CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF STRATEYCHUK v. UKRAINE

(Application no. 25543/02)

JUDGMENT

STRASBOURG

26 April 2007

FINAL

26/07/2007

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 Strateychuk 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 27 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 25543/02) 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 Vladimir Ivanovich Strateychuk (“the applicant”), on 12 September 2001.

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

3. On 17 October 2005 the Court decided to communicate the complaint 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 1968 and lives in the town of Berdyansk, Zaporizhzhia region.

5. On 30 May 2000 the Berdyansk Court awarded the applicant UAH 1,423.39 against the JSC “Yuzhgidromash”, a company in which the State owned 25% of the shares (hereinafter “YGM”) in compensation for salary arrears.

6. On 7 July 2000 the Berdiansk Bailiffs' Service (hereinafter "the Bailiffs") initiated enforcement proceedings in the case.

7. On 26 June 2001 the enforcement proceedings were suspended in view of Order no. 33/5 of 1 June 2001 of the Minister of Justice and the moratorium on the forced sale of the YGM's property.

8. On 24 July 2001 the Berdiansk State Tax Administration informed the applicant that all YGM's property was under tax lien.

9. On 1 April 2002 the Zaporizhzhia Regional Commercial Court instituted bankruptcy proceedings against the YGM.

10. On 12 April 2002 the enforcement proceedings were suspended in view of the above bankruptcy proceedings.

11. On 22 March 2004 the enforcement proceedings were resumed and on 2 April 2004 the Bailiffs attached the debtor's property.

12. During June 2004 – January 2005 the enforcement proceedings were suspended as the debtor challenged the Bailiffs' acts before the Berdyansk Court.

13. On 10 January 2005 the enforcement proceedings were resumed.

14. On 16 June 2005 the Shevchenkivsky District Court of Kyiv prohibited the forced sale of the YGM property.

15. The judgment of 30 May 2000 given in the applicant's favour remains unenforced.

Other proceedings

16. On 12 February 2002 the Berdyansk Court ordered the applicant to pay UAH 443.03 to the communal property enterprise in compensation for unpaid commodity charges. This judgment was upheld by the Zaporizhzhia Regional Court of Appeal. The applicant did not appeal in cassation.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

18. The applicant complained under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1 about the non-enforcement of the

judgment of the Berdiansk Court of 30 May 2000. The above provisions read, 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 ...."

A. Admissibility

19. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies similar to those already dismissed in a number of the Court's judgments regarding non-enforcement against the State-owned companies (see e.g. *Sokur v Ukraine* (dec.), no. 29439/02, 16 December 2003 and *Trykhlib v. Ukraine*, no. 58312/00, §§ 39-43, 20 September 2005). The Court considers that these objections must be rejected for the same reasons.

20. The Court concludes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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.

B. Merits

21. 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.

22. The applicant disagreed.

23. The Court notes that the decision of the Berdyansk Court remains unenforced for six years and eleven months.

24. 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, *Rudenko v. Ukraine*, no. 11412/02, 29 November 2005 and *Sokur v. Ukraine*, cited above).

25. 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.

26. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER COMPLAINTS

27. The applicant complained that as a result of the non-enforcement of the above-mentioned judgment he was unable to pay commodity charges as ordered by the decision of 12 February 2002 by the Berdiansk Court. He referred to Article 17 and Article 1 of Protocol No. 1.

28. The Court notes that the applicant did not avail himself of the possibility to appeal in cassation against this decision before the Supreme Court and has, therefore, not exhausted all the remedies available to him under Ukrainian law (see *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002). It follows that this part of the application must be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed the unsettled debt due to him under the judgment at issue (see paragraphs 5 above) as well as UAH 7,000 (EUR 1,150) in respect of non-pecuniary damage.

31. The Government did not submit any comments on the applicant's claims for pecuniary damage and agreed to pay UAH 7,000 by way of compensation for non-pecuniary damage in the event of the Court's finding a violation.

32. The Court finds that the Government should pay the applicant the outstanding debt due to him under the judgment of 30 May 2000 of the Berdyansk Court in order to satisfy his claim for pecuniary damage. Additionally, it awards to the applicant EUR 1,150 by way of compensation for non-pecuniary damage.

B. Costs and expenses

33. The applicants did not submit any separate claim under this head; the Court therefore makes no award.

C. Default interest

34. 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 complaint concerning the non-enforcement of the judgment in the applicant's favour admissible and the remainder of the application inadmissible;

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 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 outstanding debt in accordance with the judgment of 30 May 2000 of the Berdyansk Court, as well as EUR 1,150 (one thousand one hundred and fifty euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable at 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 26 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK　　　　Peer LORENZEN
Registrar　　　　President