CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF FUKLEV v. UKRAINE

(Application no. 71186/01)

JUDGMENT

STRASBOURG

7 June 2005

FINAL

30/11/2005

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 Fuklev v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 19 May 2005,

Having regard to the observations submitted by the parties,

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

PROCEDURE

1. The case originated in an application (no. 71186/01) 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 Petr Petrovich Fuklev ("the applicant"), on 10 February 2001.

2. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeria Lutkovska and subsequently Ms Zoryana Bortnovska.

3. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

4. The applicants' complaints under Article 6 § 1 and Article 13 of the Convention were communicated to the respondent Government on 7 July 2003. On the same date the Court decided that Article 29 § 3 of the Convention should be applied and the admissibility and merits of the complaint be considered together.

5. The applicant and the Government each filed observations on the admissibility and merits of the application (Rule 54A).

THE FACTS

6. The applicant was born in 1935 and lives in Berdiansk. He is a former employee of a Joint Stock Company, the Iskra Brick Factory ("the IBF").

He worked at the IBF from 1 December 1996 to 24 November 1997, when he was dismissed from his position as a senior engineer at his own request. At the time of his dismissal the applicant was not paid the wages owed to him.

I. THE CIRCUMSTANCES OF THE CASE

A. Bankruptcy of the Iskra Brick Factory

7. In March 1997 a construction company, the Closed JSC Donetskzhelezobetonmontazh (hereafter the CJSC), instituted bankruptcy proceedings against the IBF on account of its failure to comply with contractual obligations.

8. The bankruptcy proceedings were initiated on 8 April 1997 by the Zaporizhzhia Regional Arbitration Court ("the ZRAC"). The applicant acted in these proceedings as a representative of the IBF.

9. On 20 August 1997 the ZRAC declared the IBF bankrupt. It also established a liquidation commission to manage its debts. The liquidation commission consisted of representatives of the Berdiansk State Municipal Council, the Berdiansk State Tax Inspectorate, the Financial Department of the State Municipal Council, the Ukrayina Bank (a State-owned bank) and the CJSC. The liquidators were obliged to elect the chairman and members of the liquidation commission within a period of ten days.

10. On 23 September 1997 the commission made an inventory of the IBF's property.

11. On 16 January 1998 the liquidation commission elected Mr Bogushko as its chairman.

12. Between October 1998 and 14 December 2000, in accordance with the submissions of the parties, the liquidation commission was not in operation.

13. On 5 October 1998 the then chair of the liquidation commission, Ms Chulkova, resigned.

14. On 14 December 2000 the liquidation commission elected Mr Fenenko as its chairman.

15. On 19 January 2001 the President of the ZRAC decided that the bankruptcy proceedings concerning the IBF should be referred from Judge A.E. Kuznetsov for consideration by another judge (Judge V.G. Serkiza).

16. On 19 November 2001 the President of the Zaporizhzhia Regional Commercial Court (the "ZRCC", former Zaporizhzhia Regional Arbitration Court as renamed in 2001 as a result of "small judicial reform"), decided that the bankruptcy proceedings concerning the IBF should be referred for consideration from Judge V.G. Serkiza to another judge (Judge L.P. Turkina).

17. On 22 March 2002 the ZRCC found that the liquidation commission appointed in 1997 had deviated from its duties. It also informed the members of the liquidation commission that they had incurred criminal liability for failure to comply with the judgments and decisions of the domestic courts.

18. On 22 March, 10 April and 3 June 2002, the ZRCC requested the liquidation commission to submit a report on the results of the operation.

19. On 2 April 2002 the liquidation commission elected a new chairman, Mr Otryshko. The commission discussed the proposal for the friendly settlement of the IBF's debts. The new chairman of the commission submitted a report to the ZRCC that made no reference to the IBF's salary debts.

20. On 21 May 2002 the IBF's shareholders agreed to enter into a friendly settlement with the creditors.

21. On 2 July 2002 the liquidation commission decided to conclude a friendly settlement in the bankruptcy proceedings pending against the IBF.

