



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KARPUKHAN AND OTHERS v. UKRAINE

*(Applications nos. 45524/05, 39316/07, 39326/07, 39329/07, 39331/07,
39332/07, 39333/07, 39335/07, 39337/07, 39339/07, 39342/07, 39360/07,
39407/07, 39411/07, 39418/07, 39422/07, 39426/07, 39429/07, 39433/07,
and 45858/07)*

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

*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 Karpukhan and Others v. Ukraine,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Mykhaylo Buromenskiy, *ad hoc judge*,
and Claudia Westerdiek, *Section Registrar*.

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in twenty applications (see Annex I) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twenty Ukrainian nationals:

- Mr Andrey Igorevich KARPUKHAN of Krasnyy Luch, born in 1982 (no. 45524/05) (the first applicant);
- Svetlana Mikhaylovna POMOGAYEVA of Krasnyy Luch, born in 1963 (no. 39316/07) (the second applicant);
- Viktor Petrovich YEVTUSHEVICH of Krasnyy Luch, born in 1963 (no. 39326/07) (the third applicant);
- Ludmila Valentinovna MOMRIK of Vakhrushevo, born in 1959 (no. 39329/07) (the fourth applicant);
- Nina Ivanovna MEDVED of Krasnyy Luch, born in 1956 (no. 39331/07) (the fifth applicant);
- Larisa Aleksandrovna SAMOFALOVA of Krasnyy Luch, born in 1953 (no. 39332/07) (the sixth applicant);
- Vitaliy Yevgenyevich SAMOFALOV of Krasnyy Luch, born in 1979 (no. 39333/07) (the seventh applicant);
- Tatyana Viktorovna GORSKAYA of Krasnyy Luch, born in 1952 (no. 39335/07) (the eighth applicant);
- Valentina Leonidovna SHEVCHENKO of Vakhrushevo, born in 1955 (no. 39337/07) (the ninth applicant);
- Valentina Viktorovna SERKINA of Kniaginovka, born in 1955 (no. 39339/07) (the tenth applicant);
- Nikolay Mikhaylovich SERKIN of Kniaginovka, born in 1955 (no. 39342/07) (the eleventh applicant);

- Tatyana Anatolyevna PINDUR of Kniaginovka, born in 1971 (no. 39360/07) (the twelfth applicant);
- Yelena Vladimirovna KAZHARSKAYA of Vakhrushevo, born in 1965 (no. 39407/07) (the thirteenth applicant);
- Lyudmila Aleksandrovna TIMOSHENKO of Vakhrushevo, born in 1969 (no. 39411/07) (the fourteenth applicant);
- Olga Aleksandrovna YASYUCHENYA of Krasnyy Luch, born in 1973 (no. 39418/07) (the fifteenth applicant);
- Vitaliy Vladimirovich YASYUCHENYA of Krasnyy Luch, born in 1970 (no. 39422/07) (the sixteenth applicant);
- Nataliya Nikolayevna BYCHEK of Vakhrushevo, born in 1964 (no. 39426/07) (the seventeenth applicant);
- Vera Sergeyevna NOSKO of Krasnyy Luch, born in 1945 (no. 39429/07) (the eighteenth applicant);
- Irina Nikolayevna PIKULINA of Vakhrushevo, born in 1960 (no. 39433/07) (the nineteenth applicant);
- Ivan Pavlovich ZHUKOV of Krasnyy Luch born in 1938 (no. 45858/07) (the twentieth applicant).

2. The applicants were represented by Mr V.N. Bychkovskiy. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The Court decided to communicate the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. By decisions of the Krasnyy Luch Town Court adopted between 2002 and 2005 the State Company “Tsentralna Zbagachuvalna Fabryka ‘Yanivska’ ” (*ДБАТ «Центральна збагачувальна фабрика “Янівська”»*) was ordered to pay the applicants various amounts in salary arrears and other payments (see Annex I for details). The decisions in favour of the applicants remain unenforced.

II. RELEVANT DOMESTIC LAW

5. The relevant domestic law is summarised in the *Sokur v. Ukraine* judgment (no. 29439/02, §§ 17-22, 26 April 2005).

THE LAW

I. JOINDER OF THE APPLICATIONS

6. In accordance with Rule 42 § 1 of the Rules of Court, the Court decided to join the applications, given their common factual and legal background.

II. COMPLAINTS UNDER ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

7. The applicants complained about the State authorities' failure to enforce in due time the judgments given in their favour. They invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which provide, in so far 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 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

8. The Government submitted no observations on the admissibility of the above complaints with the exception of application no. 45524/05. In particular, in that application they raised objections regarding the exhaustion

of domestic remedies by the first applicant, similar to those which the Court has already dismissed in its judgment in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 28-32, 27 July 2004). The Court considers that these must be rejected for the same reasons.

