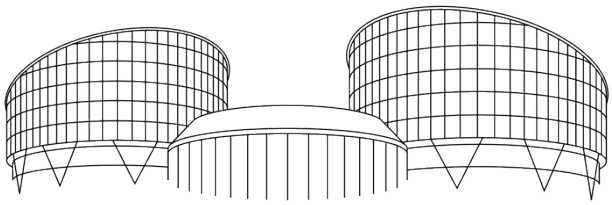

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF KISELYOV v. UKRAINE

*(Application no. 42953/04)*

JUDGMENT

STRASBOURG

13 June 2013

*This judgment is final but it may be subject to editorial revision.*

**In the case of Kiselyov v. Ukraine,**

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

Angelika Nußberger, *President,*
Ganna Yudkivska,
André Potocki, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 21 May 2013,

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

# PROCEDURE

1. The case originated in an application (no. 42953/04) 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 Ukrainian national, Mr Andrey Aleksandrovich Kiselyov ("the applicant"), on 30 November 2004.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr N. Kulchytskyy.

3. On 1 June 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

# THE FACTS

## THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in Simferopol.

### A. First set of proceedings

#### *1. Consideration of the case by the courts*

5. On 11 February 2002 the applicant challenged the actions of his former commander and claimed the payment of various allowances and compensation for non-pecuniary damage. On 27 March 2002 the Simferopol Garrison Court allowed the applicant's claims. By a decision of 18 June 2002 the Navy Court of Appeal quashed that judgment. The proceedings were severed into three separate sets.

6. By a judgment of 6 March 2003, the Simferopol Garrison Court declared unlawful, *inter alia*, the commander's refusal to pay allowances due to the applicant on the date of his retirement, and ordered the commander to grant the applicant's claim in that part. By the same judgment the court also awarded the applicant UAH 3,800 in compensation for non-pecuniary damage. On 12 June 2003 the Navy Court of Appeal reduced that amount and upheld the remainder of the judgment with minor amendments. On 26 November 2003 the Supreme Court upheld the judgment of 12 June 2003.

7. On 11 December 2003 and 25 December 2003 the Simferopol Garrison Court considered the remainder of the applicant's claim, as severed from the initial claim, and awarded him, respectively, 2,263.40 Ukrainian hryvnias (approximately 331 euros (EUR)) and UAH 204 (approximately EUR 30) in respect of various payments due to him on the date of his retirement. On 4 March 2004 the Navy Court of Appeal upheld those judgments. On 26 May and 9 June 2004 those judgments were also upheld by the Supreme Court.

*2. Enforcement of the judgments of 11 December 2003 and 25 December 2003*

8. According to the Government, between 22 February 2005 and 25 December 2008 bailiffs partly enforced the judgment of 11 December 2003, paying UAH 1,670.63 to the applicant. The Government stated that as of 28 September 2010 the outstanding debt was UAH 592,77. According to the applicant, it was UAH 1,399.97.

9. On 22 February 2005 bailiffs fully enforced the judgment of 25 December 2003.

## B. Second set of proceedings

10. On 6 September 2002 the applicant lodged a civil claim with the Zheleznodorozhnyy District Court of Simferopol ("the District Court) against the military unit, the Ministry of Defence, the Ministry of Finance, the State Treasury and the State Insurance Fund for Work-Related Accidents and Diseases ("the Fund"). The applicant claimed the payment of compensation for damage caused to him a result of his disability. He also claimed that the defendants failed to provide him with free housing. On 9 March 2004 the District Court decided to sever the proceedings (see below).

*1. Proceedings in respect of the compensation claim*

11. On 3 February 2005 the District Court partly allowed the applicant's claim. He was awarded compensation, to be paid by the Fund. On 25 May

2005 the Court of Appeal of the Autonomous Republic of Crimea quashed the part of the judgment concerning the Fund's obligation to pay compensation and awarded the applicant UAH 27,923.65 in compensation for pecuniary and non-pecuniary damage, to be paid by the Ministry of Defence. By the same judgment the applicant was entitled to receive an allowance of UAH 673.57 in the period from 1 May to 1 November 2005. On 19 December 2007 the Zhaporizhzhya Regional Court of Appeal, acting as a court of cassation, upheld that judgment.

*2. Proceedings concerning the applicant's claim for free housing*

12. The case has been considered by the District Court and the Court of Appeal of the Autonomous Republic of Crimea; however, no decision on the merits has been adopted. As of 28 September 2010 the proceedings were still pending before the District Court.