22. On 3 July 2002 the ZRCC held a hearing with a view to discussing the possible friendly settlement and the report by the liquidation commission. The hearing was adjourned until 23 July 2002.

23. On 23 July 2002 the ZRCC terminated the bankruptcy proceedings concerning the IBF by way of a friendly settlement between the IBF and its creditors (the CJSC and the Berdiansk State Tax Inspectorate).

B. Enforcement proceedings in the applicant's case

24. In January 1998 the applicant instituted proceedings in the Berdiansk City Court (the "Berdiansk Court") against the IBF, seeking the recovery of salary arrears.

25. On 24 February 1998 the Berdiansk Court allowed the applicant's claims and ordered the IBF to pay him 2,080.38 Ukrainian hryvnas (UAH) [1].

26. In April 1998 the applicant instituted proceedings in the Berdiansk Court, seeking compensation for the delay in the payment of salary arrears awarded to him by the decision of 24 February 1998. On 6 May 1998 the Berdiansk Court rejected his claims as being unsubstantiated. On 4 June 1998 the Zaporizhzhia Regional Court upheld that decision.

27. On 22 May 1998 the Bailiffs' Service of the Berdiansk Court served notice on the IBF to pay the applicant the sums due.

28. On 6 May 1998 the Berdiansk Court rejected the applicant's additional claims for compensation for the delay in payment of salary arrears as it was unsubstantiated. That judgment was upheld on 4 June 1998 by the Zaporizhzhia Regional Court.

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29. On 22 May 1998 the Berdiansk Court's bailiffs ("the court bailiffs") instituted enforcement proceedings in the case and requested the IBF to pay the applicant the sum due.

30. On 28 May 1998 the court bailiffs requested the IBF to provide correct information as to its bank accounts, so that the sums due the applicant could be procured.

31. A resolution to initiate enforcement proceedings in the case was issued by the Berdiansk City Bailiffs' Service (the "bailiffs") on 5 March 1999, following the transfer of jurisdiction for the enforcement from the court bailiffs.

32. On 8 April 1999 the bailiffs informed the applicant that the judgment could not be executed immediately on account of the entry into force of the new Enforcement Proceedings Act and the referral of all the enforcement proceedings from the jurisdiction of the courts to the jurisdiction of the Bailiffs Service of the Ministry of Justice.

33. On 22 April 1999 the bailiffs initiated enforcement proceedings in the case.

34. On 20 April 2000 the bailiffs informed the applicant that a request had been sent to the ZRAC on 20 March 2000 concerning the inactivity of the liquidation commission. It also stated that no response had been received from the ZRAC.

35. On 24 May and 14 September 2000 the bailiffs informed the applicant that the writ of execution could not be sent to the liquidation commission as the commission did not exist *de facto*. It also informed the applicant that the writs of execution issued by the Berdiansk Court had only been received on 22 April 1999 by the bailiffs.

36. On 17 July and 28 October 2000 the applicant complained about the non-enforcement of a judgment in his favour to the General Prosecution Service and the Ministry of Justice. On 6 November 2000 the General Prosecution Service transmitted his complaints to the Higher Commercial (formerly Arbitration) Court ("the HCC"). On 18 January 2001 the HCC forwarded his complaints to the ZRAC for a reply.

37. On 31 January 2002 the bailiffs informed the applicant that the most recent chair of the liquidation commission was Ms I. Chulkova. They also stated that, in accordance with section 65 of the Enforcement Proceedings Act, writs of execution had to be transferred to the liquidation commission from the bailiffs.

38. On 4 February 2002 the bailiffs suspended the enforcement proceedings until the election of a new chairman of the liquidation commission and the formation of a new commission.

39. On 10 June 2002 the Berdiansk District Council of the Zaporizhzhia Region informed the bailiffs about the membership of the liquidation commission and its chairman (Mr Otryshko). This information was to be provided to the applicant.

40. On 27 June 2002 the bailiffs terminated the enforcement proceedings pending before them in the applicant's case by transmitting the writs of execution to the liquidation commission for the IBF.

