CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF SVETLANA NAUMENKO v. UKRAINE

(Application no. 41984/98)

JUDGMENT

STRASBOURG

9 November 2004

FINAL

30/03/2005

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 Svetlana Naumenko v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 19 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 41984/98) against Ukraine lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Ukrainian national, Mrs Svetlana Borisovna Naumenko ("the applicant"), on 6 February 1998.

2. The applicant, who had been granted legal aid, was represented by Mrs Olga Kozorovitskaya, a lawyer practising in Odessa, Ukraine. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The applicant alleged, in particular, that her rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 had been infringed.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

7. By a decision of 14 October 2003 the Court declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

9. The applicant, Mrs Svetlana Borisovna Naumenko, was born on 26 January 1956 and currently resides in Odessa.

I. THE CIRCUMSTANCES OF THE CASE

10. On 5 May 1991 the applicant was recognised as having been a relief worker at the 1986 Chernobyl Nuclear Plant disaster. The appropriate certificate (an identity card) was issued to the applicant by the Ministry of Health of the Ukrainian Soviet Socialist Republic.

11. In November 1991 the applicant was recognised as falling within the second category of invalidity in relation to her participation in the relief work at Chernobyl.

12. On 22 April 1992 the Ministry of Health of the Ukrainian Soviet Socialist Republic annulled the certificate issued on 5 May 1991 because the applicant had not stayed and worked in the "Chernobyl alienation zone" (*тридцятикілометрова зона або зона відчудження*)[*].

13. On 7 November 1992 the Ministry of Health dismissed a petition filed by the chief doctor of the Odessa City Ambulance Service (the applicant's place of employment) requesting that the employees (including the applicant) of the Odessa City Ambulance Service who had worked in the alienation zone be given the status of relief workers.

14. On 1 September 1993 the Ministry of Chernobyl Affairs informed the chief doctor of the Odessa City Ambulance Service that there were no documents proving that the employees had stayed in the alienation zone.

15. In February 1994 the applicant lodged complaints with the Illichevsk District Court of Odessa, seeking to establish that she had indeed stayed in the alienation zone. On 3 March 1994 the Illichevsk District Court of Odessa delivered a judgment in which it accepted that the applicant had stayed in the alienation zone on 27 and 29 May 1986. The judgment became enforceable on 14 March 1994.

16. On 6 October 1994 the Odessa Regional Court dismissed as groundless the motion filed by the Chairman of the Odessa Regional Council's Commission on the Status of Victims of the Chernobyl Catastrophe to reverse the judgment of 3 March 1994.

17. On 28 December 1994 the Odessa Regional Council issued a certificate (an identity card) acknowledging the applicant's status as a victim of the Chernobyl disaster, as established by the decision of 3 March 1994.

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[*] The alienation zone - the so-called "30 km zone" – was contaminated by the radiation around Chernobyl. It is a zone of special radiation and security control and has required the compulsory re-settlement of persons who were resident there.

18. On 8 June 1995 the Cabinet of Ministers adopted Resolution no. 404 introducing amendments to its earlier Resolution of 25 August 1992 no. 501 on the Procedure for the Issue of Certificates (Identity Cards) to Victims of the Chernobyl Catastrophe. By virtue of these amendments, court judgments could not serve as a basis for the issue of certificates (identity cards) nor provide proof of being a victim of the disaster and thereby give entitlement to special State benefits and social payments.

19. On 14 December 1995 the Commission on Disputes of the Ministry of Chernobyl Affairs refused to confirm the applicant's status as a Chernobyl victim since the relief work had taken place outside the alienation zone.

20. On 18 January 1996 the Odessa Regional Council's Commission on the Status of Victims of the Chernobyl Catastrophe (the "Commission") annulled the decision of 28 December 1994 by which a certificate was issued to the applicant.

21. On 6 March 1996 the Chairman of the Department of Social Security of the Odessa Regional Council adopted a decision withdrawing the certificate from the applicant, suspending her social security payments and annulling the benefits awarded to her as a victim of the Chernobyl disaster.

22. On 18 June 1996 the Commission adopted a decision annulling the certificate.

23. In August 1996 the applicant lodged a complaint with the Supreme Court.

24. On 9 August 1996 the Supreme Court informed the applicant by letter that the refusal to issue a certificate could be appealed in accordance with the procedure established by law.

25. On 12 January 1999 the applicant instituted proceedings in the Primorsky District Court of Odessa in order to annul the decision of 18 January 1996 and to oblige the Commission to recognise her status as a Chernobyl victim and to re-issue the certificate.

