



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

FIFTH SECTION

CASE OF ALEKSANDR SHEVCHENKO v. UKRAINE

(Application no. 8371/02)

JUDGMENT

STRASBOURG

26 April 2007

FINAL

24/09/2007

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 Aleksandr Shevchenko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 27 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 8371/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Aleksandr Aleksandrovich Shevchenko (“the applicant”), on 31 January 2002.

2. The applicant was represented before the Court by Mr I. Pogasiy, a lawyer, practicing in the city of Kirovograd, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 21 January 2005 the Court decided to communicate the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 concerning the lengthy non-enforcement of the judgment in the applicant's favour and the complaint under Article 6 § 1 of the Convention concerning the length of the third set of proceedings 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in the city of Kirovograd, Ukraine.

A. First set of proceedings

5. On an unidentified date the applicant instituted proceedings in the Leninskyy District Court of Kirovograd against his former employer, the State Kirovograd Store No. 72 for military personnel (*Кіровоградський воєнторг № 72*) claiming salary arrears. On 11 September 1998 the court awarded the applicant 1,834.92¹ Ukrainian hryvnias (UAH).

6. The Government submitted that on 16 October 2003 the debtor in the applicant's case had transferred the amount awarded by the judgment of 11 September 1998 to the Bailiffs Service's bank account. By letter of 30 January 2004 the applicant was requested to provide information necessary for a bank or postal transfer of this amount from the Bailiffs Service's account to the applicant. Since the applicant failed to provide such information the awarded amount remains unpaid to him.

B. Second set of proceedings

7. On 28 October 2001 the applicant instituted administrative proceedings in the Leninskyy District Court against the Bailiffs' Service claiming compensation for the non-enforcement of the judgment in his favour. On 9 November 2001 the court returned the applicant's complaint on the ground that it should have been lodged under the civil procedure. On 21 December 2001 the same court returned the applicant's appeal against the decision of 9 November 2001 for non-compliance with the procedural formalities.

C. Third set of proceedings

8. On 31 January 2002 the applicant instituted proceedings in the Leninskyy District Court against his former employer, the Kirovograd Store No. 72 for military personnel, claiming compensation for the loss of earnings caused by the lengthy non-enforcement of the judgment in his favour. On 5 September 2002 the court left the applicant's action without consideration as the parties twice failed to appear in court hearings. According to the applicant, he was informed about this decision only upon his request lodged with the court in December 2003. In February 2004 the applicant appealed against the decision of 5 September 2002. On 2 June 2004 the Kirovograd Regional Court of Appeal quashed this decision and remitted the case for a fresh consideration. On 25 April 2005 the Leninskyy District Court found against the applicant. The applicant submitted that he had learned about this judgment only from the Government's observations submitted to the Court in September 2005. He did not request to renew a time-limit for lodging an appeal against it.

1. At the material time approximately 396.08 euros (EUR)

D. Fourth set of proceedings

9. On 15 September 2003 the applicant instituted proceedings in the Leninsky District Court against the Bailiffs' Service, the Ministry of Justice of Ukraine and the State Treasury claiming compensation for pecuniary and non-pecuniary damage caused by the non-enforcement of the judgment in his favour. On 11 February 2004 the court found against the applicant. On 7 April 2004 the same court returned the applicant's appeal as he had failed to pay the court fee. On 8 July 2004 the Kirovograd Regional Court of Appeal upheld the decision of 7 April 2004. The applicant appealed against these decisions in cassation and proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

11. The applicant complained about the lengthy non-enforcement of the judgment of 11 September 1998 given in his favour, relying on Article 6 of the Convention and Article 1 of Protocol No. 1. The applicant also complained under Article 13 of the Convention that he had no effective remedies in respect of the above complaints. The applicant further complained under Article 6 § 1 of the Convention about the length and unfairness of the second, third and fourth sets of proceedings. The applicant finally complained under Article 13 of the Convention about the ineffectiveness of the judicial system as a whole. The Articles invoked 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 13

Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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 ...”

I. NON-ENFORCEMENT OF THE JUDGMENT IN THE APPLICANT'S FAVOUR**A. Admissibility**

12. The Government raised objections regarding the applicant's victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

13. The Court concludes that the applicant's complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring them inadmissible.