41. On 31 July 2002 the applicant complained to the bailiffs about the failure to enforce the judgment.

42. On 13 August 2002 the bailiffs informed the applicant that they were no longer responsible for the enforcement of the judgment of 24 February 1998.

43. In September 2002 the judgment of 24 February 1998 was partly enforced by the liquidation commission and the applicant was paid UAH 1,000[1] in compensation.

44. On 28 October 2002 the applicant complained to the ZRCC about the failure to enforce the judgment in his favour. By a letter of 13 November 2002, a judge of the ZRCC informed the applicant of the friendly settlement in the case. She also stated that the applicant could not be considered a creditor of the IBF as he had not applied to the court in the course of the IBF bankruptcy proceedings to be declared a creditor. She also refused to provide him with documents concerning the bankruptcy proceedings in the case.

45. On 20 December 2002 the applicant lodged complaints with the HCC concerning the failure to pay his salary arrears and the inactivity of the liquidation commission and the bailiffs. On 18 February 2003 the HCC informed the applicant that his complaints had been forwarded to ZRCC for a reply.

46. On 5 March 2003 the applicant lodged complaints with the ZRCC, seeking a declaration that he was a creditor of the IBF and an order requiring the IBF to enforce the judgment of 24 February 1998. He also sought a declaration that the friendly settlement reached by the IBF and its creditors was unlawful. By a letter of 18 April 2003, the ZRCC informed the applicant that, as he had failed to lodge a request to be recognised as a creditor during the bankruptcy proceedings in the case (April 1997 – July 2002), he could not claim to be a creditor and could not therefore seek to have the friendly settlement declared unlawful.

C. Court proceedings against the bailiffs

47. On 26 November 2001 the applicant lodged complaints with the Berdiansk Court, seeking a declaration that the inactivity of the Head of the State Execution Service Department was unlawful in view of his failure to enforce the judgment of 24 February 1998.

48. On 28 November 2001 the complaint was left without consideration for failure to comply with the formalities prescribed by law.

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49. On 25 December 2001 the applicant again lodged a complaint with the Berdiansk Court against the bailiffs, seeking to have their failure to enforce the judgment of 24 February 1998 declared unlawful. In December 2001 the Berdiansk Court rejected this complaint on account of the applicant's failure to comply with the requirements as to its form and content. The applicant was allowed ten days to rectify the matter.

50. On 8 January 2002 the applicant resubmitted his complaint.

51. On 20 March 2002 the Berdiansk Court rejected his complaints as being lodged out of time.

52. On 11 June 2002 the Zaporizhzhia Regional Court of Appeal (the "Court of Appeal") quashed that decision and remitted the case to the same court for a fresh consideration.

53. On 6 September 2002 the applicant lodged additional complaints with the Berdiansk Court, seeking the annulment of the bailiffs' resolution of 27 June 2002 on the termination of the enforcement proceedings.

54. The proceedings concerning the failure of the bailiffs to act and the resolution on terminating the enforcement proceedings were disjoined, forming two separate proceedings: case no. 2-973/2002 and case no. 2-1378/2002.

55. On 20 November 2002 the Berdiansk Court found in favour of the applicant in the first case (no. 2-973/2002). It also declared unlawful the failure of the bailiffs to enforce the judgment for a lengthy period (four years and nine months) and found the applicant's complaints to be substantiated. The applicant appealed against this decision as he thought that a mere acknowledgment of the fact that the bailiffs had acted unlawfully was not sufficient to rectify the situation. On 24 April 2003 the Court of Appeal upheld the judgment given on 20 November 2002 and dismissed the applicant's appeal.

56. On 20 November 2002 the Berdiansk Court dismissed the applicant's claims concerning the allegedly unlawful termination of the enforcement proceedings in his second case as being unsubstantiated (case no. 2-1378/2002). The applicant appealed to the Court of Appeal, seeking the resumption of the enforcement proceedings and an extension of the time allowed for lodging an appeal. On 5 May 2003 the Court of Appeal quashed the judgment of 20 November 2002 and did not consider the applicant's complaints as they had been lodged out of time (section 39 of the Enforcement Proceedings Act).