26. On 26 January 1999 the District Court allowed her claims and declared the actions of the Commission unlawful. It also annulled the Commission's decisions and ordered it to issue a document recognising the applicant's status as a Chernobyl victim. The decision became enforceable on 6 February 1999.

27. On 6 February 1999 the Commission annulled its decision of 18 January 1996 and confirmed the applicant's status as a relief worker. The applicant's name was entered in the register of disabled Chernobyl relief workers.

28. In April 1999 the Deputy Chairman of the Odessa Regional Council's Commission on the Status of Chernobyl Victims filed a motion with the President of the Odessa Regional Court, requesting the President to lodge a *protest* against the decision of 26 January 1999 with a view to quashing it.

29. On 7 May 1999 the President of the Odessa Regional Court dismissed this petition as unsubstantiated.

30. On 14 January 2000 the Commission issued a Chernobyl victim identity card to the applicant. The applicant's name was also entered in the list of persons who had requested improved living conditions.

31. On 21 March 2000 the applicant filed a motion with the Primorsky District Court of Odessa for an interpretation of its judgment of 26 January 1999. She also requested that the Commission calculate her benefits and pension as from 18 January 1996 and compensate her for arrears in benefits from that same date.

32. On 28 March 2000 the Primorsky District Court of Odessa allowed the applicant's claims and ruled that the amount of compensation, arrears and benefits was to be calculated and paid to the applicant as from 18 January 1996.

33. On 15 June 2000 the applicant requested the Primorsky District Court of Odessa to issue her a writ of execution in respect of the ruling of 28 March 2000. On 13 July 2000 the Primorsky District Court of Odessa allowed the applicant's request and issued this writ.

34. The execution proceedings commenced on 19 July 2000, i.e. two days after the Illichevsk District Execution Service of Odessa Region had received the writ.

35. On 11 August 2000 the Illichevsk District Execution Service held that it had no jurisdiction over the enforcement of the ruling in the applicant's case.

36. On 29 August 2000 (28 August 2000 according to the Government) the Deputy President of the Odessa Regional Court lodged a *protest* with the Presidium of the Odessa Regional Court, requesting that the case be re-examined and the judgment of the Illichevsk District Court of Odessa of 3 March 1994 establishing the fact of the applicant's stay in the alienation zone reversed.

37. On 6 September 2000 the Presidium of the Odessa Regional Court allowed the *protest* and quashed the decision of 3 March 1994. It also remitted the case to the Illichevsk District Court of Odessa for re-consideration.

38. On 16 July 2001 the Illichevsk District Court of Odessa upheld the applicant's complaint, finding that she had stayed in the alienation zone on 27 and 29 May 1986.

39. On 14 August 2001 the Odessa Regional State Administration lodged an appeal against the judgment of 16 July 2001.

40. On 12 October 2001 the case file was transferred to the Odessa Regional Court of Appeal. However, it was sent back to the Illichevsk District Court of Odessa on 25 October 2001 since it was necessary to rule on the request for leave to appeal against the decision of 16 July 2001.

41. On 12 November 2001 the Illichevsk District Court of Odessa found that the Odessa Regional State Administration had failed to comply with the formalities envisaged by law for the introduction of appeals. The Administration was given until 20 November 2001 to rectify this shortcoming.

42. On 23 November 2001 the Odessa Regional Council rectified the shortcoming and appealed against the decision of 16 July 2001, seeking its annulment.

43. On 6 December 2001 the Illichevsk District Court of Odessa extended until 10 December 2001 the time-limit for the Odessa Regional State Administration to lodge a petition.

44. On 28 December 2001 the Odessa Regional Court of Appeal sent the case file to the Illichevsk District Court of Odessa requesting it to rule on the formal defects in the appeal that had been introduced out of time.

45. On 29 January 2002 the Illichevsk District Court of Odessa allowed the Administration's motion to extend the time-limit for filing an appeal with the Odessa Regional Court of Appeal.

46. On 1 February 2002 the Illichevsk District Court of Odessa sent the case file to the Odessa Regional Court of Appeal.

47. On 22 February 2002 the Odessa Regional Court of Appeal decided to initiate appeal proceedings in the case and scheduled a hearing on the merits for 14 May 2002.

48. On 14 May 2002 the Odessa Court of Appeal quashed the decision of 16 July 2001 and remitted the case to the same first-instance court.

49. On 17 July 2002 the case file was remitted to the Illichevsk District Court of Odessa for further consideration.

50. Between 12 August 2002 and 23 September 2002 the case could not be heard as the judge was on leave.

51. The case was scheduled for examination on 18 October 2002.

52. The hearing was adjourned to 8 November 2002 as the Ministry of Health, the State enterprise RUZOD and the Ministry of the Interior had failed to comply with the court's order of 17 July 2002 to provide relevant documentary evidence of the applicant's involvement in relief work at Chernobyl. The evidence requested by the court did not arrive until 18 October 2002.

