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

SECOND SECTION

CASE OF KUZMENKOV v. UKRAINE

(Application no. 39164/02)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Kuzmenkov 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. TÜRMEN,
Mr V. BUTKEVYCH,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *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. 39164/02) 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, Mr Viktor Mitrofanovich Kuzmenkov ("the applicant"), on 25 September 2002.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mrs Valeria Lutkovska.

3. On 9 September 2004 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in the town of Novogrodovka, the Donetsk Region.

5. On 8 July 1997 and 22 February 2000 the Novogrodovka City Court (hereafter "the City Court") awarded the applicant a total of UAH 33,277[1] against the Novogrodovskaya State-owned Coal Mine No. 2 (hereafter "the NCM") for arrears of salary, redundancy pay and industrial disability

[1] approximately 5,146 euros ("EUR").

benefits. The judgments became final and were remitted to the Novogrodovka City Bailiffs' Service for compulsory enforcement.

6. In 1998 and 1999 the Novgorodsky City Court and the Donetsk Regional Court rejected as unsubstantiated the applicant's complaints against the Rossiya Association (the NCM's managing company between August 1997 and March 1998) and the NCM for their failure to pay in due time and in full the sum awarded to him by the judgment of 8 July 1997.

7. In 1999 and 2000 the Prosecutor's Office rejected on several occasions the applicant's criminal complaints against officials of the Bailiffs' Service.

8. On 24 May 2001 the Ministry of Fuel and Energy decided to wind up the NCM, designating the Ukrvuglrestrukrutizatsyya Company as its successor.

9. The applicant instituted proceedings in the City Court against the Bailiffs' Service for failure to execute the decisions in his favour. On 14 August 2001, the court rejected the applicant's claim, finding no fault had been committed by the Bailiffs, who had demonstrated due diligence in enforcing the judgments in the applicant's favour, but the NCM's lack of funds had prevented them from securing the immediate payment of the awards.

10. In 2002 and 2003, due to the on-going bankruptcy proceedings against the NCM, the Bailiffs' Service forwarded on several occasions the applicant's writs of execution to the NCM's liquidation commission, which refused to accept them, referring to the company's lack of funds.

11. The judgments of 8 July 1997 and 22 February 2000 remain partially unenforced, the outstanding debts being UAH 3,736[1] and 2,857[2] respectively.

II. RELEVANT DOMESTIC LAW

12. Relevant domestic law may be found in the judgments of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19) and of 30 November 2004 in the case of *Dubenko v. Ukraine* (74221/01 §§ 22-29).

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[1] approximately EUR 611

[2] approximately EUR 468

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

13. The applicant complained about the State authorities' failure to execute the judgments of 8 July 1997 and 22 February 2000 given in his favour. He alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, in so far as relevant, as follows:

Article 6

"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 or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

14. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The Government maintained that the Bailiffs performed all necessary actions to enforce the judgments and were not liable for the delays in the enforcement proceedings. They argued that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgments.

16. The applicant reiterated that the State was responsible for the enforcement delays.

17. The Court notes that the judgments of 8 July 1997 and 22 February 2000 have remained partially unenforced for periods of over eight years two months and five years seven months, respectively. The Court considers that, by delaying the full enforcement of the judgments in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of much of their useful effect. The Court finds that the Government have not advanced any convincing justification for this delay (see, among many others, *Romashov v. Ukraine*, cited above, § 46; *Dubenko v. Ukraine*, cited above, §§ 47 and 51; *Vasilenkov v. Ukraine*, no. 19872/02, §§ 24-26, 3 May 2005).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed 46,129 euros (EUR) in respect of pecuniary and non-pecuniary damage.

21. The Government found the applicant's claims unjustified.

22. In so far as the judgments in the applicant's favour have not been paid in full (paragraph 11 above), the Court notes that the State's outstanding obligation to enforce them is not in dispute. Accordingly, the Court considers that, if the Government were to pay the remaining debts owed to the applicant, it would constitute full and final settlement of the case.

23. The Court considers that the applicant's remaining claim is excessive. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court awards the applicant a global sum of EUR 3,920 in pecuniary and non-pecuniary damage.

B. Costs and expenses

24. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

25. 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 Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the judgment debts still owed to him, as well as EUR 3,920 (three thousand nine hundred and twenty euros) in respect of non-pecuniary damage, to 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;
   (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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA
Registrar President