CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF POMAZANYY AND SHEVCHENKO
v. UKRAINE

(Application no. 9719/02)

JUDGMENT

STRASBOURG

4 April 2006

FINAL

04/07/2006

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 Pomazanyy and Shevchenko 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 Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 9719/02) 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 Yuriy Stepanovych Pomazanyy and Mr Vitaliy Leonidovych Shevchenko ("the applicants"), on 6 February 2002.

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

3. On 2 July 2003 the Court decided to communicate the complaint concerning the non-enforcement of the final judgments given in the applicants' favour with regard to an alleged infringement of Article 6 § 1 of the Convention 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 applicants were born in 1938 and 1951, respectively, and currently reside in Kyiv. They are former technical engineers of the State-owned company JSC "Air Company Ukrainian National Airlines" (the "UNA").

I. CIRCUMSTANCES OF THE CASE

5. On 6 May 1998 and 14 December 2001 the Zaliznychny District Court of Kyiv (the "Zaliznychny Court") ordered the UNA to pay the first applicant UAH 10,315.85[1] in compensation for salary arrears.

6. On 29 April and 14 September 1998, 25 November 1999 and 14 December 2002, the Zaliznychny Court ordered the UNA to pay the second applicant a total sum of UAH 7,231.02[2] in compensation for similar arrears.

7. On 25 November 1998 the judge of the Kyiv Arbitration Court declared the UNA bankrupt. This judgment was quashed on 4 March 1999 by the First Deputy President of the Kyiv Court of Arbitration. The bankruptcy proceedings were suspended until privatisation of the debtor.

8. On 12 January 2000 the Zaliznychny Bailiffs' Service (the "ZBS") attached property belonging to the UNA. On 7 February 2000 the Zaliznychny Court suspended the sale of assets of the UNA in view of a complaint brought by the UNA against the ZBS.

9. On 18 January 2000 the Cabinet of Ministers ordered the privatisation of the UNA.[3]

10. On 7 February 2000 the Zaliznychny Court rejected the UNA's request to quash the ZBS's decision to attach its property. On 5 April 2000 the Kyiv City Court quashed this judgment and remitted the case for a fresh examination to the Zaliznychny Court.

11. On 21 August 2000 the enforcement proceedings were resumed by the ZBS in view of the judgment of 7 February 2000. However, they were again suspended due to the bankruptcy proceedings reinitiated against the UNA.

12. On 24 October 2000 the Zaliznychny Court rejected the UNA's complaints against the actions of the ZBS. The enforcement proceedings were resumed.

13. On 12 December 2000 the enforcement proceedings were again suspended by a judge of the Zaliznychny Court, in view of the UNA's complaints against the ZBS.

14. On 11 April 2001 the ZBS informed the first applicant of a payment of UAH 210[4] made to him. The second applicant received the same sum.

15. On 6 September 2001 the UNA informed the applicants that the outstanding debt was UAH 8,570.71[5] (for the first applicant) and UAH 2,692.47[6] (for the second applicant).

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1. 2,158.10 euros.
2. EUR 1,512.75.
3. The UNA were not privatised in 2000. They were again put on sale in 2001, but were not apparently privatised due to their large debts.
4. EUR 43.65.
5. EUR 1,812.52.

16. On 22 August 2002 the Kyiv City Commercial Court resumed examination of the UNA's bankruptcy and ordered its creditors to hold a meeting. On 9 October 2002 the Kyiv City Commercial Court approved the creditors' claims register and suspended the bankruptcy proceedings.

17. On 29 September 2003 the Government informed the Court that each of the applicants had received UAH 540[1] in enforcement of the judgments given in their favour.

18. On 11 August 2005 the Kyiv City State Administration discussed a possibility of reducing the debt of the UNA and the possible proposals to be put in this respect to the State Property Fund of Ukraine (the total amount of debt was UAH 354,200).

19. On 5 September 2005 the Cabinet of Ministers approved the UNA privatisation scheme.

20. Since the enforcement proceedings were instituted the applicants have received part of the salary debts owed to them in small instalments. However the judgments given in their favour have still not been executed in full.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant provisions of the domestic law and practice are cited in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. The applicants complained about the non-enforcement of the judgments against the UNA given in their favour. In substance, they rely on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

23. The Government submitted that the applicants had not exhausted domestic remedies, pursuant to Article 35 § 1 of the Convention.

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6. EUR 518.19.
1. EUR 90.94.

24. The applicants disagreed.

25. The Court considers, having regard to its case law, that the applicants had no effective remedy to exhaust to ensure the enforcement of their judgments (cf. the aforementioned *Romashov* judgment, §§ 28-31).

26. The Court finds that the applicants have complied with the requirements of Article 35 § 1 of the Convention. It further notes that the applicants' complaint is not inadmissible on any other grounds. Accordingly, it dismisses the Government's objections and declares the application admissible.

B. Merits

27. The Government maintained that there had been no violation of Article 6 § 1 of the Convention in the applicants' case. In particular, they noted that the domestic authorities took all necessary measures to enforce the judgments given in the applicants' favour. Moreover, they alleged that the non-enforcement was due to the difficult financial situation of the State-owned company and the aviation industry.

28. The Court notes that, in the instant case, the delay in the full enforcement of the judgments given in favour of the first applicant has been some seven years and ten months. The delay in the full enforcement of the judgments given in favour of the second applicant has been seven years and eight months. The Government have not advanced any convincing justification for these delays.

29. The Court, having regard to its extensive case-law on the matter of non-enforcement (see, among many other authorities, the aforementioned *Romashov* case, § 46), finds a violation of Article 6 § 1 of the Convention in respect of the unreasonable length of the enforcement proceedings in the applicants' case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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. Damage

31. Each of the applicants claimed UAH 3,000[1] in compensation for non-pecuniary damage. The first applicant claimed UAH 10,315.85[2] in pecuniary damage and UAH 3,844.20[3] for the indexation of the salary debt due to its alleged loss of value. The second applicant claimed UAH 7,231.02[4] in pecuniary damage and UAH 3,068.68[5] for the indexation of the award, to take account of the inflation. (The applicants made no claim for costs and expenses.)

32. The Government maintained that there was no causal link between the violation found and the pecuniary damage alleged by the applicants. They further maintained that the amount of non-pecuniary damage claimed by the applicants was unreasonable and that the finding of a violation would constitute sufficient just satisfaction in the instant case.

33. The Court deciding on an equitable basis, as required by Article 41 of the Convention, awards each of the applicants their full claim in non-pecuniary damages, rounded up to EUR 465. In so far as the judgment debts in the applicants' favour have not been paid, the Court notes that the State's outstanding obligation to enforce them is not in dispute. Accordingly, the Court considers that, if the Government were to pay the remaining debts owed to the applicants, it would constitute full and final settlement of their claim for pecuniary damage.

B. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

1. EUR 463.55.
2. EUR 1,593.99.
3. EUR 593.99.
4. EUR 1,117.33.
5. EUR 474.17.

3. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the judgment debts still owed to them, as well as EUR 465 (four hundred and sixty-five euros) each in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

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

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President