9. The Government further noted that the first applicant had lodged his application with the Court four months after the judgment of the domestic court and two months after the beginning of the enforcement proceedings. They asserted in this regard that at the time it was lodged the application was manifestly ill-founded.

10. The Court notes that the application to the Court did not preclude the Government from enforcing the judgment at issue. Moreover, seven years after delivery, the judgment remains unenforced. Accordingly, the Court rejects the Government's preliminary objection.

11. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

12. In their observations on the merits of the applicants' claims, the Government contended that there had been no violation of Article 6 § 1 of the Convention or of Article 1 of Protocol No. 1. The delays in the enforcement of the judgments in the applicants' favour had been due to the large number of enforcement proceedings against the debtor and its financial difficulties. The Government further maintained that the bailiffs' service had performed all the necessary actions and could not be blamed for the delays.

13. The applicants disagreed.

14. The Court notes that the judgments in the applicants' favour have remained unenforced for considerable periods of time. The shortest period of non-enforcement has been approximately four years (application no. 45858/07).

15. The Court points out that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Sokur*, cited above, §§ 36-37, and *Sharenok v. Ukraine*, no. 35087/02, §§ 37-38, 22 February 2005).

16. Having examined all the material in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

17. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. All the applicants claimed the unpaid judgment debts, inflation adjustments and exemplary damages, based on a 3% interest rate, by way of pecuniary damage. They also claimed in respect of non-pecuniary damage (see Annex II for all details).

20. The Government contested these claims as excessive and unsubstantiated.

21. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgments at issue.

22. It further notes that the applicants' claims for inflation adjustment are supported by extensive calculations and an official certificate of inflation indexes issued by the State Statistics Committee (*Державний комітет статистики України*). Taking into account the fact that the Government did not dispute the method of calculation employed by the applicants (see, for example, *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006), the Court awards the applicants the amounts claimed in this respect.

23. As regards the applicants' claims for exemplary damages, the Court has declined on several occasions to impose any form of punitive or exemplary damages (see, for example, *Akdivar and Others v. Turkey* (Article 50), 1 April 1998, § 38, *Reports of Judgments and Decisions* 1998-II; *Cable and Others v. the United Kingdom* [GC] nos. 24436/94 et seq., 18 February 1999, § 30; and *Orhan v. Turkey*, no. 25656/94, § 448, 18 June 2002). It sees no reason to depart from this practice in the present case and therefore rejects these claims.

24. The Court further finds that the applicants must have suffered non-pecuniary damage on account of the violations found. Ruling on an equitable basis, it awards the applicants the following amounts in respect of non-pecuniary damage:

- the first applicant – 1,000 euros (EUR);
- the second applicant – EUR 2,600;
- the third applicant – EUR 1,000;
- the fourth applicant – EUR 2,340;
- the fifth applicant – EUR 1,000;
- the sixth applicant – EUR 2,600;

- the seventh applicant – EUR 2,600;
- the eighth applicant – EUR 1,000;
- the ninth applicant – EUR 1,000;
- the tenth applicant – EUR 1,000;
- the eleventh applicant – EUR 2,600;
- the twelfth applicant – EUR 1,000;
- the thirteenth applicant – EUR 1,000;
- the fourteenth applicant – EUR 1,000;
- the fifteenth applicant – EUR 1,000;
- the sixteenth applicant – EUR 2,600;
- the seventeenth applicant – EUR 1,000;
- the eighteenth applicant – EUR 1,000;
- the nineteenth applicant – EUR 1,000;
- the twentieth applicant – EUR 1,000.

B. Costs and expenses

25. The first, third, fifth, eighth, ninth, tenth, twelfth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth and nineteenth applicants claimed EUR 100 each for the costs and expenses incurred before the Court. The second, fourth, sixth, seventh, eleventh and sixteenth applicants claimed EUR 150 each under this head. The twentieth applicant claimed EUR 400.

26. The Government contested these claims as unsubstantiated.

27. According to the Court's case-law, an applicant is entitled to reimbursement of his or her 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 sum of EUR 40 to each of the applicants to cover their costs for the proceedings before the Court.

