



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

FIRST SECTION

CASE OF KARPACHEVA AND KARPACHEV v. RUSSIA

(Application no. 34861/04)

JUDGMENT

STRASBOURG

27 January 2011

FINAL

27/04/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Karpacheva and Karpachev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 34861/04) 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 two Russian nationals, Ms Yelena Alekseyevna Karpacheva and Mr Maksim Vladislavovich Karpachev (“the applicants”), on 28 August 2004.

2. The applicants were represented by Ms N. Kutepova, a lawyer working for an NGO in Ozersk, Russia, and Mr Ph. Leach and Mr B. Bowring, lawyers practising in London. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The second applicant alleged, in particular, that the judgment in the second applicant's favour had not been enforced and that the second applicant's rights set out in Article 2 of Protocol No. 4 had been infringed.

4. On 7 May 2008 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, mother and son, were born in 1958 and 1981 respectively. The first applicant lives in Ozersk, a closed town in Chelyabinsk Region where the Mayak nuclear fuel reprocessing plant is located and where the second applicant permanently resided before his conviction in 2002. They are joint owners of a flat in Ozersk. The second applicant is currently serving a prison sentence in a correctional colony in Chelyabinsk Region.

6. On 5 August 2002 the second applicant was found guilty at Ozersk Town Court of certain criminal offences and sentenced to four years' imprisonment.

7. On 15 July 2004 the Kasli Town Court, Chelyabinsk Region, relieved him from further serving his sentence. The second applicant returned to Ozersk.

8. The first applicant requested the local administration to authorise the second applicant's entry to, and permanent residence in, Ozersk. It appears the authorities permitted the second applicant's temporary stay in Ozersk from 25 November 2004 to 16 January 2005.

9. On an unspecified date the Ozersk Town Administration (Администрация Озерского городского округа, "the Town Administration") and the Chelyabinsk Regional Division of the Federal Security Service (Управление федеральной службы безопасности по Челябинской области, "the Regional Security Service") dismissed the request, referring to the second applicant's conviction. The second applicant challenged the refusal in court.

10. On 21 June 2005 the Ozersk Town Court, Chelyabinsk Region, granted the second applicant's claim. According to the court's findings, the dismissal by the competent authorities of the second applicant's request for the entry to, and permanent residence in, Ozersk did not have a basis in law. The Town Court ordered (1) the Town Administration to issue the second applicant with an entry and residence permit and (2) the Regional Security Service to approve it.

11. The parties did not appeal against the judgment of 21 June 2005 and on 2 July 2005 it came into force. The Town Court issued two writs of execution.

12. On 29 July 2005 the Head of the Town's Administration approved the second applicant's application to be permanently registered in Ozersk. Despite this, on 6 August 2005 the bailiff opened enforcement proceedings in respect of the Town Administration.

13. On 18 August 2005 the administration of the Mayak nuclear fuel reprocessing plant informed the first applicant as follows:

“Pursuant to Decree of the Government of the Russian Federation no. 693 as of 11 July 1996 on special regulations in a closed administrative and territorial entity where enterprises affiliated with the Ministry of Nuclear Power are located, on 12 October 2004 the federal security service authorised the temporary residence of [the second applicant] in ... Ozersk.

As regards your application for permanent residence [for the second applicant] in [Ozersk], on 3 August 2005 the [Mayak administration] forwarded the [relevant] documents ... to the [Regional Security Service]. The time-limit for their response shall not exceed sixty days. Should the federal security service approve permanent residence [for the second applicant], the [Mayak administration] will prepare the necessary documents for his registration at his place of residence and issuance of a permanent pass.”

14. On 26 August 2005 the bailiff opened enforcement proceedings in respect of the Regional Security Service.

15. According to the Government, on 30 August 2005 the bailiff closed the enforcement proceedings in respect of the Town Administration, noting that the latter had complied with the judgment of 21 June 2005. According to the applicants, the bailiff's decision was not communicated to them.

16. On 5 September 2005 the management of the Mayak nuclear fuel reprocessing plant informed the second applicant that the Regional Security Service had refused to approve him for permanent residence in Ozersk.

