CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF GORIN v. UKRAINE

(Application no. 24380/03)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

12/10/2007

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 Gorin v. Ukraine,

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

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

Having deliberated in private on 19 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 24380/03) 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 Aleksey Yegorovich Gorin ("the applicant"), on 18 July 2003.

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

3. On 30 March 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 1938 and lives in the town of Novogrodivka, Donetsk region.

5. On 9 April 1999 the Novogrodivka Court ordered the State-owned mining company "1/3 Novogrodivska" (hereinafter "the Company") to pay

the applicant UAH 1487,17[1] in salary arrears and compensation for damages. The writ of execution was issued on the same day.

6. On 19 August 1999 and 20 February 2001 the applicant was paid, respectively, UAH 169,86 and UAH 200 (total of UAH 369,86[2]).

7. On 30 August 2000, 14 May 2001 and 23 December 2002 the Donetsk Commercial Court, in the course of bankruptcy proceedings, prohibited attaching the Company's property and accounts.

8. In January 2003 the applicant instituted proceedings against the Novogrodivka Department of the State Bailiffs' Service for its alleged inactivity.

9. On 3 March 2003 the Novogrodivka Court rejected this complaint. The court found that no fault was attributable to the bailiffs as the judgment at issue was not executed due to the bankruptcy proceedings pending against the Company. It also found that the Law of 29 November 2001 "On the Introduction of a Moratorium on the Forced Sale of Property" was applicable to the case.

10. On 5 June 2003 the Donetsk Regional Court of Appeal upheld this decision. On 31 August 2004 the Supreme Court rejected the applicant's cassation appeal.

11. On 13 January 2004 the Company was replaced by the State-owned company "Selidivvugillia" as debtor in the enforcement proceedings and the writ of execution in the applicant's case were transferred from the Novogrodivka to the Selidove Department of the State Bailiffs' Service.

12. On 25 November 2004 the amount of UAH 1,083.31[3] was transferred to the applicant's bank account.

13. The judgment of 9 April 1999 remains partly unenforced, the outstanding debt being UAH 34[4].

II. RELEVANT DOMESTIC LAW

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

1. EUR 331
2. EUR 82
3. EUR 241
4. EUR 7.5

THE LAW

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

15. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment of the Novogrodivka Court of 9 April 1999. 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

16. 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

17. 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

18. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of the provisions the Convention.

19. The applicants disagreed.

20. The Court notes that the judgment of the Novogrodivka Court of 9 April 1999 remains partly unenforced for eight years and two months.

21. The Court recalls that it has already found violation 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 and *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).

22. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. Lastly, the applicant complained under Articles 2 § 1 and 4 § 1 of the Convention about his low standard of living.

25. However, in the light of all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols (see *Sokur v. Ukraine*, cited above).

26. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 4,558 euros (EUR) in respect of pecuniary and EUR 6,000 in respect of non-pecuniary damage.

29. The Government contested this claim as unsubstantiated.

30. The Court finds that the Government should pay the applicant the outstanding debt still due to him under the judgment at issue. Additionally, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

32. 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 of Protocol No. 1;

4. *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, the unsettled judgment debt still owed to him, as well as EUR 2,600 (two thousand and six 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 amounts 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 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President