CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF TIMOTIYEVICH v. UKRAINE

(Application no. 63158/00)

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 Timotiyevich v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *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. 63158/00) against Ukraine lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Dmitriy Dmitriyevich Timotiyevich ("the applicant"), on 29 June 1998.

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

3. The applicant alleged that the proceedings in his case were unfair in so far as the final judgment given in his favour was quashed and, allegedly, no final decision has been given to date. Referring to Article 1 of Protocol No. 1 to the Convention, the applicant complains about the infringement of his property rights caused by the quashing of the final judgment awarding him compensation. He also complains that he suffered damage as a result of the continuous state of uncertainty over the fate of his property.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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.

6. By a partial decision of 25 March 2003, certain aspects of the application were communicated to the respondent Government for observations. This was followed on 18 May 2004 by the Court's final decision, declaring the remainder of the application partly admissible.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

9. The applicant was born in 1938 and lives in Krasnoyarskoye, the Donetsk region, Ukraine. He temporarily resides in the village of Kalinovka, the Vinnytsia region, Ukraine.

I. THE CIRCUMSTANCES OF THE CASE

10. The circumstances of the case, as relevant to the complaints declared admissible, may be summarised as follows.

11. On 2 September 1988 the applicant lodged complaints with the Dobropolye City Court (the "DCC") against the Belitskaya Mining Company ("*Imeni XXI syezda KPSS"*) in Dobropolye (the "Belitskaya Mine"), and the Dobropolskiy communal farm ("*Sovkhoz Dobropolskiy"*), seeking compensation for the damage caused to his house by the work of underground mining machines.

12. Between September 1988 and May 1998, the case was examined on a number of occasions by the DCC and the Donetsk Regional Court (the "DRC").

13. By a judgment of 30 May 1994, the DCC declared the defendants liable for the damage caused to the applicant's house. It ordered them to build a new house for the applicant, equivalent to that which had been damaged, by 1 July 1995, and to pay him compensation. The DCC held that the new house had to measure 76,64 square meters and had to include three rooms for habitation, utility rooms (*підсобні приміщення*) and outdoor premises (*надвірні приміщення*) on the plot of 0,25 hectare, surrounded by a fence. It also ordered the payment to the applicant and his wife of 2,627,925 karbovantsi, each, in compensation for the damage to certain property which had been in the original house, as well as costs for expert examinations and State taxes. In particular, the DCC ruled that:

> " The Belitskaya mine and Dobropolskiy communal farm, in respective shares, [are] to ensure the restitution for pecuniary damage in kind by building him a house measuring 76,64 square meters on the plot of 0,25 hectares, to be composed of two bedrooms, a living room and auxiliary rooms – a kitchen, hall, bathroom and toilet; outdoor premises: a lobby/porch, basement and garage; support premises: a summer kitchen, premises for domestic animals, birds, storage space for food, coal and wood; a fence surrounding the plot with an additional asphalt cover for the yard and green plantations around the house; to be completed before 1 July 1995.
>
> [Orders] the Belitskaya Mine and the Dobropolskiy communal farm to pay the applicant and his wife, each, 2,627,925 karbovantsi in compensation for the damage caused to their property..."

14. On 11 July 1994, the DRC upheld the judgment of 30 May 1994, which, that same day, became final.

15. Contested enforcement proceedings ensued after the defendants failed to comply with the judgment of 30 May 1994. Two key decisions were as follows:

- first, that of the DCC on 14 November 1996, upholding the judgment in the applicant's favour and ordering the defendants to reimburse the applicant, before 14 February 1997, UAH 70,054.70 for his expenses relating to the construction of a new house;
- secondly, that of the DRC on 13 January 1997, upholding the preceding decision, which thereby became final and enforceable.

16. On 10 September 1997 the Presidium of the DRC allowed the *protest* of the Acting Prosecutor of the Donetsk Region, quashed the decisions of 14 November 1996 and 13 January 1997, and remitted the case for a fresh consideration to the DCC.

17. On 15 May 1998 the Prosecutor General lodged a new *protest* with the Supreme Court, seeking the initiation of supervisory review proceedings in the applicant's case. By a Resolution of 10 June 1998, the Supreme Court quashed the judgment of 30 May 1994 given in the applicant's favour. It remitted the case to the DCC for fresh consideration. In particular, it stated that, in finding that the defendants had to build the applicant a new house, the courts had not specified in what way the original building had been defective. It also held that the award of compensation did not correspond to the actual level of inflation or the current price of construction and construction expenditures.

18. On 7 June 1999 the DCC decided not to consider the applicant's claims as he failed to appear in court on 16 November and 7 December 1998, 9 February, 16 March, 19 April, and 4 and 17 May 1999.

19. On 1 September 1999 the Presidium of the DRC allowed the *protest* of its President and quashed the ruling of 7 June 1999, remitting the case for a fresh consideration to the same court. The Presidium also gave a separate ruling as to the length of the proceedings in the applicant's case and noted the fact that the applicant had not been duly informed about the hearings and, therefore, had been unable to attend them.

