CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

**CASE OF GALITSKIY v. UKRAINE**

*(Application no. 17082/03)*

JUDGMENT

STRASBOURG

5 July 2007

**FINAL**

*05/10/2007*

*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 Galitskiy 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 12 June 2007,

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

# PROCEDURE

1. The case originated in an application (no. 17082/03) 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 Stanislav Tofilyevich Galitskiy ("the applicant"), on 6 May 2003.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mrs Valeriya Lutkovska.

3. On 22 March 2005 the Court decided to communicate the aplication 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 the village of Novodonetskoye, Donetsk region.

5. On 31 May 2002 the Dobropillya Court awarded the applicant against the State-owned coal-mine "Pioner" UAH 26,051[1] in compensation for

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[1] 3,740 euros (EUR).

work-related damage to his health. On 29 August 2002 the Donetsk Regional Court of Appeal reduced the award to UAH 24,438[1].

6. On 7 October 2002 the Dobropillya Office of the Bailiffs' Service instituted the enforcement proceedings.

7. Between June 2003 and June 2004 the applicant was paid the judgment debt owed to him.

8. The judgment of 29 August 2002 was enforced in full on 7 June 2004.

## II. RELEVANT DOMESTIC LAW

9. 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 1 OF PROTOCOL NO. 1 TO THE CONVENTION

10. The applicant complained under Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment of the Dobropillya Court of 29 August 2002. The above provision reads, insofar as relevant, as follows:

**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

11. The Government observed that there was no omission by the State authorities and the judgment in the applicant's favour was enforced in full.

[1] EUR 3,509

12. The Court observes that the applicant's complaint under Article 1 of Protocol No. 1 raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this complaint inadmissible. The Court must therefore declare it admissible.

### B. Merits

13. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect.

14. The applicant did not submit specific comments to the Government's observations but informed that he supported his initial complaints.

15. The Court notes that the judgment given in the applicant's favour remained unenforced for almost twenty two months.

16. The Court recalls that it has already found violation of Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 45, ECHR 2004 and *Dubenko v. Ukraine*, no. 74221/01, § 51, 11 January 2005).

17. Having examined all the materials 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.

There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed UAH 20,000 (EUR 3,200) in respect of pecuniary and non-pecuniary damage.

20. The Government did not comment this claim.

21. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 500 in this respect of non-pecuniary damage.

### B. Costs and expenses

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

### C. Default interest

23. 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 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred 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;

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

Done in English, and notified in writing on 5 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President