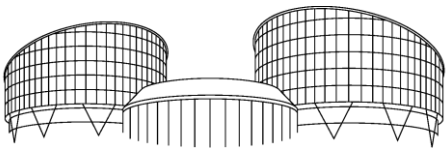

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SHEVCHENKO v. RUSSIA

(Application no. 11536/04)

JUDGMENT

STRASBOURG

14 November 2013

This judgment is final but it may be subject to editorial revision.

In the case of Shevchenko v. Russia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Elisabeth Steiner, *President,*
Mirjana Lazarova Trajkovska,
Ksenija Turković, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 22 October 2013,

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

PROCEDURE

1. The case originated in an application against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mrs Nina Vladimirovna Shevchenko, on 24 February 2004.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 September 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. In accordance with the pilot judgment *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009), the application was adjourned pending its resolution at the domestic level.

5. On 28 April 2010 the Government informed the Court that enforcement of the domestic judgment in the applicant's favour was impossible and requested the Court to consider the application on the merits. The Court therefore decided to resume examination of the present case.

THE FACTS

6. The applicant was born in 1949 and lives in Koksovyy, the Rostov Region.

7. The applicant worked for 15 years in the Extreme North of Russia. She instituted court proceedings against local pension authorities claiming recalculation of her pension.

8. On 18 July 2003 the Kolskiy District Court of the Murmansk Region granted her claim. The court ordered the Pension Fund of the Kolskiy

District of the Murmansk Region to recalculate her pension paid after 1 January 2002 by counting one year of her service in the Extreme North as one and a half years of working record and to pay her respective pension arrears for the period between 1 January 2002 and 18 July 2003. On 20 August 2003 the judgment was upheld on appeal by the Murmansk Regional Court and entered into force. It appears that the parties were not present at the appeal hearing.

9. On 5 September 2003 the applicant received two writs of execution from the district court. By the accompanying letter, sent by registered mail, the court informed her that she had to submit the writs to the respondent authority. In case of the debtor's refusal to enforce the judgment voluntarily, she was advised to forward it to the local bailiffs' service, so that the enforcement proceedings could be opened.

10. The applicant did not forward the writs either to the local bailiffs' service or the respondent pension authority. The judgment remained unenforced.

11. According to the Government, in the meantime the applicant's old-age pension had been recalculated and on 1 October 2003 further index-linked.

12. On 8 May 2008 and 27 July 2009 she applied to the Kolskiy District Court for a copy of the writs of execution. She argued without further details that, due to her lack of knowledge on the matter, she must have sent one of the writs to the Court and that she must have lost another one.

13. By two separate decisions of 17 June 2008 and 2 October 2009 the district court rejected her respective applications, since she had not complied with the three-year time-limit for lodging a request for the copy of the writ. The court found no valid reason for extension of that time-limit. The court further observed that in any event the applicant had already been in receipt of the old-age pension in the amount higher than that awarded by the judgment of 18 July 2003. If recalculated in line with that judgment, the amount of her pension would have been significantly reduced.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

14. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the applicant complained about the non-enforcement of the judgment in her favour. The relevant provisions read as follows:

Article 6

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

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 or to secure the payment of taxes or other contributions or penalties."

15. The Government argued that the delay in execution of the judgment was entirely due to the applicant's own failure to submit the writ of execution either to a respondent authority or to the bailiffs' service. They argued that the authorities could not enforce the judgment in question, since the applicant had failed to cooperate and she had not taken minimally required steps to initiate enforcement of the judicial award. Furthermore, the applicant was in any event receiving the old-age pension in a higher amount than that determined by the judgment of 18 July 2003. Therefore, the execution of the initial judicial decision would be to the detriment of the applicant's pecuniary interests. With reference to that later fact, as well as to the applicant's failure to apply to the bailiffs' service for assistance in the enforcement they concluded that the applicant's claim did not constitute a "possession" within the meaning of Article 1 of Protocol No. 1. The Government requested that the Court consider the case on its merits.

16. The applicant maintained her claims.

A. Admissibility

17. Turning to the Government's submission that the judgment debt in the applicant's case did not amount to a "possession", the Court reiterates that to constitute an "asset" or "possessions" within the meaning of Article 1 of Protocol No. 1 and, consequently, to attract the guarantees of this provision, a claim, for example, a judgment debt, should be sufficiently established to be enforceable (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35 et seq., ECHR 2004-IX, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301 B).

18. In the present case the judgment debt consisted of two parts: first, an obligation to recalculate the applicant's pension and, second, an obligation to pay the applicant pension arrears for the period from 1 January 2002 to

18 July 2003. Although an exact sum to be paid under this head was not specified in the relevant part of the judgment, the Court considers that the judgment contained all information necessary to calculate the amount due to the applicant, and it has not been shown that the respondent authority had any discretion in this respect (see, *mutatis mutandis*, *Bulgakova v. Russia*, no. 69524/01, § 29, 18 January 2007). In fact, the judgment contained a clear reference to the applicable legal provisions governing calculation of the pension, as well as specified a period in respect of which the arrears were to be calculated. The Court concludes that the judgment was sufficiently clear and specific to be enforceable (see *Bulgakova*, cited above, §§ 29-31). Accordingly, from the date of the judgment of 6 August 2001 the applicant had an established "legitimate expectation" to acquire a pecuniary asset. The Court is therefore satisfied that the applicant's claim was sufficiently established to constitute a "possession" falling within the ambit of Article 1 of Protocol No. 1 (see, in so far as relevant, *Malinovskiy v. Russia*, no. 41302/02, §§ 45-46, ECHR 2005 VII (extracts)). The Court considers that the applicant's complaint under Article 1 of Protocol No. 1 cannot be rejected as incompatible ratione materiae.