57. On 15 May 2003 the applicant requested the Berdiansk Court to extend the time for considering his complaints against the bailiffs' resolution of 27 June 2002 on terminating the enforcement proceedings in his second case (no. 2-1378/2002). In particular, he alleged that the delay in lodging his complaints was due to the fact that he had received the resolution of 27 June 2002 in a version that was illegible (it was sent to him twice, on 23 July and 6 August 2002). He had lodged his complaints only

on 6 September 2002 as he could not read the documents supplied to him by the bailiffs, which were allegedly of a very poor quality. He has not given the Court any further information as to the outcome of these proceedings.

58. On 19 August 2003 the applicant lodged a cassation appeal against the ruling of 24 April 2003 in the first case (no. 2-973/2002).

59. On 20 April 2004 the Registry of the Supreme Court informed the applicant that his appeal had been received. It also stated that it was pending for consideration before the Supreme Court.

60. On 1 November 2004 a panel of three judges of the Supreme Court dismissed the applicant's appeal as it found no infringements of the rules of substantive or procedural law. It also found that there were no grounds for remitting the appeal for consideration by the Chamber of the Supreme Court.

THE LAW

61. The applicant complained about the State authorities' failure to execute the judgment of 24 February 1998 against the Iskra Brick Factory in due time. He relied on Article 6 § 1 of the Convention, which in so far as relevant provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

62. The applicant further alleged that the failure to enforce the judgment in his favour constituted an infringement of Article 13 of the Convention, which reads:

> "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."

63. The applicant also alleged that Article 1 of Protocol No. 1 to the Convention had been infringed as a judgment in his favour had not been enforced for a lengthy period of time. This provision reads as follows:

> "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.
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> 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 or to secure the payment of taxes or other contributions or penalties."

I. ADMISSIBILITY

A. Admissibility *ratione personae*

64. The Government submitted that the IBF was a separate legal entity that did not belong to the State and was not effectively controlled or managed by the State. They further submitted that the biggest share in the enterprise - 44% - belonged to the collective agricultural enterprise "Iskra" (*колгосп "Іскра"*), which was also a private legal entity, and that the State held only 13.4% of the IBF's shares.

65. They further submitted that the liquidation commission had been appointed by the Regional Commercial Court and had acted independently of the State authorities, as it had been appointed by an independent judicial body. They further pointed out that the State had no right to interfere in bankruptcy proceedings concerning a private company.

66. The applicant disagreed. In particular, he stated that the liquidation commission appointed by the Regional Commercial Court had been inactive for a period of five years and that the judgment had therefore not been enforced. He further observed that it had consisted of public officials, who had failed to comply with the obligations imposed on them by a decision of the Regional Commercial Court to form a liquidation commission. He also submitted that the bailiffs had refused to enforce the judgment given in his favour as it was outside their jurisdiction and was a matter for the IBF liquidation commission. He argued that he had exhausted all the domestic remedies to challenge the lawfulness of the bailiffs' conduct.

67. The Court considers that the IBF itself enjoyed sufficient institutional and operational independence from the State to absolve the State from responsibility under the Convention for its acts and omissions (see *Mykhaylenky and Others v. Ukraine*, nos. 35091/02 and others, § 44, ECHR 2004-...). Nevertheless, it points out that the State's responsibility for enforcement of a judgment against a private company extends no further then the involvement of State bodies, including the domestic courts, in the enforcement proceedings (see, *mutatis mutandis*, *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

68. It therefore considers that the Court has jurisdiction to examine whether the domestic authorities have complied with their positive obligation to enforce the judgment given against a private entity in the applicant's favour. It accordingly dismisses the Government's preliminary objection.

B. The Government's objection as to the exhaustion of domestic remedies

1. Submissions of the parties

69. The Government contended that the applicant had not exhausted all the remedies available to him under Ukrainian law. In particular, he had not lodged complaints with the Zaporizhzhia Regional Commercial Court seeking an acknowledgment of his status as a creditor of the IBF. Nor had he complained to the Zaporizhzhia Regional Commercial Court about the failure of the liquidation commission to act during the bankruptcy proceedings instituted against the IBF. They further mentioned that the proceedings against the bailiffs were still pending.