53. On 8 November 2002 the Illichevsk District Court of Odessa held a hearing in the applicant's case. On the same date the court postponed the hearing until 29 November 2002 in order to summon specific witnesses.

54. On 29 November 2002 the hearing was rescheduled for 19 December 2002 as the Administration had requested that additional witnesses be summoned.

55. On 19 December 2002 the court heard the additional witnesses. It also scheduled another hearing for 16 January 2003 in order to allow time

for the transfer of the case file relating to the applicant's status as a Chernobyl relief worker from the Primorsky District Court of Odessa.

56. On 16 January 2003 the hearing was rescheduled as the Administration's representative did not have a valid letter of authority. The next hearing was scheduled for 22 January 2003.

57. On 22 January 2003 the applicant lodged a motion with the court seeking the adjournment of the hearing in her case so that she could provide additional information about her claims. The hearing was rescheduled for 10 February 2003.

58. On 6 March 2003 the Malinovsky District Court of Odessa (the case having been transferred to this court in accordance with the territorial division of the districts of Odessa) found that the applicant had been a relief worker at the Chernobyl Nuclear Power Plant in 1986 and had stayed in the "alienation zone". There was no appeal against this decision and it became final on 8 April 2003.

59. On 13 March 2003 the Malinovsky District State Execution Service initiated execution proceedings in the case.

60. The decision of 6 March 2003 was executed on 8 May 2003 once the applicant had received the Chernobyl victim certificate.

61. On 12 May 2003 the Malinovsky District State Execution Service terminated the execution proceedings since they had been completed.

62. On 13 November 2003 the Malinovsky District Court of Odessa gave an interpretation of the judgment of 6 March 2003 to the effect that the applicant stayed in the alienation zone from 26 May to 4 June 1986.

63. 24 May 2004 the Malinovsky Distrtict Court of Odessa awarded the applicant UAH 13,253.01 in unpaid pension for the period from 1 September 1996 to 1 November 2003. It also held that the applicant's monthly salary should be UAH 307,65.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine of 1996

64. Relevant provisions of the Constitution read as follows:

Article 129

In the administration of justice, judges are independent and subject only to the law

"... The main principles of judicial proceedings are:

1) legality;

...9) the mandatory nature of court decisions."

B. Code of Civil Procedure of Ukraine[1]

65. Relevant provisions of the Code of Civil Procedure read as follows:

Chapter 42

Supervisory review of enforceable court decisions, rulings and resolutions

Article 327

Enforceable decisions, rulings and resolutions which may be reviewed

"Court decisions, rulings and resolutions may be reviewed in supervisory review proceedings following a protest lodged by the officials designated in Article 328 of the Code of Civil Procedure of Ukraine."

Article 328

Persons who have the right to lodge a protest against an enforceable decision, ruling or resolution of a court

"The following persons have the right to lodge a protest against an enforceable court judgment, ruling or resolution:

...2) presidents of the Supreme Court of the Crimea, regional courts, Kyiv and Sevastopol city courts and their deputies - against decisions and rulings of the district (city), inter-district (county) court, and also against the cassation rulings of the civil division of the Supreme Court of the Crimea, regional courts, and the Kyiv and Sevastopol city courts; ..."

Article 329

The courts that may examine protests in supervisory review proceedings

"The following courts hear cases in supervisory review proceedings: ...

3. The Presidium of the Supreme Court of the Crimea, regional courts, Kyiv and Sevastopol city courts: as regards protests lodged by the President of the Supreme Court of Ukraine, the General Prosecutor of Ukraine and their deputies, Presidents of the Supreme Court of the Crimea, regional, Kyiv and Sevastopol city courts and their deputies - against the judgments and rulings of the district (city), inter-district (county) courts and against judgments of the district (city) courts, inter-district (county) courts and against the cassation rulings of the Supreme Court of the Crimea, regional courts, Kyiv and Sevastopol city courts; ..."

1. These provisions were annulled on the basis of the introduction of the Law of Ukraine on the Introduction of Changes and Amendments to the Code of Civil Procedure of Ukraine with effect from 29 June 2001.

Article 331

Suspension of execution of judgments, rulings and resolutions that have entered into force

"Officials who have the right to lodge a protest may suspend execution of the relevant judgments, rulings and resolutions until the end of the supervisory review proceedings.

The lodging of a protest against a judgment adopted following a complaint about unlawful actions by an official who interferes with the citizen's lawful rights suspends execution of that decision until the end of the supervisory review proceedings."