17. According to the Government, on 10 October 2005 the bailiff closed the enforcement proceedings in respect of the Regional Security Service, noting that the judgment of 21 June 2005 had been enforced in full. The Government did not, however, submit any documents in support of this allegation. According to the applicants, they were not informed of the alleged closing of the enforcement proceedings.

18. On 13 December 2005 the second applicant was arrested on suspicion of drug dealing. On 16 March 2006 the Ozersk Town Court found him guilty as charged and sentenced him to four years' imprisonment. The second applicant's conviction was upheld in substance by the Presidium of the Chelyabinsk Regional Court by way of supervisory review.

II. RELEVANT DOMESTIC LAW

19. The Law of the Russian Federation On Closed Administrative and Territorial Entities of 14 July 1992 (Article 1), as amended, provides as follows:

“A closed administrative and territorial entity is a municipality where industrial enterprises specialising in development, production, storage and disposal of mass destruction weapons, processing of radioactive and other materials, military and other facilities... are located. [Such entities] are subject to special regulations on secured operation and protection of state secrets, including special residence conditions.”

20. Decree of the Government of the Russian Federation no. 693 as of 11 July 1996 on special regulations in a closed administrative and territorial entity where enterprises affiliated with the Ministry of Nuclear Power are located stipulates that entry to, and permanent residence in, a closed administrative and territorial entity is subject to restrictions (§ 2). The head of the administration may, subject to the approval of the federal security service, authorise entry to the closed entity (§ 19). Title to real property located in a closed administrative and territorial entity may give rise to a right to enter and reside there, subject to authorisation of access to state secrets (§ 23).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4 OF THE CONVENTION

21. The second applicant complained of a violation of Article 2 of Protocol No. 4 which reads, in so far as relevant, as follows:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

22. The Government contested that argument. While they conceded that there had been an interference with the second applicant's freedom to choose his place of residence, they considered that the interference had been in accordance with law and necessary in a democratic society.

23. The applicant maintained his complaint.

A. Admissibility

24. The Court notes that this complaint 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.

B. Merits

25. The Court notes that it is common ground between the parties that the authorities' rejection of the second applicant's application for permanent residence in Ozersk constituted an interference with his right to freedom to choose his own place of residence as protected by Article 2 of Protocol No. 4.

26. The Court further notes that the authorities' refusal to ensure permanent residence for the second applicant in Ozersk has been found unlawful by the domestic judicial authorities. The Court has no reason to doubt the interpretation of the Russian legislation by its own courts. The situation was aggravated by the fact that, even following the delivery of the judgment confirming the second applicant's right to live permanently in Ozersk, the authorities refused to respect their obligations *vis-à-vis* the second applicant. In this connection the Court notes that there is nothing in the material before it to support the Government's assertion to the contrary (see para. 17). Accordingly, the interference with the second applicant's right to choose his own residence was not imposed in accordance with law. This finding makes it unnecessary to determine whether it pursued a legitimate aim and was justified in a democratic society.

27. There has been therefore a violation of Article 2 of Protocol No. 4.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

28. The second applicant complained that the judgment in his favour had not been enforced, in contravention of Article 6 of the Convention, which reads as follows:

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

29. The Government considered that the second applicant's complaint was incompatible *ratione materiae*. In their opinion, the provisions of the Russian Civil Code were not applicable to the second applicant's case and, accordingly, it did not concern determination of his civil rights and obligations. The respondent parties in the case were municipal and state authorities.

30. The second applicant submitted that the right to freedom to choose his residence clearly fell within the scope of civil rights.

31. Having regard to the particular circumstances of the present case, the Court takes the view that this complaint constitutes one of the essential points of the complaint under Article 2 of Protocol No. 4. Accordingly,

whereas the complaint is admissible, the Court finds that it is not necessary to examine this issue separately under Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. Lastly, the first applicant complained that the authorities' failure to enforce the judgment in second applicant's favour disclosed a violation of her rights set out in Article 6 of the Convention. The applicants further alleged a violation of Article 8 of the Convention. The second applicant complained under Article 1 of Protocol No. 1 that he could not use his real property in Ozersk. He further complained that he had been unable to obtain medical insurance, employment or social benefits. Finally, he referred to Article 14 of the Convention.

