CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF CHERNYAYEV v. UKRAINE

(Application no. 15366/03)

JUDGMENT

STRASBOURG

26 July 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 Chernyayev 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 28 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 15366/03) 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 Vladimir Ilyich Chernyayev ("the applicant"), on 16 April 2003.

2. The Ukrainian Government ("the Government") were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 19 January 2004 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 1938 and lives in the town of Nova Kakhovka, Kherson region, Ukraine.

5. On 4 August 2000 the Nova Kakhovka Town Court awarded the applicant UAH 3,150.00[1] in salary arrears against his former employer – the Southern Machinery Construction factory (the majority share of which –

1. Around EUR 485

70% – was owned by the State). The judgment was not appealed and became final.

6. On 3 July 2001 the Nova Kakhovka Town Court awarded the applicant UAH 1,180.00[1] in compensation for moral damage against the same factory.

7. By letter of 14 February 2003, the Head of the Kherson Regional Department of Justice of Ukraine informed the applicant that the enforcement proceedings against the factory had been stayed due to the opening of bankruptcy proceedings against the debtor.

8. On 17 May 2004 the Nova Kakhovka Town Court awarded the applicant UAH 13,460.72[2] in compensation for the delay in payment of the salary arrears against the same debtor. The enforcement proceedings in respect of this judgment were initiated on 24 June 2004.

9. The judgments remain unenforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

11. The applicant complained of an alleged failure by the State authorities to execute the court decisions of 4 August 2000 and 3 July 2001 given in his favour. He invoked Article 6 § 1 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 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 ...."

1. Around EUR 180
2. Around EUR 2,070

I. ADMISSIBILITY

A. The Government's preliminary objections

12. The Government contended that the applicant had not exhausted domestic remedies regarding the Bailiffs' Service and the expedition of proceedings.

13. The applicant did not make any comments.

14. The Court notes that similar points have already been dismissed in a number of Court judgments (see the aforementioned *Romashov* judgment, § 41). In such cases the Court has found that applicants were absolved from pursuing the remedies invoked by the Government. It finds no reason to reach different conclusions in the present case and, therefore, rejects the Government's objections.

B. Conclusion

15. In the light of the parties' submissions, the Court concludes that the applicant's complaint under Article 6 § 1 of the Convention raises serious 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 part of the application inadmissible. For the same reasons, the applicant's complaints under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

A. The applicant's complaints under Article 6 § 1 of the Convention

16. The Government maintained that the Bailiffs performed all necessary actions to enforce the judgment and could not be liable for the delays in the enforcement proceedings. They further suggested that there was no infringement of Article 6 § 1 of the Convention.

17. The applicant did not elaborate his original complaint.

18. The Court notes that the decisions of 4 August 2000 and 3 July 2001 remain unenforced for well over four and three years respectively.

19. The Court considers that by delaying for so long the enforcement of the judgments in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court finds that the Government have not advanced any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

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

B. The applicant's complaints under Article 1 of Protocol No. 1.

21. The Government in their submissions confirmed that the amounts awarded to the applicant by the domestic court constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, the Government maintained that the provision had not been violated since the applicant's entitlement to the award was not disputed and he was not deprived of his property. The Government further noted that the delay in payment was due to the difficult economic situation of the debtor and the bankruptcy proceedings against it.

22. The applicant did not make any further comments in addition to his original complaint.

23. 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, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003).

24. In the instant case the Court is of the opinion that the impossibility for the applicant to obtain execution of his judgments of 4 August 2000 and 3 July 2001 for so long constitutes an interference with his right to the peaceful enjoyment of his possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1.

25. By failing to comply with the judgments of the Nova Kakhovka Town Court, the national authorities have prevented, and still prevent, the applicant, for a considerable period of time, from receiving in full the money to which he was entitled. The Government have not advanced any justification for this interference, and the Court considers that economic difficulties cannot justify such an omission. Furthermore, having regard to the compensation proceedings instituted by the applicant against the debtor, and even assuming that the compensation for the delay in payment awarded by the decision of 17 May 2004 could be considered in the circumstances of the instant case as having *de facto* some remedial effect, at least with respect to the delays in the recovery of judgment debt under the decision of 4 August 2000, the Court notes that it also remains unenforced, and the prospects of its execution are as remote as those of the original judgments.

26. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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."

28. The Court notes that the applicant failed to submit a detailed claim for just satisfaction when invited to do so by the registry. However, in previous correspondence the applicant had claimed non-pecuniary damages in the amount of 50,000 Ukrainian hryvnas and in his reply to the registry's request he stated that he wished to maintain his application. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good merely by the Court's finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of 1,000 euros.

29. Moreover, it is undisputed that the State still has an outstanding obligation to enforce the judgments at issue. Accordingly, the applicant remains entitled to recover the principal amount of the debts, as well as the compensation awarded to him in the course of the domestic proceedings.

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

4. *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 1,000 (one thousand euros) for non-pecuniary damage plus any tax that may be chargeable;
   (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (c) 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;

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

Done in English, and notified in writing on 26 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President