Article 333

The right of persons participating in the case to lodge explanations with regard to the lodged protest and to take part in the consideration of the case

"Parties and other persons participating in the case have the right to lodge written explanations regarding the protest.

Persons informed about the place and time of consideration of the case can at their request participate in the proceedings. Their absence does not influence the consideration of the case."

Article 337

The powers of the court that considers a case in supervisory review proceedings

"When considering a case in supervisory review proceedings, the court has the right by its ruling or resolution to:

1) leave a judgment, ruling, resolution without changes, and refuse a protest;

2) annul a judgment, ruling or resolution in whole or in part and remit the case for re-consideration to the court of first or cassation instance;

3) annul a judgment, ruling or resolution fully or partially and terminate proceedings in a case or leave it without consideration;

4) leave one of the previously adopted judgments in the case, or one of the rulings or resolutions without satisfaction;

5) change a judgment, ruling or resolution or adopt a new decision, without remitting the case for new consideration, if the case does not require the collection or an additional verification of evidence, the circumstances of the case are established by the court of first instance fully and correctly, but the error was made in the application of the norms of substantive law."

Article 341

Obligatory nature of the directions of the court that considers a case in supervisory review proceedings

"The directions of the court that made the supervisory review are binding on the court which later re-examines the case. These directions are binding within the limits established by Article 319 of this Code.

When considering a case in supervisory review proceedings or annulling the cassation decision, the court has no authority to determine the conclusions that could be made in the course of re-consideration of the case by the cassation court."

C. The Law of Ukraine on the Introduction of Changes to the Code of Civil Procedure of Ukraine of 21 June 2001

66. Relevant provisions of the Law of 21 June 2001 read as follows:

Chapter II

Transitional provisions

"1. This Law shall enter into force on 29 June 2001...

3. Appeals in civil cases lodged before 29 June 2001 shall be considered in accordance with the procedure adopted for the examination of appeals against local court judgments.

4. Protests against judgments lodged before 29 June 2001 shall be sent to the Supreme Court of Ukraine for consideration in accordance with the cassation procedure.

5. Judgments that have been delivered and which have become enforceable before 29 June 2001 can be appealed against within three months in accordance with the cassation procedure (*to the Supreme Court of Ukraine*)."

D. The Law on the Status and Social Security of Victims of the Chernobyl Nuclear Plant Disaster (28 February 1991)

67. Relevant provisions of the Law of 28 February 1991 read as follows:

Section 10

Determination of persons belonging to the participants in the relief works at the Chernobyl nuclear power plant

"Relief workers dealing with the consequences of the Chernobyl nuclear power plant disaster are those citizens who took part directly in any work related to dealing with the disaster itself or its consequences in the alienation zone in 1986-1987 regardless of the number of days worked, and in 1988-1990 – for not less than 30 calendar days, including the evacuation of persons and property from this zone, and those temporarily present there or assigned there from their place of employment within the designated terms for the execution of works in the alienation zone, including military servicemen, civil servants (*якщо це державні службовці*), the public, enterprises, institutions and organisations regardless of their jurisdiction and those who worked not less than 14 calendar days in 1986 in the acting ambulance stations for the decontamination of the population and the deactivation of the equipment or buildings. The list of these stations is drawn up by the Cabinet of Ministers of Ukraine."

Section 11

Determination of persons belonging to the category of victims of the Chernobyl nuclear power plant disaster

"Persons who are considered victims of the Chernobyl nuclear power plant disaster are the following: ...

5) persons who worked for at least 14 days from the time of the accident until 1 July 1986 or for at least three months during 1986-1987 outside the exclusion zone in particularly harmful working conditions (taking into account radioactivity factors), where this work was related to the elimination of the consequences of the Chernobyl nuclear plant disaster and was carried out on the basis of instructions received from the Government. The types of work and territories to be covered are determined by the Cabinet of Ministers of Ukraine."

E. Resolution of the Cabinet of Ministers of Ukraine no. 501 of 25 August 1992 on the Procedure for the Issue of Certificates to Victims of the Chernobyl Nuclear Plant Disaster

68. Relevant provisions of the Resolution no. 501 of 25 August 1992 read as follows:

Section 10

Certificates are issued in the following cases:

"... persons assisting in eliminating the consequences of the nuclear power plant disaster shall be issued certificates on the basis of one of the following documents:

a) a certificate of assignment to the alienation zone;

b) a military certificate;

c) a certificate of proof of bonus payments for participation in the relief work;

d) (excluded on the basis of the Resolution of the Cabinet of Ministers of Ukraine no. 404 of 8.06.1995) a decision of a court establishing direct participation in any work for a certain period related to dealing with the consequences of the nuclear power plant disaster, its consequences in the alienation zone, including the evacuation of persons and property from this zone...

