CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF LEN v. UKRAINE

(Application no. 43065/04)

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 Len v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *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. 43065/04) 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 Pyotr Anatolyevich Len ("the applicant"), on 21 February 2004.

2. The applicant was represented by Mr V. Bychkovskiy from Miusinsk. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

3. On 8 November 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 1960 and lives in Krasnyy Luch, the Lugansk region.

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

6. In 2000 the applicant instituted civil proceedings in the Krasnyy Luch Court (*Краснолуцький міський суд Луганської області*) against his employer, the State Open Joint Stock Mining Company "Izvestiya" ("the Company," *ДВАТ шахта „Ізвестія"*), for salary arrears and other payments. On 14 June 2000 the court awarded the applicant UAH 8,185.11.[1] This judgment was not appealed against and became final.

7. On 26 June 2000 the Krasnyy Luch Bailiffs' Service ("the Bailiffs," *Відділ Державної виконавчої служби Краснолуцького міського управління юстиції*) initiated the enforcement proceedings for the above judgment.

8. On 29 October 2002 the Lugansk Regional Commercial Court ("the Commercial Court," *Господарський суд Луганської області*) initiated bankruptcy proceedings against the Company and introduced a moratorium on payment of its debts.

9. On 28 July 2003 the Commercial Court approved a friendly settlement between the Company and its creditors.

10. On 3 December 2004 the applicant received his judgment debt and the Bailiffs terminated the enforcement proceedings as completed.

II. RELEVANT DOMESTIC LAW

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

THE LAW

12. The applicant complained about the State authorities' failure to enforce the judgment of the Krasnyy Luch Court of 14 June 2000 in due 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

1. EUR 1,567.18.

> 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

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

14. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of 14 June 2000 raises issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring this complaint inadmissible. The Court must therefore declare it admissible. For the same reasons, the Court declares admissible the applicant's complaint under Article 1 of Protocol No. 1.

II. MERITS

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

16. The applicant disagreed.

17. The Court notes that the judgment of the Krasnyy Luch Court of 14 June 2000 remained unenforced for about four years and six months.

18. 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).

19. 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.

20. 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

21. 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

22. The applicant claimed UAH 38,702.70[1] by way of just satisfaction.

23. The Government submitted that this claim should be rejected.

24. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,400 (one thousand four hundred euros) by way of just satisfaction.

B. Costs and expenses

25. The applicant did not submit any separate claim under this head; the Court therefore makes no award in this respect.

C. Default interest

26. 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;

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1. EUR 6,115.

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 global sum of EUR 1,400 (one thousand four hundred euros) in respect of just satisfaction, 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;

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

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	Peer LORENZEN
Registrar	President