



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

FIFTH SECTION

CASE OF KACHERSKAYA AND FROLOVA v. UKRAINE

(Application no. 28020/03)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Kacherskaya and Frolova v. Ukraine,

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

Peer Lorenzen, *President*,
Rait Maruste,
Karel Jungwiert,
Volodymyr Butkevych,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 November 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in application (no. 28020/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ukrainian nationals, Mrs Lidiya Konstantinovna Kacherskaya (“the first applicant”) and Mrs Irina Igorevna Frolova (“the second applicant”) on 12 August 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovskaya.

3. The applicants alleged non-enforcement of the judgments given in their favour.

4. On 13 October 2004 the Court decided to give notice of 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1937; the second applicant was born in 1958. They live in Pervomaysk, Mykolaiv region, Ukraine.

6. On 22 June 1999 the Pervomaysk Court awarded the first applicant 1,410.85 ¹Ukrainian hryvnas (UAH) in salary arrears against the Pervomaysk State department for education.

7. On 2 August 1999 the same court awarded the first applicant UAH 324.34² in compensation for recreation leave allowance against the same defendant.

8. On 22 June 1999 the Pervomaysk Court awarded the second applicant UAH 794.60³ in salary arrears against the Pervomaysk State department for education. On 2 August 1999, the same court awarded the second applicant UAH 274⁴ in compensation for recreation leave allowance against the same defendant.

9. In December 2003, the Mykolaiv Regional Department of Justice informed the applicants that the judgments in their favour could not be enforced due to lack of the funds in the State budget, and the property of the debtor could not be attached since it was a public institution.

10. The judgments given in favour of the applicants remain unenforced.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004) and *Kechko v. Ukraine* (no. 63134/00, §§ 16-18, 8 November 2005).

THE LAW

I. SCOPE OF THE CASE

12. In reply to the Government's observations the applicants invoked Article 13 of the Convention referring to the same facts. The Court notes that this complaint was not included in the initial application, on which the Government have already commented. Accordingly, the Court considers that it is not appropriate to deal with this matter in the present case (see, *Novitskiy v. Ukraine* (dec.), no. 20324/03, 16 October 2007).

1. EUR 343.10.

2. EUR 68.88.

3. EUR 193.24.

4. EUR 58.19.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

13. The applicants complained about the State authorities' failure to enforce the judgments of the Pervomaysk Court of 22 June 1999 and 2 August 1999. They invoked Article 1 of the Convention and Article 1 of Protocol No. 1. The Court will examine the applicants' complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Sharov v. Russia*, no. 38918/02, § 11, 12 June 2008). As far as relevant, these Articles read 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 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"

A. Admissibility

14. 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* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

15. The Court concludes that the application 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 it inadmissible.

B. Merits

16. The Government made no observations on merits.

17. The applicants alleged that the judgments remained unenforced.

18. The Court notes that the judgments of 22 June 1999 and 2 August 1999 remain unenforced for more than nine years.

19. 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, *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, §§ 17-22, 28 February 2006).

20. 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 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicants claimed payment of the debts under the judgments of 22 June 1999 and 2 August 1999 in respect of pecuniary damage. They also claimed each UAH 10,000¹ in respect of non-pecuniary damage.

23. The Government agreed that they had outstanding debts under the judgments given in the applicants' favour. They further agreed to pay each applicant UAH 10,000 in respect of non-pecuniary damage.

24. In so far as the judgments debts in the applicants' favour have not been paid the Court notes that the State's outstanding obligation to enforce the judgments given in the applicants' favour is not in dispute. The Court finds that the Government should pay the applicants the outstanding debts under the judgments of 22 June 1999 and 2 August 1999, by way of compensation for pecuniary damage. On the other hand, ruling on an equitable basis, the Court considers that it should award each applicant the full sum claimed in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicants did not submit any claim under this head within the set time-limit; the Court therefore makes no award under this head.

1. EUR 1,450.

C. Default interest

26. 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 application 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 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the debts still owed to the applicants under the judgments of the Pervomaysk Court of 22 June 1999 and 2 August 1999, as well as EUR 1,450 (one thousand four hundred and fifty euros) each in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of payment, 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.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President