19. The Court further notes that the non-enforcement complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). It has been the Court's constant position that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). In such cases, the defendant State authority must be duly notified of the judgment and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for execution. This is particularly relevant in a situation where, in view of the complexities and possible overlapping of the execution and enforcement procedures, an applicant may have reasonable doubts about which authority is responsible for the execution or enforcement of the judgment (see *Akashev v. Russia*, no. 30616/05, § 21, 12 June 2008, and *Burdov (no. 2)*, cited above, § 68). Consequently, the Court held that the burden to ensure compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable (*Burdov (no. 2)*, cited above, § 69).

21. On the other hand, the Court has accepted that a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt (see *Shvedov v. Russia*, no. 69306/01, § 32, 20 October 2005) Accordingly, it is not unreasonable that the authorities request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of a judgment (see, *mutatis mutandis*, *Kosmidis and Kosmidou v. Greece*, no. 32141/04, § 24, 8 November 2007, and *Burdov (no. 2)*, cited above, § 69). The creditor's uncooperative behaviour may be an obstacle to timely enforcement of a judgment, thus alleviating the authorities' responsibility for delays (see *Belayev v. Russia* (dec.), no. 36020/02, 22 March 2011). The requirement of the creditor's cooperation must not, however, go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the Convention to take timely action of their own motion, on the basis of the information available to them, with a view to honouring the judgment against the State (see *Akashev*, cited above, § 22, and *Burdov (no. 2)*, cited above, § 69).

22. In the *Gadzhikhanov and Saukov* case (*Gadzhikhanov and Saukov v. Russia*, nos. 10511/08 and 5866/09, 31 January 2012) the Court dealt specifically with the applicants' failure to submit writs of execution to a competent authority. The Court found that if the applicant for any reason obtains him- or herself the writ of execution from the trial court, it would appear logical to require that he or she submits it to the competent authority with a view to enforcement of the judgment. The Court concluded that the authorities could not have been held responsible for the applicants' unexplained failure to follow the domestic enforcement procedure and, notably, for their deliberate and persistent refusal to provide the writs of enforcement (see *Gadzhikhanov and Saukov*, cited above, §§ 27-31).

23. In the present case, it is not disputed that the applicant did not take any steps to recover the judgment debts between 5 September 2003, when she received the writs of execution, and 8 May 2008, when she first applied to a court for a duplicate of the writs.

24. The Court takes note of the applicant's personal circumstances and, in particular, of the fact that she is an old-age person, apparently having no specific knowledge of the provisions of the domestic law governing the enforcement procedure. However, the applicant did not submit to the Court any comments or objections to the Government's argument as to her failure to cooperate. Indeed, she confined her position to a confirmation of her intention to maintain the case before the Court. She has never contested her persistent failure to take any action in order to recover the judgment debt, and she did not claim to be unaware of the procedure to follow.

25. In fact, it transpires from the case materials that she was advised in simple, unambiguous and non-technical terms on the two possibilities opened to her upon receipt of the writs, namely to apply directly to the respondent authority or, in case of the debtor's refusal to comply with the

judgment, to the bailiffs' service. She never argued before the Court or before the domestic courts in the proceedings concerning the duplicate of the writs of 2008-2009 that she had had any difficulties with understanding the procedure. Finally, she neither pointed to any valid circumstance preventing or dispensing her from complying with the enforcement procedure. Therefore, there is nothing to suggest that the requirement to forward a writ of execution to the authorities imposed a disproportionate burden on her or was otherwise unreasonable or unnecessary.

26. In view of the above circumstances, the Court agrees with the Government that the applicant's failure to take reasonable procedural steps constituted an obstacle to enforcement of the judgment in her favour. In the absence of any explanation from the applicant, the Government's assumption that she had deliberately withheld the writs of execution for several years does not appear unfounded. In these circumstances, the Court does not find any reason to depart from its findings in the *Gadzhikhanov and Saukov* case (cited above) and concludes that the applicant's behaviour was an obstacle to enforcement of the judgment. Consequently, the authorities cannot be held responsible under the Convention for the non-enforcement of the judicial award in her favour.

27. Finally, in the absence of any comment by the applicant, the Court lends credence to the Government's submission and the domestic court's findings (see paragraphs 11 and 13 above) that the applicant has in any event been in receipt of the old-age pension in the amount higher than that awarded by the judgment of 18 July 2003 and that the amount of her pension would have been significantly reduced, if recalculated in line with that judgment.

28. The Court accordingly concludes that there has been no violation of Article 6 § 1 and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicant complains in broad terms and without referring to the Convention about insufficiency of the amount of her old-age pension.

30. 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 the above 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the non-enforcement complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

Done in English, and notified in writing on 14 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Elisabeth Steiner
President