



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

FIFTH SECTION

CASE OF SHAPKINA v. UKRAINE

(Application no. 20028/04)

JUDGMENT

STRASBOURG

13 November 2008

FINAL

13/02/2009

This judgment may be subject to editorial revision.

In the case of Shapkina v. Ukraine,

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

Rait Maruste, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 October 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 20028/04) 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 Kazakh national, Ms Valentina Grigoryevna Shapkina (“the applicant”), on 20 May 2004.

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

3. On 13 November 2007 the Court declared the application partly inadmissible and decided to communicate the complaint under Article 1 of Protocol No.1 to the Convention about the non-enforcement of the judgment given in the applicant’s favour against the Bailiffs’ Service. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the remainder of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Ms Valentina Grigoryevna Shapkina, is a Kazakh national who was born in 1937 and lives in the town of Berdyansk, Ukraine.

5. On 7 August 1998, the Berdyansk Court convicted Ms K. and Ms L. of fraud and awarded the applicant 19,357 Ukrainian hryvnas (UAH)¹ in compensation for pecuniary and non-pecuniary damage caused to the applicant by these persons.

6. As the judgment of 7 August 1998 had not been enforced by the Berdyansk Bailiffs' Service (*Відділ державної виконавчої служби Бердянського міського управління юстиції Запорізької області*), the applicant instituted proceedings against the latter in the Berdyansk Court. The applicant claimed compensation for pecuniary and non-pecuniary damage caused to her by the lengthy non-enforcement of the judgment.

7. On 19 December 2002 the court found in part for the applicant. By its judgment, the court ordered that the Berdyansk Bailiffs' Service pay the applicant UAH 5,635.90² in compensation for pecuniary and non-pecuniary damage caused to the latter as a result of the Bailiffs' failure to take all necessary enforcement actions during the relevant period.

8. Being dissatisfied with the amount of the compensation awarded to her, the applicant lodged an appeal against the above judgment. On 24 November 2003 the Zaporizhzhya Regional Court of Appeal upheld the judgment of the first instance court. On the same date the judgment of 19 December 2002 became final.

9. On 19 January 2004 the applicant transferred the enforcement writ in respect of the judgment of 19 December 2002 to the Berdyansk Bailiffs' Service. On 27 February 2004 the enforcement writ was transferred for enforcement to the Primorsky Bailiffs' Service.

10. On 5 April 2004 the latter instituted enforcement proceedings in respect of the judgment of 19 December 2002.

11. On 1 November 2005 the Primorsky Bailiffs' Service suspended enforcement proceedings since the Berdyansk Bailiffs' Service had no property that could be attached.

12. The judgment of 19 December 2002 remains unenforced.

II. RELEVANT DOMESTIC LAW

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

¹ Approximately EUR 8,133.74

² Approximately EUR 1,064.18

THE LAW

I. SCOPE OF THE CASE

14. In her reply to the Government's observations the applicant invoked Article 13 of the Convention referring to the same facts.

15. In the Court's view, the new complaint is not an elaboration of the applicant's original complaint to the Court, which had been communicated to the respondent Government. The Court considers, therefore, that it is not appropriate now to consider it (see *Novitskiy v. Ukraine* (dec.), no. 20324/03, 16 October 2007; *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

16. The applicant complained about the non-enforcement of the judgment of 19 December 2002. She invoked Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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"

17. The Government contested that argument.

A. Admissibility

18. The Government raised objections regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in a number of similar cases concerning the non-enforcement of the court judgments (see, *Romashov v. Ukraine*, no. 67534/01, § 28, 27 July 2004). The Court considers that these objections must be rejected for the same reasons.

19. The Court concludes that the applicant's complaint raises issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring it inadmissible. The Court must therefore declare it admissible.

B. Merits

20. The Government contended that there had been no violation of Article 1 of Protocol No. 1.

21. The applicant disagreed.

22. The Court notes that the judgment of 19 December 2002, which became final in November 2003, remains unenforced for more than four years and nine months.

23. The Court recalls that it has frequently found violations of Article 1 of Protocol No. 1 to the Convention in cases raising similar issues to the present application (see, for example, *Zubko and Others v. Ukraine*, nos. 3955/04, 5622/04, 8538/04 and 11418/04, §§ 65-70, 26 April 2006).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 1 of Protocol No. 1 to the Convention.

III. 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 USD 5,000 in respect of the pecuniary damage caused to her as a result of the non-enforcement of the judgment of 7 August 1998. She made no claims in respect of the pecuniary damage caused to her as a result of the non-enforcement of the judgment of 19 December 2002.

She claimed EUR 10,000 in respect of non-pecuniary damage.

27. The Government noted that the subject of this Court's consideration had been the non-enforcement of the judgment of 19 December 2002 and therefore her claims for pecuniary damage should be rejected.

They further considered the applicant's claim for non-pecuniary damage unsubstantiated and exorbitant.

28. The Court notes that the applicant did not submit any claim for pecuniary damage caused to her as a result of the non-enforcement of the judgment of 19 December 2002. The Court therefore makes no award in this respect.

As regards the applicant's claim for non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, considers it reasonable to award the applicant a global sum of EUR 1,400 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant claimed UAH 3,000¹ for costs and expenses.

30. The Government agreed to pay the applicant UAH 170.52².

31. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

32. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 30 for costs and expenses.

C. Default interest

33. 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.

¹ Approximately EUR 400

² Approximately EUR 25

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
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 the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 1,400 (one thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 30 (thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 13 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President