



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF YURIY NIKOLAYEVICH IVANOV v. UKRAINE

(Application no. 40450/04)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

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 Yuriy Nikolayevich Ivanov v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 40450/04) 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 Russian national, Mr Yuriy Nikolayevich Ivanov (“the applicant”), on 13 September 2004.

2. The applicant was represented by Mr I. Pogasiy, a lawyer practising in Kirovograd. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 24 October 2006 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. In accordance with Article 36 § 1 of the Convention, the Russian Government were invited to exercise their right to intervene in the proceedings, but they declined to do so.

5. On 25 November 2008 the Chamber decided to give priority treatment to the above application in accordance with Rule 41 of the Rules of Court and to inform the parties that it was considering the suitability of applying a pilot-judgment procedure in the case (see, for a recent authority, *Burdov v. Russia* (no. 2), no. 33509/04, §§129-130, 15 January 2009). The Chamber also decided to invite the parties, under Rule 54 § 2 (c), to submit further observations on the case.

6. The parties filed further written observations. The applicant requested the Chamber to hold a hearing and to relinquish jurisdiction in favour of the Grand Chamber under Rule 72. The Government objected to a hearing and to relinquishment of the Chamber’s jurisdiction. The Chamber decided,

pursuant to Rule 54 § 3 and Rule 72 §§ 1 and 2, that no hearing was required and that it was not necessary to refer this case to the Grand Chamber.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1957 and lives in Moscow.

A. Proceedings against the military unit

8. In October 2000 the applicant retired from the Ukrainian Army. He was entitled to a lump-sum retirement payment and compensation for his uniform, but the payments were not made to him on his retirement.

9. In July 2001 the applicant instituted proceedings in the Cherkassy Regional Military Court against Military Unit A-1575, seeking recovery of the debt. On 22 August 2001 the court allowed his claim in full and ordered the military unit to pay the applicant 1,449.36 Ukrainian hryvnias (UAH)¹ in compensation for his uniform, UAH 2,512.50² in retirement payment arrears, and UAH 51³ by way of reimbursement for the court fees. On 22 September 2001 the court's judgment became final and enforceable.

10. On an unspecified date the applicant received UAH 2,512.50⁴. The remainder of the award remained unpaid.

11. The enforcement proceedings concerning the judgment of 22 August 2001 commenced on 24 January 2002. In the course of those proceedings the bailiffs informed the applicant that they had frozen the debtor's bank accounts, though no funds had been found in those accounts.

12. In a letter of 12 November 2002 the Ministry of Defence informed the applicant that the legislative provisions entitling him to compensation for his uniform were suspended and that there were no budgetary allocations for such payments.

13. On 5 May 2003 the debtor military unit was disbanded and Military Unit A-0680 became its successor.

14. In a letter of 6 April 2004 the bailiffs informed the applicant that the latter military unit had no money to pay the applicant in compliance with

1. About 296 euros (EUR).

2. About EUR 513.

3. About EUR 10.

4. About EUR 513.

the judgment of 22 August 2001. They also mentioned that the forced sale of assets belonging to military units was prohibited by the law.

15. The judgment of 22 August 2001 remains partially unenforced.

B. Proceedings against the bailiffs

16. In 2002 the applicant lodged with the Leninskyy District Court of Kirovograd (“the Leninskyy Court”) a complaint against the bailiffs, alleging that the judgment of 22 August 2001 had not been enforced because of fault on their part. On 3 December 2002 the court found that the bailiffs had not taken the necessary measures to enforce the judgment in the applicant’s favour and ordered them to identify and freeze the bank accounts of the debtor military unit in order to seize the money available in those accounts.

17. According to the applicant, the bailiffs did not comply with the court’s ruling of 3 December 2002. On 20 May 2003 he lodged a claim with the same court against the bailiffs, seeking compensation for pecuniary and non-pecuniary damage.

18. On 29 July 2003 the applicant’s claim was partly allowed. The Leninskyy Court found that the judgment of 22 August 2001 remained unenforced through the fault of the bailiffs and awarded the applicant UAH 1,500.³⁶¹ in compensation for pecuniary damage and UAH 1,000² for non-pecuniary damage. On 29 August 2003 the judgment of 29 July 2003 became final and enforceable. On 25 February 2004 an appeal by the applicant against the judgment of 29 July 2003 was dismissed as having been lodged out of time.

19. On 3 March 2004 the applicant submitted a written request to the Leninskyy Court to issue a writ of execution in respect of the judgment of 29 July 2003. The applicant did not receive the writ or a reply to his request. The judgment of 29 July 2003 remains unenforced.

20. Throughout the proceedings against the bailiffs, the applicant was assisted and represented by a lawyer.

C. The application to the Court

21. According to the applicant’s lawyer, in order to substantiate the application in the present case he had tried to obtain some unspecified documents from the applicant’s case file kept by the Leninskyy Court. On 13 July 2004 he requested that court to send him all the documents from the case file, without specifying that he needed them for the applicant’s case before the Strasbourg Court.

1. About EUR 256.

2. About EUR 171.

22. In a letter of 29 July 2004 the Leninskyy Court informed the lawyer that he had failed to provide a form of authority and thus could not obtain the documents requested.

23. The applicant's lawyer did not resubmit his request with an authority form.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine of 26 June 1996

24. Article 124 of the Constitution provides as follows:

“... Judicial decisions are adopted by the courts in the name of Ukraine and are mandatory for execution throughout the entire territory of Ukraine.”

B. Criminal Code of 2001

25. Article 382 of the Code provides:

“1. Wilful failure of an official to comply with a sentence, judgment, ruling or resolution of a court which has entered into force, or hindrance of its enforcement,

shall be punishable by a fine [in the amount] of five hundred to one thousand times the statutory non-taxable monthly income, or by deprivation of liberty for a term of up to three years with deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years.

