



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

FIFTH SECTION

CASE OF MIKHAYLOVA AND OTHERS v. UKRAINE

(Application no. 16475/02)

JUDGMENT

STRASBOURG

15 June 2006

FINAL

23/10/2006

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 Mikhaylova and Others v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 22 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 16475/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 16 Ukrainian nationals: Ms Zoya Petrovna Mikhaylova, Ms Anna Vasilyevna Didorchuk, Ms Klavdiya Grigoryevna Khodakova, Ms Tatyana Alekseyevna Bondarenko, Ms Yelena Mikhaylovna Vaskevich, Ms Anna Nikolayevna Shandurskaya, Ms Yelena Nikolayevna Khlusevich, Ms Galina Vasilyevna Savchenko, Mr Aleksandr Petrovich Gaydachuk, Mr Vladimir Vasilyevich Ostapenko, Mr Nikolay Nikolayevich Litvinov, Mr Nikolay Nikolayevich Vaypan, Mr Nikolay Ivanovich Starodubets, Ms Yelena Anatolyevna Zavina, Mr Tofik Kadyr Ogly Ibragimov, Ms Lyusya Ivanovna Ibragimova (“the applicants”) on 26 March 2002.

2. The applicants were represented by Mr Igor Petrovich Pogasiy. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs Z.Bortnovska, Mrs V.Lutkovska and Mr Y.Zaytsev.

3. On 24 October 2003 the Court decided to communicate the application to the Government. 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.

4. On 1 April 2006 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly constituted Fifth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Ms Zoya Petrovna Mikhaylova was born in 1944. Ms Anna Vasilyevna Didorchuk was born in 1955. Ms Klavdiya Grigoryevna Khodakova and Ms Galina Vasilyevna Savchenko were born in 1951. Ms Tatyana Alekseyevna Bondarenko was born in 1950. Ms Yelena Mikhaylovna Vaskevich was born in 1961. Ms Anna Nikolayevna Shandurskaya and Ms Yelena Nikolayevna Khlusevich were born in 1962. Mr Aleksandr Petrovich Gaydachuk was born in 1963. Mr Vladimir Vasilyevich Ostapenko was born in 1970. Mr Nikolay Nikolayevich Litvinov was born in 1976. Mr Nikolay Nikolayevich Vaypan was born in 1949. Mr Nikolay Ivanovich Starodubets was born in 1947. Ms Yelena Anatolyevna Zavina was born in 1964. Mr Tofik Kadyr Ogly Ibragimov was born in 1954. Ms Lyusya Ivanovna Ibragimova was born in 1958. All applicants reside in the city of Kirovograd, Ukraine.

6. In 2000-2001 the applicants instituted separate sets of proceedings in the Kirovskiy District Court of Kirovograd, seeking the recovery of salary arrears and other payments, from their former employer, the State-owned enterprise, Kirovogradskiy Lyvarnyi Zavod (“the KLZ”), or its subsidiary enterprises. Mr Ibragimov and Mrs Ibragimova filed also applications with the labour disputes commission of the KLZ to recover unpaid salary.

7. By a judgment of 27 June 2001, Ms Zoya Mikhaylova was awarded 4,684.81 Ukrainian hryvnas (UAH) in salary arrears from the KLZ. On 9 October 2001 the Court of Appeal of the Kirovograd Region upheld this judgment. The judgment remains unenforced. On 11 April 2002 the Kirovskiy District Court of Kirovograd rejected the applicant’s complaint against the Bailiffs’ Service for the non-enforcement of the judgment in her favour.

8. By a judgment of 11 July 2001, Ms Anna Didorchuk was awarded UAH 2,736 in salary arrears from the KLZ. The judgment remains unenforced.

9. By a judgment of 4 April 2000, Ms Klavdiya Khodakova was awarded UAH 1,075.90 in salary arrears from the KLZ subsidiary enterprise “Lyvarne Vyrobnystvo”. The judgment remains unenforced.

10. By a judgment of 7 September 2001, Ms Tatyana Bondarenko was awarded UAH 1,586.82 in salary arrears from the KLZ. In February 2003 the debt was partly (UAH 326) set off against the payment for communal charges. The rest of the judgment remains unenforced.

11. By a judgment of 7 September 2001, Ms Yelena Vaskevich was awarded UAH 1,242.07 in salary arrears and compensation for the payment delay from the KLZ. In February and April 2003 the debt was set off against

the payment for communal charges. On 6 May 2003 the Bailiffs' Service terminated the enforcement proceedings in view of the full enforcement of the judgment given in the applicant's favour.

