CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF LOZYNSKYY AND OTHERS v. UKRAINE

(Application no. 28562/02)

JUDGMENT

This version was rectified on 2 April and 18 June 2008 under Rule 81 of the Rules of Court.

STRASBOURG

6 September 2007

FINAL

06/12/2007

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 Lozynskyy and Others 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 Mr J.S. PHILLIPS, Deputy *Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 28562/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ukrainian nationals, Mr Petro Mykhaylovych Lozynskyy, Mrs Mariya Vasylivna Lozynska and Mr Viktor Fedorovych Ashurkov[1] ("the applicants"), on 28 July 2001. After the death of Mr Ashurkov, his wife, Mrs Ashurkova Raisa Oleksiyivna[2], expressed her wish to pursue the application.

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

3. On 11 April 2006 the Court decided to communicate the complaints concerning the non-enforcement of judgments given in the applicants' 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.

1. The applicant's name was given in the judgment as Ashkurov. On 2 April 2008, paragraphs 1, 4 and 14 of the judgment, and the consequential amendment of the heading between paragraphs 13 and 14, were rectified pursuant to Rule 81.
2. The name of Mrs Ashurkova was given in the judgment as "Raisa Ivanivna". On 18 June 2008 paragraph 1 of the judgment was rectified pursuant to Rule 81.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant, Mr Petro Mykhaylovych Lozynskyy, was born in 1964; the second applicant, Mr Viktor Fedorovych Ashurkov, was born in 1955; the third applicant, Mrs Mariya Vasylivna Lozynska, was born in 1965. All the applicants are Ukrainian nationals and reside in the Bashtansky District of the Mykolayiv region.

A. Proceedings against the JSC "Peremoga"

5. On 13 November and 18 December 2000 the Bashtanka Court, in three separate judgments, ordered a private JSC "Peremoga" (hereafter "the JSC") to pay the applicants, respectively, UAH 2335, 1798 and 1552[1].

6. On 8 June 2001 the Bashtanka Court, upon the applicants' complaint, declared unlawful the failure of the Bashtanka Bailiffs' Service (hereafter "the Bailiffs") to enforce the judgments of 13 November and 18 December 2000. The court established that the Bailiffs had taken no steps to enforce the judgments. In particular, no measures had been undertaken to attach and sell the debtor's property.

7. During 2002 the Bailiffs attached and sold the JSC's property, following which the applicants were paid UAH 1,059, 910 and 1,368, respectively.

8. As on 28 April 2004 the Mykolayiv Commercial Court declared the JSC insolvent, the Bailiffs terminated the enforcement proceedings and transferred the writs of execution to the liquidation commission.

9. The judgments' debts owed to the applicants were paid in total in September 2005.

B. Proceedings against the Bailiffs' Service

10. By decisions of 21 September and 1 October 2001 the Bashtanka Court awarded each applicant UAH 590[2] against the Bailiffs for non-pecuniary damage caused by the failure to execute the judgments given in their favour against the JSC.

11. On 8 January 2002 the Bailiffs instituted enforcement proceedings in respect of the judgments of 21 September and 1 October 2001.

12. On 16 September 2004 the writs of execution were returned to the applicants unenforced due to the debtor's lack of funds.

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1. EUR 499.16, 384.36 and 331.78.
2. EUR 121.53.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

I. AS TO THE *LOCUS STANDI* OF MRS ASHURKOVA

14. The Court notes firstly the fact of the death of Mr Ashurkov, and the wish of his widow to pursue the proceedings he initiated.

15. The Court considers that the widow of the applicant has standing to continue the present proceedings in his stead. However, reference will still be made to the applicant throughout the ensuing text.

II. ADMISSIBILITY

16. The applicants complained about the infringement of Article 6 § 1 and Article 1 of Protocol No. 1 caused by the lengthy non-enforcement of the judgments given in their favour against the Bailiffs. They also complained under Article 13 of the Convention that they had no effective remedies for enforcing these judgments. The above provisions 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 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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 ....”

17. The Government observed that the applicants failed to exhaust the domestic remedies as they did not re-submit the writs of execution.

18. The Court observes that it has already dismissed the Government's similar contentions in the cases in which the non-enforcement of judgments against State bodies was prevented because of the failure of the State to take any measures, rather than by a Bailiff's misconduct (see, for instance, *Voytenko v. Ukraine*, no. 18966/02, § 30-31, 29 June 2004).

19. The Court finds no reason to reach a different conclusion in the present case and concludes that the applicants' complaints about the non-enforcement of the judgments given against the Bailiffs raise serious 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 part of the application inadmissible.

III. MERITS

A. The applicants' complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

20. In their observations, the Government contended that there had been no violation of these provisions of the Convention in the applicants' respect.

21. The applicants disagreed.

22. The Court notes that the judgments given in the applicants' favour against the Bailiffs remain unenforced for more than five years and nine months.

23. 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, *Romashov*, cited above, §§ 42-46, and *Voytenko,* cited above, §§ 53-55).

24. 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.

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

B. The applicants' complaint under Article 13 of the Convention

26. The Government referred to their observations about the non-exhaustion by the applicants of effective domestic remedies (see paragraph 19 above).

27. The applicants insisted that they had had no effective domestic remedy in respect of their complaints about the non-enforcement of the judgments in their favour.

28. The Court concludes that the applicants did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings (see *Voytenko,* cited above, §§ 48). Accordingly, there has been a breach of this provision.

IV. OTHER COMPLAINTS

29. The applicants further complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to it about the lengthy non-enforcement of the judgment s given in their favour against the JSC.

30. However, in the light of all the materials in its possession and to the extent that the matters complained of are within its competence, 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.

31. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicants claimed the judgments' debts (see paragraph 10 above) indexed at the inflation rate and EUR 3,770 each as non-pecuniary damage.

34. The Government maintained that the applicants' claims were exorbitant and non-substantiated.

35. In so far as the applicants claimed the amount awarded to them by the judgments at issue, the Court considers that the Government should pay

them the outstanding debts (see paragraph 10 above) in settlement of their pecuniary damage.

36. As regards the applicants' claim concerning the inflation losses, the Court notes that it is not supported by any official documents, which would enable the Court to determine the amount. Consequently, it rejects this part of the claim (see e.g., *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006).

37. As to the remainder of the applicants' just satisfaction claims, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicants EUR 1,800 (one thousand and eight hundred euros) each in respect of their non-pecuniary damage.

B. Costs and expenses

38. The applicants failed to submit any claims; the Court therefore makes no award.

C. Default interest

39. 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 complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgments given against the State Bailiffs' Service 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 13 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No.1 to the Convention;

5. *Holds*
(a) that the respondent State is to pay to each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the judgments debts

still owed to them as well as EUR 1,800 (one thousand and eight hundred euros) each for non-pecuniary damage;
(b) that the above amounts shall 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;
(c) 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS	Peer LORENZEN
Deputy Registrar	President