



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SHASTIN AND SHASTINA v. UKRAINE

(Application no. 12381/04)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/05/2010

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 Shastin and Shastina 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,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*.

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 12381/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Ms Lyudmila Yevgenyevna Shastina (“the first applicant”) and Mr Pyotr Pavlovich Shastin (“the second applicant”), on 19 February 2004. On 2 April 2008 the second applicant died and the first applicant expressed a wish to continue the proceedings on behalf of the second applicant, her husband.

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

3. On 15 October 2008 the President of the Fifth Section decided to communicate to the Government the complaint under Article 6 § 1 of the Convention concerning the non-enforcement of final decisions given in the applicants' favour. 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 applicants were born in 1932. The first applicant lives in Slovyansk. The second applicant lived in the same town before his death.

5. At the material time the applicants worked at the State Soda Plant (*BAT «Содовий завод»*).

6. On 24 October 1997 and 5 June 1998 the Slovyansk Town Court awarded the first applicant 1,752.56 and 717.74 Ukrainian hryvnias (UAH)¹ in salary arrears to be paid by the above-mentioned company.

7. On 24 October 1997 and 28 March 2001 the Slovyansk Town Court awarded the second applicant UAH 940.84 and UAH 715.63² in salary arrears to be paid by the above-mentioned company.

8. These decisions became final and the State Bailiffs' Service instituted proceedings to enforce them.

9. On 3 January 2001 the Donetsk Regional Arbitration Court (after June 2001 the Donetsk Regional Commercial Court) instituted insolvency proceedings against the debtor company. On 4 September 2003 the court, having declared the debtor insolvent, ordered its liquidation, which is still pending.

10. The decisions given in the applicants' favour have not been executed.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

I. AS TO THE *LOCUS STANDI* OF THE FIRST APPLICANT IN RESPECT OF THE COMPLAINTS OF THE SECOND APPLICANT

12. The second applicant died on 2 April 2008, while the case was pending before the Court. It has not been disputed that the first applicant (his wife) is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see, among other authorities, *Benyaminson v. Ukraine*, no. 31585/02, § 84, 26 July 2007, and *Horváthová v. Slovakia*, no. 74456/01, §§ 25-27, 17 May 2005). However, reference will still be made to both applicants throughout the ensuing text.

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

13. The applicants complained that by failing to enforce the decisions given in their favour the respondent State violated Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

¹ About 933.65 and 348.67 United States dollars (USD) respectively at the material time.

² About USD 501.22 and USD 132.07 respectively 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. ...”

A. Admissibility

14. 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 against the debtor company, and had failed to apply to any domestic court to challenge the allegedly inadequate enforcement by the Bailiffs' Service of the decisions in their favour.

15. The applicants disagreed.

16. 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 the objections in the instant case must be rejected for the same reasons.

17. The Court notes that the complaints 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

18. The Government advanced their standard arguments for cases concerning the lengthy non-enforcement of domestic court decisions and concluded that there had been no violation of Article 6 § 1 of the Convention.

19. The applicants disagreed.

20. The Court notes that the decisions in the applicants' favour have remained unenforced for more than eight years.

21. The Court reiterates that it has already found violations of Article 6 § 1 in similar cases (see, among other authorities, *Sokur v. Ukraine*, no. 29439/02, §§ 30-37, 26 April 2005; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004; and *Voytenko v. Ukraine*, no. 18966/02, §§ 43, 48 and 55, 29 June 2004).

22. 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.

23. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the lengthy non-enforcement of the decisions in the applicants' favour in the present application.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicants further complained that lengthy non-enforcement of decisions in their favour amounted to violation of Articles 4 and 17 of the Convention.

25. Having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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.”

27. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

28. The Court, however, notes that the State still has an outstanding obligation to enforce the decisions at issue. Accordingly, the applicants remain entitled to recover the principal amount of the debts awarded to them in the course of the domestic proceedings.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 § 1 of the Convention concerning the lengthy non-enforcement of decisions in the applicants' favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President