



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF SHCHERBAKY v. UKRAINE

(Application no. 31095/02)

JUDGMENT

STRASBOURG

28 March 2006

FINAL

28/06/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shcherbaky v. Ukraine,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 7 March 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 31095/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Leonid Shcherbak and his wife Mrs Lidiya Shcherbak (“the applicants”), on 5 July 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Zoryana Bortnovska, succeeded by Ms Valeria Lutkovska.

3. On 24 October 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The first applicant was born in 1953. The second applicant was born in 1962. They both reside in Kharkiv. They are former employees of the State Enterprise “Vilne Housing and Communal Property Authority” of the Dzhankoy District of the Autonomous Republic of Crimea (the “debtor”).

I. CIRCUMSTANCES OF THE CASE

5. On 14 February 1999 the Dzhankoy City Court ordered the debtor to pay the applicants UAH 573.43¹ and UAH 256.12², respectively. The court

1. EUR 136.63.

issued separate judgments with respect to each applicant on 6 March and 7 April 1999.

6. On 24 February 1999 the Dzhankoy Bailiffs' Service (the "DBS") initiated the enforcement proceedings in the case.

7. On 29 September 1999 the Dzhankoy City Court awarded the first applicant UAH 140.60¹ in child support arrears.

8. On 2 September 2000 the Crimean Department of Justice of the Ministry of Justice informed the applicants that the enforcement proceedings were still pending.

9. On 20 August 2001 the DBS attached the debtor's bank accounts. Certain enforcement actions were undertaken by the DBS from 26 November 2001 to 26 January 2004 (attachment of the debtor's funds, sale of its property, etc.).

10. On 26 January 2004 the applicants had been fully paid the salary arrears due to them and the judgments had thus been enforced.

11. On 29 January 2004 the DBS terminated the enforcement proceedings in the applicants' case.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. SCOPE OF THE CASE

13. The Court notes that the first applicant introduced a new complaint about the failure of the domestic authorities to enforce the judgment of the Dzhankoy City Court of 29 September 1999 after the communication of the case to the respondent Government. This judgment was fully enforced on 26 January 2004.

14. In the Court's view, the new complaint is not an elaboration of the first applicant's original complaint to the Court about the failure to enforce a judgment of 24 February 1999 for the payment of salary arrears to him, and on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

2. EUR 61.02.

1. EUR 29.88.

II. ADMISSIBILITY

15. The Government maintained that the first applicant had failed to produce a valid letter of authority allowing him to represent his wife in the proceedings before the Court. They contended that the second applicant's complaints could not therefore be examined by the Court.

16. The applicants disagreed. They stated that the application had been initially lodged on behalf of the Scherbak family and that they were both applicants in the case.

17. It appears from the case file that it contains correspondence with the Court signed by both applicants and sometimes by each of them separately. In these circumstances, the Court accepts both spouses as applicants and dismisses the Government's objection.

18. As to the applicants' complaints under Article 8 of the Convention about the non-enforcement of the judgments given in their favour, the Court considers that they are wholly unsubstantiated (see *Romashov* judgment, cited above, § 36). It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

19. As to the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the Government submitted that the applicants were no longer victims as the judgments in their favour had already been enforced and that they had not exhausted domestic remedies as they had not complained to the national courts about any alleged failure of the State Bailiffs to act effectively.

20. The Court recalls that similar objections have already been rejected in a number of judgments adopted by the Court (see *Romashov* judgment, cited above, § 32). Accordingly, the present objections of the Government must be dismissed and the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 declared admissible. No other ground for declaring them inadmissible has been established.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

21. The applicants complain about the non-enforcement of the judgments of the Dzhankoy City Court of 24 February 1999 that awarded them compensation for unpaid salary arrears. They allege an infringement of Article 1 of Protocol No. 1. In substance, the applicants also invoke Article 6 § 1 of the Convention. These provisions provide, insofar as relevant, as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...”

22. The Court notes that the judgments of 24 February 1999 remained partially unenforced until 29 January 2004 (see paragraph 11 above), and that the enforcement proceedings were effectively resumed only in December 2003, after the case had been communicated to the Government. It thus took some four years and eleven months to pay the debts owed to the applicants.

23. The Court has frequently found violations of Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues (see *Voytenko v. Ukraine*, no. 18966/02, § 43, 29 June 2004, and the aforementioned *Romashov* case, § 43).

24. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or a convincing argument enabling it to reach a different conclusion in the instant case. The Court finds that, by failing for so long to comply with the two enforceable judgments of 24 February 1999 given in the applicants' favour, the Ukrainian authorities prevented them from receiving the money to which they were entitled. Moreover, they did not have an effective domestic remedy to redress the damage caused by the delays.

25. Accordingly there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damages and costs

27. The applicants claimed EUR 700,000 each in compensation for non-pecuniary damage. They also claimed pecuniary damage, but did not specify the amount.

28. The Government suggested that the amounts claimed by the applicants in non-pecuniary damage were excessive. They also submitted that the pecuniary damage claimed could not be awarded as the applicants had not quantified it.

29. Making its assessment on an equitable basis, as required by Article 41 of the Convention and being guided by the extensive case-law on the matter, the Court awards each of the applicants EUR 3,000 in non-pecuniary damage. However, it dismisses the applicants' claim for pecuniary damage as being unsubstantiated.

30. The applicants did not claim costs.

B. Default interest

31. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicants' complaints under Article 8 inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay to each of the applicants, within three months from the date on which the judgment becomes final

according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President