2. The same actions committed by an official occupying a responsible or especially responsible position, or by a person previously convicted of the crime envisaged by this Article, or [the same actions] causing substantial damage to the legally protected rights and freedoms of citizens, State or public interests or the interests of legal entities,

shall be punishable by restraint of liberty for a term of up to five years, or by deprivation of liberty for the same term with deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years.

3. Wilful failure of an official to comply with a judgment of the European Court of Human Rights

shall be punishable by deprivation of liberty for a term of three to eight years with deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years.”

C. Enforcement Proceedings Act of 21 April 1999

26. The Act determines the procedure for forcible execution of decisions of courts and of other competent authorities and officials (“judgments”).

27. Under section 2 of the Act, the enforcement of judgments is entrusted to the State Bailiffs’ Service, which forms part of the Ministry of Justice. Other entities and officials may also carry out enforcement in accordance with the law. In particular, pursuant to section 9, the bodies of the State Treasury are responsible for the enforcement of judgments concerning recovery of money from the State or local budgets or entities financed from the State budget.

28. The Act confers a wide range of powers on bailiffs in enforcement proceedings. In particular, they are entitled to seek and obtain, from any person concerned, information and documents that are necessary for the enforcement of decisions, to enter and inspect premises belonging or occupied by debtors, to seize and sell debtors’ property, to freeze debtors’ bank accounts, and to impose fines on citizens and officials in cases envisaged by the law (sections 4-5 of the Act). The bailiffs’ orders concerning the enforcement of judgments are binding on all entities, organisations, officials and common citizens in the territory of Ukraine. Pursuant to sections 6 and 88 of the Act, the bailiffs are entitled to punish persons failing to comply with their orders by a fine amounting to ten to thirty times the statutory non-taxable monthly income. If the actions of the offenders fall within the ambit of the criminal law, the bailiffs are to request their prosecution.

29. Section 3 of the Act contains a list of documents on the basis of which bailiffs may proceed with forcible execution (“the enforcement documents”). It includes, *inter alia*, writs of execution issued by courts, rulings and resolutions of courts in civil, commercial, administrative and criminal cases, judicial orders, and judgments of the European Court of Human Rights. In order to initiate enforcement proceedings, the person in whose favour the judgment was delivered (“the creditor”) or a prosecutor who represented a citizen or the State in the court proceedings must submit to the bailiffs one of the documents specified in section 3 together with a request for its enforcement (section 18). The bailiffs have three days to determine whether the request was made in compliance with the law and, if so, to start the enforcement proceedings, which must normally be completed within six months (sections 24-25). Section 34 of the Act obliges the bailiffs to suspend the enforcement proceedings in specific situations. Such suspension is compulsory if, for instance, a commercial court has started bankruptcy proceedings against the debtor and imposed a ban on payments in respect of creditors’ claims, or if the debtor is an enterprise included on the list of fuel and energy enterprises taking part in the procedure for

recovery of debts pursuant to the Act on measures designed to ensure the stable functioning of fuel and energy enterprises.

30. Under section 37, enforcement proceedings are to be discontinued in cases where, for example, the judgment has actually been enforced in full, the time allowed for a particular type of debt collection has expired, or the enforcement document has been transferred to the debtor's liquidator following official recognition of the debtor's insolvency. The bailiffs must return the enforcement document to the creditor if, for instance, the debtor does not have property which could be seized with a view to enforcing the judgment and the measures adopted by the bailiffs in order to discover such property have proved to be unsuccessful.

31. Parties to enforcement proceedings or persons involved in them are entitled to challenge the bailiffs' actions or inactivity before their superiors or courts and to claim damages (sections 7, 85 and 86).

32. By the transitional provisions of the Act, the application of sections 4 and 5 was suspended in respect of enterprises included on the list of fuel and energy enterprises taking part in the procedure for recovery of debts pursuant to the Act on measures designed to ensure the stable functioning of fuel and energy enterprises.

D. State Bailiffs' Service Act of 24 March 1998

33. Section 11 of this Act provides that damage caused by bailiffs in the course of execution of a judgment is to be compensated at the expense of the State in accordance with the procedure established by law.

E. Act on Economic Activities in the Armed Forces of Ukraine of 21 September 1999

34. Under section 5 of this Act, a military unit, as an entity taking part in economic activities, is legally responsible for its failure to fulfil its contractual obligations and for damage caused to the environment and to the rights and interests of natural and legal persons and the State. The money allocated under the relevant provisions of its budget, excluding the money allocated in respect of protected items of the budget, may be used to fulfil the unit's obligations. If the amount of money available is insufficient, the Ministry of Defence becomes responsible for the unit's debts. No property allocated to the unit may be used for settlement of its debts.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. Recommendation Rec(2004)6 of the Committee of Ministers to member States on the improvement of domestic remedies, 12 May 2004

35. At its 114th session on 12 May 2004 the Committee of Ministers, having considered the measures needed to guarantee the long-term effectiveness of the control system instituted by the Convention, recommended, *inter alia*, that member States

“review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court...”

36. In the Appendix to the Recommendation of 12 May 2004, the Committee of Ministers noted:

“... The Court is confronted with an ever-increasing number of applications. This situation jeopardises the long-term effectiveness of the system and therefore calls for a strong reaction from contracting parties. It is precisely within this context that the availability of effective domestic remedies becomes particularly important. The improvement of available domestic remedies will most probably have quantitative and qualitative effects on the workload of the Court:

– on the one hand, the volume of applications to be examined ought to be reduced: fewer applicants would feel compelled to bring the case before the Court if the examination of their complaints before the domestic authorities was sufficiently thorough;

– on the other hand, the examination of applications by the Court will be facilitated if an examination of the merits of cases has been carried out beforehand by a domestic authority, thanks to the improvement of domestic remedies...

