



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

FIFTH SECTION

CASE OF DUMA v. UKRAINE

(Application no. 39422/04)

JUDGMENT

STRASBOURG

30 November 2006

FINAL

28/02/2007

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 Duma v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 6 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 39422/04) 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 Ivan Ivanovich Duma (“the applicant”), on 29 October 2004.

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

3. On 13 December 2005 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgment in the applicant's favour 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 1956 and lives in Chervona Kamyanka, the Kirovograd region.

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

6. In 1998 the applicant instituted civil proceedings in the Krasnyy Luch Court (*Краснолучський міський суд Луганської області*) against his

former employer, Mine no. 5 of the “Ukrrosobladnannya” State Mining Company (“the Mine no. 5,” *шахта №5 ТПВ „Укррособладнання”*) for disability benefits and other payments. On 9 October 1998 the court awarded the applicant UAH 15,668.80.¹

7. On 23 October 1998 the court bailiffs commenced the enforcement proceedings for the above judgment, which were subsequently transferred to the Krasnyy Luch Bailiffs' Service (“the Bailiffs,” *Відділ Державної виконавчої служби Краснолуцького районного управління юстиції*).

8. On 13 August 2002 the Lugansk Regional Commercial Court (“the Commercial Court,” *Господарський суд Луганської області*) instituted bankruptcy proceedings against Mine no. 5. On 4 February 2003 the Commercial Court discontinued the bankruptcy proceedings, having approved the friendly settlement between the mine and its creditors.

9. In 2004 the applicant instituted civil proceedings in the Krasnyy Luch Court against the Bailiffs for their omissions in enforcing the court judgment of 9 October 1998. On 13 August 2004 the court dismissed his claims, having found no such omissions. On 1 December 2004 the Krasnyy Luch Court returned the applicant's appeal against the ruling of 13 August 2004 as “not lodged” because of his failure to rectify its procedural shortcomings. The applicant did not appeal against this court decision.

10. Between 27 August 1999 and 3 November 2004 the applicant received about half of the judgment debt (UAH 7,328.83²) due to him in some twenty instalments.

11. The remainder of the debt (UAH 8,340.00³) was paid to the applicant in three instalments of 20 December 2004, 15 March 2005 and 12 August 2005.

12. On 18 August 2005 the Bailiffs terminated the enforcement proceedings as completed.

II. RELEVANT DOMESTIC LAW

13. A description of the relevant domestic law can be found in *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

14. The applicant complained about the State authorities' failure to enforce the judgment of the Krasnyy Luch Court of 9 October 1998 in due

1. EUR 3,298.09.

2. EUR 1,112.64.

3. EUR 1,343.74.

time. He invoked Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, insofar 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”

I. ADMISSIBILITY

15. The Government submitted no observations on the admissibility of the applicant's complaints.

16. The Court notes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the delay in the enforcement of the judgment of 9 October 1998 raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring these complaints inadmissible. The Court must therefore declare them admissible.

II. MERITS

17. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

18. The applicant disagreed.

19. The Court notes that the judgment of the Krasnyy Luch Court of 9 October 1998 remained unenforced for six years and ten months.

20. The Court recalls 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 v. Ukraine*, cited above, §§ 36-37 and *Sharenok v. Ukraine*, no. 35087/02, §§ 37-38, 22 February 2005).

21. 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.

22. 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

23. 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

24. The applicant submitted that he had suffered some pecuniary and non-pecuniary damage because of the length of the non-enforcement of the judgment. However, he was not able to specify the amount of his claim.

25. The Government maintained that the applicant had failed to submit his just satisfaction claims within the time limit set by the Court and invited the Court to make no award.

26. The Court observes that the applicant did not submit his just satisfaction claims, as he had been invited by the Court, following the receipt of the Government's observations. Nonetheless, the applicant confirmed the claims which he had made at the time when he had lodged the present application with the Court. Regard being had to the circumstances of the case and the Court's case-law, the Court awards the applicant EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage (see *Kryachkov v. Ukraine*, no. 7497/02, § 30, 1 June 2006).

B. Costs and expenses

27. The applicant did not submit any claim under this head. The Court therefore makes no award.

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. *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 Protocol No. 1 of 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, EUR 2,600 (two 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 amount 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 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President