CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF VOLOSYUK v. UKRAINE

(Application no. 60712/00)

JUDGMENT

STRASBOURG

29 June 2006

FINAL

29/09/2006

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 Volosyuk v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 6 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 60712/00) 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 Vladimir Meletiyovych Volosyuk ("the applicant"), on 29 May 2000.

2. The applicant was represented by Mr Igor Petrovich Klyus, a lawyer practising in the city of Khmelnitskiy. The Ukrainian Government ("the Government") were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 24 January 2005 the Court decided to communicate to the Government the applicant's complaint concerning a significant delay in the enforcement of the court decision in his favour caused by a supervisory review procedure. 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.

4. On 1 April 2006 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly constituted Fifth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and resides in the city of Khmelnitskiy, Ukraine.

A. Criminal proceedings against the applicant

6. At the material time the applicant worked as a lawyer in a private company "Naddnistryanka".

7. On 29 November 1994 the General Prosecutor's Office (hereinafter – the GPO) instituted criminal proceedings against the applicant for bribing. On 14 December 1994 the Deputy Prosecutor General sanctioned the applicant's arrest and detention. On 16 December 1994 the applicant was arrested and detained until 24 June 1996.

8. While in detention, the applicant was allegedly subjected to psychological pressure by the investigation officers. Prior to interrogation the applicant allegedly was placed in a tiny ($2m^2$) cold room without windows, where he had to stay for several hours. The applicant states that he lost consciousness during interrogations and was interrogated while being seriously ill. In detention and afterwards the applicant suffered from chronic bronchitis and chronic neuritis. The applicant was beaten by one of the cellmates. The applicant maintained that the offender was a former Security Service officer. The applicant further alleges that drugs were added to his meals. According to the applicant, his family members were not allowed to see him in detention. On his numerous complaints about such treatment the applicant received answers that no violations had been revealed during pre-trial investigation in his case.

9. After his release the applicant was on a written undertaking not to abscond until 12 April 1999. In 1995-1999 criminal charges in the applicant's case were several times changed. By 12 April 1999 the criminal case against the applicant was closed. By a prosecutor's decision of 13 June 1999 the applicant was awarded UAH 6,502.37 (at the material time – EUR 1,568.28) in compensation for material damage.

B. Civil proceedings

1. First set of civil proceedings

10. In June 1998 the applicant instituted proceedings in the Khmelnitskiy City Court against the Security Service of Ukraine claiming UAH 500,000 in compensation for moral damage. The applicant later raised

his claims to UAH 7,000,000. In April 1999 he claimed UAH 15,000,000 in compensation for moral damage from the GPO. These claims were joined and examined together. On 15 December 1999 the Khmelnitskiy City Court found in part for the applicant and ordered the State to pay him UAH 7,635 in compensation for material and moral damage caused by the unlawful criminal action against the applicant and his unlawful detention. On 3 February 2000 the Khmelnitskiy Regional Court upheld this decision and it became final. On an unidentified date the applicant requested the Deputy Chairman of the Khmelnitskiy Regional Court to lodge a supervisory review request (*protest*) against these decisions. His request was satisfied, the judgment of 15 December 1999 was quashed and the case was remitted for a fresh consideration. On 11 September 2000 the Khmelnitskiy City Court found in part for the applicant and ordered the State to pay him UAH 10,180 (approximately EUR 2,000) in compensation for moral damage for the unlawful criminal action against the applicant, for his unlawful detention and for being on a written undertaking not to abscond. This compensation had to be paid from the funds allocated for maintenance of the GPO. On 19 October 2000 the Khmelnitskiy Regional Court upheld this decision and it became final.

11. On 20 February 2001 the GPO suspended the enforcement of the judgment of 11 September 2000. On 15 May 2001 the Deputy Prosecutor General lodged a *protest* with the Supreme Court of Ukraine asking to quash the decision of 11 September 2000 in the part concerning the source of the payment on the ground that the awarded amount should not be paid from the funds allocated for the maintenance of the GPO.