C. Default interest

28. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *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 outstanding amounts due to them under the judgments given in their favour and EUR 40 (forty euros) for costs and expenses to each of the applicants, as well as the following sums:
 - Mr KARPUKHAN – EUR 111 (one hundred and eleven euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mrs POMOGAYEVA – EUR 251 (two hundred and fifty-one euros) in respect of pecuniary damage and EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage;
 - Mr YEVTUSHEVICH – EUR 287 (two hundred and eighty-seven euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mrs MOMRIK – EUR 401 (four hundred and one euros) in respect of pecuniary damage and EUR 2,340 (two thousand three hundred and forty euros) in respect of non-pecuniary damage;
 - Mrs MEDVED – EUR 326 (three hundred and twenty-six euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mrs SAMOFALOVA – EUR 1,855 (one thousand eight hundred and fifty-five euros) in respect of pecuniary damage and EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage;
 - Mr SAMOFALOV – EUR 266 (two hundred and sixty-six euros) in respect of pecuniary damage and EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage;
 - Mrs GORSKAYA – EUR 217 (two hundred and seventeen euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;

- Mrs SHEVCHENKO – EUR 217 (two hundred and seventeen euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mrs SERKINA – EUR 141 (one hundred and forty-one euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mr SERKIN – EUR 133 (one hundred and thirty-three euros) in respect of pecuniary damage and EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage;
 - Mrs PINDUR – EUR 205 (two hundred and five euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mrs KAZHARSKAYA - EUR 160 (one hundred and sixty euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mrs TIMOSHENKO – EUR 217 (two hundred and seventeen euros) in respect of pecuniary damage and EUR 1,000 (one thousand euro) in respect of non-pecuniary damage;
 - Mrs YASYUCHENYA – EUR 442 (four hundred and forty-two euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mr YASYUCHENYA – EUR 511 (five hundred and eleven euros) in respect of pecuniary damage and EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage;
 - Mrs BYCHEK – EUR 208 (two hundred and eight euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mrs NOSKO – EUR 665 (six hundred and sixty-five euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mrs PIKULINA – EUR 224 (two hundred and twenty-four euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - Mr ZHUKOV – EUR 10,505 (ten thousand five hundred and five euros) in respect of pecuniary damage and EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
- plus any tax that may be chargeable on the sums awarded in respect of non-pecuniary damage;
- (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;
 - (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 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

ANNEX I

	Application No.	Date of introduction	Name of the applicant	Date of decision(s)	Amount(s) awarded by the domestic court
1.	45524/05	29 September 2005	Andrey Igorevich KARPUKHAN	19 May 2005	UAH 3,253.75 (EUR 511.67)
2.	39316/07	11 August 2007	Svetlana Mikhaylovna POMOGAYEVA	(1) 8 January 2003 (2) 10 June 2005	(1) UAH 1,234.12 (EUR 228.46) (2) UAH 2,284.79 (EUR 370.20)
3.	39326/07	11 August 2007	Viktor Petrovich YEVTVSHEVICH	17 June 2005	UAH 5,436.3 (EUR 891.93)
4.	39329/07	11 August 2007	Ludmila Valentinovna MOMRIK	(1) 2 April 2003 (2) 18 July 2005	(1) UAH 3,057.71 (EUR 541.90) (2) UAH 2,463.62 (EUR 425.93)
5.	39331/07	11 August 2007	Nina Ivanovna MEDVED	1 June 2005	UAH 6,083.07 (EUR 974.18)

	Application No.	Date of introduction	Name of the applicant	Date of decision(s)	Amount(s) awarded by the domestic court
6.	39332/07	11 August 2007	Larisa Aleksandrovna SAMOFALOVA	(1) 19 December 2002 (2) 24 June 2005	(1) UAH 9,198.42 (EUR 1,736.86) (2) UAH 18,204.26 (EUR 2,990.22)
7.	39333/07	11 August 2007	Vitaliy Yevgenyevich SAMOFALOV	(1) 19 December 2002 (2) 24 June 2005	(1) UAH 1,713.05 (EUR 323.46) (2) UAH 1,905.37 (EUR 312.97)
8.	39335/07	11 August 2007	Tatyana Viktorovna GORSKAYA	11 May 2005	UAH 4,058.67 (EUR 628.83)
9.	39337/07	11 August 2007	Valentina Leonidovna SHEVCHENKO	11 May 2005	UAH 4,043.96 (EUR 626.55)
10.	39339/07	11 August 2007	Valentina Viktorovna SERKINA	16 May 2005	UAH 2,632.13 (EUR 413.24)

