



Dubetska and Others v Ukraine

Application No. 30499/03

Country:

Region: Europe

Year: 2011

Court: European Court of Human Rights

Facts

The applicants were eleven Ukrainian nationals residing in Vilshyna in the Lviv region of Ukraine had. They filed the case against the Ukrainian Government (hereinafter "the Government") alleging the failure of the state authorities to protect their home, private and family life from the excessive pollution generated by two state-owned industrial facilities. The facilities had piled up soil-heaps which according to several studies by governmental and non-governmental institutions had caused adverse environmental effects such as groundwater pollution which has resulted in lack of drinking water, and air pollution due to excess of dust and the lack of clean drinking water has led to the development of chronic health conditions such as chronic bronchitis, emphysema, and carcinoma. It has further led to the disruption of family life. Pursuant to this, several administrative decisions aimed at improving the environmental situation were taken but unfortunately, none of them were enforced or followed.

On July 2002, the Dubetska-Nayda family instituted civil proceedings in the Chervonograd Court seeking resettlement, which was granted by the court and the decision became final. However, the enforcement proceeding which was initiated was appealed by the factory owners. Similar proceedings, on the lines of Dubetska-Nayda family, were initiated by the Gavrylyuk-Vakiv family but the claim was dismissed stating that the applicant's house was located outside the 300-meter zone. In 2004, the applicants appealed against the decision which was dismissed by both Lviv Regional Court of Appeal as well as Khmelnytsky Regional Court of Appeal. Finally, the applicants made an application to the European Court of Human Rights (hereinafter "the court") stating the breach of Article 8 of the European Convention on Human Rights which provides for the respect of private and family life. The government argued that there was no infringement upon the rights as the applicable safety standards were met for the concentration of pollutants outside the zone.

Decision and Reasoning

The court held that even though there is no evidence to establish a quantifiable harm, the pollution of the living area is in excess of the safety standards which poses an elevated health risk to the applicants and sufficient evidence exists which cites the contribution of the mine and the factory towards environmental, water as well as air pollution and the actual excess of polluting substances within the distances in which the house is situated. The court held that the State owed a duty to the applicants for resettlement under Article 8 due to the strong link between the pollutant emissions and State activities.

The court further held that the state had breached Article 8 of the Convention as the government has failed to strike a balance between the competing interests of the individuals affected and the community as a whole as there was a failure to facilitate the relocation of the applicants or put in place a policy to protect them from health and environmental risks posed by the pollution. Hence, the court held that the violation of Article 8 of the convention has obligated the government to take appropriate measures to remedy the applicant's situation and awarded non-pecuniary damages of EUR 32,000 and EUR 33,000 to the Dubetska-Nayda family and the Gavrylyuk-Vakiv family respectively.

Decision Excerpts

"neither Article 8 nor any other provision of the Convention guarantees the right to preservation of the natural environment as such. Likewise, no issue will arise if the detriment complained of is negligible in comparison to the environmental hazards inherent in life in every modern city. However, an arguable claim under Article 8 may arise where an environmental hazard attains a level of severity resulting in significant impairment of the applicant's ability to enjoy his home, private or family life." Paragraph 105.

â€œ[]n order to determine whether or not the State could be held responsible under Article 8 of the Convention, the Court must examine whether a situation was a result of a sudden and unexpected turn of events or, on the contrary, was long-standing and well known to the State authorities; whether the State was or should have been aware that the hazard or the nuisance was affecting the applicant's private life and to what extent the applicant contributed to creating this situation for himself and was in a position to remedy it without a prohibitive outlay.â€• Paragraph 108

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