CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF VERKEYENKO v. UKRAINE

(Application no. 22766/02)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Verkeyenko v. Ukraine,

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

Mr A.B. BAKA, *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 22 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 22766/02) 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 Lev Andreyevich Verkeyenko ("the applicant"), on 21 July 2001.

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

3. On 24 October 2003 the Court decided to communicate the complaint under Articles 6 § 1 and 13 of the Convention concerning the length of the execution of the judgment of the Zhovtnevy District Court of Odessa to the Government and the lack of effective remedies in that respect to the respondent 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

4. The applicant was born in 1936 and currently resides in Odessa. He is a former employee of the State Company "Chornomorske Morske Paroplavstvo" (the "CMP").

I. THE CIRCUMSTANCES OF THE CASE

5. In 1997 the applicant instituted proceedings against the CMP in the Zhovtnevy District Court of Odessa, seeking the recovery of salary arrears.

6. On 6 October 1998 the Zhovtnevy District Court of Odessa ordered the CMP to pay the applicant UAH 3,604[1] in compensation. The decision was not appealed and became final on 16 October 1998.

7. On 18 December 2000 the Ministry of Justice informed the applicant that the judgment in his favour could not be immediately executed due to the CMP's lack of funds. In particular, it noted that the CMP's debts amounted to UAH 20,095,905, including salary arrears in the amount of UAH 5,067,027. They also stated that they were in the course of selling some of the CMP's property and vessels belonging to it.

8. On 28 May 2001 the Zhovtnevy District Prosecutor's Office informed the applicant that the Bailiffs' Service had frozen the CMP's bank accounts, however they had been empty since 1997.

9. On 26 December 2002 the applicant informed the Court that the judgment had been executed when, on 18 December 2002, he had been paid UAH 3,604[2].

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

I. AS TO THE ADMISSIBILITY OF THE APPLICANT'S COMPLAINTS UNDER ARTICLES 4 § 2 AND 17 OF THE CONVENTION

11. As to the complaints of a violation of Articles 4 § 2 and 17 of the Convention that allegedly ensued from the State's failure to comply with the final judgment given in the applicant's favour, the Court considers that they are wholly unsubstantiated (cf. *Romashov v. Ukraine*, no. 67534/01, § 36, 27 July 2004). It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

1. 777.95 euro – "EUR".
2. EUR 777.95.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

12. The applicant complained about the State authorities' failure to execute the judgment of 6 October 1998 of the Zhovtnevy District Court of Odessa. He alleged that the length of the proceedings had been unreasonable, in breach of Article 6 § 1 of the Convention, and that he had had no effective remedies in respect of the non-enforcement, contrary to Article 13 of the Convention. These provisions 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 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

13. The Government raised objections similar to those which the Court dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 28-33). In particular, they contended that the applicant was not a victim of a violation as the judgment was enforced, and that he had not exhausted domestic remedies.

14. The Court considers that the applicant may legitimately claim to be the victim of violation of Articles 6 § 1 and 13 of the Convention, given the prolonged delay in the enforcement of the judgment of 6 October 1998 and the failure of the domestic authorities to provide reparation for that. These complaints must therefore be declared admissible.

B. Merits

15. In their observations, the Government put forward arguments similar to those in the case of *Romashov v. Ukraine*, contending that there had been no violation of Articles 6 § 1 and 13 of the Convention (see, the *Romashov* judgment, cited above, §§ 28-33, 37).

16. The applicant disagreed.

17. The Court notes that the judgment of the 6 October 1998 of the Zhovtnevy District Court of Odessa remained unenforced until

18 December 2002 and that no reparation for this delay of over four years and two months was offered to the applicant.

18. The Court has frequently found violations of Articles 6 § 1 and 13 of the Convention in cases raising similar issues, in relation to State-owned or State-controlled enterprises (see *Voytenko v. Ukraine*, no. 18966/02, § 43, 29 June 2004).

19. Having examined the materials submitted to it, the Court notes 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. The Court finds that, by failing for so long to comply with the enforceable judgment in the applicant's favour, the Ukrainian authorities deprived the provisions of Article 6 § 1 of much of their useful effect. Moreover, the applicant did not have an effective domestic remedy to redress the damage caused by the delay in the present proceedings, as required by Article 13.

20. There has accordingly been a violation of Articles 6 § 1 and 13 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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 and costs and expenses

22. The applicant claimed EUR 10,360 in compensation for pecuniary and non-pecuniary damage. The applicant further claimed EUR 26 for the costs and expenses incurred.

23. The Government submitted that the applicant had neither specified nor substantiated his claim of pecuniary damage. The Government also mentioned that the amount claimed in non-pecuniary damage was ten times higher than the amount of the original judgment debt. They considered that a finding of a violation would constitute sufficient just satisfaction in the case.

24. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 2,026 in respect of pecuniary and non-pecuniary damage, costs and expenses.

B. Default interest

25. 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 Articles 6 § 1 and 13 of the Convention 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 13 of 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 in accordance with Article 44 § 2 of the Convention, EUR 2,026 (two thousand and twenty-six euros) in respect of pecuniary and non-pecuniary damage, costs and expenses, to be converted into the currency of the respondent State at the rate applicable on 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 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 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	A.B. BAKA
Registrar	President