



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

SECOND SECTION

CASE OF BAKAY AND OTHERS v. UKRAINE

(Application no. 67647/01)

JUDGMENT

STRASBOURG

9 November 2004

FINAL

09/02/2005

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 Bakay and Others v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BİRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 19 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 67647/01) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by six Ukrainian nationals (“the applicants”): Ms Olga Sergiyivna Bakay (the first applicant), Ms Svitlana Pavlivna Leschova (the second applicant), Ms Lyubov Mykolayivna Yemets (the third applicant), Ms Yaroslava Ivanivna Voloshyna (the fourth applicant), Ms Tamara Semenivna Semak (the fifth applicant) and Ms Nataliya Leonidivna Lytvynenko (the sixth applicant), on 4 January 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The applicants' complaints under Articles 6 § 1 and 13 of the Convention were communicated on 9 May 2003. On the same date the Court decided that Article 29 § 3 of the Convention should be applied and the admissibility and merits of the complaints be considered together.

4. The applicants and the Government each filed observations on the admissibility and the merits (Rule 59 § 1).

THE FACTS

5. The first and fifth applicants were born in 1960. The second applicant was born in 1959. The third applicant was born in 1969. The fourth applicant was born in 1945. The sixth applicant was born in 1965. The applicants are nationals of Ukraine and reside in Beryslav, the Kherson Region.

I. THE CIRCUMSTANCES OF THE CASE

6. In April 1998 the applicants initiated proceedings in the Beryslav City Court (the “Beryslav Court”) against the Department of Education of the Beryslav Municipal Council (the “Department”), seeking to recover an additional salary payment allegedly due to them for their time-in-service.

7. On 13 May 1998 the Beryslav Court allowed the applicants' claims and ordered the Department to pay the applicants the additional salary (time-in-service bonuses). In particular, it ordered that the first applicant be paid UAH 570.85¹ in compensation, the second – UAH 367.52², the third – UAH 204.3³, the fourth – UAH 863.4⁴, the fifth – UAH 561.4⁵, and the sixth applicant – UAH 292.3⁶.

8. On 18 May 1998 the Beryslav City Bailiffs' service (the “Bailiffs”) initiated enforcement proceedings for the judgment of 13 May 1998.

9. On 2 August 1999 the Beryslav Court suspended the execution of the judgment for three months due to the lack of funds in the budget of the Department.

10. On 7 March 2001 the Bailiffs informed the applicants that the Beryslav Court had suspended the execution of the judgment of 13 May 1998. On 13 August 2002 the Bailiffs informed the applicants that the judgment of 13 May 1998 would be executed when the State had provided the necessary budgetary funding. The judgment remained unenforced due to the Department's lack of funds.

11. On 31 July 2003 the amounts due to them pursuant to the judgment of 13 May 1998 were transferred to the applicants. They received the following amounts (the initial sums awarded by that judgment having been subjected to taxation): the first applicant – UAH 401.2⁷, the second applicant – UAH 276.35⁸, the third applicant – UAH 173.18⁹, the fourth applicant – UAH 640.46¹⁰, the fifth applicant – UAH 419.94¹¹, and the sixth applicant – UAH 242.98¹².

1. EUR 123.22 (at the rate as on 1 January 1999).

2. EUR 79.33 (at the rate as on 1 January 1999).

3. EUR 44.1 (at the rate as on 1 January 1999).

4. EUR 186.57 (at the rate as on 1 January 1999).

5. EUR 121.18 (at the rate as on 1 January 1999).

6. EUR 63.1 (at the rate as on 1 January 1999).

7. EUR 68.22 (at the rate as on 31 July 2003).

8. EUR 46.99 (at the rate as on 31 July 2003).

9. EUR 29.45 (at the rate as on 31 July 2003).

10. EUR 108.91 (at the rate as on 31 July 2003).

11. EUR 71.41 (at the rate as on 31 July 2003).

12. EUR 41.32 (at the rate as on 31 July 2003).

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law is set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS AS TO THE ADMISSIBILITY OF THE APPLICATION

A. The applicants' victim status

13. The Government mentioned that, in accordance with the jurisprudence of the Court, an applicant who has obtained reparation at the national level for an alleged violation of the Convention can no longer be considered a victim for the purposes of Article 34 of the Convention (see, *Marchenko v. Ukraine* (dec.), no. 63520/01, 17 September 2002). Accordingly, as the judgment of the 13 May 1998 has been executed in full, the applicants can no longer be considered victims of a violation of their rights under Article 6 § 1 of the Convention. They therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

14. The applicants disagreed. They alleged that the judgment remained unenforced for a lengthy period of time and therefore they can still claim to be victims of a violation of Article 6.