13. When a judgment which points to structural or general deficiencies in national law or practice (‘pilot case’) has been delivered and a large number of applications to the Court concerning the same problem (‘repetitive cases’) are pending or likely to be lodged, the respondent state should ensure that potential applicants have, where appropriate, an effective remedy allowing them to apply to a competent national authority, which may also apply to current applicants. Such a rapid and effective remedy would enable them to obtain redress at national level, in line with the principle of subsidiarity of the Convention system.

14. The introduction of such a domestic remedy could also significantly reduce the Court’s workload. While prompt execution of the pilot judgment remains essential for solving the structural problem and thus for preventing future applications on the same matter, there may exist a category of people who have already been affected by this problem prior to its resolution...

16. In particular, further to a pilot judgment in which a specific structural problem has been found, one alternative might be to adopt an ad hoc approach, whereby the state concerned would assess the appropriateness of introducing a specific remedy or widening an existing remedy by legislation or by judicial interpretation...

18. When specific remedies are set up following a pilot case, governments should speedily inform the Court so that it can take them into account in its treatment of subsequent repetitive cases..."

B. Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem, 12 May 2004

37. At the same session of 12 May 2004 the Committee of Ministers adopted a resolution, by which it invited the Court to:

" ... I. as far as possible, to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;

II. to specially notify any judgment containing indications of the existence of a systemic problem and of the source of this problem not only to the state concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General of the Council of Europe and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court."

C. Interim Resolution of the Committee of Ministers on the execution of the judgments of the European Court of Human Rights in 232 cases against Ukraine relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy, 6 March 2008

38. On 6 March 2008 the Committee of Ministers considered, pursuant to Article 46 § 2 of the Convention, the measures adopted by the Government of Ukraine with a view to complying with the Court's judgments concerning the issue of the prolonged non-enforcement of final domestic decisions. The Committee adopted an interim resolution (CM/ResDH(2008)1), the relevant provisions of which read as follows:

"The Committee of Ministers...

EXPRESSES PARTICULAR CONCERN that notwithstanding a number of legislative and other important initiatives, which have been repeatedly brought to the

attention of the Committee of Ministers, little progress has been made so far in resolving the structural problem of non-execution of domestic judicial decisions;

STRONGLY ENCOURAGES the Ukrainian authorities to enhance their political commitment in order to achieve tangible results and to make it a high political priority to abide by their obligations under the Convention and by the Court's judgments, to ensure full and timely execution of the domestic courts' decision;

CALLS UPON the Ukrainian authorities to set up an effective national policy, coordinated at the highest governmental level, with a view to effectively implementing the package of measures announced and other measures which may be necessary to tackle the problem at issue;

URGES the Ukrainian authorities to adopt as a matter of priority the draft laws that were announced before the Committee of Ministers, in particular the law *On Amendments to Certain Legal Acts of Ukraine (on the protection of the right to pre-trial and trial proceedings and enforcement of court decisions within reasonable time)*;

ENCOURAGES the authorities, pending the adoption of the draft laws announced, to consider the adoption of interim measures limiting as far as possible the risk of new violations of the Convention of the same kind, and in particular:

- to consider the adoption of measures similar to those taken in the education sector in other sectors which raise similar problems;
- to take measures to ensure effective management and control over state entities and enterprises to avoid debts arising to employees;
- to ensure in practice the effective liability of civil servants for non-enforcement;
- to award compensation for delays in enforcement of domestic judicial decisions directly on the basis of the Convention's provisions and the Court's case-law as provided by the Law on enforcement of judgments and the application of the case-law of the European Court;

INVITES the Ukrainian authorities to consider, in addition to the measures announced, appropriate solutions in the following areas:

- to improve budgetary planning, particularly by ensuring compatibility between the budgetary laws and the state's payment obligations;
- to ensure the existence of specific mechanisms for rapid additional funding to avoid unnecessary delays in the execution of judicial decisions in case of shortfalls in the initial budgetary appropriations; and
- to ensure the existence of an effective procedure and funds for the execution of domestic courts' judgements delivered against the state..."

D. Decision of the Committee of Ministers on 300 cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments, 8 June 2009

39. From 2 to 5 June 2009 the Committee of Ministers resumed consideration under Article 46 § 2 of the Convention of the group of the Court's judgments against Ukraine concerning the failure to enforce, or delays in the enforcement of, domestic decisions. The following decision (CM/Del/Dec(2009)1059) was adopted by the Committee on that subject:

“The Deputies,

1. recalled that, as acknowledged by the Committee of Ministers in its Interim Resolution CM/ResDH(2008)1, the non-enforcement of domestic judicial decisions constitutes a structural problem in Ukraine;

2. noted that there are still a number of cases in which domestic court decisions remain unenforced despite the judgments of the European Court;

3. noted with concern that, notwithstanding the efforts made by the Ukrainian authorities in adopting interim measures, the structural problem underlying the violations has not been solved;

4. observed that failure to adopt all necessary measures, including previously announced legislative measures, has resulted in a steady increase in the number of new applications lodged with the European Court concerning non-enforcement of domestic judicial decisions;

5. noted with concern in this context that priority has not been given to setting up a domestic remedy in case of non-enforcement or delayed enforcement of domestic judicial decisions, despite the Committee's repeated calls to this effect;

6. called upon the Ukrainian authorities once again to take rapidly the necessary action to ensure Ukraine's compliance with its obligations under the Convention, and in particular to reconsider the various proposal for reforms made during the examination of these cases (see, in particular, CM/Inf/DH(2007)30 revised and CM/Inf/DH(2007)33);

7. decided to resume consideration of these items at the latest at their 1072nd meeting (December 2009) (DH), possibly in light of a draft interim resolution taking stock of the general and individual measures adopted by then and other outstanding issues if any.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

40. The applicant complained about the non-enforcement of the judgments of the Cherkassy Regional Military Court of 22 August 2001 and of the Leninsky District Court of 29 July 2003, and of the ruling of the Leninsky District Court of 3 December 2002. He invoked in this respect Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, in so far as relevant:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] tribunal...”

