CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 55870/00
by Svetlana Aleksandrovna EFIMENKO
against Ukraine

The European Court of Human Rights (Second Section), sitting on 13 December 2005 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 regard to the above application lodged on 1 September 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Svetlana Aleksandrovna Efimenko, is a Ukrainian national who was born in 1964 and resides in the city of Zaporizhzhya, Ukraine.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background of the case

From November 1994 until September 1996 the applicant worked as a lawyer in the Avers LTD auditing company (hereinafter – the "Company"), of which she was a shareholder. Her share in the Company's capital was 30 %.

On 2 September 1996, the applicant handed an application attested by a notary and dated 12 August 1996 to Mrs. N., director and holder of 70 % of shares in the Company's capital, notifying her of her decision to secede from the Company. The same day, Mrs N. together with Mrs L. and Mrs K. held a general meeting of shareholders and decided to admit Mrs L. and Mrs K. to the Company and to expel the applicant. On 12 September 1996, the Executive Committee of the Ordzhonikidzevsky District Council of Zaporizhzhya (hereinafter – the Executive Committee) passed decision no. 756-P about registration of the changes to the statutory documents of the Company by which the applicant was expelled from the Company on the basis of her application of 2 September 1996 and the minutes of the general meeting of shareholders of the same day.

On 31 January 1997 the Company decided that the value of the applicant's share was UAH 2,629.20[1]. The applicant maintained that according to the accounting documents her share had to be UAH 294,180[2].

On 6 November 1997 the Executive Committee passed decision no. 143 on termination of the State registration of the Company on the basis of the decision of the meeting of shareholders of the Company of 28 October 1997.

On 23 March 1998 the liquidation commission issued an act on termination of the liquidation procedure of the Company.

2. First set of proceedings

On 20 November 1996, the applicant lodged a claim with the Ordzhonikidzevsky District Court of Zaporizhzhya against the Company to receive compensation for her share in the Company's assets.

On 25 November 1996 the court gave a ruling on attachment of the defendant's car and bank accounts to secure the claim.

On 11 August 1997 the court also ordered the seizure of the vehicle VAZ 21099 that belonged to the defendant.

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[1] Around 405 euros ("EUR")

[2] Around EUR 45,259

Between December 1996 and 3 April 2003, the first instance court scheduled the applicant's case for hearing twenty-five times. During the said period only four hearings in the case were held and on twenty-one occasions the hearings were postponed on different grounds. Four times the case was transferred from one judge to another following motions of the applicant or the defendant, or due to expiry of the judge's term of office. The case was also transferred from one first instance court to another upon request of the applicant. The proceedings were suspended on several occasions upon the applicant's request.

On 18 December 1997 the director of the Company informed the court that by the order of the Executive Committee the Company had been liquidated.

On 29 December 1997 the court ordered seizure of office equipment of the Company.

In January 1998 the bailiff informed the court that there was no property in the Company because it had been liquidated.

On 26 August 1998 Judge S. upon the applicant's request sent letters of inquiry concerning the Company's debtors.

21 February 2003 the tax authorities, in reply to the inquiry of Judge MB, informed the latter that the Company's registration had been cancelled in 1999.

On 28 February 2003 Judge MB issued a ruling obliging the applicant to inform the court about successors of the Company.

On 3 April 2003 Judge MB terminated the proceedings in the case due to the failure of the applicant to appear before the court and to submit the requested information. The applicant maintained that she had learned about this decision only from the Government's observations on her application before this Court.

3. Second set of proceedings

On 14 January 1997[3] the applicant lodged a claim with the Ordzhenikidzevsky District Court of Zaporizhzhya against the Company and the Executive Committee to invalidate the decisions of 2 and 12 September 1996 and to restore her status as a shareholder of the Company.

From 17 October 1997, the first instance court scheduled the applicant's case for hearing seventeen times. During the said period only two hearings in the case were held and on fifteen occasions the hearings were postponed on different grounds. Four times the case was transferred from one judge to another following motions of the applicant or the defendant, or due to

[3] The Government maintained that the applicant lodged her claim only on 17 October 1997, even though the applicant's information is supported by the materials, in which 14 January 1997 is indicated as a date of lodging of her claim.

expiry of the judge's term of office. The case was also transferred from one first instance court to another upon request of the applicant. The proceedings were suspended on several occasions upon the applicant's request.