	Application No.	Date of introduction	Name of the applicant	Date of decision(s)	Amount(s) awarded by the domestic court
11.	39342/07	11 August 2007	Nikolay Mikhaylovich SERKIN	(1) 19 December 2002 (2) 16 May 2005	(1) UAH 1,078.56 (EUR 203.66) (2) UAH 556.02 (EUR 87.29)
12.	39360/07	25 July 2007	Tatyana Anatolyevna PINDUR	16 June 2005	UAH 3,831.74 (EUR 629.94)
13.	39407/07	25 July 2007	Yelena Vladimirovna KAZHARSKAYA	29 June 2005	UAH 3,027.07 (EUR 500.13)
14.	39411/07	25 July 2007	Lyudmila Aleksandrovna TIMOSHENKO	16 June 2005	UAH 4,111.36 (EUR 675.91)
15.	39418/07	25 July 2007	Olga Aleksandrovna YASYUCHENYA	13 May 2005	UAH 8,245.62 (EUR 1,287.30)
16.	39422/07	25 July 2007	Vitaliy Vladimirovich YASYUCHENYA	(1) 17 June 2002 (2) 13 May 2005	(1) UAH 4,014.24 (EUR 826.30) (2) UAH 1,556.17 (EUR 242.95)

	Application No.	Date of introduction	Name of the applicant	Date of decision(s)	Amount(s) awarded by the domestic court
17.	39426/07	25 July 2007	Nataliya Nikolayevna BYCHEK	10 June 2005	UAH 3,863.19 (EUR 625.95)
18.	39429/07	25 July 2007	Vera Sergeyevna NOSKO	13 May 2005	UAH 12,213.86 (EUR 1,906.82)
19.	39433/07	25 July 2007	Irina Nikolayevna PIKULINA	1 June 2005	UAH 4,176.46 (EUR 668.85)
20.	45858/07	13 October 2007	Ivan Pavlovich ZHUKOV	28 July 2005	UAH 201,249.35 (EUR 33,239.0)

ANNEX II

	Application No.	Name of the applicant	Claim for pecuniary damage (UAH)		Claim for non-pecuniary damage (EUR)
			inflation adjustments	exemplary damages	
1.	45524/05	Andrey Igorevich KARPUKHAN	1,180.67 (EUR 111)	336.92 (EUR 32)	10,000
2.	39316/07	Svetlana Mikhaylovna POMOGAYEVA	2,661.28 (EUR 251)	462.62 (EUR 44)	21,600
3.	39326/07	Viktor Petrovich YEVTUSHEVICH	3,044.33 (EUR 287)	548.15 (EUR 52)	12,400
4.	39329/07	Ludmila Valentinovna MOMRIK	4,259.99 (EUR 401)	772.68 (EUR 73)	23,400
5.	39331/07	Nina Ivanovna MEDVED	3,461.27 (EUR 326)	613.37 (EUR 58)	13,200
6.	39332/07	Larisa Aleksandrovna SAMOFALOVA	19,685.42 (EUR 1,855)	3866.83 (EUR 364)	55,000
7.	39333/07	Vitaliy Yevgenyevich SAMOFALOV	2,821.19 (EUR 266)	570.39 (EUR 54)	23,500
8.	39335/07	Tatyana Viktorovna GORSKAYA	2,309.38 (EUR 217)	420.26 (EUR 40)	11,000
9.	39337/07	Valentina Leonidovna SHEVCHENKO	2,301.01 (EUR 217)	418.74 (EUR 39)	11,000
10.	39339/07	Valentina Viktorovna SERKINA	1,497.68 (EUR 141)	272.55 (EUR 26)	9,300
11.	39342/07	Nikolay Mikhaylovich SERKIN	1,410.04 (EUR 133)	312.66 (EUR 29)	21,000

	Application No.	Name of the applicant	Claim for pecuniary damage (UAH)		Claim for non-pecuniary damage (EUR)
			inflation adjustments	exemplary damages	
12.	39360/07	Tatyana Anatolyevna PINDUR	2,180.26 (EUR 205)	396.76 (EUR 37)	10,700
13.	39407/07	Yelena Vladimirovna KAZHARSKAYA	1,695.16 (EUR 160)	305.23 (EUR 29)	9,600
14.	39411/07	Lyudmila Aleksandrovna TIMOSHENKO	2,302.36 (EUR 217)	414.56 (EUR 39)	10,900
15.	39418/07	Olga Aleksandrovna YASYUCHENYA	4,691.76 (EUR 442)	853.81 (EUR 80)	16,000
16.	39422/07	Vitaliy Vladimirovich YASYUCHENYA	5,421.55 (EUR 511)	975.66 (EUR 92)	26,000
17.	39426/07	Nataliya Nikolayevna BYCHEK	2,198.16 (EUR 208)	400.02 (EUR 38)	10,800
18.	39429/07	Vera Sergeyevna NOSKO	7,059.61 (EUR 665)	1,264.71 (EUR 119)	20,000
19.	39433/07	Irina Nikolayevna PIKULINA	2,376.41 (EUR 224)	432.46 (EUR 41)	11,000
20.	45858/07	Ivan Pavlovich ZHUKOV	111,492.14 (EUR 10,505)	19,747.30 (EUR 1,861)	243,400