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...”

A. The parties' submissions

41. The Government submitted that Article 6 § 1 of the Convention was inapplicable *ratione materiae* to the proceedings concerning compensation for the uniform which the applicant had been obliged to wear in the exercise of his public functions. In their view, the award was of a public-law nature and was not decisive for the applicant's private-law rights or obligations. Relying on the same grounds, they suggested that there had been no interference with the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 in respect of the award of 22 August 2001.

42. The Government further argued that that the applicant had not exhausted domestic remedies and had not acquired victim status in respect of his complaints relating to the non-enforcement of the judgment of 29 July 2003, as he had failed to lodge with the Bailiffs' Service a writ of execution for the initiation of enforcement proceedings in respect of that judgment. They submitted that the State was not responsible for its enforcement.

43. The Government therefore invited the Court to declare the application inadmissible.

44. The applicant disagreed. In particular he contended that Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 were applicable in his case, as he had discontinued his service in the Army and the award of 22 August 2001 was of a private nature. He further argued that he could not institute enforcement proceedings in respect of the judgment of 29 July 2003 because of the authorities' failure to provide him with a writ of execution for that judgment.

B. The Court's assessment

1. Admissibility

45. The Court observes that it has already held in similar cases against Ukraine that Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 are applicable to proceedings concerning claims for compensation for a military officer's uniform as such proceedings concern the right to compensation and not, as the Government put it, title to the uniform; that at the material time the applicants in those cases had already retired from public service and had access to a court under national law, and that a judgment debt constitutes a possession for the purposes of Article 1 of Protocol No. 1 (see, for instance, *Voytenko v. Ukraine*, no. 18966/02, §§ 51-54, 29 June 2004, and *Peretyatko v. Ukraine*, no. 37758/05, § 16, 27 November 2008). The Court finds no reason to reach a different conclusion in the present case.

46. As regards the question of the admissibility of the complaints concerning the non-enforcement of the judgment of 29 July 2003, the Court reiterates that a person who has obtained a final judgment against the State cannot be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004, and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). In such cases, the defendant State authority which was duly notified of the judgment must take all necessary measures to comply with it or to transmit it to another competent authority for execution (see *Burdov (no. 2)*, cited above, § 68).

47. Furthermore, the Court notes that the enforcement of the judgment of 29 July 2003 depended on the availability of sufficient budgetary allocations for such purposes and the bailiffs had no power to compel the State to amend its budget laws (see, for instance, *Voytenko*, cited above, § 30; *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 14, 28 February 2006; and *Vasylyev v. Ukraine*, no. 10232/02, § 29, 13 July 2006).

48. Therefore, the Court finds that the applicant cannot be criticised for not lodging with the Bailiffs' Service an application, or a writ of execution, for the initiation of enforcement proceedings.

49. On the same grounds the Court finds that this state of affairs engaged the responsibility of the State for the enforcement of the judgment of 29 July 2003 and that the applicant may claim to be the victim of a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in relation to its non-enforcement.

50. In view of the above considerations, the Court dismisses the Government's objections to the admissibility of this part of the application and concludes that it raises 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. Accordingly, this part of the application must be declared admissible.

2. Merits

(a) General principles

51. The Court reiterates that the right to a court protected by Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). The effective access to court includes the right to have a court decision enforced without undue delay (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 66, ECHR 1999-V).

52. In the same context, the impossibility for an applicant to obtain the execution of a judgment in his or her favour in due time constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Voytenko*, cited above, § 53).

53. An unreasonably long delay in the enforcement of a binding judgment may therefore breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, and the amount and nature of the court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007). In assessing the reasonableness of the delay in enforcement due regard must be paid to the fact that a delay of one year and four months in the enforcement of a monetary award against the State body has been found by the Court to be excessive (see *Zubko and Others v. Ukraine*, nos. 3955/04, 5622/04, 8538/04 and 11418/04, § 70, ECHR 2006-VI).

54. The Court further reiterates that it is the State's obligation to ensure that final decisions against its organs, or entities or companies owned or controlled by the State, are enforced in compliance with the above-mentioned Convention requirements (see *Voytenko*, cited above; *Romashov v. Ukraine*, no. 67534/01, 27 July 2004; *Dubenko v. Ukraine*, no. 74221/01,

11 January 2005; and *Kozachek v. Ukraine*, no. 29508/04, 7 December 2006). It is not open to the State to cite lack of funds as an excuse for not honouring judgments against it or against entities or companies owned or controlled by it (see *Shmalko v. Ukraine*, no. 60750/00, § 44, 20 July 2004). The State is responsible for the enforcement of final decisions if the factors impeding or blocking their full and timely enforcement are within the control of the authorities (see *Sokur v. Ukraine*, no. 29439/02, 26 April 2005, and *Kryshchuk v. Ukraine*, no. 1811/06, 19 February 2009).

(b) Application of these principles to the present case

55. The Court observes that in the present case the judgment of the Cherkassy Regional Military Court of 22 August 2001 has not been fully enforced so far, the delay in its enforcement being about seven years and ten months. The judgment of the Leninskyy District Court of 29 July 2003 has remained unenforced for about five years and eleven months. The Government's submissions do not contain any justification for such substantial delays in the enforcement of the judgments in the applicant's favour. The Court notes that the delays were caused by a combination of factors, including the lack of budgetary funds, omissions on the part of the bailiffs, and shortcomings in the national legislation, as a result of which there existed no possibility for the applicant to have the judgments enforced in the event of a lack of budgetary allocations for such purposes (see paragraphs 12, 14, 16, 18, 30, and 34 above). The Court considers that those factors were not outside the control of the authorities and thus holds the State fully responsible for this state of affairs.

56. The Court observes that it has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to those raised in the present case (see, for example, *Sinko v. Ukraine*, no. 4504/04, § 17, 1 June 2006, and *Kozachek*, cited above, § 31). There are no arguments in the case capable of persuading the Court to reach a different conclusion.

57. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the prolonged non-enforcement of the judgments of the Cherkassy Regional Military Court of 22 August 2001 and of the Leninskyy District Court of 29 July 2003.

58. In view of its above findings, the Court does not consider it necessary to examine the applicant's complaint under the same provisions about the non-enforcement of the ruling of the Leninskyy District Court of 3 December 2002, by which the bailiffs were ordered to take specific measures with a view to enforcing the judgment of 22 August 2001, as that ruling concerned no more than an incidental matter which arose in the

course of the enforcement of the latter judgment (see *Zhmak v. Ukraine*, no. 36852/03, § 21, 29 June 2006).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. The applicant complained of the lack of effective domestic remedies in respect of his complaints about the non-enforcement of the judgments in his favour. He relied on Article 13 of the Convention, which provides as follows:

“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. The parties’ submissions

60. Relying on their objection to the applicability of Article 6 § 1 of the Convention (see paragraph 41 above), the Government initially argued that Article 13 of the Convention was equally not applicable in the applicant’s case. In their further observations the Government did not elaborate on that matter, despite the Court’s explicit request for the parties’ additional observations on the question of domestic remedies in respect of the prolonged non-enforcement of domestic judgments.

61. The applicant maintained his allegations about the lack of effective remedies in the Ukrainian legal system in respect of the matters raised in the present case.

B. The Court’s assessment

1. *Admissibility*

62. The Court notes that this part of the application is linked to the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 examined above and must therefore likewise be declared admissible (see paragraphs 45-50 above).

2. *Merits*

(a) General principles

63. The Court reiterates that Article 13 of the Convention gives direct expression to the States’ obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own

legal system. It therefore requires that the States provide a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

64. The scope of the Contracting States’ obligations under Article 13 of the Convention varies depending on the nature of the applicant’s complaint; the “effectiveness” of a “remedy” within the meaning of this provision does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be “effective” in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła*, cited above, §§ 157-158, and *Wasserman v. Russia* (no. 2), no. 21071/05, § 45, 10 April 2008).

65. The Court has already given an extensive interpretation of the requirements of Article 13 of the Convention as regards complaints of non-enforcement of domestic court decisions in the recent judgment of *Burdov* (no. 2) (cited above, §§ 98-100), the relevant parts of which read as follows:

“98. As regards more particularly length-of-proceedings cases, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 183, ECHR 2006-...). Likewise, in cases concerning non-enforcement of judicial decisions, any domestic means to prevent a violation by ensuring timely enforcement is, in principle, of greatest value. However, where a judgment is delivered in favour of an individual against the State, the former should not, in principle, be compelled to use such means (see, *mutatis mutandis*, *Metaxas*, cited above, § 19): the burden to comply with such a judgment lies primarily with the State authorities, which should use all means available in the domestic legal system in order to speed up the enforcement, thus preventing violations of the Convention (see, *mutatis mutandis*, *Akashev*, cited above, §§ 21-22).

99. States can also choose to introduce only a compensatory remedy, without that remedy being regarded as ineffective. Where such a compensatory remedy is available in the domestic legal system, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. The Court is nonetheless required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the Convention principles, as interpreted in the light of the Court’s case-law (see *Scordino*, cited above, §§ 187-191). The Court has set key criteria for verification of the effectiveness of a compensatory remedy in respect of the excessive length of judicial proceedings. These criteria, which also apply to non-enforcement cases (see *Wasserman*, cited above, §§ 49 and 51), are as follows:

- an action for compensation must be heard within a reasonable time (see *Scordino*, cited above, § 195 *in fine*);

- the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable (*ibid.*, § 198);
- the procedural rules governing an action for compensation must conform to the principle of fairness guaranteed by Article 6 of the Convention (*ibid.*, § 200);
- the rules regarding legal costs must not place an excessive burden on litigants where their action is justified (*ibid.*, § 201);
- the level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases (*ibid.*, §§ 202-206 and 213).

100. On this last criterion, the Court indicated that, with regard to pecuniary damage, the domestic courts are clearly in a better position to determine the existence and quantum. The situation is, however, different with regard to non-pecuniary damage. There exists a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage (see *Scordino*, cited above, §§ 203-204, and *Wasserman*, cited above, §50). The Court considers this presumption to be particularly strong in the event of excessive delay in enforcement by the State of a judgment delivered against it, given the inevitable frustration arising from the State's disregard for its obligation to honour its debt and the fact that the applicant has already gone through judicial proceedings and obtained success..."

(b) Application of these principles in cases against Ukraine and in the present case

66. The Court refers to one of its first cases against Ukraine, in which it considered the issue of the availability of effective domestic remedies in respect of complaints of prolonged non-enforcement of judgments and made the following conclusions on that issue (see *Voytenko*, cited above, §§ 30 -31 and 48):

"30. The Government invoked the possibility for the applicant to challenge any inactivity or omissions on the part of the Bailiffs' Service and the Treasury, and to seek compensation for pecuniary and non-pecuniary damage caused by them. In the present case, however, the debtor is a State body and the enforcement of judgments against it, as it appears from the case file, can only be carried out if the State foresees and makes provision for the appropriate expenditures in the State Budget of Ukraine by taking the appropriate legislative measures. The facts of the case show that, throughout the period under consideration, the enforcement of the judgment in question was prevented precisely because of the lack of legislative measures, rather than by a bailiff's misconduct. The applicant cannot therefore be reproached for not having taken proceedings against the bailiff (see *Shestakov v. Russia*, decision, no. 48757/99, 18 June 2002). Moreover, the Court notes that the Government maintained that there were no irregularities in the way the Bailiffs' Service and the Treasury had conducted the enforcement proceedings.

31. In these circumstances, the Court concludes that the applicant was absolved from pursuing the remedy invoked by the Government.

...48. The Court refers to its findings (at paragraphs 30-31 above) in the present case concerning the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings. Accordingly, there has been a breach of this provision..."

