CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF ZAICHENKO v. UKRAINE

(Application no. 29875/02)

JUDGMENT

STRASBOURG

22 November 2007

FINAL

31/03/2008

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 Zaichenko 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 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 29875/02) 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 Georgiyevich Zaichenko ("the applicant"), on 16 July 2002.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev and the Deputy Minister of Justice, Mrs V. Lutkovska.

3. On 22 January 2007 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings, the lack of remedies in this respect, and the non-enforcement of a final judgment to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Dnipropetrovsk.

5. On 22 September 1998 criminal proceedings, instituted against the applicant on suspicion of tax evasion, were discontinued on exonerative grounds.

6. In December 1998 the applicant instituted proceedings in the Krasnogvardiysky District Court of Dnipropetrovsk ("the Krasnogvardiysky Court," *Красногвардійський районний суд м. Дніпропетровська*), seeking compensation from the State budget for moral damage inflicted by the allegedly unlawful actions of the investigating authorities.

7. On 10 September 1999 the Krasnogvardiysky Court rejected the applicant's claims as unsubstantiated. On 1 November 1999 the Dnipropetrovsk Regional Court ("the Regional Court," *Дніпропетровський обласний суд*)[1] quashed this judgment and remitted the case for a fresh consideration.

8. On 2 February 2000 the Krasnogvardiysky Court awarded the applicant 3,000 hryvnyas (UAH)[2] in moral damage without specifying the debtor. This judgment was upheld by the Regional Court on 21 February 2000 and became final. The applicant unsuccessfully attempted to obtain a supervisory review of the two rulings, seeking a higher amount of compensation.

9. On 16 March 2000 the Dnipropetrovsk Regional Treasury (*Управління державного казначейства у Дніпропетровській області*) transferred the judgment of 2 February 2000 to the State Treasury (*Державне казначейство України*) for enforcement. The State Treasury did not pay the debt and requested the Prosecutors' Office to lodge a supervisory review request (*a protest*) against the court rulings of 2 and 21 February 2000. On 14 September 2000 the Deputy Regional Prosecutor (*Заступник прокурора Дніпропетровської області*) lodged *a protest* with the Regional Court alleging that no compensation should have been awarded.

10. On 18 October 2000 the Presidium of the Regional Court dismissed *the protest* and upheld the previous two rulings. The Deputy Prosecutor General lodged a protest with the Supreme Court against all three court rulings.

11. In its final decision of 16 May 2001, the Supreme Court upheld the rulings at issue and amended the judgment of 2 February 2000 to specify that the debt was to be paid by the Zhovtnevy District Treasury of Dnipropetrovsk ("the Zhovtnevy Treasury," *Відділення Державного казначейства у Жовтневому районі м. Дніпропетровська*). The applicant unsuccessfully attempted to lodge a cassation appeal against this final decision, seeking a higher amount of compensation.

12. On 12 July 2001 the Zhovtnevy District Bailiffs' Service ("the Bailiffs," *Відділ Державної виконавчої служби Жовтневого районного управління юстиції в м. Дніпропетровську*) initiated the enforcement proceedings in respect of the amended judgment of 2 February 2000.

1. Since July 2001 – the Dnipropetrovsk Regional Court of Appeal (*Апеляційний суд Дніпропетровської області*).
2. 563.34 euros.

13. On 5 October 2001 the Bailiffs imposed a fine on Ms G., the Head of the Zhovtnevy Treasury, for her failure to ensure the enforcement of the judgment in due time. Ms G. appealed to the Zhovtnevy District Court of Dnipropetrovsk ("the Zhovtnevy Court," *Жовтневий районний суд м. Дніпропетровська*).

14. On 11 December 2001 the Zhovtnevy Court allowed Ms G.'s appeal, having found that the judgment had not been enforced on account of a failure in the statutory mechanism and the lack of budgetary allocations. The applicant's appeal against this judgment was returned as "not lodged" in view of his failure to rectify its procedural shortcomings.

15. On 1 April 2002 the Bailiffs discontinued the enforcement proceedings on the ground that the collection of the debt was not possible. The applicant unsuccessfully attempted to institute criminal investigation into the non-enforcement.

16. The judgment of 2 February 2000 remains unenforced to the present day.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law is summarised in the judgment of *Volosyuk v. Ukraine* (no. 60712/00, §§ 20-24, 29 June 2006).