70. The applicant disagreed. He stated that the enforcement of judgments against legal entities that were not bankrupt was a matter for the State bailiffs. Once the entity at issue was declared bankrupt, the bailiffs had to refer the writs of execution to the liquidation commission for the relevant company. That did not mean that the enforcement proceedings were to be terminated. The liquidation commission in the present case had been set up by a resolution of the Zaporizhzhia Regional Arbitration Court on 20 August 1997 (see paragraph 9 above). However, it had not existed in reality for almost four years, so it had been impossible to appeal against its actions or inactivity (see paragraphs 17 and 35 above). He maintained that there had been a delay on the part of the bailiffs and the domestic courts in failing to oversee effectively the procedure for liquidating the IBF and in paying compensation for its debts. He had complained of this delay to the domestic courts, which had acknowledged it but had made no reparation for the infringement of his rights. He further claimed that, notwithstanding the fact that it was not his duty to supervise the liquidation commission's work, he had nevertheless tried to complain to it about the failure to enforce the judgments of 24 February 1998. However, he had received no response to his complaints from the *de facto* chairman of the liquidation commission, and the Regional Commercial Court had not examined his complaints on the merits.

71. The applicant further contended that the judgment of 20 November 1998 declaring his complaints against the bailiffs well-founded (see paragraph 55 above) was a mere declaration of the State bailiffs' inactivity. It was not enforceable. He also submitted that it was unnecessary to complain to the domestic courts about the bailiffs as it was in any event an obligation and a particular task of the State bailiffs to enforce final judgments without undue delay. This obligation was prescribed by law and they should therefore have used all available and possible legal means to comply with their duty of enforcing judgments.

2. The Court's assessment

(a) The Court's case-law

72. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law (see *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002). It observes that it has already ruled on the issue of exhaustion in a number of its judgments (see, among many other authorities, *Romashov v. Ukraine*, no. 67534/01, § 27, 27 July 2004). In particular, the Court has found that the applicant does not have to exhaust domestic remedies if the debtor is a State body and the enforcement is impeded by lack of appropriate legislative measures or where a State assumes liability for the debts of a State-owned legal entity (see *Romashov*, cited above, § 31). In the instant case the debtor is not a State entity; however, the applicant's complaints about non-enforcement relate to the alleged inactivity of the domestic authorities in enforcing the judgment and not to the inactivity of the debtor company.

73. The Court notes that there were four possible courses of action the applicant could have taken, as suggested by the Government, in relation to the enforcement of a judgment. It therefore considers it necessary to decide whether the applicant has exhausted all the domestic judicial remedies in relation to his complaints about: the delay in enforcement of the judgment of 24 February 1998; the termination of the enforcement proceedings in his case; the inactivity of the liquidation commission; and the failure of the IBF to pay his salary arrears after the bankruptcy proceedings had been terminated and the IBF's operational and financial status restored.

(b) Complaints against the bailiffs about the delay in enforcement of the judgment of 24 February 1998

74. The Court considers that the applicant has exhausted all the domestic remedies available to him under Ukrainian law, including an appeal in cassation that was lodged with the Supreme Court (see paragraph 60 above). The Government's objection on this point must therefore be dismissed (see *Vorobyeva v. Ukraine*, cited above) and the applicant's complaint declared admissible. No other ground for declaring it inadmissible has been established.

(c) Termination of the enforcement proceedings in the applicant's case

75. The Court considers that the applicant has not exhausted all the domestic remedies in relation to these complaints, as he did not complain to the Supreme Court of Ukraine about the ruling of the Zaporizhzhia Regional Court of Appeal of 5 May 2003. The applicant accordingly cannot be regarded as having exhausted all domestic remedies available to him under

Ukrainian law. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention.