12. On 3 October 2001 the Constitutional Court of Ukraine found unconstitutional the provisions of Article 32 of the Law on State Budget for the Year of 2000 according to which the compensation for damage inflicted by unlawful actions of the prosecutors had to be paid from the funds allocated for the maintenance of the GPO.

13. On 2 July 2002 the Pecherskiy District Bailiffs' Service opened the enforcement proceedings in the applicant's case. On 22 July 2002 the Bailiffs' Service requested the National Bank of Ukraine to transfer the amount awarded to the applicant to the deposit account of the Bailiffs' Service. On 6 December 2002 the applicant received the amount awarded and the enforcement proceedings were closed.

14. On 8 May 2003 the Supreme Court of Ukraine satisfied the protest and decided that the compensation in the applicant's case had to be paid directly from the State Budget.

2. Second set of civil proceedings

15. In June 1999 the applicant instituted proceedings in the Khmelnitskiy Town Court against the Khmelnitskiy State Centre for Standardisation, Metrology and Certification, which had been his employer

at that time, for his allegedly unlawful dismissal. On 11 October 1999 the court found against the applicant. On 9 December 1999 the Khmelnitskiy Regional Court upheld this decision.

3. Third set of civil proceedings

16. The applicant instituted two sets of proceedings in the Khmelnitskiy City Court against the GPO claiming UAH 61,161.06 and 5,862,364.79 in compensation for material damage. The applicant stated that according to the labour contracts of 12 November 1993 and 14 April 1994 his employer, the private company "Naddnistryanka", had to pay him the above mentioned amounts of remuneration for the work performed. The applicant alleged that because of his detention and the investigation in the criminal case against him he had not been able to receive this money as the company went bankrupt in 1998. On 19 March and 3 April 2002 the court found against the applicant on the ground that the GPO was not an appropriate defendant to this claim and that the applicant should institute proceedings against his ex-employer. On 18 June and 2 July 2002 the Khmelnitskiy Appellate Court upheld these decisions. On 19 December 2002 and 29 September 2003 the Supreme Court of Ukraine rejected the applicant's appeals in cassation.

C. Other events

17. In 1998-2000 a number of articles about the applicant were published in different newspapers.

18. In 2001-2004 the applicant complained to police and to other bodies that unknown people, who were allegedly policemen and the Security Service agents, threatened to destroy him in particular because he had raised complaints about the Security Service and the GPO before the European Court of Human Rights. By letter of 17 April 2001 the police informed the applicant that checks were carried out following his complaints. It was revealed that in February-March 2001 the former investigation officer, Mr M., who had investigated the applicant's case, threatened the applicant. Mr M. was wanted for committing several crimes. By another letter of 22 March 2003 the police informed the applicant that an unknown person, who called him and threatened to eliminate him, was identified and warned about possible responsibility for such actions. By letters of 7 April and 30 December 2004 the police informed the applicant about the refusal to institute criminal proceedings following his complaints for the absence of the *corpus delicti*.

19. The applicant requested the investigation officer to allow him to represent Mr K. in a criminal case against the latter. By a decision of 19 November 2003 the investigation officer rejected the applicant's request on the ground that in spite of having a law degree the applicant did not

possess an advocate's certificate. On 2 July 2004 the Khmelnitskiy Miskrayonnyi Court upheld this decision.

II. RELEVANT DOMESTIC LAW

A. The Constitution

20. The relevant provisions read as follows:

Article 56

"Everyone has the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority."

Article 62

...

"... In the event that a court verdict is revoked as unjust, the State compensates the material and moral damages inflicted by the groundless conviction."

Article 124

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

B. Code of Civil Procedure, 1963

21. At the material time, Chapter 42 of the Civil Code of Procedure allowed a final and binding judgment to be reviewed under the supervisory review procedure. The supervisory review procedure was repealed in June 2001.

C. Law of Ukraine "On Enforcement Proceedings"

22. Paragraph 6 of Article 34 provides that the enforcement proceedings may be suspended upon decision of the State official entitled to such actions by law.