12. By a judgment of 20 June 2001, Ms Anna Shandurskaya was awarded UAH 1,324.98 in salary arrears from the KLZ. On 3 March 2004 the judgment was enforced.

13. By a judgment of 27 September 2001, Ms Yelena Khlusevich was awarded UAH 1,815.88 in salary arrears from the KLZ. The judgment remains unenforced.

14. By a judgment of 20 June 2001, Ms Galina Savchenko was awarded UAH 224.50 in salary arrears from the KLZ. The debtor enterprise maintained that in February 2003 the debt was set off against the payment for communal charges. The applicant challenges this statement. In June 2003 the Bailiffs' Service returned the writ of enforcement to the applicant because of the lack of funds of the debtor enterprise.

15. By a judgment of 30 August 2001, Mr Aleksandr Gaydachuk was awarded UAH 809.74 in salary arrears from the KLZ. On 19 January 2004 the debt amount was transferred to the applicant by a postal order.

16. By a judgment of 27 April 2001, Mr Vladimir Ostapenko was awarded UAH 100 and UAH 3,870.73 in salary arrears from the KLZ and from the KLZ subsidiary enterprise "Lyvarne vyrobnytstvo", respectively. On 3 March 2004 the judgment was enforced.

17. By a judgment of 12 June 2001, Mr Nikolay Litvinov was awarded UAH 554.98 and UAH 493.25 in salary arrears from the KLZ and from the KLZ subsidiary enterprise "Pidrozdil okhorony "Strilets", respectively. On 19 January 2004 the debt amount was transferred to the applicant by a postal order.

18. By a judgment of 18 April 2001, Mr Nikolay Vaypan was awarded UAH 144.85 and UAH 2,730.61 in salary arrears from the KLZ subsidiary enterprise "Promyslovets" and the KLZ subsidiary enterprise "Lyvarne vyrobnytstvo", respectively. On 31 May 2001 the Court of Appeal of the Kirovograd Region upheld this judgment. In February 2003 the debt was partly set off (UAH 145) against the payment for communal charges. The rest of the judgment remains unenforced.

19. By a judgment of 15 May 2001, Mr Nikolay Starodubets was awarded UAH 1,786 in salary arrears from the KLZ subsidiary enterprise "Lyvarne vyrobnytstvo". The judgment remains unenforced.

20. By a judgment of 15 May 2001, Ms Yelena Zavina was awarded UAH 793.68 in salary arrears from the KLZ subsidiary enterprise "Lyvarne vyrobnytstvo". On 19 January 2004 the debt amount was transferred to the applicant by a postal order.

21. By a decision of 10 February 1998 the labour disputes commission awarded Mr Tofik Kadyr Ogly Ibragimov UAH 667.37 in salary arrears from the KLZ subsidiary enterprise "Lyvarne vyrobnytstvo". By a judgment

of 31 May 2001 he was awarded UAH 1,443 in salary arrears from the same enterprise. The decision and the judgment remain unenforced.

22. By a decision of 10 February 1998 the labour disputes commission awarded Ms Lyusya Ibragimova UAH 1,044 in salary arrears from the KLZ. By a judgment of 3 July 2001 she was awarded UAH 2,786.41 in salary arrears from the same enterprise. The decision and the judgment remain unenforced.

23. In December 2002 the applicants instituted proceedings in the Kirovskiy District Court against the State Property Fund claiming compensation for material and moral damage inflicted by the non-enforcement of the judgments in their favour. On 29 May 2003 the court dismissed the applicants' claims. On 23 October 2003 the Court of Appeal of the Kirovograd Region upheld this judgment. On 31 August 2005 the Supreme Court of Ukraine rejected the applicants' cassation appeal.

24. On 16 and 19 January 2004 Ms Mikhaylova, Ms Didorchuk, Ms Khodakova, Ms Bondarenko, Ms Khlusevich, Mr Vaypan, Mr Starodubets, Mr and Mrs Ibragimovy refused to receive the awarded amounts until the end of the examination of their case in the Supreme Court of Ukraine. The above amounts were transferred to the deposit account of the Bailiffs' Service.

