CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF KASPEROVICH v. UKRAINE

(Application no. 22289/02)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kasperovich 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 I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, , *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 18 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 22289/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Aleksandr Nikolayevich Kasperovich ("the applicant"), on 21 May 2002.

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

3. On 21 June 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1928 and lives in the town of Novogrodovka, the Donetsk region.

5. On 16 June 1999 and 11 April 2001 the Novogrodovka City Court (hereafter "the City Court") awarded the applicant a total of UAH 4,078[1] against the Novogrodovskaya Coal Mine (a State-owned entity, hereafter "the Coal Mine") in salary arrears. Both judgments became final and were

[1] approximately 635 euros ("EUR")

sent to the Novogrodovka City Bailiffs' Service (hereafter "the Bailiffs' Service") for compulsory enforcement.

6. In 2001 the applicant complained to the City Court about the Bailiffs' alleged inactivity. On 11 September 2001 the court rejected this complaint, stating, *inter alia*, that no fault was attributable to the Bailiffs, who had undertaken all necessary measures to secure the execution of the judgments, and that their non-enforcement was due to the Coal Mine's lack of funds. The City Court also indicated that the enforcement proceedings were further impeded by the bankruptcy case pending against the Coal Mine before the Donetsk Regional Court of Arbitration, which on 30 August 2000 and 14 May 2001 prohibited the Bailiffs' Service from attaching and selling the Coal Mine's assets. On 19 November 2001 the Donetsk Regional Court of Appeal upheld the judgment of the City Court. On 7 March 2002 the Supreme Court rejected the applicant's cassation appeal.

7. On 25 February 2003 the Ministry of Fuel and Energy ordered a merger of the Coal Mine with several others to form the Selydivvugilia State Company.

8. On 3 December 2003 the Bailiffs' Service applied to the City Court for directions regarding the replacement of the debtor in the applicant's case. On 18 December 2003 the City Court ordered that the debtor be replaced by the Selydivvugilia State Company.

9. On 21 September 2004 the enforcement proceedings were terminated as the judgments in the applicant's favour had been enforced in full.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law may be found in the judgments of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19) and of 30 November 2004 in the case of *Dubenko v. Ukraine* (74221/01 §§ 22-29).

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

1. Alleged violation of Article 2 of the Convention

11. The applicant complained that the existing situation infringed his right to life under Article 2 § 1 of the Convention, given his low standard of living. The Court reiterates that, according to its case-law, neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy a certain standard of living (*Wasilewski*

v. Poland, no. 32734/96, 20.4.1999). Moreover, the applicant has not shown that he suffers such destitution as to put his life at risk (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Alleged violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

12. The applicant complained of the failure of the State authorities to execute the judgments of 16 June 1999 and 11 April 2001 given in his favour. He alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which provide, in so far as relevant, as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

13. The Government objected that the applicant could no longer be considered a victim, for the purposes of Article 34 of the Convention, as the judgments had been enforced.

14. The applicant disagreed, stating that the decisions had remained unenforced for an unreasonably long time.

15. The Court recalls its case-law to the effect that, whilst the execution of the decision given in the applicant's favour redressed the non-execution as such, it could not in itself remedy the undue length of the enforcement procedure (see, *Romashov v. Ukraine*, cited above, § 27 and *Sokur v. Ukraine*, no. 29439/02, § 27, 26 April 2005). The Court considers, therefore, that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 and Article 1 of Protocol No. 1 in relation to the period during which the judgments in his favour remained unexecuted.

16. The Court considers, therefore, that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

II. MERITS

17. The Government maintained that the Bailiffs performed all necessary actions to enforce the judgments and could not be liable for the delays in the enforcement proceedings. They suggested that there was no infringement of Article 6 § 1 of the Convention in view of their enforcement.

18. The applicant reiterated that the State was responsible for the enforcement delays.

19. The Court notes that the judgments of 16 June 1999 and 11 April 2001 remained unenforced until 21 September 2004, i.e. periods of over five years three months and three years five months, respectively. It further notes that these judgments were enforced in full after the communication of the application to the respondent Government.

20. The Court considers that, by delaying the enforcement of the judgments in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of much of their useful effect. The Court finds that the Government have not advanced any convincing justification for this delay (see, among many others, *Romashov v. Ukraine*, cited above, § 46; *Dubenko v. Ukraine*, cited above, §§ 47 and 51; *Vasilenkov v. Ukraine*, no. 19872/02, §§ 24-26, 3 May 2005).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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 and costs and expenses

23. The applicant claimed 6,397 euros (EUR) in respect of pecuniary and non-pecuniary damage.

24. The Government did not agree with the applicant's claims. They alleged that they were unsubstantiated.

25. The Court considers that the applicant's claims are excessive. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court awards the applicant a global sum of EUR 2,520 in pecuniary and non-pecuniary damage.

B. Costs and expenses

26. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

27. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 6 § 1 of the Convention and Article 1 of the Protocol No. 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,520 (two thousand five hundred and twenty euros) in respect of pecuniary and non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President