THE LAW

18. The applicant complained that the length of his compensation proceedings, including their enforcement stage, had been incompatible with the guarantees set forth in Article 6 § 1 of the Convention and that he had no effective remedies in respect of this complaint as required by Article 13 of the Convention. Additionally, he complained that the failure of the authorities to enforce the final judgment given in his favour breached his rights under Article 1 of Protocol No. 1. The impugned provisions read, 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 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 ...."

I. ADMISSIBILITY

19. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies in respect of his complaint concerning the lengthy non-enforcement of the judgment and the lack of effective remedies in this respect similar to those which the Court has already dismissed in a number of other cases (see e.g., *Vasylyev v. Ukraine*, no. 10232/02, §§ 29-33, 13 July 2006 and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). The Court considers that these objections must be rejected for the same reasons.

20. The Court further observes that the applicant's enforcement proceedings cannot be dissociated from his court action (see, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 23-26, 13 June 2006).

21. The Court considers that the applicant's complaints raise issues of fact and law under the Convention and finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

II. MERITS

A. The alleged violation of Article 6 § 1 of the Convention

22. In their observations on the merits of the above complaint, the Government contended that there had been no violation of Article 6 § 1.

23. The applicant disagreed.

24. The Court reiterates that the applicant initiated the "determination" of his "civil rights" within the meaning of Article 6 § 1 of the Convention by instituting judicial proceedings in December 1998. These proceedings eventually led to the adoption of a court judgment on 2 February 2000, which became final on 21 February 2000 and has remained in force ever since that date, in spite that various parties attempted to have the proceedings reopened and that on 16 May 2001 the Supreme Court introduced editorial clarifications to the text of the judgment at issue.

Therefore, the length of proceedings in their judicial phase did not exceed one year and two months.

25. As of the date, when the judgment in the applicant's favour became final (21 February 2000), the State became liable to pay the applicant the judgment award. Although at one point of time the applicant instituted formal enforcement proceedings to facilitate the debt collection, it has not been paid until the present date. The period of debt recovery in the applicant's case has thus exceeded seven and a half years.

26. The Court notes that the primary reason for the delay in the final determination of the applicant's civil rights in the present case has been caused by the non-enforcement of a final judgment given in his favour. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, e.g., *Sika v. Slovakia*, cited above, § 35, *Vasylyev v. Ukraine*, no. 10232/02, § 36, 13 July 2006 and *Volosyuk v. Ukraine*, cited above, §§ 37-38).

27. Having examined all the material submitted to it, 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.

28. Having regard to its case-law on the subject, the Court considers that in the instant case there has accordingly been a breach of Article 6 § 1.

B. Alleged violation of Article 13 of the Convention

29. The Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, whereby he could have obtained a ruling upholding his right to have his claims finally settled within a reasonable time, as set forth in Article 6 § 1 of the Convention (see e.g. *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004 and *Vasylyev v. Ukraine*, cited above, § 41). Accordingly, there has been a breach of this provision.

C. Alleged violation of Article 1 of Protocol No. 1 to the Convention

30. The Court recalls its case-law that the impossibility for an applicant to obtain the enforcement of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003 and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004). The Court finds no ground to depart from its case-law in the present case.

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

III. 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 applicant claimed 14,495.56 euros (EUR) in respect of pecuniary damage. This amount included the unsettled judgment debt divided by the amount of the minimum monthly salary as of the date of the judgment, multiplied by the amount of the minimum monthly salary as of the date, on which the present claim was formulated, to which was added statutory default interest, which, according to the applicant, accrued on the outstanding debt due to him. Additionally, the applicant claimed EUR 12,900 in respect of non-pecuniary damage.

34. The Government contested these claims as unsubstantiated.

35. The Court finds that the Government should pay the applicant the outstanding judgment debt due to him by way of compensation for pecuniary damage. Otherwise, it does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the remainder of the applicant's claim. On the other hand, the Court finds it reasonable to award the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

36. The applicant also claimed EUR 42 for postal and other expenses incurred in connection with his Convention proceedings.

37. The Government left the matter to the Court's discretion.

38. The Court considers it reasonable to award the applicant the full amount claimed.

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 remainder of 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 13 of the Convention;

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

5. *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 debt under the judgment of 2 February 2000 as well as EUR 2,042 (two thousand and forty two euros) in respect of non-pecuniary damage and costs and expenses, 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;

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

Done in English, and notified in writing on 22 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President