CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF MIKHEYEVA v. UKRAINE

(Application no. 44379/02)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Mikheyeva v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 44379/02) 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, Mrs Olga Vladimirovna Mikheyeva ("the applicant"), on 21 October 2002.

2. The applicant was represented by Mr I. Voron, a lawyer practising in Ukraine. The Ukrainian Government ("the Government") were represented by their Agent, Mrs V. Lutkovska.

3. On 23 November 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 1971 and lives in Dniprodzerzhynsk, Ukraine.

5. On 27 October 2000 the Arbitration Court of the Dnipropetrovsk Region initiated bankruptcy proceedings against the State Company "Prydniprovskyi Khimichnyi Zavod" (the "PKZ") – a State-owned enterprise.

6. In 2001 the applicant instituted proceedings in the Bagliyskyi District Court against the PKZ seeking recovery of salary arrears. On 9 August 2001 the court awarded the applicant UAH 2,201.58 (around 324 euros – "EUR") in salary arrears and other payments.

7. On 5 July 2004 the applicant was informed by a letter from the Bailiffs' Service that the judgment in her favour was not enforced due to a large number of enforcement proceedings against the debtor and the bankruptcy proceedings initiated against it. The Bailiffs also informed her that the procedure for the forced sale of assets belonging to the debtor was blocked by the Law on the Introduction of a Moratorium on the Forced Sale of Property of 29 November 2001.

8. The judgment in the applicant's favour remains to a large extent unenforced (UAH 2,192.58 (EUR 325)), as only UAH 9.00 (around EUR 1.32) were paid to her.

II. RELEVANT DOMESTIC LAW [AND PRACTICE]

9. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

10. The applicant complained about the State authorities' failure to enforce the judgment of the Bagliyskyi District Court of 9 August 2001 given in her favour. She invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, insofar as relevant, as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

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

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

I. ADMISSIBILITY

11. The Government contended that the applicant had not exhausted domestic remedies as she had not challenged the actions or inactivity of the State Bailiffs' Service before the domestic courts. They therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

12. The applicant disagreed. In particular, she argued that the remedies invoked by the Government were not effective.

13. The Court recalls that it has already dismissed the Government's analogous contentions in similar cases (see, for instance, the aforementioned *Romashov* judgment, §§ 30-33) and finds no reason to reach a different conclusion in the present case. Accordingly, it dismisses the Government's objection.

14. The Court considers that the applicant's complaint under Article 6 § 1 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this part of the application inadmissible. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

15. In their observations, the Government maintained that the Bailiffs' Service had taken all measures provided for by the domestic legislation to enforce the judgment of the Bagliyskyi District Court of 9 August 2001. The delay in enforcement was caused by the difficult financial situation of the debtor and the bankruptcy proceedings instituted against it. The Government, accordingly, contended that there was no infringement of Article 6 § 1 of the Convention.

16. The Government further confirmed that the amounts awarded to the applicant by the domestic courts constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, they maintained that the provision had not been violated, since the applicant's entitlement to the awards was not disputed and he was not deprived of his property. The Government also noted that the delays in payments were due to the difficult economic situation and, therefore, were justified.

17. The applicant disagreed.

18. The Court notes that the judgment of the Bagliyskyi District Court of 9 August 2001 remains unenforced for more than four years.

19. The Court recalls 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 the present application (see, for instance, *Sokur*

v. Ukraine, no. 29439/02, §§ 30-37, 26 April 2005; and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that by delaying for the abovementioned period of time the enforcement of the judgments in the applicant's favour, the State authorities deprived the provisions of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of much of their useful effect. There has, accordingly, been a violation of these provisions.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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, costs and expenses

22. The applicant claimed USD 10,000 (around EUR 8,341), which included the judgment debt, by way of just satisfaction. She stated that she had suffered pecuniary loss and distress as a result of the failure of the domestic authorities to enforce the judgment given in her favour.

23. The Government maintained that the applicant had not substantiated the amount claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

24. The Court notes that the applicant did not substantiate the whole amount claimed in respect of pecuniary damage. In so far as the applicant claimed the amount awarded to him by the judgment at issue, the Court notes that the State's outstanding obligation to enforce that judgment is not in dispute. Accordingly, the Court considers that, if the Government were to pay the debt owed to the applicant, it would constitute full and final settlement of the case.

25. As for non-pecuniary damage, the Court considers that the applicant has suffered distress as a result of the violations found which cannot be made good by the Court's mere finding of a violation or the payment of the sum requested by the applicant. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court, therefore, awards the applicant the sum of EUR 1,920 in respect of non-pecuniary damage.

B. Default interest

26. 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 application admissible;

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;

4. *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 judgment debt still owed to him, as well as EUR 1,920 (one thousand nine hundred and twenty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on 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 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President