CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF IVASHCHISHINA v. UKRAINE

(Application no. 43116/04)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

07/03/2007

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 Ivashchishina v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 13 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 43116/04) 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, Ms Lyudmila Petrovna Ivashchishina ("the applicant"), on 2 March 2004.

2. The applicant was represented by Mr V. Bychkovskiy from Miusinsk. The Ukrainian Government ("the Government") were represented by Mr Y. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

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 judgments 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 Vakhrushevo, the Lugansk region.

5. On 26 February 2003 and 11 February 2004 the Krasnyy Luch Court (*Краснолуцький міський суд Луганської області*) awarded the applicant

UAH 3,823.21[1] and UAH 2,094.50,[2] respectively, in salary arrears and other payments against the State Open Joint Stock Company "Yanivska" (*ДВАТ ЦЗФ „Янівська"*). These judgments became final and the enforcement writs were transferred to the Krasnyy Luch Bailiffs' Service (*Відділ Державної виконавчої служби Краснолуцького міського управління юстиції*) for enforcement.

6. In July 2005 the applicant received the debt due to her by the judgment of 11 February 2004. The judgment of 26 February 2003 remains unenforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

8. The applicant complained about the State authorities' failure to enforce the judgments of 26 February 2003 and 11 February 2004 in due time. She invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, in so far 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 ...."

1. EUR 687.10.
2. EUR 317.90.

I. ADMISSIBILITY

9. The Government submitted no observations on the admissibility of the applicant's complaints in respect of the non-enforcement of the judgment of 26 February 2003. As regards the judgment of 11 February 2004, the Government raised objections, contested by the applicant, regarding her victim status, similar to those already dismissed in a number of the Court's judgments (see e.g. among many others, *Romashov v. Ukraine* (no. 67534/01, §§ 23-27, 27 July 2004). The Court therefore dismisses them on the same grounds.

10. The Court finds 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 judgments of 26 February 2003 and 11 February 2004 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

11. In their observations on the merits of the applicant's claims, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1. The delays in the enforcement of the judgments in the applicant's favour were due to the large number of enforcement proceedings against the debtor and its financial difficulties.

12. The applicant disagreed.

13. The Court notes that the delay in the enforcement of the judgment of 26 February 2003 has exceeded three years and nine months, while the judgment of 11 February 2004 was enforced with a delay of one year and five months.

14. 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).

15. 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.

16. 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

17. 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

18. The applicant claimed the unsettled judgment debt due to her and an additional sum of UAH 400 (EUR 63) in compensation for pecuniary damage. She also claimed UAH 4,000 (EUR 630) in compensation for non-pecuniary damage.

19. The Government agreed to pay the unsettled debt and submitted that the remainder applicant's claim for pecuniary damage was unsubstantiated. As regards the applicant's claim for non-pecuniary damage, the Government preferred to leave it to the Court to determine the award.

20. The Court considers that the Government should pay the applicant the unsettled judgment debt, which would constitute full and final settlement of her claim for pecuniary damage. The Court further considers that the applicant must have sustained non-pecuniary damage as a result of the violations found. Having regard to the circumstances of the case and the submissions of the parties, the Court awards the applicant EUR 630 in this respect.

B. Costs and expenses

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

C. Default interest

22. 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 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 unsettled debt still owed to her as well as EUR 630 (six hundred thirty 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.

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

Done in English, and notified in writing on 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President