The decision to issue or not to issue the relevant certificate shall be adopted within one month from the date of receipt of the necessary documents by the body issuing such a certificate."

F. Resolution of the Cabinet of Ministers of Ukraine no. 106 of 23 July 1991

69. Relevant provisions of the Resolution no. 106 of 23 July 1991 read as follows:

List of the localities referred to as zones of radioactivity as a result of the Chernobyl nuclear power plant disaster

"... Commentary: The town of Ivankiv to which the applicant was assigned from the place of his employment (Odessa) is not included in the list of localities..."

G. Resolution of the Cabinet of Ministers of Ukraine no. 404 of 8 June 1995

70. Relevant provisions of the Resolution no. 404 of 8 June 1995 read as follows:

On the Introduction of Amendments to paragraph 10 of the Rules for Issue of Certificates to Victims of the Chernobyl nuclear power plant disaster

"1. (delete paragraph 10 from the Resolution of the Cabinet of Ministers of Ukraine No. 501 of 25 August 1992).

2. Commissions on disputed issues regarding the determination of the status of persons who assisted in dealing with the consequences of the nuclear power plant disaster, created at the Ministry of Chernobyl Affairs ... shall verify the issue of certificates to victims of the Chernobyl nuclear plant disaster on the basis of judicial decisions and shall take action where they find a violation of the procedure for establishing such status."

H. Resolution of the Plenary Supreme Court on Judicial Practice on the Establishment of Facts that are of legal consequence (31 March 1993)

71. Relevant provisions of the Resolution of the Plenary Supreme Court of 31 March 1993 read as follows:

"2. ... – in accordance with the Law of Ukraine on the Status and Social Security of Victims of the Chernobyl Nuclear Power Plant Disaster and the Resolutions of the Cabinet of Ministers of Ukraine of 25 August 1992 on the Procedure for the Issue of Certificates to Victims of the Chernobyl Nuclear Plant Disaster, adopted in accordance with the Law, certificates may be issued on the basis of a court judgment establishing the person's specific participation in any kind of work for a certain period of time (determined by the legislation) related to eliminating the consequences of the disaster and its consequences in the alienation zone, including the evacuation of persons and property from such zones, and/or the works in the acting ambulance stations for decontamination of the population and deactivation of equipment. All other issues concerning the status of the victims of the Chernobyl nuclear power plant disaster shall be determined on the basis of the relevant documentation of the commissions of the executive bodies of the Kyiv and Zhytomyr Regional Municipal Councils, and disputes shall be settled by the commissions of the Executive Committees of Kyiv and Zhytomyr and of the Ministry of Chernobyl Affairs."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

72. According to the applicant, the length of the proceedings in her case was unreasonable. She also complained that the proceedings were unfair. She referred in this respect to Article 6 § 1 of the Convention, which provides as relevant:

> "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."

A. The length of the proceedings

1. Period to be taken into consideration

73. The Government submitted that the period to be taken into consideration commenced after 11 September 1997, the date of entry into force of the Convention in respect of Ukraine. Furthermore, they considered that that period should only be counted from 6 September 2000, when the decision of the Illichevsk District Court of Odessa of 3 March 1994 was quashed by the Presidium of the Odessa Regional Court. On that understanding, the Government considered that the length of the proceedings only lasted two years and five months.

74. The Court notes at the outset that there were two sets of proceedings in the applicant's case. Those proceedings concerned, firstly, the establishment of the fact that the applicant had worked in the "alienation zone" and, secondly, the refusal of the Odessa Regional Administration to grant her Chernobyl relief worker status on the basis of that fact. Both sets of proceedings were interdependent since they concerned the applicant's right to receive social privileges and a pension as a "Chernobyl relief worker". Furthermore, in the course of both sets of proceedings the courts reviewed the same facts on the basis of the same documentary and oral evidence since they concerned the determination of the same civil right. The Court considers therefore that it would be inappropriate to separate these proceedings and to assess their length in isolation.

75. The Court observes that the proceedings in issue began in February 1994 and ended on 12 May 2003, when the judgment was enforced and the enforcement proceedings terminated. The overall duration of the proceedings was therefore nine years, one month and five days. However, the Court's jurisdiction *ratione temporis* in respect of the length of the proceedings only covers the period after 11 September 1997, the date of

entry of the Convention into force in respect of Ukraine. Nevertheless, it may take note of the stage reached in the proceedings prior to 11 September 1997 when examining the complaint as a whole (see, *Leshchenko and Tolyupa v. Ukraine* (dec.), no. 56918/00, 6 April 2004; *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 57, ECHR 2002-VII).