67. The Court confirmed its above findings in subsequent cases raising a similar issue (see, for instance, *Romashov*, cited above, §§ 31-32 and 47; *Garkusha v. Ukraine*, no. 4629/03, §§ 18-20, 13 December 2005; *Mikhaylova and Others v. Ukraine*, no. 16475/02, §§ 27 and 36, 15 June 2006; *Vasylyev*, cited above, §§ 31-33 and 41; *Raisa Tarasenko v. Ukraine*, no. 43485/02, § 13, 14 and 23, 7 December 2006; and *Pivnenko v. Ukraine*, no. 36369/04, §§ 18-20, 12 October 2006).

68. Turning to the present case, the Court finds that there is nothing in the parties' submissions to suggest that there existed a remedy at national level satisfying the requirements of Article 13 of the Convention in respect of the applicant's complaints about the non-enforcement of the judgments in his favour.

69. The proceedings which the applicant instituted against the bailiffs, despite their outcome in his favour, did not provide him with an opportunity to prevent or put right the violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 subsequently found by the Court in his case. While it is true that, in the final judgment of 29 July 2003, the bailiffs were held responsible for the prolonged non-enforcement of the judgment of 22 August 2001 and were ordered to pay compensation to the applicant, this did not improve his situation, since the enforcement of the judgment of 22 August 2001 was not completed, let alone accelerated, and the compensation awarded in the judgment of 29 July 2003 remained unpaid.

70. Accordingly, the Court finds that there has been a breach of Article 13 of the Convention in the present case.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

71. The applicant alleged that his lawyer had been unable to obtain some unspecified documents from the applicant's case file kept by the Leninskyy Court which he had deemed necessary for the substantiation of the present application. He invoked Article 34 of the Convention, which reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

72. The Court notes that it received copies from the applicant and his lawyer of all documents which it considered necessary to deal with the present case. Furthermore, the Court observes that the lawyer did not submit a power of attorney to the Leninskyy Court authorising him to act on behalf of the applicant. On the whole, the application does not contain any appearance of hindrance in the exercise of the applicant's right under Article 34 of the Convention. Accordingly, no further examination of this matter is required (see, *mutatis mutandis*, *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004).

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

73. The Court notes that the instant case concerns a recurring problem underlying the most frequent violations of the Convention found by the Court in respect of Ukraine; more than half of its judgments in Ukrainian cases have concerned the issue of prolonged non-enforcement of final decisions for which the Ukrainian authorities were responsible. The Court observes that one of the first such judgments, delivered in June 2004, was based on facts similar to the circumstances of the present case (see *Voytenko*, cited above). In particular, in the case of *Voytenko* the applicant could not receive the sums awarded to him in relation to the termination of his military service for about four years. As well as finding a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the delay in the enforcement of the domestic award in *Voytenko*, the Court concluded that the Ukrainian legal system offered no effective domestic remedy, as required by Article 13 of the Convention, to prevent delays in the enforcement of judgments or to afford redress for the damage created by such delays.

74. The instant case demonstrates that the issues of the prolonged non-enforcement of final decisions and of the lack of effective domestic remedies in the Ukrainian legal system remain without a solution, despite the fact that there is clear case-law urging the Government to take appropriate measures to resolve those issues.

75. In these circumstances the Court considers it necessary to examine this case under Article 46 of the Convention, which reads as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

A. The parties' submissions

76. The applicant submitted that the Ukrainian authorities' recurrent failure to enforce domestic decisions delivered against the authorities or companies owned or controlled by the State and to introduce an effective domestic remedy constituted a systemic problem. He referred to several cases raising similar issues which had already been determined with final effect by the Court, including *Svintitskiy and Goncharov v. Ukraine* (no. 59312/00, 4 October 2005); *Mikhaylova and Others v. Ukraine* (no. 16475/02, 15 June 2006); *Aleksandr Shevchenko v. Ukraine* (no. 8371/02, 26 April 2007); *Kolesnik v. Ukraine* (no. 20824/02, 10 April 2008); *Maydanik v. Ukraine* (no. 20826/02, 10 April 2008); and *Tishchenko v. Ukraine* (no. 33892/04, 25 September 2008).

77. The Government submitted that the problems impeding the enforcement of domestic decisions differed in particular cases. In some instances, domestic decisions remained unenforced because of the lack of budgetary allocations, whereas in other cases this was due to shortcomings in national legislation and administrative practice, or, as in the present case, because of omissions or inaction on the part of the bailiffs. In their view, this case therefore did not concern a systemic problem. The Government further argued that the pilot-judgment procedure should not be applied in the present case as the measures aimed at resolving the problems of prolonged non-enforcement had already been determined by the Committee of Ministers in its Interim Resolution of 6 March 2008. They suggested that the application of such a procedure in the present case would amount to the performance of a supervisory function by the Court.

B. The Court's assessment

1. Application of the pilot-judgment procedure

78. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000 VIII; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002 VI; *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008-...).

79. In its resolution on judgments revealing an underlying systemic problem, adopted on 12 May 2004, the Committee of Ministers invited the Court “to identify in its judgments finding a violation of the Convention what it considers to be an underlying systemic problem and the source of that problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments” (see paragraph 37 above).

80. In order to facilitate the effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent state to remedy them (see *Broniowski v. Poland* [GC], 31443/96, §§ 189-194 and the operative part, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC] no. 35014/97, §§ 231-239 and the operative part, ECHR 2006-VIII).

81. In line with its approach in the case of *Burdov (no. 2)* (cited above, §§ 129-130), which concerned similar issues of non-enforcement of domestic decisions in the Russian Federation, the Court considers it appropriate to apply the pilot-judgment procedure in the present case, given notably the recurrent and persistent nature of the underlying problems, the large number of people affected by them in Ukraine and the urgent need to grant them speedy and appropriate redress at domestic level.

