



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

FIRST SECTION

CASE OF SHEVCHENKO v. RUSSIA

(Application no. 42383/02)

JUDGMENT

STRASBOURG

10 April 2008

FINAL

10/07/2008

This judgment may be subject to editorial revision.

In the case of Shevchenko v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 42383/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Raisa Ilyinichna Shevchenko (“the applicant”), on 10 October 2002.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by Mrs V. Milinchuk.

3. On 29 August 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

4. The applicant was born in 1947 and lives in the town of Kamyshin in the Volgograd Region.

5. On 23 April 2002 the Tsentralny District Court of Volgograd allowed the applicant’s claim for housing aid and awarded her 209,550 Russian roubles (RUB) against the Ministry of Finance. The District Court found that the applicant was entitled to thirty-three square metres (sq. m), and that the average price per sq. m in the region at the relevant time was RUB 6,350.

6. The parties did not appeal against the judgment and it became final on 4 May 2002.

7. On 28 May 2002 the applicant submitted a writ of execution to the local office of the Ministry of Finance.

8. By letter of 24 October 2002, in response to the applicant's query about the state of enforcement proceedings, the Ministry advised her that an application for supervisory review of the above judgment had been lodged.

9. On 15 November 2002 the applicant submitted the writ to the bailiffs' service.

10. On 6 December 2002 the bailiff returned the writ to the District Court because it had failed to set out its period of validity. On 17 January 2003 the District Court sent the corrected writ to the bailiff.

11. On 28 February 2003 the bailiff opened enforcement proceedings. He discontinued them on 12 May 2003 because the bailiffs' service was not competent to enforce judgments against the State. He advised the applicant to submit her writ of execution to the Ministry.

12. On 26 June 2003 the applicant requested the District Court to rectify an error in the writ. On 1 July 2003 the District Court forwarded the rectified writ to the applicant. It was marked "duplicate".

13. On 22 July 2003 the applicant submitted it to the Ministry.

14. On 9 September 2004 the District Court sent the Ministry a new version of the writ, without the note "duplicate". It explained that the court secretary had marked the previous writ as "duplicate" by mistake. On 15 September 2004 the applicant also submitted to the Ministry the rectified writ, without the "duplicate" mark. She referred to the District Court's explanations of 9 September 2004. The Ministry received the applicant's writ on 22 September 2004.

15. By letter of 8 October 2004, the Ministry requested the applicant to explain why she had submitted a duplicate of the writ.

16. On 30 December 2004 the applicant received the sum of money awarded to her under the judgment of 23 April 2002.

THE LAW

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

17. Referring to Articles 3, 6 of the Convention and Article 1 of Protocol No. 1, the applicant complained about the delay in enforcement of the judgment of 23 April 2002. The Court considers that the applicant's complaint should be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which read as follows:

Article 6 § 1

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

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...”

A. Admissibility

18. 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

19. The Government argued that the judgment in the applicant's favour had been enforced in due time. The Ministry of Finance had received the original writ of execution on 22 September 2004. On 24 December 2004 the money had been transferred to the applicant's bank account.

20. The applicant responded that she had promptly submitted the writ of execution to the Ministry. After six months' inactivity the Ministry had advised her that it would not enforce the judgment because it had applied for supervisory review. The applicant had to fetch the writ from the Ministry and to submit it to the bailiffs but they had also refused to enforce the judgment. The applicant finally referred to the District Court's repeated errors in issuing the writ and concluded that the delay in the enforcement of the judgment had been fully attributable to the authorities.

21. The Court observes that the judgment of 23 April 2002 became enforceable on 4 May 2002 but was enforced on 30 December 2004. It thus took the authorities more than two years and seven months to execute it.

22. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III; *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 30 et seq., 17 March 2005; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005; and *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004).

23. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of

persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that, by failing, for a substantial period of time, to comply with the enforceable judgment in the applicant's favour, the domestic authorities violated her right to a court and prevented her from receiving the money she could reasonably have expected to receive.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 12,940 euros (EUR) in respect of pecuniary damage, of which EUR 3,653 represented the interest accrued on the judgment debt at the marginal lending rate of the Russian Central Bank, and EUR 9,287 compensation for depreciation of the judgment calculated on the basis of increases in the average housing prices in the Volgograd Region from 2002 to 2007. In particular, she submitted that in December 2004 the average price had amounted to RUB 10,500 per sq. m and in March 2007 to RUB 16,200 per sq. m. She further claimed EUR 3,000 in respect of non-pecuniary damage.

27. The Government submitted that the applicant had applied a wrong method of calculation but failed to provide any further details. They considered that the applicant had been entitled to no more than a flat of thirty-three sq. m and that she could have managed to buy it even with the money paid to her in 2004. If she had bought a smaller apartment she would have had to return the remainder of the money to the State because the award had been made for the sole purpose of buying housing. Hence, the applicant was not entitled to the interest on the judgment debt. Finally, the Government submitted that the applicant's claim in respect of non-pecuniary damage was excessive.

28. The Court notes that on 23 April 2002 the District Court awarded the applicant a sum of money for purchasing a flat. The applicant could not use that award for any other purpose. The Court observes that the applicant claimed EUR 3,653 representing the interest which could have accrued if the money had been paid in good time and put in a bank. Having regard to

the special purpose of the award, the Court agrees with the Government that the applicant had no right to profit from it by investing it or depositing the money on a bank account (see *Glushakova v. Russia* (no. 2), no. 23287/05, § 23, 10 May 2007). The Court therefore dismisses her claim under this head.

29. As to the remainder of the pecuniary claim, the Court notes that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the delays in the enforcement of the judgment in the applicant's favour. The Court reiterates that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005; *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). The Court observes that the amount of housing aid awarded to the applicant under the judgment of 23 April 2002 was calculated by multiplying the number of sq. m to which she was entitled by the average price per sq. m in the region in 2002. The applicant received the award in December 2004 and by that time the average price had considerably increased (see paragraph 26 above). The Court accepts that the judgment debt depreciated as a result of the delayed enforcement of the judgment (compare *Pylnov v. Russia*, no. 7111/05, § 31, 12 July 2007). The Court further finds that the Government failed to explain what specific aspect of the applicant's calculation had been erroneous. They did not contest the reference prices supplied by the applicant. Having regard to the materials in its possession and to the fact that the judgment was fully enforced in 2004, the Court awards the applicant EUR 4,000, plus any tax that may be chargeable on that amount, and dismisses the remainder of the claim for pecuniary damage.

30. Finally, the Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in her favour. Taking into account the length of the enforcement proceedings and making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

31. The applicant did not claim costs and expenses and, accordingly, there is no call to make an award under this head.

C. Default interest

32. 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 of the Convention and Article 1 of Protocol No. 1;
3. *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 following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:
 - (i) EUR 4,000 (four thousand euros) in respect of pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President