(d) Complaints about the inactivity of the liquidation commission

76. The Court takes note of the aforementioned considerations as to the status of the liquidation commission (see paragraphs 65-67 above). However, it still considers it necessary to discuss the issue of exhaustion as it was raised by the Government. It observes that enforcement of the judgment at issue was within the jurisdiction of the Bailiffs' Service until the liquidation commission for the IBF was formed and the writs of execution were transmitted to it (on 27 June 2002). It would therefore be inconceivable to suggest that the applicant should have instituted additional proceedings in the Zaporizhzhia Regional Commercial Court seeking enforcement of a judgment with regard to an entity that did not yet have any jurisdiction over the enforcement proceedings and did not exist *de facto* (see paragraphs 17 and 35 above). As to the possibility of lodging complaints against the liquidation commission after 27 June 2002, the Court considers that, from the refusals of the Zaporizhzhia Regional Commercial Court to consider the applicant's complaints (see paragraphs 44-46 above), it ensues that this remedy, in the circumstances of the instant case, did not offer reasonable prospects of success to the applicant and was ineffective. Moreover, the liquidation commission ceased to exist on 23 July 2002 with the adoption of the friendly settlement between the parties to the bankruptcy proceedings. However, notwithstanding these considerations and taking into account the fact that the State cannot be held liable for the acts or omissions of the liquidation commission, the Court considers that this part of the application should be dismissed as being incompatible *ratione personae*.

(e) The failure of the IBF to comply with the judgment of 24 February 1998 after the conclusion of a friendly settlement

77. As to the remainder of the applicant's complaints under Article 6 § 1 of the Convention about the failure to enforce a judgment in the applicant's favour, the Court considers that, following the friendly settlement in the bankruptcy proceedings against the IBF and the restoration of the status of the IBF as an operational private company, the applicant is entitled to bring further enforcement proceedings with regard to the remainder of the debt and, if he is still unsatisfied with the activities of the bailiffs, to lodge additional complaints with the domestic courts and seek compensation for pecuniary and non-pecuniary damage. Accordingly, the applicant has not exhausted all domestic remedies available to him as regards this aspect of the case. It follows that it must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(f) Conclusions as to admissibility

78. Taking into account its considerations as to admissibility *ratione personae* and the exhaustion of domestic remedies, the Court concludes that the applicant's complaints under Article 6 § 1 of the Convention are only admissible in relation to the inactivity of the bailiffs from 24 February 1998 (the date of the adoption of the judgment by the Berdiansk Court) to 27 June 2002 (the date on which the writs of execution were transmitted to the IBF liquidation commission).

C. Admissibility of the complaints under Article 13 of the Convention

79. The Court refers to its conclusions as to the admissibility of the applicant's complaints under Article 6 § 1 of the Convention (see the preceding paragraph 78), which are equally pertinent to the applicant's complaints under Article 13 of the Convention. Consequently, the Court declares admissible the applicant's complaints under Article 13 only in so far as they are related to those deemed to be admissible under Article 6 § 1 of the Convention.

D. Complaint under Article 1 of Protocol No. 1 to the Convention

80. The Court considers, in the light of the parties' submissions and taking into account the scope of the issues under consideration, that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes, therefore, that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

81. The Government submitted that they had taken all the measures prescribed by domestic legislation to enforce the judgment in the applicant's favour. Moreover, they maintained that the non-enforcement of the judgment in the period from 24 February 1998 to 27 June 2002 had not violated the applicant's rights under Article 6 § 1 of the Convention. They further submitted that the delay in enforcement was not attributable to the domestic authorities. They reiterated that the decision given in the applicant's favour had not been executed in full, owing to the failure of the private company to act.

82. The applicant replied that the enforcement proceedings had been pending since 24 February 1998 and were still so. He further stated that the

sum awarded to him had decreased in value because of inflation from the date of the original judgment, and that he had not been provided with compensation for that. He also pointed out that part of the sum, UAH 1,000[1], had been paid to him after the liquidation commission had commenced its work. However, it had ceased to exist on 23 July 2002.

83. The Court notes that a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

84. Furthermore, the Court considers that the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay. The Court, taking into account the considerations as to the liability of the State for the acts or omissions of private persons (see paragraphs 65-67 above), finds that there was a lack of action on the part of the State Bailiffs' Service, as was acknowledged by the Berdiansk City Court on 20 November 2002, to enforce the judgment given in the applicant's favour within a reasonable time and to exercise effective supervision of the enforcement of the judgment by the IBF liquidation commission. In particular, the judgment was given on 24 February 1998, and the writs of execution were issued on 22 April 1999. However, they were not transmitted to the liquidation commission until 27 June 2002, more than 3 years later.