15. The Court does not share the view of the Government. It considers that the applicants may still claim to be victims of an alleged violation of the rights guaranteed by the Article 6 § 1 of the Convention in relation to the period during which the judgment remained unexecuted (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 6 June 2004, § 35; *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 34; *Romashov v. Ukraine*, no. 67534/01, judgment of 27 July 2004, § 27).

B. The objections as to the exhaustion of domestic remedies

16. The Government contended that the applicants have not exhausted domestic remedies as they did not lodge a claim with the domestic courts to challenge the inactivity of the State Bailiffs' Service, seeking to expedite the enforcement proceedings in the case.

17. The applicants contested this submission.

18. The Court recalls its recent case-law on this issue. It finds that the situation in this application is similar to the cases of *Voytenko, Shmalko and Romashov* (cited above, paragraphs 28-31, 37-39 and 30-32 respectively), and from which there is no reason to distinguish the present application. It concludes therefore that the applicants were absolved from pursuing further litigation and have complied with the requirements of Article 35 § 1 of the Convention.

C. The Court's conclusion on the admissibility of the case

19. The Court finds 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.

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

20. The applicants complain about the State authorities' failure to execute the judgment of the Beryslav City Court of 13 May 1998 given in their favour. They allege that the length of the enforcement proceedings was unreasonable. They further maintain that the judgments in their favour were never enforced as the sums that were due to them were not paid in full. They rely on Article 6 § 1 of the Convention, which in so far as relevant provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ...by an independent and impartial tribunal established by law.”

1. The submissions of the parties

21. The Government submitted that they took all measures required by the domestic legislation to enforce the judgment given in the applicants' favour. They further considered that there was no infringement of Article 6 § 1 of the Convention. Moreover, they maintained that the period from 13 May 1998 (the date of adoption of the judgment of the Beryslav City Court) until 31 July 2003 (the date of receipt by the applicants of the sums due to them in accordance with the judgment of 13 May 1998) does not violate the applicants' rights under Article 6 § 1 of the Convention and was caused by the difficult financial situation in the education system of Ukraine. Furthermore, they reiterated that the judgment given in the applicants' favour was executed in full.

22. The applicants disagreed. In particular, they complained that the execution proceedings lasted a very long time and that they did not receive the full amounts as awarded to them by the judgment of 13 May 1998.

2. *The Court's assessment*

23. The Court recalls that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

24. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt, although a delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected by Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

25. The Court notes that the judgment of 13 May 1998 remained unenforced wholly or in part at least until 31 July 2003, after the case had been communicated to the Government on 9 May 2003, when the debt owed to the applicants was paid to them. The Court considers that it is not necessary to assess the issue of whether the judgment was enforced in full in view of the fact that the awards were subjected to taxation. By failing for almost five years and two months to take the necessary measures to comply with the final judicial decisions in the present case, the Ukrainian authorities deprived the provisions of Article 6 § 1 of all useful effect.

26. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. AS TO THE ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. The applicants also complain that they had no effective remedies in respect of their complaints under Article 6 § 1 of the Convention. They invoke Article 13 of the Convention, which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

28. The Court refers to its considerations at paragraph 18 above on the question of exhaustion of domestic remedies. For the same reasons, the Court concludes that the applicants did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings (see the aforementioned judgments in *Voytenko*, §§ 46-48, and *Romashov*, § 47). Accordingly, there has also been a breach of this provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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 and costs and expenses

30. The applicants claimed damages. They mentioned that the awards ultimately paid to them were added to their salary, resulting in higher income tax. Those sums had anyway decreased in value due to the inflation of the Ukrainian Hryvnia in the last couple years. The applicants claimed pecuniary damage in relation to the amounts awarded by the Beryslav City Court and not paid by the Department of Education as they were subjected to taxation. They further requested non-pecuniary damage amounting to USD 10,000¹.

31. The Government contested the applicants' claims. They alleged that they were unsubstantiated.

32. The Court does not discern any causal link between the violations found and the pecuniary damage alleged by the applicants. It therefore makes no award in this respect. However, it takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation (see the aforementioned *Romashov* judgment, § 52). The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each of the applicants the sum of EUR 2,800 in non-pecuniary damage. The Court also awards each of the applicants' EUR 50 for costs and expenses.

1. Around EUR 8,300.

B. Default interest

33. 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 complaints under Articles 6 § 1 and 13 of the Convention concerning the lengthy non-enforcement of the final judicial decision in the applicants' case 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 13 of the Convention;
4. *Holds*:
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,800 (two thousand eight hundred euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) for costs and expenses, plus any tax that may be chargeable, these amounts to be converted into the currency of the respondent State at the rate applicable on 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 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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. Early
Deputy Registrar

J.-P. COSTA
President