



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

SECOND SECTION

CASE OF KARPOVA v. UKRAINE

(Application no. 12884/02)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

29/02/2006

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 Karpova v. Ukraine,

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

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

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 8 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 12884/02) 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, Mrs Mariya Fedorovna Karpova (“the applicant”), on 6 October 2001.

2. The applicant is represented before the Court by Mr Vsevolod Sergiyovych Kireyev, a national of Ukraine, who subsequently sought to become an applicant in the case. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Zoryana Bortnovska, succeeded by Ms Valeria Lutkovska.

3. On 9 May 2003 the Court decided to communicate to the respondent Government the applicant’s complaints under Article 6 § 1 of the Convention about the failure of the domestic authorities to enforce the judgment of 8 December 1998 of the Shostka City Court given in her favour. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1948 and lives in Shostka, the Sumy Region, Ukraine.

I. THE CIRCUMSTANCES OF THE CASE

A. Proceedings concerning additional salary payments

5. In October 1998 the applicant instituted proceedings in the Shostka City Court against the Department of Education of the Shostka Municipal Council (the Department), seeking to recover additional salary for her time-in-service and healthcare benefits.

6. On 8 December 1998 the Shostka City Court ordered the Department to pay the applicant UAH 1,201¹ in compensation. The judgment was not executed due to the Department's lack of funds.

7. In July 1999 the applicant instituted proceedings in the Shostka City Court against the Shostka State Execution Service seeking to oblige it to execute the decision of 8 December 1998 and to receive compensation for moral damage caused by the non-execution of that judgment.

8. On 29 July 1999 the Shostka City Court rejected these claims as being unsubstantiated. It also found that the judgment was not executed due to the lack of funds in the State budget.

9. On 8 September 1999 the Sumy Regional Court upheld that decision.

10. Between 1999 and 2001 the applicant unsuccessfully complained to the Presidents of the Sumy Regional Court and the Supreme Court of Ukraine with a view to having supervisory review proceedings initiated in her case.

11. On 14 March 2001 the writ of execution was returned to the applicant unenforced due to the lack of funds on the accounts of the education department.

12. On 17 May 2001 the Regional Court informed the applicant that there were no grounds for initiating supervisory review proceedings upon her complaints.

B. Proceedings concerning public service payments (in these proceedings the applicant and her representative both claim to be victims of a violation of the Convention)

1. Proceedings against Mr V.S. Kireyev

13. On 2 July 2001 the Department responsible for the public water supply of the Shostka Municipal Council (the "DPW") instituted proceedings in the Shostka City Court against Mr V.S. Kireyev ("V.S.K."), seeking the payment of UAH 796.25² for the water supplied to him and his

1. Approximately EUR 600.

2. EUR 174.22.

use of the water mains. On 21 February 2002 the Shostka City Court allowed the DPW's claims and ordered V.S.K. to pay the debt. On 29 May 2002 the Sumy Regional Court of Appeal upheld that decision.

14. In August 2001 the State "Sumyteplocomunenergo" company (the "SCS") instituted proceedings in the Shostka City Court against V.S.K., seeking the payment of UAH 113.76¹ for his use of heating facilities. On 25 January 2002 the Shostka City Court allowed the SCS's claims and ordered V.S.K. to pay the debt. On 29 April 2002 the Sumy Regional Court of Appeal upheld that decision.

2. Proceedings against Ms M.F. Karpova

15. On 28 August 2001 the DPW instituted proceedings in the Shostka City Court against the applicant, seeking the payment of UAH 311.44² for the water supplied to her and for her use of the water mains. On 21 February 2002 the Shostka City Court allowed the DPW's claims and ordered the applicant to pay the debt. On 29 May 2002 the Sumy Regional Court of Appeal upheld that decision.

16. On 2 July 2001 the SCS instituted proceedings in the Shostka City Court against the applicant, seeking the payment of UAH 773.85³ for the use of heating facilities. On 1 March 2002 the Shostka City Court allowed the SCS's claims and ordered the applicant to pay the debt. On 29 May 2002 the Sumy Regional Court of Appeal upheld that decision.

II. THE RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

I. ADMISSIBILITY

A. Preliminary considerations

18. The applicant complained about the alleged unfairness of the decisions obliging her and her representative to pay for public services. In

1. EUR 24.89.

2. EUR 68.14.

3. EUR 169.32.

particular they alleged that the domestic courts erred in the assessment of the facts and the application of the law.

19. Article 6 § 1 of the Convention, insofar as relevant to the present case, reads as follows:

“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.”

20. The Court observes this complaint has been brought by both the applicant and her representative, Mr Kireyev, and concerned the alleged unfairness of the unfavourable outcome of proceedings (paragraphs 13-16 above). Despite other grounds of inadmissibility, including the possible lack of standing of Mr Kireyev, the Court finds that there is nothing in the case file which might disclose any appearance of a breach of Article 6 § 1 of the Convention. The complaint must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. The parties’ submissions on the non-enforcement complaint

1. Preliminary objections

21. The Government submitted that the applicant had failed to comply with the six months’ rule and / or had not exhausted domestic remedies, pursuant to Article 35 § 1 of the Convention.

22. The applicant disagreed.

23. The Court considers that the applicant may legitimately claim to be the victim if a continuous violation of the Convention, given the prolonged non-enforcement of the judgment of 8 December 1998 in her favour. The six months’ rule is therefore not applicable in this situation. Moreover, having regard to its case law, the applicant has no effective remedy to exhaust to ensure the enforcement of that judgment (cf. the aforementioned *Romashov* judgment, §§ 28-31).

24. The Court finds that the applicant has complied with the requirements of Article 35 § 1 of the Convention. Accordingly, it dismisses the Government’s objections.

2. Conclusions

25. The Court concludes that the applicant’s complaint under Article 6 § 1 of the Convention concerning the non-enforcement of the final judicial decision given in her favour is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It notes that the complaint is not inadmissible on any other grounds.

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

26. The applicant complains about the State authorities' failure to execute the judgment of the Shostka City Court of 8 December 1998 given in her favour. She alleges that the length of the enforcement proceedings was unreasonable. She relies on Article 6 § 1 of the Convention cited above.

27. The Government submitted that they took all necessary measures under domestic law to enforce the judgment given in the applicant's favour.

28. The applicant disagreed.

29. The Court notes that the judgment of 8 December 1998 remains unenforced. By failing for almost seven years to comply with the final judicial decision in the present case, the Ukrainian authorities have deprived the provisions of Article 6 § 1 of all useful effect.

30. There has accordingly been a violation of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed EUR 20,000 in compensation for pecuniary and non-pecuniary damage. She did not specify the costs and expenses incurred.

33. The Government submitted that there was no causal link between the violation found and the pecuniary damage claimed. They noted that the applicant's request was unsubstantiated and exorbitant. They considered that a finding of a violation would constitute sufficient just satisfaction in the case.

34. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,280 in non-pecuniary damage and EUR 50 for costs and expenses. It also notes that, as the judgment of 8 December 1998 remains unenforced, the Government should pay the applicant the outstanding debt.

B. Default interest

35. 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 applicant's complaint under Article 6 § 1 of the Convention concerning the non-enforcement of the judgment of 8 December 1998 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, the judgment debt still owed to her, as well as the following amounts, to be converted into the currency of the respondent State at the rate applicable on the date of settlement:
 - (i) EUR 3,280 (three thousand two hundred and eighty euros) in respect of non-pecuniary damage;
 - (ii) EUR 50 (fifty euros) in costs and expenses;
 - (iii) plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President