20. On 25 February 2000 the parties failed to appear before the DCC. On the same date the DCC decided not to consider the applicant's claims because of his absence. On 2 August 2000 the President of the DRC allowed the *protest* of his Deputy and quashed this ruling, the case being again remitted for a fresh consideration.

21. The case was re-examined on a number of occasions (see *Timotiyevich v. Ukraine* (dec.), no. 63158/00, 18 May 2004). By decisions of 13 April and 24 May 2001, the DCC adjourned the proceedings due to the applicant's failure to appear before it. On 18 June 2001 the applicant again failed to appear before the DCC. As a result, the DCC did not consider the applicant's substantive claims and the proceedings were finally terminated. The applicant did not appeal.

22. On 19 June 2001 the applicant requested the DCC to suspend the proceedings in his case due to the consideration of his application by the European Court of Human Rights.

II. RELEVANT DOMESTIC LAW

23. The relevant provisions of the domestic law are summarised in the case of *Svetlana Naumenko v. Ukraine* (no. 41984/98, § 65, 9 November 2004).

THE LAW

I. PRELIMINARY CONSIDERATIONS AS TO THE SCOPE OF THE CASE

24. The Court observes that the applicant lodged new complaints after its final decision on admissibility. They concerned the alleged failure of the domestic authorities to provide him with a properly functioning electro-cardio stimulator, poor surgery on his bladder and gallbladder, the alleged murder of his son, the confiscation of a land certificate, the failure of the State Savings Bank to allow him to recover his and his wife's deposits, the State's refusal to provide him with a new Avtozaz-Daewoo car and, in general, the poor state of his and his wife's health. He also complained, relying on Article 6 § 1 of the Convention, of his and his wife's suffering from the unlawful behaviour of the State authorities.

25. The Court recalls that it has already fixed the scope of the case with its admissibility decision of 18 May 2004. However, the Court does not consider it necessary to disjoin these new complaints for a separate examination as they are wholly unsubstantiated. There is nothing in the case file which discloses any appearance of a breach of the Convention in this respect. These complaints must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 *in fine* of the Convention.

26. The Court repeats that, in its decision of 18 May 2004, the only complaints declared admissible were those under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 regarding the fairness of the proceedings and the infringement of property rights. It notes that final judicial decisions in the instant case, conferring rights upon the applicant, were quashed in the course of supervisory review proceedings on four occasions:

- on 10 September 1997 the DRC, by a Resolution, quashed decisions of 14 November 1996 and 13 January 1997 (see paragraphs 15-16 above);
- on 10 June 1998 the Supreme Court quashed the judgment of 30 May 1994 awarding compensation to the applicant by way of the payment of money and the construction of a new house (see paragraphs 13 and 16 above);
- on 1 September 1999 the President of the DRC quashed a ruling of 7 June 1999 by the DCC not to consider the applicant's case (see paragraph 19 above);
- on 2 August 2000 the Presidium of the DRC quashed a second ruling by the DCC of 25 February 2000 not to consider the applicant's case (see paragraph 20 above).

27. The Court observes, as to the Resolution of 10 September 1997, that it was issued before the Convention entered into force in respect of Ukraine. Therefore this part of the applicant's complaints should be rejected as being incompatible *ratione temporis* (Article 35 §§ 3 and 4 *in fine* of the Convention). As to the quashing of the rulings of 7 June 1999 and 25 February 2000, the Court finds that they were given in the applicant's favour and concerned procedural aspects of the case, i.e. they did not concern a final determination of the applicant's civil rights and obligations. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see, *mutatis mutandis*, *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

28. As to the quashing of the judgment of 30 May 1994 by the Supreme Court on 10 June 1998, upon the Prosecutor General's *protest,* the Court confirms that this decision falls within its competence and forms the basis of the ensuing examination of the merits of the case.

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

29. The applicant complained about a lack of fairness in the consideration of his case. In particular, he complained about the quashing of the final judgment given in his favour by the Supreme Court upon the *protest* lodged by the Prosecutor General. He refers to 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 within a reasonable time by an independent and impartial tribunal established by law..."

30. The Government submitted that the supervisory review of the judgment in the applicant's favour did not contradict the principles of the rule of law and legal certainty. They maintained that the *protest* could not be used in an arbitrary manner as this procedure was transparent, foreseeable and used by citizens as an effective mechanism to appeal against judicial decisions. Moreover, the Government pointed out that the applicant pursued supervisory review proceedings on his own motion, having himself petitioned the Prosecutor General.

31. The applicant disagreed.

32. The Court notes that in the instant case, as a result of the *protest* lodged by the Prosecutor General, the Supreme Court, on 10 June 1998, quashed the judgment of 30 May 1994 which had already become final and binding, remitting the case for reconsideration on the merits to the first instance court. The Court has previously found violations of Article 6 § 1 of the Convention in similar cases against Ukraine, holding that such measures are incompatible with the principles of the rule of law and legal certainty enshrined in that provision (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 77, ECHR 2002-VII; *Tregubenko v. Ukraine*, no. 61333/00, §§ 44-45, 2 November 2004; *Svetlana Naumenko v. Ukraine*, no. 41984/98, § 92, 9 November 2004).

