CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF CHERNYSH v. UKRAINE

(Application no. 25989/03)

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 Chernysh 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 Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 18 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 3383/03) 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 Oleksiy Vasylyovych Chernysh ("the applicant"), on 4 January 2003.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mrs V. Lutkovska.

3. On 19 November 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 1928 and lives in the city of Khmelnytskyi, Ukraine.

A. First set of proceedings

5. On 22 August 2002 the Pecherskyi District Court of Kyiv ordered the Khmelnytskyi Regional Court of Appeal to pay the applicant

UAH 9,565.17[1] in pension arrears (involving a special retired judges' allowance). The court also ordered the Ministry of Finance and the Ministry of Justice to transfer to the Khmelnytskyi Regional Court of Appeal the amount of the award.

6. On 31 January 2003 the Pecherskyi District Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

7. On 15 December 2003 the judgment was enforced in full.

B. Second set of proceedings

8. On 27 December 2002 the Pecherskyi District Court of Kyiv ordered the Ministry of Finance and the Ministry of Justice to pay the applicant UAH 3,618.78[2] in similar pension arrears. The court held that the amount of the award should be seized from a specific account of the State Treasury.

9. On 5 March 2003 the Pecherskyi District Bailiffs' Service instituted enforcement proceedings in respect of the judgment of 27 December 2002. On 16 May 2003 the Bailiffs' Service submitted the writ of execution for the judgment to the State Treasury of Ukraine. On an unspecified date the State Treasury returned the writ of execution and informed the Bailiffs' Service that the judgment could not be enforced because of the absence of relevant allocations from the State Budget.

10. On 24 December 2004 the judgment of 27 December 2002 was enforced in full.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ADMISSIBILITY

12. The applicant complained in substance under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the State authorities' failure to enforce the judgments of the Pecherskyi District Court of Kyiv of 22 August 2002 and 27 December 2002 in due time. Article 6 § 1 of the

1. Around 1,560 euros – "EUR".
2. Around EUR 590.

Convention and Article 1 of Protocol No. 1 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 ...."

13. The Court notes that the applicant's complaints concern two judgments, the delays in the enforcement of which vary significantly. Thus, the complaints in respect of each judgment will be examined separately.

A. The applicant's complaint about the length of the non-enforcement of the judgment of 27 December 2002

14. The Government submitted that, since the judgment of 27 December 2002 had been enforced in full, the applicant could no longer be considered a victim of a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

15. The Government further contended that the applicant had not exhausted domestic remedies as he had not appealed against that judgment with the aim of changing the defendant/debtor in the enforcement proceedings. They maintained that it had been the responsibility of the State Court Administration, and not of the Ministry of Finance, to pay the special retired judges' allowance. They therefore proposed that the application be declared inadmissible.

16. The Court recalls that it has already dismissed the Government's analogous contention regarding the applicant's victim status in similar cases (see the *Romashov* judgment, cited above, §§ 23-27) and finds no reason to reach a different conclusion in the present case. In so far as the Government raise an objection regarding the exhaustion of domestic remedies, the Court does not find any reasonable ground to hold the applicant responsible for failure to appeal against a judgment favourable to himself. Moreover, there is no information in the case file that any party to the proceedings, including

the Ministry of Finance, was prevented from contesting that judgment. Accordingly, it dismisses the Government's objections.

17. The Court takes the view that this aspect of the case 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 it inadmissible.

B. The applicant's complaint about the length of the non-enforcement of the judgment of 22 August 2002

18. The Court observes that the enforcement proceedings in respect of the judgment of 22 August 2002 commenced on 31 January 2003 and were completed by the Bailiffs' Service on 15 December 2003. Therefore, the period, during which the enforcement proceedings were pending, lasted less than eleven months. The Court notes that, given its findings in previous, similar cases against Ukraine (see, for instance, *Kornilov and Others v. Ukraine* (dec.), no. 36575/02, 7 October 2003), this period is not so excessive as to raise an arguable claim under the Convention. It follows that the applicant's complaint about the length of the non-enforcement of this judgment is manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

II. MERITS

19. The Court will now examine the merits of the applicant's complaint about the length of the non-enforcement of the judgment of the Pecherskyi District Court of Kyiv of 27 December 2002.

20. The Government repeated their arguments (summarised at paragraphs 14-15 above), contending that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

21. The Court notes that the judgment of the Pecherskyi District Court of Kyiv of 27 December 2002 remained unenforced for about two years.

22. Having rejected the Government's arguments above, the Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for instance, *Voytenko v. Ukraine*, no. 18966/02, §§ 39-43 and 53-55, judgment of 29 June 2004).

23. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. 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

24. 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."

25. The applicant did not submit a claim for just satisfaction. Accordingly, the Court makes no such award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints under Article 6 § 1 of the Convention and Article 1 Protocol No. 1 about the length of the non-enforcement of the judgment of the Pecherskyi District Court of Kyiv of 27 December 2002 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;

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	J.-P. COSTA
Registrar	President