82. Contrary to the Government’s submissions, the application of the pilot-judgment procedure in the present case does not run counter to the division of functions between the Convention institutions. Although it is for the Committee of Ministers to supervise the implementation of measures designed to satisfy the respondent State’s obligations under Article 46 of the Convention, it is the Court’s task, as defined by Article 19 of the Convention, to “ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto” and this task is not necessarily best achieved by repeating the same findings in large series of cases (see, *mutatis mutandis*, *E.G. v. Poland* (dec.), no. 50425/99, § 27, 23 September 2008). Therefore, in view of the recurrent problems with which the Court is dealing in the present case, it is within its competence to apply the pilot-judgment procedure in order to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at domestic level (see *Burdov (no. 2)*, cited above, § 127).

2. Existence of a practice incompatible with the Convention

83. The Court notes that it has delivered judgments in more than 300 cases against Ukraine during the past five years since its first judgments (see, for instance, *Voytenko*, cited above) finding repetitive violations of the

Convention on account of the non-enforcement or the lengthy enforcement of final domestic awards in Ukraine and on account of the absence of effective domestic remedies in respect of such shortcomings. While it is true that there are some vulnerable groups of the Ukrainian population who are affected by those problems more than others, it is not necessarily the case that persons in the same situation as the applicant belong to “an identifiable class of citizens” (compare *Broniowski*, cited above, § 189, and *Hutten-Czapska*, cited above, § 229). As follows from the Court’s current case-law on the matter, any person who has obtained a final domestic decision for the enforcement of which the Ukrainian authorities are responsible runs the risk of being deprived of the possibility of drawing benefit from such a decision in compliance with the Convention.

84. The Court sees no reason to disagree with the Government that the delays in the enforcement of final domestic decisions are caused by a variety of dysfunctions in the Ukrainian legal system. In particular, the Court refers to its findings under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in the present case that the enforcement of the judgments in the applicant’s favour was hindered by a combination of factors, including the lack of budgetary allocations, the bailiffs’ omissions and the shortcomings in the national legislation (see paragraph 55 above). In other cases raising similar issues, applicants have been unable to obtain the enforcement of court awards in due time because of the authorities’ failure to take specific budgetary measures, or because of the introduction of bans on the attachment and sale of property belonging to State-owned or controlled companies (see, for instance, *Romashov*, *Dubenko* and *Kozachek*, all cited above).

85. The Court notes that the above-mentioned factors were all within the control of the State, which has failed so far to adopt any measures aimed at improving the situation, despite the Court’s substantial and consistent case-law on the matter.

86. The systemic character of the problems identified in the present case is further evidenced by the fact that approximately 1,400 applications against Ukraine, which concern, fully or in part, the above problems, are currently pending before the Court and the number of such applications is constantly increasing.

87. The Court pays due regard to the position of the Committee of Ministers, which has acknowledged that the non-enforcement of domestic judicial decisions constitutes a structural problem in Ukraine which remains unsolved (see paragraphs 38-39 above).

88. In view of the foregoing, the Court concludes that the violations found in the present judgment were neither prompted by an isolated incident, nor were they attributable to a particular turn of events in this case, but were the consequence of regulatory shortcomings and administrative conduct of the State authorities with regard to the enforcement of domestic

decisions for which they were responsible. Accordingly, the situation in the present case must be qualified as resulting from a practice incompatible with the Convention (see *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V, and *Burdov (no. 2)*, cited above, §§ 134-135).

3. Adoption of general measures to remedy the structural problems underlying violations of the Convention in the present case

89. The Court reiterates that it is in principle not its task to determine what remedial measures may be appropriate to satisfy the respondent State's obligations under Article 46 of the Convention. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta*, cited above, § 249).

90. The structural problems with which the Court is dealing in the present case are large-scale and complex in nature. They *prima facie* require the implementation of comprehensive and complex measures, possibly of a legislative and administrative character, involving various domestic authorities. Indeed, the Committee of Ministers is better placed and equipped to monitor the measures to be adopted by Ukraine in this respect.

91. The Court notes with satisfaction that the adoption of measures in response to the structural problems of prolonged non-enforcement and the lack of domestic remedies have been thoroughly considered by the Committee of Ministers in cooperation with the Ukrainian authorities (see paragraphs 38-39 above). However, as is evident from the Court's own findings in the present case and similar cases against Ukraine, viewed in conjunction with other relevant material in its possession, the respondent State has demonstrated an almost complete reluctance to resolve the problems at hand.

92. The Court stresses that specific reforms in Ukraine's legislation and administrative practice should be implemented without delay in order to bring it into line with the Court's conclusions in the present judgment and to comply with the requirements of Article 46 of the Convention. The Court leaves it to the Committee of Ministers to determine what would be the most appropriate way to tackle the problems and to indicate any general measure to be taken by the respondent State.

93. In this context, the Court refers to the basic principles deriving from its case-law on the issue, to which the required general measures must conform (see paragraphs 45-46 and 51-54 above).

94. In any event, the respondent State must introduce without delay, and at the latest within one year from the date on which the judgment becomes final a remedy or a combination of remedies in the national legal system and ensure that the remedy or remedies comply, both in theory and in practice,

with the key criteria set by the Court and reiterated in the present judgment (see paragraphs 63-65 above). In so doing, the Ukrainian authorities should also have due regard to the Committee of Ministers' recommendations to the member States on the improvement of domestic remedies (see paragraphs 35-36 above).

4. Procedure to be followed in similar cases

95. The Court reiterates that one of the aims of the pilot-judgment procedure is to allow the speediest possible redress to be granted at domestic level to the large numbers of persons suffering from the structural problem identified in the pilot judgment (see *Burdov (no.2)*, cited above, § 127). While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. The Court is thus in a position to decide in the pilot judgment on the procedure to be followed in cases stemming from the same structural problems (see, *mutatis mutandis*, *Broniowski*, cited above, § 198, and *Xenides-Arestis v. Turkey*, no. 46347/99, § 50, 22 December 2005).