33. The Court does not find any reason in the present case to depart from that jurisprudence. It considers, therefore, that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicant's case.

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

34. The applicant complains that, by quashing the final judgment of 30 May 1994 which recognised his right to be compensated for the expense of building a new house, there has been an unlawful interference with his right to the peaceful enjoyment of his possessions. He refers to Article 1 of Protocol No. 1 to the Convention, which in so far as relevant provides:

> "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 ..."

35. The Government submitted that the present application cannot be compared to the judgments in the cases of *Brumărescu v. Romania* ([GC], no. 28342/95, ECHR 1999-VII) or *Sovtransavto Holding v. Ukraine* (no. 48553/99, ECHR 2002-VII). In particular, they mentioned that the judgment in the present case was quashed and the case remitted for fresh consideration with the aim of restoring the applicant's rights which had been infringed by an unlawful judgment. Moreover, by quashing the judgment of 30 May 1994, the Supreme Court rectified the errors of the first instance and regional courts which had created obstacles to restoring the applicant's pecuniary rights. They maintained that the quashing of the judgment of 30 May 1994 did not prejudice the applicant's rights.

36. The applicant disagreed. He maintained that the quashing of this final judgment was to his disadvantage. In particular, he stated that for a long time he has been living in premises which are unfit for habitation. He also mentioned that he and his wife have suffered substantially due to the prolonged uncertainty over the outcome of these proceedings.

37. The Court observes that, in the aforementioned *Brumărescu* case, a violation of Article 1 of Protocol No. 1 was found because a final decision, acknowledging the applicant's ownership of a house, was quashed by the Supreme Court of Justice on the application of the Attorney General. In the present case, in a final judgment of 30 May 1994, the defendants in the domestic proceedings (a State-owned mine and a communal farm) were ordered to build a new house for the applicant after they had damaged his existing property. This judgment thereby established a clear, pecuniary entitlement for the applicant. However, four years later, that judgment was quashed, contrary to the applicant's interests, on the initiative of the public prosecutor acting within his discretionary powers.

38. This left the applicant in a situation in which there was uncertainty about his accommodation for a prolonged period of time, which imposed an excessive individual burden on him (see *Immobiliare Saffi v. Italy,* [GC], no. 22774/93, § 59, ECHR 1999-V, § 59), taking into account his financial and social situation and his poor housing conditions.

39. The Court considers therefore that there was a disproportionate and unjustified interference with the applicant's rights under Article 1 of Protocol No. 1 to the Convention. There has accordingly been a violation of that provision.

III. 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. Pecuniary damage

41. The applicant complained that the pecuniary compensation due to him was related to the damage caused to his house by the work of underground mining machines. He therefore asked the Court to award him compensation for the destruction of the original house. He also asked the Court to award him compensation for a broken car, his and his wife's savings in the State Savings Bank, the murder of his son and the theft of his land. The applicant did not specify the exact amount of his claim.

42. The Government submitted that the applicant's just satisfaction claims were lodged out of time and therefore should not be taken into consideration.

43. The Court rejects the Government's submission as, on 10 December 2004, the President of the Second Section decided to admit the applicant's claims to the file (Rule 38 § 1 of the Rules of Court).

44. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to the violation and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States are in principle free to choose the means whereby they comply with the Court's judgment. However, if the nature of the breach allows for *restitutio in integrum*, the respondent State should give effect to it. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party appropriate satisfaction (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

45. The Court considers that, in the circumstances of the present case, the payment of compensation for the new house which should have been built, and compensation for the damage to property in the old house, equivalent to that ordered by the final judgment of the Dobropolskiy City Court on 30 May 1994, would restore the applicant to his previous situation had there not been breaches of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. The Court therefore awards, as pecuniary damage, the current value of the proposed new house and the land around it, as specified by the judgment of the Dobropolskiy District Court on 30 May 1994, at the approximate market value of EUR 25,000. It also considers that this sum

should cover compensation paid to the applicant for damaged property (see paragraph 13 above).

B. Non-pecuniary damage

46. The Court finds that the applicant may be considered to have suffered some degree of frustration and distress, given the lengthy period of uncertainty which he has endured as a result of the quashing of the final and binding judgment in his favour. It therefore awards him, on an equitable basis, EUR 2,500 for his non-pecuniary damage.

C. Default interest

47. 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 aspects of the application concerning the quashing of decisions on 10 September 1997, 1 September 1999 and 2 August 2000 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Ukrainian hryvnias at the rate applicable on the date of settlement:
      (i) EUR 25,000 (twenty five thousand euros) in respect of pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage;
      (iii) any tax that may be chargeable on the above amounts;
   (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 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President