13. According to the information provided by the Government, there were fifteen adjournments of the hearings, four of them due to the parties' failure to appear and two of them to the applicant's failure to appear. On two occasions the proceedings were suspended pending the outcome of other proceedings: the first period of suspension lasted nine and a half months and the second period one year and nine months.

## C. Third set of the proceedings

14. On 24 February 2006 the Tsentralny District Court of Simferopol awarded the applicant UAH 771.24 and UAH 195.34 in allowance arrears, to be paid by the Ministry of Defence. By the same judgment the applicant was entitled to receive a monthly allowance of UAH 812.89 (approximately EUR 129) up to 1 November 2008.

15. According to the Government, on 27 November 2006 the amount of UAH 195.34 was paid to the applicant. The applicant then received regular payments in accordance with the judgment. By November 2008 the applicant had been paid UAH 36,057.09 in total. The enforcement proceedings were closed as the judgment had been enforced in full.

16. According to the applicant, the first payment under that judgment was made in December 2006. Subsequent payments were also delayed. There was still an outstanding debt in the amount of UAH 908.27 (approximately EUR 85).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT OF COURT JUDGMENTS

17. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the judgments of 11 December 2003, 25 December 2003 and 24 February 2006 had not been properly enforced.

### A. Admissibility

18. As regards the alleged failure to enforce the judgment of 25 December 2003, the Court considers that given the amount at stake (approximately EUR 30), the applicant did not suffer any significant disadvantage on account of the alleged violation. The Court further does not discern any shortcomings which could seriously affect the applicant as regards the enforcement of the judgment of 24 February 2006. Even assuming that there still remained an outstanding debt, which according to the applicant constituted approximately EUR 85, the Court considers that the applicant has not substantiated that he had sustained any significant disadvantage in that regard. Moreover, no human rights issues require the further examination of those matters (see *Eduard Fedotov v. Moldova* (dec.), no. 51838/07, 24 May 2011, and *Bazelyuk v. Ukraine* (dec.), no. 49275/08, 27 March 2012). This part of application is therefore rejected as inadmissible under Article 35 § 3 (b) of the Convention.

19. As to the alleged non-enforcement of the judgment of 11 December 2003, the Court considers that this part of application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

20. The Court notes that there is disagreement between the parties as to the amounts actually paid to the applicant under the judgment of 11 December 2003. However, it is common ground that that judgment remained completely unenforced until 22 February 2005 and that that judgment had not been enforced in full at least by 28 September 2010.

21. Having regard to its well-established case-law on the subject (see *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 56-58, 15 October 2009), the Court considers that these undisputed facts are sufficient to

conclude that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

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

22. The applicant complained under Article 6 § 1 of the Convention that the length of the judicial proceedings instituted in September 2002 had been excessive.

### A. Admissibility

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

24. The applicant maintained that the proceedings had been unreasonably lengthy. The Government contested that argument, stating that the case was complex and that there had been no major delays attributable to the State. They further submitted that the length of the proceedings could be explained by the conduct of the applicant.

25. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

26. Turning to the present case, the Court notes that in the second set of proceedings the applicant lodged his civil claim on 6 September 2002. As of 28 September 2010, that is, more than eight years later, his claim concerning free housing was still pending before the first-instance court.

27. 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 that such a length of proceedings was justified in the circumstances of the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has therefore been a violation of Article 6 § 1 of the Convention.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant complained of other violations of rights protected by the Convention and other international treaties.

29. The Court has examined these complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed UAH 683,558.79 in respect of pecuniary damage. He also claimed that the State should provide his family with a comfortable dwelling or pay him UAH 1,586,219. The applicant further claimed EUR 80,000 in respect of non-pecuniary damage.

32. The Government contested these claims.

33. In the present case, bearing in mind the principles which it has developed for assessing the amount of compensation to be awarded where it has found a breach of the Convention as regards issues of non-enforcement and length of proceedings in similar cases, the Court considers it reasonable and equitable to award the applicant 3,500 euros (EUR). This award is to cover any pecuniary and non-pecuniary damage. The Court further notes that the respondent State has an obligation to enforce the judgment of 11 December 2003.

### B. Costs and expenses

34. The applicant did not submit any claims under this head. The Court therefore makes no award.

### C. Default interest

35. The Court considers it appropriate that the default interest rate 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 concerning the non-enforcement of the court judgment of 11 December 2003 and the complaint concerning the excessive length of the second set of proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of delayed enforcement proceedings;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the second set of proceedings;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,500 (three thousand five hundred euros) in respect of pecuniary and non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 13 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| Stephen Phillips | Angelika Nußberger |
| Deputy Registrar | President |