



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SHVENTKOVSKIY v. UKRAINE

(Application no. 27589/05)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Shventkovskiy v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 27589/05) 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 Victor Vladimirovich Shventkovskiy (“the applicant”), on 19 July 2005.

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

3. On 30 April 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in the city of Kharkiv, Ukraine.

5. On 19 March 2004 the Moskovskiy District Court of Kharkiv (“the court”) partly allowed the applicant’s claims and awarded him 4,643.42 Ukrainian hryvnyas (UAH)¹ in salary arrears and compensation for loss of earnings, to be paid by the State-controlled company “Serp i molot”.

¹ About 722 euros (EUR)

6. The applicant did not appeal against this decision under the ordinary appeal procedure, but on 3 February 2005 he lodged a cassation appeal against it. On 4 February 2005 the court returned the applicant's cassation appeal since the relevant decision had not been appealed under the ordinary appeal procedure.

7. The applicant states that he received the ruling of 4 February 2005 when the time-limit for lodging an appeal against it had already expired. The applicant did not provide this Court with any document certifying that he had requested the domestic courts to renew the time-limit for lodging an appeal against the ruling of 4 February 2005.

8. On 31 August 2004 the Moskovskiy District Bailiffs' Service of Kharkiv initiated enforcement proceedings in respect of the judgment of 19 March 2004.

9. Following insolvency and liquidation proceedings instituted against the company, on 10 October 2007 the latter was closed down and removed from the relevant enterprises' register.

10. In 2007 the applicant received UAH 163.71. The remainder of the judgment has not been enforced.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine*, no. 67534/01, §§ 16-19, 27 July 2004, and *Voytenko v. Ukraine*, no. 18966/02, §§ 20-25, 29 June 2004.

THE LAW

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

12. Relying on Article 17 the applicant complained about the non-enforcement of the judgment given in his favour. The Court will consider this complaint under Article 6 § 1 of the Convention, which reads 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.”

A. Admissibility

13. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that he had not availed himself of the opportunity to be registered as a creditor in the insolvency proceedings pending against the debtor company, and had failed to apply to any domestic court against the Bailiffs' Service to challenge the allegedly inadequate enforcement of the judgment.

14. The applicant disagreed.

15. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Trykhlil v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that this objection must be rejected in the instant case for the same reasons.

B. Merits

16. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention.

17. The applicant disagreed.

18. The Court notes that the judgment in the applicant's favour has remained unenforced for five years.

19. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising a similar issue to the one in the present case (see *Chechin v. Ukraine*, no. 6323/03, § 17, 15 May 2008; *Romashov*, cited above, § 46, and *Voytenko*, cited above, § 43).

20. Having examined all the material in its possession, 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.

21. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The applicant further complained under Article 6 of the Convention that the proceedings in his case had been unfair. Relying on Article 13 of the Convention, the applicant complained that he had had no access to the court of appeal and the court of cassation. He finally invoked Article 1 of the Convention, referring to the same facts.

23. Having carefully examined the applicant's submissions in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any

appearance of a violation of the rights and freedoms set out in the Convention.

24. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of 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 EUR 50,000 in respect of pecuniary and non-pecuniary damage.

27. The Government contested these claims as unsubstantiated.

28. The Court finds that the Government should pay the applicant the outstanding debt under the judgment given in his favour by way of compensation for pecuniary damage. Otherwise, it does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the remainder of the applicant's claim in that respect. On the other hand, ruling on an equitable basis, the Court finds it reasonable to award the applicant EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant made no separate claim as to costs and expenses. Therefore, the Court makes no award under that head.

C. Default interest

30. 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 complaint concerning the non-enforcement of the judgment given in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of 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 debt still owed to the applicant under the judgment of the Moskovskiy District Court of Kharkiv of 19 March 2004 in respect of pecuniary damage, as well as EUR 1,600 (one thousand six hundred euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President