33. However, having regard to all the material in the Court's possession, and in so far as these complaints fall within its competence *ratione personae*, the Court finds that the events complained of 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 Articles 35 § 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The second applicant claimed 5,863 euros (EUR) as compensation for loss of earnings he had allegedly sustained as a result of the authorities' failure to grant him permanent residence in Ozersk. He further claimed EUR 50,000 in respect of non-pecuniary damage.

36. The Government considered these claims unsubstantiated and excessive.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant suffered frustration on account of the violation found. However, the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards

the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

38. The applicants claimed EUR 1,700 for the work carried out by Ms Kutepova. According to the applicants, she spent two hours on the preparation of the application to the Court and thirty-two hours on preparation of their observations in response to those submitted by the Government. The applicants also claimed EUR 160 for the postal, telephone and fax expenses incurred by her. They did not submit copies of the relevant receipts. The applicants further claimed (1) 249.98 pounds sterling (GBP) for the work carried out by Mr Keleher, who reviewed the documents for two and a half hours; (2) GBP 105 for the work carried out by the EHRAC administrator who did some translation, arranged for the translation of the documents by external translators and compiled the list of documents; (3) GBP 70 for the postal, telephone/fax and photocopying expenses incurred by the EHRAC office. No copies of the relevant receipts were provided; and (4) GBP 1,452.6 for translators' services. They submitted invoices in respect of the work performed by Mr Keleher and the translators.

39. The Government submitted that the amounts sought by the applicants were excessive and lacked any substantiation. In particular, they did not provide a copy of the contract for provision of legal services by Ms Kutepova or any other documents confirming the payment of the amounts claimed.

40. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 850 in respect of the work performed by Ms Kutepova and EUR 1,730 to cover translation costs.

C. Default interest

41. 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

1. *Declares* unanimously the complaints concerning the alleged breach of the second applicant's right to freedom to choose his residence and the non-enforcement of the judgment of 21 June 2005 rendered by the Ozersk Town Court admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 2 of Protocol No. 4;
3. *Holds* by five votes to two that there is no need to examine the complaint under Article 6 § 1 of the Convention;
4. *Holds* unanimously
 - (a) that the respondent State is to pay the second applicant, within three months, the following amounts:
 - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the second applicant, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (ii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the second applicant, in respect of the costs and expenses, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (iii) EUR 1,730 (one thousand seven hundred and thirty euros), plus any tax that may be chargeable to the second applicant, in respect of the translation costs, to be paid into the EHRAC bank account in the United Kingdom;
 - (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;
5. *Dismisses* unanimously the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Vajić and Malinverni is annexed to this judgment.

C.L.R.
S.N.

JOINT DISSENTING OPINION OF JUDGES VAJIĆ AND MALINVERNI

(Translation)

To our regret, we are unable to agree with the approach followed by the majority, which in our opinion departs from that normally adopted by the Court in cases of this kind.

In our view, the present case falls within the scope of both Article 6 of the Convention and Article 2 of Protocol No. 4. From that perspective, it does not differ fundamentally from the many Russian cases in which the Court has found a violation of Article 6 of the Convention on the ground that the domestic administrative authorities failed to enforce a judgment delivered by a national court, and has then gone on to find a violation of Article 1 of Protocol No. 1 (see, for example, *Burdov v. Russia* (no. 2), no. 33509/04, ECHR 2009-...).

We therefore fail to understand why the Court has dealt with the present case solely under Article 2 of Protocol No. 4 and has held, after having declared the complaint under Article 6 admissible, that it was not necessary to examine this issue separately (see paragraph 31 of the judgment).

Contrary to the position advanced by the Government and apparently shared, at least implicitly, by the majority, the present case indisputably comes within the scope of Article 6 of the Convention in its civil aspect, even if the Russian Civil Code does not apply to the facts of the case (see paragraph 29). The notion of determination of a civil right has an autonomous meaning according to the case-law. The fact that the Civil Code does not contain any provisions applicable to the matter is thus immaterial. In our view, the right to choose one's own residence is incontestably a civil right within the meaning of Article 6 of the Convention.

In the present case the appropriate domestic courts had found that the administrative authorities' refusal to authorise the applicant's permanent residence in Ozersk had no valid basis in law and was thus unlawful (see paragraph 26 of the judgment).

This is therefore a classic case of failure by the administrative authorities to comply with a domestic judicial decision. Accordingly, there has also been a violation of Article 6.