D. Law of Ukraine "On the Prosecutor's Office"

23. At the material time, part 2 of Article 41 provided that the prosecutors who brought an appeal for supervisory review in the civil cases were entitled also to suspend the enforcement proceedings in such cases.

In June 2001 this Article was repealed.

E. Decision of the Constitutional Court of Ukraine of 3 October 2001

24. The relevant parts of the decision of 3 October 2001 read as follows:

> " 5... Therefore, Article 32 of Law of Ukraine "On the State Budget of Ukraine for the Year 2000" ... *de facto* introduces civil and not public responsibility of ..., the prosecutor's offices, ... for the material and moral damage caused to the citizens by unlawful actions of these bodies. Concurrently, the Constitution of Ukraine guaranties the right of the citizens for the compensation by the State and not from the funds allocated for the maintenance of these bodies (Article 56, 62).
>
> ...
>
> the Constitutional Court has decided:
>
> 1. To consider as contrary to the Constitution of Ukraine (unconstitutional) provisions of Article 32 of Law of Ukraine "On the State Budget of Ukraine for the Year 2000" ... according to which the compensation for damage inflicted to the citizens by unlawful actions of ..., the prosecutor's offices, ... is to be provided from the funds allocated for the maintenance of the courts, the General Prosecutor's Office, the Security Service of Ukraine, and the Ministry of Interior.
>
> 2. Provisions of Article 32 of Law of Ukraine "On the State Budget of Ukraine for the Year 2000" ... are considered unconstitutional, and void from the day this decision is made by the Constitutional Court of Ukraine."

THE LAW

I. COMPLAINTS ABOUT THE LENGTHY NON-ENFORCEMENT OF THE COURT DECISION

A. Admissibility

25. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the appeal for supervisory review lodged by the Deputy Prosecutor General against the final and binding decision in

his case, which caused a significant delay in the enforcement of the above decision and about the lengthy enforcement proceedings. The applicant invoked in this respect Article 6 § 1 of the Convention and Article 1 of Protocol No.1, which provide 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..."

26. The Government maintained that this complaint is incompatible *ratione materiae* with the provisions of the Convention and its Protocols. They further maintain that it could not be considered by the Court since the events related to the applicant's complaint occurred after he had lodged the application before the Court and the applicant failed to exhaust existing domestic remedies under Ukrainian law.

27. The applicant disagreed and stated that he had exhausted all available domestic remedies related to his complaint.

28. The Court observes that the applicant has lodged his initial application on 29 May 2000. Later, in his letter of 30 April 2002, the applicant has introduced an additional complaint about the lengthy enforcement of the court decision in his favour. Consequently, the Court sees no grounds to reject the applicant's complaint as inadmissible because it was lodged after the date of the initial application.

29. The Court further observes that the Government failed to specify any domestic remedies the applicant was supposed to exhaust in order to enforce the decision in his favour.

30. Accordingly, the Court dismisses the Government's objections. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

31. The Government maintained that there was no violation of the Article 6 § 1 of the Convention and Article 1 of Protocol No.1 because in spite of the GPO's resolution to stay the enforcement proceedings in the applicant's case, the writ of enforcement was submitted to the Bailiffs' Service on 2 July 2002 and the decision was enforced on 22 July 2002. Therefore, such period could not be considered as unreasonable. The

Government further mentioned that it was not the aim of the prosecutor's *protest* to quash the final decision in the applicant's case but to clarify the way of its enforcement.

32. The applicant disagreed and maintained that his rights guaranteed by the Convention were violated. In particular, he underlined that the court decision in his favour was not enforced for more than two years.

33. The Court notes that by a decision of 11 September 2000 which was upheld by the decision of 19 October 2000 the applicant was awarded a compensation for material and moral damage to be paid by the State. According to the documents submitted by the Government the applicant has finally received the amount awarded on 6 December 2002 and not on 22 July 2002 as stated by the Government. Therefore, the decision was finally enforced after two years and two months.

