CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF RUDENKO v. UKRAINE

(Application no. 19441/03)

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 Rudenko 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. 19441/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Vladimir and Mrs Valentina Rudenko ("the applicants"), on 14 March 2003.

2. The Ukrainian Government ("the Government") were represented by Mr Y. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

3. On 30 May 2006 the Court decided to communicate the complaints concerning non-enforcement of judgments 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 applicants, husband and wife, live in Dniprodzerzhynsk.

5. In August 2000 the applicants instituted civil proceedings in the Zavodsky District Court of Dniprodzerzhynsk (*Заводський районний суд м. Дніпродзержинська*) against their employer, the municipally owned Public Transportation Company ("the PTC"; *Комунальне експлуатаційне підприємство "Дніпродзержинськміськелектротранс"*) for salary arrears and compensation for a delay in the payment of salary.

6. On 31 August 2000 the court awarded 4,004.55 hryvnyas (UAH)[1] to the first and UAH 3,323[2] to the second applicant in salary arrears and compensation.

7. Subsequently the applicants lodged similar claims and on 4 April 2001 the court additionally awarded UAH 2,511.83[3] to the first and UAH 1,539.94[4] to the second applicant in salary arrears and compensation.

8. The judgments became final and the enforcement writs were transferred to the Zavodsky District Bailiffs' Service ("the Bailiffs"; *Відділ Державної виконавчої служби Заводського районного управління юстиції в м. Дніпродзержинську*) for enforcement.

9. On 29 October 2001 the Bailiffs informed the applicants that the PTC lacked funds and that no buyers were interested in acquiring its assets.

10. In January 2002 the Bailiffs proposed that the PTC's property (trams, technical equipment and an administrative building) be transferred to the creditors.

11. Having received no positive response from the applicants, on 26 June 2002 the Bailiffs returned the enforcement writs to them unenforced.

12. On 17 June 2003 the Dnipropetrovsk Commercial Court (*Господарський суд Дніпропетровської області*) declared the PTC bankrupt and ordered its liquidation.

13. The PTC paid the salary arrears due to the applicants in several instalments. However, the compensations for a delay in the payment of salary awarded by all four judgments in the amounts of UAH 639.38[5] in favour of the first and UAH 673.94[6] in favour of the second applicant remain outstanding.

II. RELEVANT DOMESTIC LAW

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

1. 824.43 euros (EUR).
2. EUR 684.12.
3. EUR 517.14.
4. EUR 317.04.
5. EUR 96.75.
6. EUR 101.98.

THE LAW

I. THE LENGTHY NON-ENFORCEMENT OF JUDGMENTS

15. The applicants complained about the State authorities' failure to enforce the judgments of the Zavodsky District Court of Dniprodzerzhynsk given in their favour. They invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which 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 ...."

A. Admissibility

16. The Government raised objections, contested by the applicants, regarding the applicants' victim status and exhaustion of domestic remedies similar to those already dismissed in a number of the Court's judgments regarding non-enforcement of judgments against the State-owned companies (see e.g. among many others, *Romashov v. Ukraine*, no. 67534/01, §§ 23-27, 27 July 2004 and *Mykhaylenky and Others v. Ukraine*, nos. 35091/02 and following, §§ 38-40, ECHR 2004-XII). The Court considers that these objections must be rejected for the same reasons.

17. The Court concludes that these complaints raise issues of fact and law under the Convention, the determination of which requires an

examination on the merits. The Court finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

18. The applicants also relied on the European Social Charter, which is, however, outside the Court's competence (*Kucherenko v. Ukraine*, no. 27347/02, § 28, 15 December 2005).

B. Merits

19. In their observations on the merits of the applicants' case, the Government contended that there had been no violation of the applicants' Convention rights.

20. The applicants disagreed.

21. The Court notes that the delay in the enforcement has exceeded six years and eleven months in respect of the judgments of 31 August 2000 and six years and two months in respect of the judgments of 4 April 2001.

22. 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, including the case concerning the same municipally-owned debtor - the PTC (see, *Kucherenko v. Ukraine*, cited above, § 27).

23. 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.

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

25. The Court does not find it necessary in the circumstances to examine under Article 13 of the Convention the same complaint as under Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicants claimed the unsettled judgments debts and 3,000 euros (EUR) each in respect of pecuniary and non-pecuniary damage.

28. The Government submitted that these claims were unsubstantiated.

29. The Court notes that, as the judgments given in favour of the applicants remain unenforced, the Government should pay the applicants the

outstanding debts in order to satisfy their claims for pecuniary damage. The Court further takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicants did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

31. 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 about the lengthy non-enforcement of judgments 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* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the unsettled debts still owed to them, as well as the sum of EUR 2,600 (two thousand six hundred euros) to each applicant 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;

6. *Dismisses* the remainder of the applicants' 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