CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF BUKHOVETS v. UKRAINE

(Application no. 22098/02)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Bukhovets 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 V. BUTKEVYCH,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 October 2005

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

PROCEDURE

1. The case originated in an application (no. 22098/02) 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 Anatoliy Ivanovich Bukhovets ("the applicant"), on 25 March 2002.

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

3. On 28 August 2003 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 city of Donetsk, Ukraine.

5. On 13 December 2000 the labour disputes commission (hereafter "the LDC") ordered the *"Zhovtnevy Rudnyk"* coal mine (a State enterprise, hereafter "the ZRCM") to pay the applicant UAH 29,875[1] in compensation for unpaid industrial disability benefits.

[1] approximately EUR 4,890

6. On 13 March 2001 the Kuybyshevskiy District Court of Donetsk (hereafter "the District Court") awarded the applicant UAH 7,427.58[1] against the ZRCM in salary arrears.

7. On 9 January and 9 April 2001 respectively, the Kuybyshevskiy District Bailiffs' Service (hereafter "the Bailiffs' Service") opened the enforcement proceedings concerning the above decisions.

8. On 23 June 2001 the Deputy Head of the Donetsk Regional Department of Justice informed the applicant that the LDC decision of 13 December 2000 and the court judgment of 13 March 2001 could not be immediately executed in full due to the debtor's lack of funds. However, on 22 March 2001 the applicant was paid UAH 388.88[2] of the benefits awarded by the LDC.

9. On 19 April, 5 August and 6 December 2002 the Bailiffs' Service informed the applicant that the decisions of the court and the labour commission could not be enforced on account of the debtor's lack of funds and the moratorium on the forced sale of the property of State enterprises introduced by the 2001 Law.

10. On 7 February 2003 the Ministry of Fuel and Energy ordered the merger of several coal mines, including the ZRCM, into the Donetskvugillia State Company.

11. On 1 September 2003, relying on the fact that the ZRCM's had lost its status as an independent legal entity, the Bailiffs dealing with the applicant's case terminated the enforcement proceedings. However, on 23 October 2003 the Head of the Bailiffs' Service annulled this decision as ill-founded.

12. On 20 and 28 October 2003 the Bailiffs' Service applied to the District Court, seeking directions regarding the replacement of the debtor in the applicant's enforcement cases. On 24 and 30 October 2003 the court ordered that the debtor in the cases be replaced by the Donetskvugillia State Company. On 13 November 2003 the enforcement case was transmitted to the Voroshylovske District Bailiffs' Service.

13. The amount awarded by the judgment of 13 March 2001 was paid to the applicant on 5 December 2003. The benefits awarded on 13 December 2000 were paid in two instalments on 3 and 29 December 2003.

II. RELEVANT DOMESTIC LAW

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

[1] approximately EUR 1,215
[2] approximately EUR 65

and of 30 November 2004 in the case of *Dubenko v. Ukraine* (74221/01 §§ 22-29).

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

1. Alleged violation of Article 2 of the Convention

15. The applicant complained that the existing situation infringed his right to life under Article 2 § 1 of the Convention, given his low standard of living. The Court reiterates that, according to its case-law, neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (*Wasilewski v. Poland*, no. 32734/96, 20.4.1999). Moreover, the applicant has not shown that he suffers such destitution as to put his life at risk (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The non-enforcement of the court judgments given in the applicant's favour

16. The applicant complained about the State authorities' failure to execute the judgment of the City Court awarding him arrears in salary and social benefits against his employer. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which in so far as relevant provide:

Article 6

"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."

17. The Government maintained that the applicant had failed to exhaust domestic remedies, in that he had not lodged a claim with the domestic courts challenging the inactivity of the Bailiffs' Service and claiming compensation for the allegedly irregular enforcement proceedings or for the devaluation of the amounts awarded.

18. The applicant contested that argument, recalling that the main reason for the continued non-enforcement of the judgments given in his favour was the debtor company's difficult economic situation.

19. The Court recalls its case-law on this issue to the effect that an applicant is absolved from lodging complaints against Bailiffs where the non-enforcement of judgments was due to reasons which the Bailiffs could not influence (see, among many others, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, and the following, §§ 38-39). It finds no reason to distinguish the present application from the previous cases.

20. The Court considers, in the light of the parties' submissions, that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaints cannot be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

II. MERITS

21. The Government maintained that the Bailiffs had performed all necessary actions to enforce the judgments 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 in view of the execution of the judgments.

22. The applicant did not submit any additional arguments to his original complaint.

23. The Court first notes that the decision of the LDC in the applicant's case is the equivalent of a court decision, and the State bears responsibility for its non-execution (see *Romashov v. Ukraine*, cited above, § 41).

24. Secondly, the Court notes that the decisions of 13 December 2000 and 13 March 2001 remained unenforced until 5 and 29 December 2003 respectively, i.e. periods of approximately three years and over two years and nine months. Thirdly, it observes that these decisions were enforced in

full after the communication of the application to the respondent Government.

25 Having regard to its case-law on the subject, the Court finds that by failing for such lengthy periods to comply with the enforceable decisions in the applicant's favour, the Ukrainian authorities prevented him from receiving the money he could reasonably have expected to receive (see, among many others, *Vasilenkov v. Ukraine*, no. 19872/02, § 25, 3 May 2005).

26. There has accordingly been a violation of Article 6 § 1 of the Convention and 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."

A. Damage

28. The applicant sought an unspecified amount of compensation for the moral suffering caused by the lengthy non-enforcement of the decisions given in his favour.

29. The Government stated that the applicant had not sustained any non-pecuniary damage susceptible to monetary compensation.

30. 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 by the Court's mere findings. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of 1,440 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

32. 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 concerning the lengthy non-enforcement of court decisions given in the applicant's favour 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*
   (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 1,440 (one thousand four hundred and forty 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;

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President