



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

FIFTH SECTION

Application no. 18986/06
Andriy and Nadiya KARAKUTSI
against Ukraine
lodged on 4 May 2006

STATEMENT OF FACTS

Mr Andriy Vasylyovych Karakutsya (“the first applicant”) and his wife, Ms Nadiya Petrivna Karakutsya (“the second applicant”), are Ukrainian nationals who were born in 1977 and 1978 respectively, and live in Kyiv.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The first applicant was an acting serviceman. In 1999 the Ministry of Defence provided the applicants with a room in a dormitory of the National Academy of Defence. The applicants resided in the room with their minor daughter.

In 2001 the first applicant resigned from the military service.

In 2002 the National Academy of Defence instituted proceedings in the Shevchenkivskyy District Court of Kyiv seeking the applicants’ eviction from the room in its dormitory.

On 11 November 2003 the court ordered the applicants’ eviction. It held that under the national law the Ministry of Defence had not been obliged to provide the applicants with housing during or after the first applicant’s term of service.

On 9 December 2003 the applicants lodged an appeal with the Kyiv Court of Appeal which, on 29 January 2004, rejected it, having heard the case in the absence of the applicants who had not been informed of the date and time of that hearing. Representatives of the National Academy of Defence attended that hearing and submitted their arguments. The Court of Appeal did not inform the applicants about its decision.

The applicants stated that they had not been provided with any information about the hearing or the decision of 29 January 2004 despite a telephone call to the Court of Appeal which they made on an unspecified date in 2004 enquiring about the progress in their case.

In April 2004 the applicants were evicted from the disputed room in the dormitory.

On 3 October 2005, following the applicants' written requests of 12 August and 26 September 2005, the Court of Appeal informed them that their appeal had been rejected on 29 January 2004. On 29 November 2005 it provided the applicants with a copy of the decision.

On 14 December 2005 the applicants lodged an appeal in cassation with the Supreme Court explaining that they missed the prescribed time-limit because they had not been informed about the decision of 29 January 2004 in due time. They requested the Supreme Court to renew the time-limit for lodging their appeal in cassation.

On 20 December 2005 the Supreme Court, relying on paragraph 2 of Article 325 of the Code of Civil Procedure of 2004, refused to renew the time-limit and left the applicants' appeal without consideration.

B. Relevant domestic law

According to Article 216 of the Code of Civil Procedure of 1963 a court was obliged to send to the parties who had not been present during pronouncement of a court decision, copies of such decision within five days after the pronouncement.

According to paragraph 2 of Article 325 of the Code of Civil Procedure of 2004 (in force from 1 September 2005 onwards), as worded at the material time, the two-month time-limit for lodging an appeal in cassation, running from the date of the decision of a court of appeal, could be extended for a period not exceeding one year.

COMPLAINTS

1. The applicants complained under Articles 6 § 1 and 13 of the Convention that they had not been informed about the hearing before the Kyiv Court of Appeal and the decision of that court in due time. As a result, they had not been able to present their arguments during the hearing and had irreparably lost their right to have their appeal in cassation examined by the Supreme Court.

2. They also complained that Article 325 of the Code of Civil Procedure of 2004, as worded at the material time, had been contrary to Article 13 of the Convention.

3. The applicants further complained about violation of their rights under Article 8 of the Convention on account of their eviction.

QUESTIONS TO THE PARTIES

1. Has there been an infringement of the applicants' right of access to a court, as guaranteed by Article 6 § 1 of the Convention, as regards the refusal of the court of cassation to consider their appeals in cassation?

2. Did the applicants' eviction constitute an interference with their right to respect for their home? If so, was that interference in accordance with

the law and necessary in terms of Article 8 § 2? In particular, was the decision-making process in this case compatible with the requirements of Article 8 of the Convention?