96. In the present circumstances, the Court finds it necessary to adjourn the examination of similar cases pending the implementation of the relevant measures by the respondent State. The Court considers it appropriate to differentiate between cases already pending before it and those that may arrive after the delivery of the present judgment, thereby giving the respondent State an opportunity to settle the former category of cases in various ways, as indicated below.

(a) Applications lodged after the delivery of the present judgment

97. The Court will adjourn proceedings concerning all new applications lodged with it after the delivery of the present judgment in which the applicants raise arguable complaints relating solely to the prolonged non-enforcement of domestic decisions for the execution of which the State is responsible, including applications in which complaints alleging a lack of effective remedies in respect of such non-enforcement are also raised. The adjournment will be effective for a period of one year after the present judgment becomes final. The applicants in such cases will be informed accordingly.

(b) Applications lodged before the delivery of the present judgment

98. The Court decides, however, to follow a somewhat different course of action in respect of applications lodged before the delivery of the present judgment. In particular, following the delivery of the present judgment the

Court will give notice to the Government of Ukraine of applications which raise similar issues to those raised in the present case and contain no other arguable complaints. The adversarial proceedings in all such cases will be adjourned for one year from the date on which this judgment becomes final. Proceedings in cases which have already been communicated to the Government under Rule 54 § 2 (b) of the Rules of Court, but in which the Court has not yet decided on the merits, will also be adjourned for the same period of time.

99. Meanwhile, the respondent State must grant adequate and sufficient redress, within one year from the date on which the present judgment becomes final, to all applicants in the cases mentioned in the preceding paragraph whose complaints about the prolonged non-enforcement of domestic decisions have been communicated to the respondent Government. The Court reiterates that delays in the enforcement of domestic decisions should be calculated and assessed by reference to the Convention requirements and, notably, in accordance with the criteria defined in the present judgment (see in particular paragraph 53 above). In the Court's view, such redress may be achieved through implementation *proprio motu* by the authorities of an effective domestic remedy in those cases or through *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements (see paragraph 95 above).

100. If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to resume the examination of all similar applications pending before it and to take them to judgment so as to ensure effective observance of the Convention (see, *mutatis mutandis*, *E.G.*, cited above, § 28).

101. The decision to adjourn the above cases will be taken without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant, referring to the fact that the court awards remained unpaid to him for a very lengthy period of time, claimed UAH 1,837.63¹ to cover inflation-linked adjustments of the outstanding debt resulting from the judgments in his favour. In support of that claim, the applicant provided detailed calculations based on the official inflation rates issued by the State Statistics Committee of Ukraine. According to the calculations, as a result of inflation the amounts due to him lost approximately half in their value. The applicant also claimed EUR 7,000 in respect of non-pecuniary damage.

104. The Government contested the applicant’s claims as excessive and unsubstantiated. As regards the claims for inflation losses, they argued that the applicant had provided no documents in support of his calculations.

105. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgments at issue.

106. The Court further notes that the applicant’s claim in respect of inflation-linked adjustments is supported by detailed calculations based on the official data on inflation rates. Taking into account the fact that the Government did not dispute the method of calculation employed by the applicant or the accuracy of his calculations (see, for example, *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006), the Court awards him the amount claimed, namely EUR 174.

107. As to the claim in respect of non-pecuniary damage, the Court finds that the applicant must have suffered some distress and anxiety on account of the violations found. Ruling on an equitable basis, it awards him EUR 2,500 under this head.

B. Costs and expenses

108. The applicant also claimed UAH 4,350² for the costs and expenses incurred before the domestic courts and UAH 14,000³ for those incurred

1. About EUR 174.

2. About EUR 413.

3. About EUR 1,327.

before the Court. He produced contracts for legal services and receipts providing evidence of payments made to his lawyer.

109. The Government submitted that the above claims were exorbitant and requested the Court to consider them in the light of the criteria laid down in its case-law, referring in particular to *Tolstoy Miloslavsky v. the United Kingdom* (13 July 1995, § 77, Series A no. 316-B).

110. The Court reiterates that, according to its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the requested amount of EUR 1,740.

C. Default interest

111. 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* admissible the complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 and the remainder of the applicant's complaints inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that the above violations originated in a practice incompatible with the Convention which consists in the respondent State's recurrent failure to comply in due time with domestic decisions for the enforcement of which it is responsible and in respect of which aggrieved parties have no effective domestic remedy;
5. *Holds* that the respondent State must set up without delay, and at the latest within one year from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, an effective domestic remedy or combination of such remedies capable of securing adequate and sufficient redress for the non-enforcement or delayed

enforcement of domestic decisions, in line with the Convention principles as established in the Court's case-law;

6. *Holds* that the respondent State must grant such redress, within one year from the date on which the judgment becomes final, to all applicants whose applications pending before the Court were communicated to the Government under Rule 54 § 2 (b) of the Rules of Court before the delivery of the present judgment or will be communicated further to this judgment and concern arguable complaints relating solely to the prolonged non-enforcement of domestic decisions for which the State was responsible, including where complaints alleging a lack of effective remedies in respect of such non-enforcement are also raised;
7. *Holds* that pending the adoption of the above measures, the Court will adjourn, for one year from the date on which the judgment becomes final, the proceedings in all cases in which the applicants raise arguable complaints relating solely to the prolonged non-enforcement of domestic decisions for which the State is responsible, including cases in which complaints alleging a lack of effective remedies in respect of such non-enforcement are also raised, without prejudice to the Court's power at any moment to declare any such case inadmissible or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final:
 - (i) the outstanding debt under the judgments of 22 August 2001 and 29 July 2003 and EUR 174 (one hundred and seventy-four euros) to cover inflation-linked adjustments;
 - (ii) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,740 (one thousand seven hundred and forty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (b) that the above sums be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President