



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

FIFTH SECTION

CASE OF SHAGA v. UKRAINE

(Application no. 39846/04)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

30/04/2008

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 Shaga v. Ukraine,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 39846/04) 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, Mrs Oleksandra Fedorivna Shaga (“the applicant”), on 26 October 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 27 November 2006 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in the city of Chernigiv, Ukraine.

5. On 21 December 2000 the Novozavodsky District Court awarded the applicant 5,258¹ Ukrainian hryvnas (UAH) from the State-owned Atomspetsbud company (*Державна будівельно-промислова компанія*

¹ At the material time around 1,063.68 euros (EUR)

«Атомснєубод») in alimonies due to the applicant by her ex-husband who was employed by the company. This judgment remains unenforced.

6. On 29 January 2002 the Pecherskyy District Court of Kyiv rejected the applicant's claim against the President of Ukraine, the Cabinet of Ministers, the Ministry of Fuel and Energy and the Ministry of Justice for compensation for pecuniary and non-pecuniary damage inflicted by the non-enforcement of the judgment in her favour.

7. By an order of the Ministry of Energy dated 27 June 2002, the debtor company was liquidated and a liquidation commission established. As a result, the State Bailiffs' Service terminated the enforcement proceedings in the applicant's case and the writ of enforcement was forwarded to the liquidation commission. The liquidation proceedings are still pending.

II. RELEVANT DOMESTIC LAW

8. The relevant domestic law is summarised in the judgment of *Mykhaylenko and Others v. Ukraine* (nos. 35091/02 and foll., §§ 24-33, ECHR 2004-XII).

THE LAW

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

9. The applicant complained under Article 6 § 1 of the Convention about lengthy non-enforcement of the judgment of 21 December 2000 given in her favour. She also complained under Article 1 of Protocol No. 1 that she could not recover the debt due to her from the State-owned company in accordance with the judgment at issue.

These Articles 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 ...”

A. Admissibility

10. The parties did not submit any observations in respect of the admissibility of the case.

11. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

12. The parties did not submit their observations on the merits as well.

13. The Court notes that that the judgment of 21 December 2000 remains unenforced for almost seven years.

14. 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 the *Mykhaylenky and Others* judgment, cited above, §§ 55 and 64).

15. The Government have not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case.

16. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the lengthy non-enforcement of the judgment in the applicant’s favour and a violation of Article 1 of Protocol No. 1 in the present application.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicant claimed the unsettled judgment debt in respect of pecuniary damage and UAH 35,000² in respect of non-pecuniary damage.

² Approximately EUR 5,352.01

19. The Government submitted that they did not question the necessity to enforce the judgment in the applicant's favour. However, they found the claims for non-pecuniary damage exorbitant and unsubstantiated.

20. The Court notes that, as the judgment given in favour of the applicant remains unenforced, the Government should pay the applicant the outstanding debt. The Court further takes the view that the applicant must have sustained non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in this respect.

B. Costs and expenses

21. The applicant also claimed UAH 1,000³ for the costs and expenses. No document in support of this claim has been submitted.

22. The Government submitted that the Court should make no award in this respect.

23. The Court considers that the applicant has not provided any substantiation of her costs and expenses claimed; however, it is obvious that she has had postal expenses in relation to filing her application with the Court. The Court, therefore, awards the applicant EUR 30 in this respect.

C. Default interest

24. 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 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 in the present application;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the outstanding debt in accordance with

³ Approximately EUR 152.92

the judgment of 21 December 2000, as well as EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 30 (thirty euros) for the costs and expenses, 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;

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

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President