76. It concludes, therefore, taking into account the aforementioned considerations as to the Court's competence *ratione temporis,* that the proceedings in the applicant's case lasted five years, eight months and one day.

2. Reasonableness of the length of the proceedings

77. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case, and the importance of what was at stake for the applicant in the litigation (see, among other authorities, *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1172–73, § 48).

a. Complexity of the case

78. The Government were of the view that the case was complex as the courts lacked relevant documentary evidence in order to establish the fact of the applicant's stay in the Chernobyl alienation zone.

79. The applicant disagreed.

80. Even accepting that the case was to some extent complex as a result of the factual and evidentiary issues which had to be resolved, the Court considers that the overall length of the proceedings cannot be explained by the complexity of the case alone.

b. Conduct of the applicant

81. The Government were of the view that the parties, not the courts, were responsible for any periods of delay that may have occurred.

82. As to the conduct of the applicant, the Court sees no periods of substantial delay for which she was responsible. Moreover, the Government have failed to submit any evidence thereof.

c. Conduct of the national authorities

83. The Government submitted that the domestic authorities were not responsible for any delays.

84. The Court does not agree with the Government's submission. In particular, it considers that there were several periods of delay that must be attributed to the judicial authorities. These include:

- the remittal of the case for re-consideration on the merits on 6 September 2000 by the Presidium of the Odessa Regional Court, six years after the case had finally been decided;

- the remittal of the case by the Odessa Regional Court of Appeal for fresh consideration on 14 May 2002, although that court itself had jurisdiction to consider the case on the merits and to deliver a judgment;

- several remittals of the case from one court to another in order to decide on the admissibility of the appeal lodged by the Odessa Regional Administration (between 14 August 2001 and 22 February 2002).

d. The Court's assessment

85. The Court considers that throughout the proceedings the applicant behaved diligently. It is also to be noted that the compensation proceedings resulted from and were based on the reduction of the applicant's pension and privileges awarded to her as a Chernobyl relief worker. Therefore, in view of the applicant's financial situation and her state of health the proceedings were of undeniable importance for her. Accordingly, what was at stake for the applicant called for an expeditious decision on her claims.

86. In sum, having regard to the circumstances of the instant case, the length of the proceedings after 11 September 1997 (five years, eight months and one day) and the state of the proceedings on that date, the Court concludes that there was an unreasonable delay in disposing of the applicant's case.

87. There has accordingly been a violation of Article 6 § 1 in that the applicant's "civil right" was not determined within a "reasonable time".

B. Fairness of the proceedings

1. In relation to the quashing of the final and binding judgment of 3 March 1994 by the Presidium of the Odessa Regional Court on 6 September 2000 on the basis of a "protest"

a. Submissions of the parties

88. The applicant further complained under Article 6 § 1 of the Convention about the unfairness of the decision of 6 September 2000 and the lack of impartiality of the Presidium of the Odessa Regional Court in quashing the decision of the Illichevsk District Court of Odessa of 3 March 1994. In particular, she noted that the hearing before the Presidium of the Odessa Regional Court had taken place in her absence. She alleged that she had only found out about the hearing after it had already taken place and the decision of the Presidium of the Odessa Regional Court adopted.

89. The Government stressed that although the instant case concerned the quashing of a final judgment, it was nevertheless distinguishable from the case of *Brumărescu v. Romania* ([GC], no. 28342/95, ECHR 1999-VII), as the *protest* was lodged by the Deputy President of the Odessa Regional Court and not by the prosecutor. The supervisory review procedure *(процедура розгляду справ в порядку нагляду)* was expressly regulated by the Code of Civil Procedure. It contained guarantees to ensure a fair hearing, it was used by Ukrainian citizens to defend their rights and was aimed at correcting judicial errors. The supervisory review did not contradict the principles of the rule of law and legal certainty. The procedure was transparent, foreseeable and was an effective legal mechanism enabling citizens to appeal against erroneous judicial decisions.

