



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SAVINSKIY AND SHEVCHENKO v. UKRAINE

(Applications nos. 34168/05 and 45750/07)

JUDGMENT

STRASBOURG

19 November 2009

FINAL

19/02/2010

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 Savinskiy and Shevchenko v. Ukraine,
The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Peer Lorenzen, *President*,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges*,
Mykhaylo Buromenskiy, *ad hoc judge*,
and Stephen Phillips, *Deputy Section Registrar*,
Having deliberated in private on 20 October 2009,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 34168/05 and 45750/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Anatoliy Fyodorovich Savinskiy and Mr Oleksandr Igorovych Shevchenko (“the applicants”), on 1 September 2005 and 22 September 2007 respectively.

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

3. On 12 December 2007 and 15 October 2008 the President of the Fifth Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1939 and 1957 respectively and live in Pavlograd and Slovyansk, Ukraine.

5. By a judgment of 7 June 2001 the Pavlograd Town Court (*Павлоградський міський суд*) awarded Mr Savinskiy 6,376.66 Ukrainian hryvnias (UAH)¹ in salary arrears and other payments to be paid by his

¹ Approximately 1,390.62 euros (EUR) at the material time.

former employer, the State company Pershotravenskoye shakhtostroyitelnoye upravleniye-4.

6. By a judgment of 24 December 1997 the Slovyansk Town Court (*Павлоградський міський суд*) awarded Mr Shevchenko UAH 1,829.89² in salary arrears to be paid by his former employer, the Soda Plant (*BAT «Содовий завод»*), a joint stock company in which the State holds at least 25% of the share capital. By a judgment of 17 July 2000 the same court additionally ordered the debtor company to pay Mr Shevchenko UAH 7,173.09³ in payments owed to him upon retirement.

7. After the above judgments had become final, the relevant departments of the State Bailiffs' Service instituted proceedings to enforce them.

8. Subsequently, the insolvency and later the liquidation proceedings against the debtor companies were instituted and the State Bailiffs' Service terminated the enforcement proceedings. The above-mentioned liquidation proceedings are apparently still pending.

9. The judgments in the applicants' favour remain unenforced.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is set out in the judgment of 26 April 2005 in the case of *Sokur v. Ukraine* (no. 29439/02, §§ 17-22).

THE LAW

I. JOINDER OF THE APPLICATIONS

11. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

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

12. The applicants complained that by failing to enforce the judgments in their favour the State authorities had breached Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which read, in so far as relevant, as follows:

² Approximately 966.66 US dollars at the material time.

³ Approximately EUR 1,405.95 at the material time.

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

13. The Government submitted that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that the applicants had not availed themselves of the opportunity to be registered as creditors in the insolvency and liquidation proceedings pending against the debtor companies, and had failed to challenge the liquidation commission's inactivity before the relevant commercial court or apply to any domestic court against the Bailiffs' Service to challenge the allegedly inadequate enforcement of the judgments in their favour.

14. The Court points out that similar objections have already been rejected in a number of cases previously examined 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 these objections must be rejected in the instant case for the same reasons.

15. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

16. The Government advanced the standard arguments they put forward in cases concerning the lengthy non-enforcement of domestic court judgments and concluded that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

17. The applicants disagreed.

18. The Court notes that the judgments in the applicants' favour remained unenforced for at least eight years and two months.

19. The Court reiterates 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 applications (see, among other authorities, *Voytenko v. Ukraine*, no. 18966/02, §§ 43 and 55, 29 June 2004).

20. Having examined all the materials 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 and a violation of Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of the judgments in the applicants' favour.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. Mr Savinskiy failed to submit his claims for just satisfaction in time.

24. Mr Shevchenko claimed the outstanding debts under the judgments in his favour and EUR 7,360.96 in respect of non-pecuniary damage.

25. The Government contested the claim in respect of non-pecuniary damage as excessive and unsubstantiated.

26. The Court makes no award in respect of Mr Savinskiy. It notes, however, that it is undisputed that the State still has an outstanding obligation to enforce the judgments at issue. It further awards Mr Shevchenko, on an equitable basis, EUR 2,600 in respect of non-pecuniary damage.

B. Default interest

27. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - (i) the outstanding debts under the judgments given in the applicants' favour;
 - (ii) EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage to Mr Shevchenko, 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 to the applicant;
 - (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 Mr Shevchenko's claim for just satisfaction.

Done in English, and notified in writing on 19 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President