B. Merits

1. The applicant's complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

14. The Government maintained that the judgment of 11 September 1998 in the applicant's favour had been enforced in full because the relevant debt amount had been transferred to the Bailiffs' Service account. The Government further maintained that the Bailiffs' Service had performed all necessary actions and could not be blamed for the delay.

15. The applicant disagreed. In particular, he insisted that the availability of the amount awarded to him on the Bailiffs Service's bank account could not be considered as an enforcement of the judgment in his favour.

16. The Court notes that the amount awarded to the applicant by the judgment of 11 September 1998 was available to him as of 16 October 2003 when it was transferred to the Bailiffs' Service bank account. Therefore, the

Court considers that the judgment in question could be regarded as enforced by 16 October 2003.

17. The Court, however, notes that the judgment of 11 September 1998 remained unenforced for more than five years and one month.

18. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see, among others, *Romashov v. Ukraine*, cited above, § 42-46; *Shmalko v. Ukraine*, no. 60750/00, § 55-57, 20 July 2004).

19. Having examined all the materials submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

20. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

2. The applicant's complaint under Article 13 of the Convention

21. The Government referred to their observations about the non-exhaustion by the applicant of effective domestic remedies (see paragraph 12 above).

22. The applicant insisted that he had had no effective domestic remedy in respect of his complaints about the non-enforcement of the judgment in his favour.

23. The Court, having regard to its case-law, considers that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings (see *Voytenko v. Ukraine*, no. 18966/02, § 48, 29 June 2004). Accordingly, there has been a breach of this provision.

II. OTHER COMPLAINTS

A. The length of the third set of proceedings

24. The Government did not provide any observations on admissibility of the applicant's complaint under Article 6 § 1 of the Convention about the length of the third set of proceeding (see paragraph 8 above).

25. The Court recalls that the reasonableness of the length of proceedings must be assessed in accordance with the circumstances of the case and the following criteria: the complexity of the case, the behaviour of the applicant and that of the competent authorities and what was at stake for the applicant in the dispute (see, *among many other authorities*, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

26. In the instant case, the Court notes that the proceedings started on 31 January 2002 and terminated on an unidentified date in September 2005

when the applicant learned about the judgment of 25 April 2005. Therefore, they lasted for three years and eight months, and included two instances.

27. The Court finds that the subject matter of the litigation was not especially difficult. The Court further notes that the proceedings in question included two periods of judicial inactivity caused by the failure of the first instance court to inform the applicant in due time about the decisions taken in his case. However, the Court also notes that the applicant failed to show that he had undertaken any steps between September 2002 and December 2003, and after 2 June 2004 to inquire about the state of proceedings in his case. The Court reiterates that only delays attributable to the State may justify a finding of non-compliance with the “reasonable time” requirement (see *Humen v. Poland*, no. 26614/95, § 66, judgment of 15 October 1999). The Court therefore concludes that the length of proceedings in the instant case did not exceed a reasonable time within the meaning of Article 6 § 1.

28. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Other matters

29. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the materials in its possession and in so far as the matters complained of were within its competence, they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. 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. The applicant claimed UAH 67,002.10¹ in respect of pecuniary damage, including the judgment debt, and UAH 92,400² in respect of non-pecuniary damage.

1. EUR 10,646.80

2. EUR 14,682.60

32. The Government submitted that these claims were exorbitant and unsubstantiated.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

34. The applicant also claimed UAH 18,650¹ for the costs, expenses and legal representation incurred before the domestic courts and the Court.

35. The Government maintained that only those expenses which were actually and necessarily incurred should be awarded.

36. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

37. The Court considers that these requirements have not been met in the instant case. In particular, it notes that the case was not particularly complex and the applicant was dispensed from the general obligation to be legally represented. However, the applicant may have incurred some costs and expenses for his representation and the proceedings before the Court.

Regard being had to the information in its possession and to the above considerations, the Court awards the applicant EUR 300 for costs and expenses.

C. Default interest

38. 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 applicant's complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment of 11 September 1998 admissible, and the remainder of the application inadmissible;

1. EUR 2,010.12

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* that there has been a violation of Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President