CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF ALEXANDR BULYNKO v. UKRAINE

(Application no. 9693/02)

JUDGMENT

STRASBOURG

21 June 2005

FINAL

21/09/2005

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 Alexandr Bulynko v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 31 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 9396/02) 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 Alexandr Ivanovich Bulynko ("the applicant"), on 7 June 2001.

2. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeria Lutkovska, succeeded by 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 applicant's complaints under Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment of the Torez City Court of 26 February 2001 were communicated to the respondent Government on 2 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 (Rule 54A).

THE FACTS

6. The applicant was born in 1931. He died on 19 June 2003. In letters received by the Court on 12 December 2003 and 27 September 2004, the

applicant's daughter Ms T.A. Shvayko informed the Court that she wished to pursue the application.

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was a former employee of the "Donetskaya" State Mine (the "DSM"). During his work at the DSM, he contracted an occupational disease. In 1995 a medical commission examined the applicant's state of health, and he was recognised as falling within the second group of disabled persons, i.e. people with an 80% loss of ability to work.

8. Following his examination by the medical commission, the DSM decided to pay the applicant disability compensation in the amount of UAH 5,573[1]. They also ordered monthly allowances for the applicant, but failed to pay them.

9. In March 2001 the applicant instituted proceedings against the DSM seeking compensation for unpaid monthly disability allowances. On 26 February 2001 the Torez City Court ordered the DSM to pay the applicant UAH 17,037.19[2] in compensation for the delayed payment of disability benefits.

10. On 28 March 2001 the writ of execution no. 2-932 dated 26 February 2001 issued by the Torez City Court was presented to the Bailiffs' Service of the Torez City Department of Justice for enforcement.

11. On 30 March 2001 the bailiff issued a resolution instituting the enforcement proceedings in the case.

12. On 18 April 2001 the bailiff attached the DSM's current bank account and, on 17 May 2001, its property.

13. On 6 May 2001 the Torez Execution Service informed the applicant that the judgment could not be executed immediately due to the DSM's lack of funds.

14. On 10 October 2002 the applicant informed the court that the execution proceedings were still pending.

15. On 16 May 2003 the necessary funds were made available and, on 19 May 2003, the State Treasury in Shakhtarsk of the Donetsk Region paid the outstanding amount of the debt to the applicant.

16. In accordance with the information provided by the applicant's representative, he received the full amount of compensation awarded by the Torez City Court on 25 May 2003.

1. Approximately EUR 2,000 at the time.
2. EUR 3,415.09.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

18. The applicant submitted that the non-enforcement of the judgment in his favour amounted to an infringement of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

19. The applicant complains of slavery, invoking Article 4 § 1 of the Convention, which provides as relevant:

> "No one shall be held in slavery or servitude."

20. The applicant further complained about the State authorities' failure to execute the decision of 26 February 2001 in due time. He alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which provide, 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 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 or to secure the payment of taxes or other contributions or penalties."

I. ADMISSIBILITY

A. As to the *locus standi* of Ms Shvayko

21. The applicant died in June 2003. In November 2003 and September 2004 the applicant's daughter informed the Court that she wished to pursue the application.

22. The Court notes that the present application also concerns a property right which is, in principle, transferable to the heirs, and that there is a close relative of the applicant who wishes to pursue the case. In these circumstances, the Court considers that the applicant's daughter (hereinafter "the heir") has standing to continue the present proceedings instead of the applicant. However, reference will still be made to the applicant throughout the ensuing text.

B. Complaints under Article 3 of the Convention

23. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 69, ECHR 1999-IX, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

24. However, the Court finds no evidence in the case that the lengthy non-enforcement of the judgment given in the applicant's favour amounted to inhuman or degrading treatment.

25. Hence, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

C. The applicant's complaint under Article 4 § 1 of the Convention

26. The Court notes that the applicant's allegations under Article 4 § 1 derive from the fact that he did not receive remuneration for work he had performed. The Court further notes that the applicant performed his work voluntarily and his entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery within the meaning of this provision.

27. In these circumstances, the Court considers that this part of the application must also be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002).

D. Complaints under Article 6 § 1 and Article 1 of Protocol No. 1

28. The Government contended that the applicant could no longer claim to be a victim of a violation of the Convention as he had received full payment of the judgment debt. They also contended that the applicant had not exhausted domestic remedies regarding the Bailiffs' Service and the expedition of proceedings.

29. The applicant disagreed.

30. The Court notes that these objections have already been dismissed in a number of Court judgments (see, among many other authorities, the aforementioned *Romashov* judgment, §§ 23-33). Accordingly, it dismisses the Government's preliminary objections as to admissibility and declares this part of the applicant's complaints admissible. On the same basis, the Court finds that the applicant's complaint under Article 1 of Protocol No. 1 cannot be rejected and must be declared admissible.

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

31. The Government repeated that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment. They considered that the time taken to enforce it was reasonable. Furthermore, the original non-enforcement of the judgment was caused by the difficult financial situation of the State. The State Bailiffs took all necessary steps under domestic legislation to enforce the judgment.

32. The applicant disagreed.

33. The Court notes that the judgment of 26 February 2001 remained unenforced for a lengthy period of time. In particular, it remained partially unenforced until 19 May 2003 when the amount claimed was transferred to the applicant. The applicant received these amounts on 25 May 2003.

34. The Court considers therefore that, by failing for 2 years and almost 3 months to take the necessary measures to comply with the aforementioned judgment, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court also finds that there was clearly a delay in executing the judgment as from the day of the initiation of the enforcement proceedings up to the day of its full implementation, and the Government have not advanced any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, § 45, judgment of 20 July 2004).

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

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

36. The applicant alleged that there had been an unjustified interference with his property rights, in breach of Article 1 of Protocol No. 1. The substantial delay in the payment of the debt had deprived him of the actual possession of his property.

37. The Government acknowledged that the judgment debt constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, they maintained that it had not been violated since the applicant's entitlement to the award was not disputed and he was not deprived of his property. They further noted that the delay in payment was due to the insufficient funds of the defendant company.

38. The Court recalls its case-law that the impossibility for an applicant to obtain the execution 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 *Voytenko v. Ukraine,* no. 18966/02, § 53, judgment of 29 June 2004).

39. The substantial delay of nearly two years and three months to pay the judgment debt to the applicant is also an interference of this kind, for which the Government have not advanced any satisfactory explanation. The Court considers that the alleged lack of funds of a State-owned enterprise cannot justify such an omission. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed pecuniary damage in relation to the amounts awarded to him by the judgment. He further claimed non-pecuniary damage amounting to USD 50,000 (approximately EUR 40,000).

42. The Government refuted the applicant's claims as unsubstantiated.

43. The Court does not discern any causal link between the violation found and the claim for pecuniary damage as formulated by the applicant. However, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of

EUR 1,000 in respect of his claims for non-pecuniary damage and expenses in pursuing his application before the Court.

B. Default interest

44. 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 applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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 to the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicant's daughter, to be held by her for all the applicant's heirs, if other than herself, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) for non-pecuniary damage and expenses, plus any tax that may be chargeable, which total sum is 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President