CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF LISYANSKIY v. UKRAINE

(Application no. 17899/02)

JUDGMENT

STRASBOURG

4 April 2006

FINAL

04/07/2006

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 Lisyanskiy 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 14 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 17899/02) 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 Sergey Nikolayevich Lisyanskiy ("the applicant"), on 27 March 2002.

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

3. On 9 September 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 1960 and lives in the town of Dzerzhynsk, the Donetsk Region.

5. In September 1999 the applicant instituted proceedings against the Artema State-owned coal mine (the applicant's former employer, hereafter "the ACM"), seeking an increase of his industrial disease benefits and claiming compensation for the delays in current payments. On 29 September 2000 the Dzerzhynsk City Court (hereafter "the City Court") rejected the applicant's claim for increased benefits. However, the court

awarded the applicant a total of UAH 27,972[1] for arrears in the current payments. The applicant appealed against the rejection of his first claim. On 20 November 2000 the Donetsk Regional Court upheld the judgment of the City Court which, accordingly, became final and was sent to the Dzerzhynsk City Bailiffs' Service for compulsory enforcement.

6. On 14 June 2001 the Deputy President of the Donetsk Regional Court rejected the applicant's request for supervisory review of the September 2000 judgment. On 6 October 2001 the Supreme Court rejected the applicant's appeal lodged under the new cassation procedure.

7. On 8 May 2001 the City Court awarded the applicant a further UAH 17,777[2] in compensation for unpaid industrial disability benefits. The enforcement proceedings regarding this judgment were instituted on 5 July 2001.

8. On 30 August 2001 the Ministry of Fuel and Energy decided to wind up the ACM and, on 7 November 2001, to transfer its assets to the Gorlovka Directorate for Coal Mine Liquidations.

9. On 19 November 2001 the applicant was partially paid the award from September 2000, save for UAH 600[3], and received UAH 1998.86[4] of the amount awarded in May 2001.

10. On 10 July 2002 the applicant's enforcement cases were transmitted to the ACM's liquidation commission.

11. On 11 July 2002 the Donetsk Regional Commercial Court instituted bankruptcy proceedings against the ACM and, on 8 August 2002, having declared it bankrupt, opened the liquidation procedure.

12. The judgments of 29 September 2000 and 8 May 2001 remain partially unenforced.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law may be found in the judgments of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19), of 30 November 2004 in the case of *Dubenko v. Ukraine* (no. 74221/01 §§ 22-29), of 26 April 2005 in the case of *Sokur v. Ukraine* (no. 29439/02, §§ 17-22) and of 20 September 2005 in the case of *Trykhlib v. Ukraine* (no. 58312/00, §§ 25-32).

14. According to Article 217 of the Code of Civil Procedure, the judgments awarding compensation for a deterioration in health become enforceable (within the limit of one month's instalment) immediately upon their adoption.

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[1] approximately 4,630 euros (EUR).
[2] approximately EUR 2,950
[3] approximately EUR 100
[4] approximately EUR 330

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 a certain 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 pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Alleged unfairness of the City Court's rejection of the applicant's claim for an increase in benefits

The applicant next complained under Article 6 § 1 of the Convention that the rejection of his claim for an increase in his industrial disease payments was unfair. The Court notes that the final decision concerning this issue was given by the Donetsk Regional Court on 20 November 2000. The ensuing supervisory and "new cassation" proceedings cannot be taken into account as, according to the Court's case-law, they do not qualify as effective remedies to be pursued for the purposes of Article 35 § 1 of the Convention (see *Kucherenko v. Ukraine*, no. 41974/98, (dec.) 4 May 1999, and *Prystavska v. Ukraine*, no. 21287/02, (dec.) 17 December 2002). The Court thus finds that this part of the application has been submitted too late. It must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

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

16. The applicant complained of the authorities' failure to execute the judgments of the City Court awarding him arrears in social benefits against his employer. He relied on 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 ... by an independent and impartial tribunal established by law."

a. Compatibility *ratione personae* (responsibility of the State)

17. In their observations the Government maintained that, although the debtor company was a State-owned enterprise, it was a separate legal entity and the State could not be held responsible for its debts under domestic law. Accordingly, the enforcement of the judgments given in the applicant's favour could not be carried out at the expense of the State budget.

