



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

SECOND SECTION

CASE OF PISKUNOV v. UKRAINE

(Application no. 5497/02)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Piskunov v. Ukraine,

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

Mr A.B. BAKA, *President*,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

Having deliberated in private on 22 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 5497/02) 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 Aleksey Ivanovich Piskunov (“the applicant”), on 20 December 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Zoryana Bortnovska, succeeded by Ms Valeria Lutkovska.

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.

THE FACTS

4. The applicant was born in 1949 and currently resides in Donetsk. The applicant is a former employee of the State Skochinsky Mine (the “SSM”).

I. THE CIRCUMSTANCES OF THE CASE

5. In December 2000 the applicant instituted proceedings in the Kirovsky District Court of Donetsk (the “Kirovsky Court”) against the SSM, seeking recovery of salary arrears.

6. On 24 January 2001 the Kirovsky Court ordered the SSM to pay the applicant UAH 9,349.78¹ in compensation.

1. 1,836.86 euros – “EUR”.

7. On 24 February 2001 the Kirovsky District Bailiffs' Service of Donetsk (the "Bailiffs' Service") instituted enforcement proceedings.

8. On 11 November 2002 the Bailiffs' Service informed the applicant that the judgment could not be executed due to the SSM's lack of funds. It also informed the applicant of the pending bankruptcy proceedings against the SSM and the ban imposed by the Donetsk Regional Commercial Court on the execution of judgments against the company.

9. On 23 December 2002 the Donetsk Regional Commercial Court prohibited the collection by the Bailiffs' Service of funds from the SSM's accounts in view of the latter's pending bankruptcy and financial recovery programme.

10. On 7 February 2003 the Bailiff's Service resumed the enforcement proceedings in the case. However, this decision was quashed by the Head of the Bailiffs' Service in view of the bankruptcy proceedings pending against the SSM.

11. On 3 March 2003 the Kirovsky Court awarded the applicant additional compensation for the unreasonable delay in the execution of the judgment and ordered the SSM to pay him UAH 826.98¹ in compensation.

12. On 11 April 2003 the Donetsk Regional Commercial Court approved a friendly settlement reached between the SSM and its creditors, and terminated the bankruptcy proceedings.

13. On 19 May 2003 the SSM requested the Kirovsky Court to change the debtor in the enforcement proceedings to the State Enterprise "Donetskvugillia", which had become the SSM's legal successor following the decision of the Ministry of Fuel and Energy.

14. On 22 August 2003 the Bailiffs' Service suspended the enforcement proceedings in the applicant's case, awaiting the replacement of the debtor by the court.

15. On 15 January 2004 the Kirovsky Court effected the replacement.

16. On 11 May 2004 the applicant received the amount of UAH 9,309.88² awarded by the judgment of 24 January 2001 and UAH 826.88³ awarded by the judgment of 3 March 2003.*

17. On 18 May 2004 the Bailiffs' Service discontinued the proceedings in the applicant's case in view of the full enforcement of the judgments.

1. EUR 148.35.

2. EUR 1836.86.

3. EUR 148.35.

*. The parties agreed that the judgment was enforced in full. The difference in sum awarded and the sum paid to the applicant (UAH 39,9) apparently relates to a bank transfer fee incurred by the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complained about the State authorities' failure to execute the judgments of the Kirovsky District Court of Donetsk of 24 January 2001 and 3 March 2003. He alleged that the length of the enforcement proceedings was unreasonable, in breach of Article 6 § 1 of the Convention, which in so far as relevant provides as follows:

“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. ...”

A. Admissibility

20. The Government raised objections similar to those which the Court dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 28-33). In particular, they claimed that the applicant was not a victim of a violation of the Convention as the judgments were enforced, and had not exhausted domestic remedies.

21. The Court considers that the applicant may legitimately claim to be the victim of violation of Article 6 of the Convention, given the prolonged delay in the enforcement of the judgments of 24 January 2001 and 3 March 2003 and the failure of the domestic authorities to provide reparation for that. Accordingly, it dismisses the Government's objections.

B. Merits

22. In their observations, the Government put forward arguments similar to those in the case of *Romashov v. Ukraine*, contending that there was no violation of Article 6 § 1 of the Convention (see, the *Romashov* judgment, cited above, §37).

23. The applicant disagreed.

24. The Court notes that the judgment of the Kirovsky District Court of Donetsk of 24 January 2001 remained unenforced until 18 May 2004, despite the intervening judgment of 3 March 2003, after the case had been

communicated to the Government, resulting in delays of some three years and four months. The Court finds that the second judgment was an integral part of the proceedings.

25. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, for instance, *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

26. 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. The Court finds that by failing for so long to comply with the enforceable first judgment in the applicant's favour, the Ukrainian authorities prevented him from receiving the money to which he was entitled. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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 and costs and expenses

28. The applicant claimed EUR 20,000 in compensation for non-pecuniary damage. He did not specify any claim in pecuniary damage or costs.

29. The Government submitted that the applicant's claims were not substantiated and that the finding of a violation would constitute sufficient just satisfaction in the instant case.

30. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,600 in respect of non-pecuniary damage.

B. Default interest

31. 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable on 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President