II. RELEVANT DOMESTIC LAW

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

THE LAW

26. The applicants complained about the State authorities' failure to enforce the decisions of the labour disputes commission and the judgments of the Kirovskiy District Court in due time. They further complained about unfair hearings in their cases against State authorities following the non-enforcement of the judgments in their favour. The applicants finally complained that they were discriminated against because judgments adopted later in favour of other creditors had been enforced earlier than judgments in the applicants' favour. The applicants invoked Articles 6 § 1, 13 and 14 of the Convention and Article 1 of Protocol No. 1, which provide, insofar 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 13

“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.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

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”

I. ADMISSIBILITY**A. Non-enforcement of labour disputes commission decisions and court judgments**

27. The Government raised objections regarding the applicants’ victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

28. The Court concludes that the applicants’ complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the decisions of the labour disputes commission and the judgments of the Kirovskiy District Court raises serious issues of fact and law under the Convention, the determination of which requires an examination of the

merits. It finds no ground for declaring this complaint inadmissible. For the same reasons, the applicants' complaints under Article 13 of the Convention and Article 1 of Protocol No. 1 cannot be declared inadmissible.

B. Other complaints

29. In so far as the applicants complained that they did not have a fair hearing contrary to Article 6 of the Convention, the Court notes that it is not called upon to examine alleged errors of facts and law committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. Within the framework of the proceedings, the applicants were able to put forward all necessary arguments in defence of their interests, and the judicial authorities gave them due consideration. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

30. In so far as the applicants invoked Article 14 of the Convention, the Court notes that, to the extent that the applicants raised this issue before the domestic courts, their allegations are unsubstantiated and do not lay a basis for an arguable claim of a breach of this provision. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. MERITS

A. The applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

31. In their observations, the Government contended that there had been no violation of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (as in the cases of *Romashov*, cited above, § 37, and *Sokur v. Ukraine*, no. 29439/02, § 28, 26 April 2005). The Government maintained that the length of the enforcement proceedings in the applicants' cases was reasonable and, moreover, had been caused by the critical financial situation of the debtor company and the Ukrainian economy in general. The Government further maintained that the Bailiffs' Service performed all necessary actions and could not be blamed for the delay. The Government also insisted that the State could not be directly responsible for the debts of the State enterprise.

32. The applicants disagreed.

33. The Court notes that the decisions of the labour disputes commission and the judgments of the Kirovskiy District Court have remained unenforced for a considerable period of time.

34. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for instance, *Romashov*, cited above, §§ 39-46).

35. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

B. The applicants' complaint under Article 13 of the Convention

36. The Government contended that the applicants had had effective channels of complaint on the same basis that they had argued that the applicants had not exhausted domestic remedies. Having rejected the latter argument above (at paragraph 27), 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 *Voytenko v. Ukraine*, no. 18966/02, § 46-48, 29 June 2004). Accordingly, there has been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed the following amounts, including the judgment debts, in respect of pecuniary and non-pecuniary damage:

- Ms Zoya Mykhaylova - UAH 33,370.69 (EUR 5,462.39);
- Ms Anna Didorchuk - UAH 20,905.52 (EUR 3,421.99);
- Ms Klavdiya Khodakova - UAH 21,758.31 (EUR 3,561.58);
- Ms Tatyana Bondarenko - UAH 23,079.45 (EUR 3,777.83);
- Ms Yelena Vaskevich - EUR 100,000;
- Ms Anna Shandurskaya - UAH 21,232.42 (EUR 3,475.50);
- Ms Yelena Khlusevich - UAH 26,669.00 (EUR 4,365.40);
- Ms Galina Savchenko - UAH 19,980.46 (EUR 3,270.56);
- Mr Aleksandr Gaydachuk - EUR 100,000;
- Mr Vladimir Ostapenko - UAH 24,652.83 (EUR 4,035.38);

- Mr Nikolay Litvinov - EUR 100,000;
 - Mr Nikolay Vaypan - UAH 21,866.89 (EUR 3,579.35);
 - Mr Nikolay Starodubets - UAH 22,639.05 (EUR 3,705.74);
 - Ms Yelena Zavina - EUR 100,000;
 - Mr Tofik Kadyr Ogly Ibragimov – UAH 23,871.85 (EUR 3,907.54);
- and
- Ms Lyusya Ibragimova - UAH 26,760.11 (EUR 4,380.31).

