CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF KRETININ v. UKRAINE

(Application no. 10515/03)

JUDGMENT

STRASBOURG

10 August 2006

FINAL

10/11/2006

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 Kretinin v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 10515/03) 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 Vladimir Andreyevich Kretinin ("the applicant"), on 6 March 2003.

2. The Ukrainian Government ("the Government") were represented by their Agents, Mrs Z.Bortnovska, Mrs V.Lutkovska and Mr Y.Zaytsev.

3. On 2 June 2004 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments in the applicant's favour 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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1943 and resides in the town of Novogrodovka, Donetsk region, Ukraine.

6. The applicant instituted two sets of proceedings in the Novogrodovskiy Town Court of Donetsk Region against the

Novogrodovskaya Mining Company No. 1/3 - a State-owned enterprise - to recover salary arrears and other payments due to him.

7. On 22 February and 8 May 2002 the Novogrodovskiy Town Court found in favour of the applicant (*Решения Новогродовского городского суда Донецкой области*) and awarded him UAH 8,103.20[1] and UAH 3,128.40[2] respectively. These judgments were sent for enforcement to the Novogrodovskiy Town Bailiffs' Service (*Отдел Государственной исполнительной службы Новогродовского городского управления юстиции*).

8. In July 2002, the applicant instituted proceedings in the Novogrodovskiy Town Court of the Donetsk Region against the Novogrodovskiy Town Bailiffs' Service for failure to enforce the judgment of 22 February 2002 in his favour. On 25 July 2002 the Town Court rejected the applicant's claim, finding no fault had been committed by the Bailiffs' Service. The court stated that the Bailiffs' Service had acted properly in enforcing the judgment of 22 February 2002. However, by a number of decisions of the Commercial Court of the Donetsk Region, the Bailiffs' Service had been prohibited from selling the property of the Mining Company, due to the bankruptcy proceedings which had been initiated against the company. On 2 September 2002 the Court of Appeal of the Donetsk Region upheld the judgment of 25 July 2002. On 29 January 2003 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

9. In September 2002, the applicant instituted another set of proceedings in the Novogrodovskiy Town Court of the Donetsk Region against the Novogrodovskiy Town Bailiffs' Service for failure to enforce the judgment of 8 May 2002 in his favour. On 10 October 2002 the Town Court rejected the applicant's claim, for the same reasons as before. On 16 December 2002 the Court of Appeal of the Donetsk Region upheld the judgment of 10 October 2002. On 7 October 2003 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

10. In February 2003 the Novogrodovskaya Mining Company was reorganised and became a structural subdivision of the Selidovugol Mining Company. As the latter thereby became the debtor, the enforcement proceedings were transferred to the Selidovskiy Town Bailiffs' Service (*Отдел Государственной исполнительной службы Селидовского городского управления юстиции*).

11. The applicant instituted proceedings in the Selidovskiy Town Court of the Donetsk region against the Selidovskiy Town Bailiffs' Service claiming compensation for material and moral damage inflicted to him by the non-enforcement of the judgments in his favour. On 22 November 2004 the court decided on the case but the parties did not inform the Court about

[1] At the material time around 1,288.10 euros (EUR)
[2] At the material time around EUR 497.31

the outcome of the proceedings. On 24 January 2005 the court provided the applicant with a time-limit until 15 February 2005 to submit his appeal against this judgment in compliance with procedural formalities.

12. By letter of 4 January 2005 the applicant informed the court that on 7 December 2004 the judgments in his favour were enforced in full.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

I. ADMISSIBILITY

A. Complaints under Articles 2 § 1 and 4 § 1 of the Convention

14. 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* (dec.), no. 32734/96, 20 April 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.

15. The applicant next complained about a violation of Article 4 § 1 of the Convention, referring to the fact that he was forced to work without receiving remuneration. The Court notes that the applicant performed his work voluntarily and his entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery or forced or compulsory labour within the meaning of this provision (see *Sokur v. Ukraine* (dec.), cited above). In these circumstances, the Court considers that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

16. The applicant complained about the length of the non-enforcement of the judgments in his favour. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These Articles provide, insofar 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 ...."

17. The Government submitted no observations on the admissibility of the applicant's complaints.

18. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments of the Novogrodovskiy Town Court 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. It must therefore be declared admissible. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

19. The Government maintained that the judgments in the applicant's favour were enforced in full. They further maintained that the responsibility of the State in this situation was limited to the organisation and proper conduct of enforcement proceedings and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company and the energy sector of the Ukrainian economy in general. The Government contended that the Bailiffs' Service performed all necessary actions and cannot be blamed for the delay. The regularity of the enforcement proceedings in the present case was confirmed by the domestic courts. The Government argued that the State could not be considered

responsible for the debts of its enterprises and that the State annually allocated substantial amounts from its budget to cover part of the disability allowances and other compensatory payments to the workers in the mining industry.

20. The applicant disagreed.

21. The Court notes that the judgments of 22 February and 8 May 2002 in the applicant's favour were not enforced, respectively, for more than two years and six months and for more than two years and nine months.

22. 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 like the present application (see, *Sokur v. Ukraine*, cited above, §§ 30-37; *Shmalko v. Ukraine*, cited above, §§ 55-57).

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

24. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed EUR 7,227 in respect of pecuniary and non-pecuniary damage.

27. The Government maintained that the applicant has not substantiated his claims.

28. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and awards him EUR 800 in this respect.

B. Costs and expenses

29. 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

30. 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 under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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 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 800 (eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

   (b) that the above amount shall 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;

   (c) 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;

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

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President