



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SERGEYEVA v. UKRAINE

(Application no. 43798/05)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

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 Sergeyeva 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*,

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. 43798/05) 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, Ms Nataliya Oleksiyivna Sergeyeva (“the applicant”), on 15 November 2005.

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

3. The applicant alleged, in particular, that her Convention rights had been infringed on account of lengthy enforcement of a judgment given in her favour.

4. On 20 January 2009 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

5. The applicant was born in 1946 and lives in Kyiv.

6. On 28 January 2004 the Shevchenkivskiy District Court of Kyiv obliged the Shevchenkivskiy District Administration of Kyiv to regularise privatisation of the apartment, which the applicant occupied with her family.

7. On 13 May 2004 this judgment was upheld by the Kyiv City Court of Appeal and on 27 July 2004 the bailiff service instituted enforcement proceedings in its respect.

8. On 9 December 2004 the judgment was further upheld by the Supreme Court of Ukraine and became final.

9. On several occasions the enforcement proceedings were suspended on account of various objections and requests for clarification by the debtor. On 17 and 23 February 2005 the bailiffs' service imposed fines on the Head of the Administration on account of his failure to ensure enforcement of the judgment. In March 2005 the bailiffs' service further requested the prosecutors' office to institute criminal proceedings against him on account of evasion of enforcement, which request on 14 March 2005 was rejected.

10. On 15 April 2005 the Shevchenkivskiy District Administration issued the applicant and her family with a privatisation certificate and the enforcement proceedings were discontinued. However, in view of the fact that the State Real Estate Inventory Bureau (*Бюро технічної інвентаризації*) refused to register the applicant's family's title to the apartment on the basis that the title documents issued to another party, a municipal company, had not been invalidated, the enforcement proceedings were subsequently renewed.

11. On 6 December 2005 the bailiffs' service imposed a fine on the debtor for non-enforcement of the judgment in the applicant's family's favour.

12. On 19 December 2005 the Shevchenkivskiy District Administration instituted court proceedings seeking invalidation of the municipal company's title to the apartment and the enforcement proceedings in the applicant's favour were suspended.

13. On 2 June 2006 the Shevchenkivskiy District Court of Kyiv invalidated the municipal company's title to the apartment.

14. On 20 November 2006 the Real Estate Inventory Bureau registered the applicant's family's title to the apartment and on 8 December 2006 the enforcement proceedings were terminated.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of the domestic law are cited in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004) and the admissibility decision in the case of *Skubenko v. Ukraine* (no. 41152/98, 6 April 2004).

THE LAW

I. SCOPE OF THE CASE

16. The Court notes that after the case had been communicated to the respondent Government the applicant introduced a new complaint under Article 13 of the Convention that she had been deprived of effective domestic remedies on account of her complaints concerning non-enforcement of the judgment of 28 January 2004.

17. In the Court's view, the new complaint is not an elaboration of the applicant's original complaints to the Court, lodged more than three years earlier and which had been communicated to the respondent Government. The Court considers, therefore, that it is not appropriate to consider it now (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ADMISSIBILITY

18. The applicant complained that the State authorities had failed to enforce the judgment of 28 January 2004 in due time. She invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, in so far as relevant, 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. ...”

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”

19. The Government submitted that these complaints were inadmissible. They noted in particular that as the judgment at issue had finally been enforced on 20 November 2006, the applicant had lost her victim status, and so her application was incompatible *ratione personae* with the provisions of the Convention. Moreover, this application constituted abuse of right of petition, as the applicant had not informed the Court in her submissions that

the judgment had been finally enforced. In any case, the applicant had failed to exhaust domestic remedies in respect of her complaints, as she had not pursued proceedings against the bailiffs for failure to enforce the judgment in due time.

20. The applicant disagreed.

21. The Court notes that it had already examined and rejected in other cases allegations similar to those advanced by the Government in the present case (see *Skubenko* (dec.), cited above, and *Khaylo v. Ukraine*, no. 39964/02, § 73, 13 November 2008). It finds no reasons to depart from its findings in the present case and rejects the Government's objections on the same grounds.

22. The Court considers 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.

III. MERITS

23. In its observations on the merits, the applicant contended that her Convention rights had been breached on account of the lengthy non-enforcement of the judgment of 28 January 2004.

24. The Government disagreed. They emphasised that the judgment at issue had been executed in full. There was, therefore, no breach of her Convention rights.

25. The Court reiterates that the aforesaid judgment, which became binding for enforcement on 13 May 2004, remained unenforced for two and a half years. It finds that the Government have not advanced any convincing justification for this delay.

26. The Court, having regard to its extensive case-law on the matter of non-enforcement (see, for example, *Skubenko*, cited above, §§ 37-38; *Zaichenko v. Ukraine*, no. 29875/02, §§ 30-31, 22 November 2007; and *Bitkivska v. Ukraine*, no. 5788/02, § 35, 4 October 2005) finds a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the unreasonable length of the enforcement of the judgment in the applicant's case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed a global sum of 40,000 euros (EUR) in respect of damage.

29. The Government submitted that this claim was exorbitant and unsubstantiated.

30. Having regard to the circumstances of the case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 600 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant did not submit any separate claim under this head; the Court therefore makes no award in this respect.

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 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *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, EUR 600 (six hundred euros), plus any tax that may be chargeable, to be converted into the National currency of Ukraine 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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