39. The Government maintained that the applicants had not substantiated the amount claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

40. Insofar as Ms Mikhaylova, Ms Didorchuk, Ms Khodakova, Ms Bondarenko, Ms Khlusevich, Ms Savchenko, Mr Vaypan, Mr Starodubets, Mr and Mrs Ibragimovy claimed the amount awarded to them by the judgments at issue, the Court considers that the Government should pay them the outstanding debt in partial settlement of their pecuniary damage. As to the remainder of the applicants' just satisfaction claims, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant the following amounts in respect of further pecuniary and non-pecuniary damage:

- Ms Zoya Mykhaylova - EUR 600;
- Ms Anna Didorchuk - EUR 900;
- Ms Klavdiya Khodakova - EUR 1,800;
- Ms Tatyana Bondarenko - EUR 600;
- Ms Yelena Vaskevich - 400 EUR;
- Ms Anna Shandurskaya - EUR 900;
- Ms Yelena Khlusevich - EUR 600;
- Ms Galina Savchenko - EUR 400;
- Mr Aleksandr Gaydachuk - EUR 600;
- Mr Vladimir Ostapenko - EUR 900;
- Mr Nikolay Litvinov - EUR 900;
- Mr Nikolay Vaypan - EUR 900;
- Mr Nikolay Starodubets - EUR 900;
- Ms Yelena Zavina - EUR 900;
- Mr Tofik Kadyr Ogly Ibragimov - EUR 2,500; and
- Ms Lyusya Ibragimova - EUR 2,500.

B. Costs and expenses

41. Ms Mikhaylova, Ms Didorchuk, Ms Khodakova, Ms Bondarenko, Ms Shandurskaya, Ms Khlusevich, Ms Savchenko, Mr Ostapenko, Mr Vaypan, Mr Starodubets, Mr and Mrs Ibragimovy also claimed EUR 165 each for the costs and expenses incurred before the Court.

42. The Government considered that this amount was excessive.

43. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the requested sum of EUR 165 to Ms Mikhaylova, Ms Didorchuk, Ms Khodakova, Ms Bondarenko, Ms Shandurskaya, Ms Khlusevich, Ms Savchenko, Mr Ostapenko, Mr Vaypan, Mr Starodubets, Mr and Mrs Ibragimov each for the proceedings before the Court.

C. Default interest

44. 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* admissible the applicants' complaints related to the enforcement of the decisions of the labour dispute commission and the court judgments in their favour under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No.1, and inadmissible the remainder of the application;
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* that there has been a violation of Article 1 of Protocol No.1;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, as follows:
 - to Ms Zoya Mykhaylova, the judgment debt still owed to her as well as EUR 765 (seven hundred sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Ms Anna Didorchuk, the judgment debt still owed to her as well as EUR 1,065 (one thousand sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;

- to Ms Klavdiya Khodakova, the judgment debt still owed to her as well as EUR 1,965 (one thousand nine hundred sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Ms Tatyana Bondarenko, the judgment debt still owed to her as well as EUR 765 (seven hundred sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Ms Yelena Vaskevich, EUR 400 (four hundred euros) for pecuniary and non-pecuniary damage;
 - to Ms Anna Shandurskaya, EUR 1,065 (one thousand sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Ms Yelena Khlusevich, the judgment debt still owed to her as well as EUR 765 (seven hundred sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Ms Galina Savchenko, the judgment debt still owed to her as well as EUR 565 (five hundred sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Mr Aleksandr Gaydachuk, EUR 600 (six hundred euros) for pecuniary and non-pecuniary damage;
 - to Mr Vladimir Ostapenko, EUR 1,065 (one thousand sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Mr Nikolay Litvinov, EUR 900 (nine hundred euros) for pecuniary and non-pecuniary damage;
 - to Mr Nikolay Vaypan, the judgment debt still owed to him as well as EUR 1,065 (one thousand sixty five euros) for non-pecuniary damage, costs and expenses;
 - to Mr Nikolay Starodubets, the judgment debt still owed to him as well as EUR 1,065 (one thousand sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Ms Yelena Zavina, EUR 900 (nine hundred euros) for pecuniary and non-pecuniary damage;
 - to Mr Tofik Kadyr Ogly Ibragimov, the labour dispute commission decision and judgment debts still owed to him as well as EUR 2,665 (two thousand six hundred sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
 - to Ms Lyusya Ibragimova, the labour dispute commission decision and judgment debts still owed to her as well as EUR 2,665 (two thousand six hundred sixty five euros) for pecuniary and non-pecuniary damage, costs and expenses;
- (b) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
- (c) 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;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President