34. The Court further notes that the delay in the enforcement of the court decision in the applicant's favour occurred due to the supervisory review procedure initiated by the prosecutor. The Court has already found in a number of cases that the supervisory review procedure in respect of the final and binding judicial decision constitutes an infringement of the principle of legal certainty in violation of Article 6 § 1 of the Convention (see, among others, *Svetlana Naumenko v. Ukraine*, no. 41984/98, 9 November 2004).

35. In the present case, the scope of the appeal for the supervisory review was limited to the manner of enforcement of the decision of 11 September 2000 and the applicant's entitlement to the amount awarded by this decision was not questioned. In such circumstances the Court concludes that the issue of the supervisory review procedure is to be considered in the context of the lengthy non-enforcement of the decision in the applicant's favour and not as a separate issue.

36. The Court reiterates that 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). However, a stay in the execution of a judicial decision, until such time as is strictly necessary to enable a satisfactory solution to be found to public-order problems, may be justified in exceptional circumstances (see *Immobiliare Saffi v. Italy,* cited above, § 69). The issue to be considered is therefore limited to the question whether in the circumstances of the present case the delay can be regarded as reasonable.

37. In this respect the Court notes that the enforcement proceedings in the applicant's case were stayed by the GPO's decision of 20 February 2001 followed by the prosecutor's request of 15 May 2001 to review the applicant's case under the supervisory procedure in order to clarify the source of payment of the amount in the applicant's favour. Though the reasons for such clarification could be regarded as reasonable, the Court considers that since the State was a debtor in the applicant's case, by failing to clarify the situation and to enforce the decision in the applicant's favour

for more than two years, the State has put on the applicant an excessive burden thus falling short of its obligations under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

38. There has, accordingly, been a violation of these provisions.

II. OTHER COMPLAINTS

Admissibility

39. The applicant made a number of complaints in respect of the criminal case against him as well as in respect of his numerous civil cases and other events. In particular, the applicant complained that he had been tortured during the investigation and that the conditions of his detention had amounted to an inhuman and degrading treatment. He further complained that his complaints about these violations had not been properly considered. The applicant complained that his pre-trial detention had been unlawful and that his family members had not been allowed to see him while in detention. The applicant complained that during his detention the investigating officers had discriminated against him on the grounds of his faith and ethnic origin. The applicant invoked in this respect Articles 3, 5, 8, 13 and 14 of the Convention.

40. The applicant further complained under Article 6 § 1 of the Convention that the criminal case against him had been unlawful and under Article 2 of Protocol No.4 that the written undertaking not to abscond had violated his freedom of movement.

41. The applicant complained about a violation of his right to life, of his freedom of thought and freedom of expression because after the publication of several articles about the applicant and after he had lodged an application with the European Court of Human Rights, he had been allegedly threatened and persecuted by the Security Service of Ukraine and the police. The applicant invoked Articles 2, 9 and 10 of the Convention.

42. The applicant also complained under Article 6 § 1 of the Convention about unfair hearings and the outcome of the proceedings in his civil cases.

43. The applicant finally complained that the investigating officer had not satisfied his request to represent Mr K. in violation of Article 6 of the Convention.

44. However, in the light of all the material in its possession, and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

45. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 1,103,150 euros (EUR) in respect of pecuniary and non-pecuniary damage inflicted by the alleged violations of Articles 3, 5 and 13 of the Convention and by the alleged violation of Article 1 of Protocol No.1.

48. The Government commented that the matter before the Court was the lengthy non-enforcement of the court decision in the applicant's favour while the applicant claimed compensation for pecuniary and non-pecuniary damage inflicted by illegal actions of the prosecutor's office and the Security Service of Ukraine. The Government further stated that the applicant's claims were groundless and should be rejected.

49. The Court agrees that there is no causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It further considers that finding of a violation constitutes sufficient just satisfaction in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant also claimed EUR 36,885.70 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

51. The Government did not comment on this issue.

52. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only insofar as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that all of the receipts for legal assistance, translations and typing services submitted by the applicant dated back to 1997 and the applicant failed to prove to what extent these expenses were related to the present proceedings. Consequently, the Court considers it reasonable to reject the applicant's claims for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning a significant delay in the enforcement of the court decision in the applicant's favour 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 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President