90. The Government pointed out that the Presidium's decision did not influence the applicant's status, as the case was remitted for fresh consideration and the courts eventually ruled in her favour.

b. The Court's assessment

91. The Court considers that this case is similar to the case of *Ryabykh v. Russia* (no. 52854/99*,* judgment of 24 July 2003), where it was decided that, in so far as relevant to the instant case:

> "51. ... the Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question...
>
> 52. Legal certainty presupposes respect of the principle of *res judicata*..., that is the principle of finality of judgments. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power of review should be exercised for correction of judicial mistakes, miscarriages of justice, and not to substitute a review. The review cannot be treated as an appeal in disguise, and the mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character.
>
> 53. In the applicant's case, however, the judgment ... was overturned ... by the Presidium of the Belgorod Regional Court ... the Novooskolskiy District Court had misinterpreted relevant laws. The Presidium dismissed the applicant's claims and closed the matter, thus setting at naught an entire judicial process which had ended in a decision that was legally binding ... and in respect of which execution proceedings had commenced.
>
> 54. The Court notes that the supervisory review of the judgment ... was set in motion by the President of the Belgorod Regional Court – who was not party to the proceedings ... As with the situation under Romanian law examined in *Brumărescu*,

the exercise of this power by the President was not subject to any time-limit, so that judgments were liable to challenge indefinitely.

55. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right 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. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

56. The Court considers that the right of a litigant to a court would be equally illusory if a Contracting State's legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official.

57. By using the supervisory-review procedure to set aside the judgment of 8 June 1998 the Presidium of the Belgorod Regional Court infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention..."

92. The Court notes that in the instant case the Deputy President of the Odessa Regional Court lodged a *protest* (*протест в порядку нагляду*) on 28 August 2000 against the decision of the Illichevsk District Court of Odessa of 3 March 1994 that had become final and binding. By a decision of the Presidium of the Odessa Regional Court on 6 September 2000, this decision was quashed and the case was remitted for re-consideration. Furthermore, the Court has already found a violation in this respect in its judgment in *Sovtransavto Holding v. Ukraine (Sovtransavto Holding v. Ukraine*, no. 48553/99, § 77, ECHR 2002-VII*)*:

"The Court considers that judicial systems characterised by the objection (*protest*) procedure and, therefore, by the risk of final judgments being set aside repeatedly, as occurred in the instant case, are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention, read in the light of *Brumărescu* ..."

It does not see any reason for departing from the aforementioned judgments. It considers, therefore, that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicant's case.

2. Lack of independence and impartiality

a. Submissions of the parties

93. The Government maintained that, although the Deputy President of the Odessa Regional Court had heard his own *protest*, the Presidium had been chaired by the President of the Odessa Regional Court and other judges of that court heard the case sitting in a chamber. They maintained that the principles of independence and impartiality had not been infringed by the Presidium of the Odessa Regional Court and there had been no violation of Article 6 § 1 of the Convention.

94. The applicant did not comment on this point.

b. The Court's assessment

95. The Court reiterates that in order to establish whether a tribunal can be considered "independent" for the purposes of Article 6 § 1, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence (see, among many other authorities, *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, p. 281, § 73). As to the issue of impartiality, its existence, for the purposes of Article 6 § 1, must be determined according to a subjective test, that is on the basis of the personal conviction and behaviour of a particular judge in a given case, and also according to an objective test, that is, ascertaining whether the judge offered sufficient guarantees to exclude any legitimate doubt in this respect (see, among many other authorities, *Bulut v. Austria*, judgment of 22 February 1996, *Reports* 1996- I, p. 356, § 31, and *Thomann v. Switzerland*, judgment of 10 June 1996, *Reports* 1996-III, p. 815, § 30).

96. In this case it appears that an issue arises concerning the subjective impartiality of the Deputy President of the Odessa Regional Court. It will consider this issue only.

97. The Court notes that the *protest* of the Deputy President of the Odessa Regional Court was lodged with the Presidium of that same court. The Deputy President of the Odessa Regional Court examined the *protest* that he lodged with the Presidium, of which he was a member and Deputy President, along with his colleagues sitting in the Presidium. The Court is of the opinion that this practice is incompatible with the "subjective impartiality" of a judge hearing a particular case, since no one can be both plaintiff and judge in his own case.

98. It considers therefore that there has been a violation of Article 6 § 1 of the Convention in respect of the lack of impartiality of the Deputy President of the Odessa Regional Court.

c. Remainder of the complaints with regard to the *protest*

99. The Court does not propose to look into the other defects of the supervisory review proceedings raised by the applicant, such as the lack of a public hearing in her case before the Presidium and the lack of timely information given to her about the *protest* lodged. It notes in this connection that the *protest* procedure, as described in *Brumărescu* (cited above, § 62), "set at naught an entire judicial process which had ended in (...) a judicial decision that was (...) *res judicata"*.

100. It considers therefore that no separate issue arises in the instant case with regard to the other defects of the supervisory review proceedings.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

101. The applicant further complained about the infringement of Article 1 of Protocol No. 1 to the Convention as a result of the lack of fairness of the proceedings in her case and the unreasonable length of time taken to enforce the judgment given in her favour. This provision reads as follows:

> "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 or to secure the payment of taxes or other contributions or penalties."