85. The Court also notes that the liquidation commission, being formed on 20 August 1997 by a resolution of the Zaporizhzhia Regional Arbitration Court, did not exist *de facto* and deviated from its duties. Furthermore, the applicant received almost half of the sum he was owed more than four years after the liquidation commission had been formed and had commenced its work. It considers that, even though the domestic courts declared the bailiffs liable for the delay in enforcement (see paragraph 55 above), they did not afford any redress or reparation for that failing.

86. The Court considers, therefore, that the failure of the bailiffs to act for well over four years or to effectively control the enforcement proceedings in the present case, is sufficient to conclude that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

87. The Court refers to its findings (paragraph 74 above) in the present case in relation to the Government's argument about domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to

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redress or compensate the damage created by the delay attributable to the State bailiffs in the enforcement of the judgment (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 29 June 2004, §§ 46-48). Accordingly, there has been a breach of this provision.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

88. The Court notes that the parties did not dispute that there had been interference with the applicant's property rights.

89. The applicant's complaint is that the State failed to comply with its obligation to exercise effective control over the bankruptcy proceedings in his case, thus allowing for the protracted enforcement of the judgment of 24 February 1998 against the IBF. The Court must therefore examine, in the instant case, whether the failure of the domestic authorities to exercise effective control over the procedure for the enforcement of the judgment and to use all available avenues for its enforcement was compatible with the applicant's right to the peaceful enjoyment of his possessions.

90. The Court reiterates that by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention". The obligation to secure the effective exercise of the rights defined in that instrument may result in positive obligations for the State (see, among other authorities, *X and Y v. Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 11, §§ 22-23). In such circumstances, the State cannot simply remain passive and "there is ... no room to distinguish between acts and omissions" (see, *mutatis mutandis, Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 14, § 25).

91. As regards the right guaranteed by Article 1 of Protocol No. 1, those positive obligations may entail certain measures necessary to protect the right to property (see, among other authorities and *mutatis mutandis, López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, p. 55, § 55), even in cases involving litigation between private individuals or companies (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII). This means, in particular, that States are under an obligation to ensure that the procedures enshrined in the legislation for the enforcement of final judgments and for bankruptcy proceedings are complied with.

92. The Court considers that the failure of the bailiffs to act and the domestic courts' failure to exercise appropriate control over the situation, created permanent uncertainty as to the enforcement of a judgment in the applicant's favour and as to the payment of the debt owed to him. Consequently, the applicant had to cope with that uncertainty during a lengthy period of time, from 24 February 1998 (the date when the judgment

was given in his favour) to 27 June 2002 (the date when the bailiffs transmitted the writs of execution to the liquidation commission for the IBF Company).

93. Having regard to the foregoing considerations and to its findings in respect of Article 6 § 1 of the Convention, the Court is of the view that the manner in which the enforcement proceedings were conducted, their total length and the uncertainty in which the applicant was left, upset the "fair balance" that had to be struck between the demands of the public interest and the need to protect the applicant's right to the peaceful enjoyment of his possessions. Consequently, the State failed to comply with its obligation to secure to the applicant the effective enjoyment of his right of property, as guaranteed by Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicant claimed UAH 20,000 (EUR 3,415) by way of just satisfaction. He stated that he had suffered pecuniary loss as a result of the failure of the domestic authorities to enforce the judgment given in his favour.

96. The Government maintained that the applicant had not suffered any pecuniary or non-pecuniary damage. They suggested that a finding of a violation would in itself constitute sufficient just satisfaction.

97. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 1,500 in respect of damages, costs and expenses.

B. Default interest

98. 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* admissible the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, concerning the failure to enforce the final judicial decision in the applicant's case and the lack of effective remedies in this respect, 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 the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of damages, costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on the date of settlement;

   (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 7 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President