CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF PETRUK v. UKRAINE

(Application no. 25500/03)

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 Petruk 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 19 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 25500/03) 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 Oleksiy Omelyanovych Petruk ("the applicant"), on 26 July 2003.

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

3. On 11 May 2006 the Court decided to communicate the application 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 town of Novovolyns'k, Volyn' region.

5. On 12 November 2002 the Novovolyns'k Court ordered the State-owned mine No. 5 "Novovolyns'ka" to pay the applicant UAH 28,422[1] in compensation for damage to his health. This judgment became final and the writ of execution was issued on the same day.

1. EUR 5,456.54.

6. On 25 December 2002 the Novovolyns'k Office of the Bailiffs' Service (hereinafter "the Bailiffs") initiated the enforcement proceedings.

7. On 1 April 2003 the debtor company was reorganised and joined to the State-owned "Volyn'vugillya" company, which became the debtor in the enforcement proceedings.

8. Between November 2003 and April 2005 the applicant was partially paid the judgment debt owed to him.

9. On 13 April 2005 the remainder of the debt was transferred to the applicant's bank account and the enforcement proceedings were discontinued on the same date.

II. RELEVANT DOMESTIC LAW

10. 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

11. The applicant complained under Article 6 § 1 of the Convention about the lengthy non-enforcement of the judgment of the Novovolyns'k Court of 12 November 2002. This provision reads, 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. ..."

A. Admissibility

12. The Government submitted no observations on the admissibility of the applicant's complaints.

13. The Court observes that the applicant's complaint under Article 6 § 1 of the Convention 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

14. 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 as there was no omission by the State authorities and the judgment of 12 November 2002 was enforced in full.

15. The applicants disagreed.

16. The Court notes that the judgment of the Novovolyns'k Court remained unenforced for two years and five months.

17. The Court recalls that it has already found violation of Article 6 § 1 of the Convention 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).

18. 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.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed UAH 25,000 (EUR 4,000) in respect of non-pecuniary damage.

22. The Government contested this claim.

23. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 800 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

25. 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 6 § 1 of 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 800 (eight 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 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President