18. The applicant maintained that the company was a State-owned enterprise which, at least partly, was funded from the State budget.

19. The issue arises therefore whether the State is liable for the debts of a State-owned company which is a separate legal entity. The Court recalls in this respect that the decision to wind up the ACM was taken by the Ministry of Fuel and Energy which, furthermore, disposed of the company's property as it saw fit, ordering the transfer of its assets to the Gorlovka Directorate for Coal Mine Liquidations. Moreover, the debtor company operated in the highly regulated area of coal mining, where the State determines, *inter alia*, the amount and terms of payment of employees' salaries and benefits (see, *mutatis mutandis*, *Dubenko v. Ukraine*, cited above, §§ 22-29).

20. The Court considers, therefore, that, as in the *Mykhaylenky and Others v. Ukraine* case (see, nos. 35091/02 and following, §§ 44-45, ECHR 2004-...), the Government have failed to demonstrate that the debtor company enjoyed sufficient institutional and operational independence from the State to absolve it from liability under the Convention for its acts and omissions.

b. Exhaustion of domestic remedies

21. The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since he had not challenged the Bailiffs' inactivity before the domestic courts.

22. The applicant contested this submission, alleging that such a remedy had no prospect of success.

23. The Court notes that this issue has already been discussed and dismissed in a number of its previous judgments (see, for example, the aforementioned case of *Romashov* §§ 23-32). It finds no reason to draw a different conclusion in the present case and it therefore rejects the Government's objection.

c. Conclusion

24. The Court concludes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds.

II. MERITS

25. The Government maintained that after 10 July 2002, when the writ of execution was transferred to the ACM's liquidation commission from the Bailiffs' Service, the delay in execution had been caused by that commission's inactivity, for which the State bears no responsibility under the Convention. They further considered that, beforehand, the State Bailiffs had taken all necessary steps under domestic legislation to enforce the judgments, and the delay in their execution was mainly due to the ACM's lack of funds.

26. The applicant reiterated that the State was responsible for the delay in the enforcement of the court judgment in his favour.

27. The Court first recalls that in many instances it has found the Government directly responsible for the debts of State-owned coal mines in similar circumstances (see, among many others, *Chernobryvko v. Ukraine*, no. 11324/02, §§ 23 and 24, 13 September 2005). Thus the State's liability for the payment of the debts remained regardless of which institution was in charge of their enforcement at any given moment (be it the liquidation commission or the Bailiffs' Service).

28. The Court further notes that the judgments of 29 September 2000 and 8 May 2001 still remain partly unenforced, i.e. for periods of approximately 5 years 5 months and 4 years 10 months respectively.

29. The Court considers that, by delaying 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 convincing justification for these delays (see, among many others, *Romashov v. Ukraine*, cited above, § 46; *Dubenko v. Ukraine*, cited above, §§ 47 and 51; *Vasilenkov v. Ukraine*, no. 19872/02, §§ 24-26, 3 May 2005).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed the amount of the outstanding debts as compensation for pecuniary damage, and EUR 30,000 in respect of non-pecuniary damage.

33. The Government found the applicant's claims unjustified.

34. In so far as the judgment debts in the applicant's favour have not been paid in full, the Court notes that the State's outstanding obligation to enforce these judgments is not in dispute. Accordingly, the Court considers that, if the Government were to pay the remaining debts owed to the applicant, it would constitute full and final settlement of his claim for material damage.

35. As regards the applicants' claim for moral damage, the Court, making its assessment on equitable basis, as required by Article 41 of the Convention, considers it reasonable to award him EUR 2,000.

B. Costs and expenses

36. The applicant's claims under this head were submitted outside the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

37. 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 complaint under Article 6 § 1 of the Convention concerning the lengthy period of non-enforcement of court judgments 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*

(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, the judgment debts still owed to him, as well as 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President