A. Submissions of the parties

102. The Government pointed out that there had been no violation of the applicant's rights. In their view, the instant case raised issues similar to the case of *Skórkiewicz v. Poland* (no. 39860/98 (dec.), 1 June 1999). In particular, the Government contended that, even though at one point the applicant lost her status as a Chernobyl relief worker, she nevertheless retained the right to receive the pension granted to persons within another disability group (*друга група інвалідності*). They recalled that, in accordance with the judgment of the Primorsky District Court of Odessa, the applicant's status as a relief worker had been restored and she had been granted a pension for her Chernobyl-related disability. As regards the refusal of the Department of the Odessa Municipal Council to increase her pension on account of her relief work, the Government pointed out that the applicant had no documents to confirm the number of hours she had spent in

the alienation zone. Furthermore, the applicant had not appealed against this refusal.

103. The applicant disagreed. She maintained that she had suffered pecuniary and non-pecuniary damage due to the loss of her status as a Chernobyl relief worker. In particular, she alleged that she should receive a substantially higher amount of pension and various State privileges, such as the provision of an apartment.

B. The Court's assessment

104. The Court concludes that the applicant was deprived of her pension right and State privileges established by law for the benefit of Chernobyl relief workers, which were more substantial in value than ordinary disability pensions and State privileges. Her right to such was recognised by a final and binding judgment. The applicant therefore had an enforceable claim within the meaning of Article 1 of Protocol No. 1, which constituted a "possession" within the meaning of that provision (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, § 59 etc). Taking into account the applicant's financial and social status and the fact that the situation was partially rectified by the judgment of the Malinovsky District Court of Odessa of 24 May 2004, the Court notes that the impossibility for the applicant to obtain enforcement of the judgment recognising her status of a "Chernobyl relief worker" for an unreasonably long period of time constituted an interference with her right to the peaceful enjoyment of her possessions. The Government have not advanced any justification for that interference.

105. The Court finds therefore that there has been an infringement of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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

107. The applicant initially claimed 30,000 United States dollars (USD) in just satisfaction. In her subsequent claims, including those submitted to the Court on 3 August 2004, she alleged that she should be paid USD 200,000 in compensation. In particular she claimed

USD 50,000-60,000 in compensation for the cost of the apartment that was not provided to her by the State and USD 2,700 for loss of her pension. The applicant further claimed compensation for non-pecuniary damage. She also claimed that the Government ought to provide her with an apartment in accordance with her status.

108. As to the pecuniary and non-pecuniary damage claimed by the applicant, the Government maintained that it was excessive. The Government further maintained that the amount of compensation for pecuniary and non-pecuniary damage claimed by the applicant was unsubstantiated as it was not supported by any relevant evidence.

109. The Court makes no award in relation to the pecuniary damage claimed by the applicant since there is no substantiation that that damage flowed from the Convention breaches found. The Court also notes in this respect that the applicant was awarded compensation for the loss of her pension by the judgment of 24 May 2004 of the Malinovsky District Court. Nevertheless, it finds that the applicant may be considered to have suffered some degree of frustration and distress, given the lengthy period of uncertainty which she has endured as a result of the quashing of the final and binding judgment in her favour and the length of the enforcement proceedings. It therefore awards her on an equitable basis 20,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

110. The applicant claimed costs and expenses for the Convention proceedings and for the proceedings before the domestic courts. In particular, she referred to the cost of telephone calls, postal expenses and translation of correspondence for the period of proceedings in her case.

111. The Government proposed that no award should be made.

112. The Court concludes that it is quite clear that the applicant incurred some legal fees in relation to the proceedings before the Court. However, she had not specified these expenditures and has not provided any relevant proof thereof. Regard being had to the information in the case-file and the criteria established in the Court's case-law (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, §§ 63-64; *Merit v. Ukraine*, no. 66561/01, judgment of 30 March 2004, § 88), the Court considers it reasonable to award the applicant EUR 500 for costs and expenses.

C. Default interest

113. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings in the applicant's case;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the quashing of a final and binding judgment given in the applicant's favour;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the lack of impartiality of the Deputy President of the Odessa Regional Court in the supervisory review proceedings;

4. *Holds* that it is not necessary to examine the other defects of the supervisory review proceedings raised by the applicant;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

6. *Holds:*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of Ukraine at the rate applicable at the date of settlement:
   (i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;
   (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
   (iii) any tax that may be chargeable.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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

Done in English, and notified in writing on 9 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. Early
Deputy Registrar

J.-P. COSTA
President