On 6 January 1998 the applicant supplemented her original claim by requesting the court to invalidate the decision of the Company of 28 October 1997 and the decision of the Executive Committee of 6 November 1997 on termination of the State registration of the Company.

On 18 February 1998 Judge S. summoned the head of the Company's liquidation committee to appear at the hearing on 24 March 1998.

On 24 March 1998 the court hearing was adjourned because the Company's lawyer requested that certain documents be demanded and a witness be summoned.

On 31 March 1998, when the Company was still in the State register of enterprises, the Ordzhonikidzevsky District Court issued a ruling prohibiting the Executive Committee from issuing orders on liquidation of the Company.

On 4 June 1998 the court held a hearing in the absence of both parties and decided in favour of the applicant and quashed the decisions of both the shareholders' meetings and the Executive Committee.

On 19 February 1999 the Presidium of the Zaporizhzhya Regional Court quashed the decision of 4 June 1998 under the supervisory review procedure and remitted the case to the Ordzhonikidzevsky District Court for a fresh consideration.

On 15 September 1999 the case was referred to the Leninsky District Court of Zaporizhzhya following the applicant's request. The proceedings are still pending.

4. Third set of proceedings

On 28 August 1997 the applicant lodged a claim with the Ordzhenikidzevsky District Court of Zaporizhzhya against Mr L.A.F. (a son-in-law of the director of the Company) to invalidate the sales contract for the car (mentioned in the first set of the proceedings), concluded between the Company and Mr L.A.F. The same day the court started the proceedings and ordered the seizure of the impugned vehicle.

Since 28 August 1997, the first instance court scheduled the applicant's case for hearing seventeen times, all of them were postponed on different grounds. Three times the case was transferred from one judge to another following motions of the applicant or the defendant, or due to expiry of the judge's term of office. The case was also transferred from one first instance court to another upon request of the applicant.

On 17 March 1998 the court passed a ruling on the assignment of the car to the applicant's charge pending delivery of a judgment in the case.

On 15 September 1999 the case was referred to the Leninsky District Court of Zaporizhzhya following the applicant's request.

On 17 March 2003 the tax administration informed the court that the Company registration had been cancelled as from 1999.

The proceedings are still pending.

5. Other events

On 29 July 1999 the Zaporizhzhya Regional Arbitration Court decided for the Company in the dispute about excluding it from the State register of enterprises. On the basis of this decision the Ordzhenikidzevskiy District State Administration issued a decision, cancelling registration of the Company on 20 August 1999.

On 28 September 1999 the Deputy Prosecutor of the Zaporizhzhya Region lodged an appeal for supervisory review against the decision of 29 July 1999.

On 1 November 1999 the Deputy President of the Zaporizhzhya Regional Arbitration Court suspended the supervisory review proceedings pending the decision of the court of general jurisdiction in the dispute about restoration of the applicant as a shareholder in the Company (the second set of proceedings).

Following the judicial reform of June 2001, the case was transferred to the Dnipropetrovs'k Commercial Court of Appeal.

On 10 April 2003 the court resumed the proceedings in the case. They are still pending.

B. Relevant domestic law and practice

1. Constitution of 1996

Article 9

"International treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine."

2. Judicial System Act

Article 96. General conditions of the disciplinary liability of judges

"A judge may incur disciplinary liability in compliance with the disciplinary procedure on the grounds specified by the Law of Ukraine "on the status of judges"."

Article 97. Disciplinary proceedings against judges

"...2. The right to initiate the disciplinary proceedings against a judge shall belong to the following persons: the people's deputies of Ukraine; the Ombudsman for

Human Rights of the Verkhovna Rada [Parliament] of Ukraine; the Minister of Justice of Ukraine; the chairman of a higher specialized court – against a judge of a relevant specialized court where the judge holds a post, except the initiation of dismissal of a judge; the chairman of a relevant council of judges, also members of the Council of Judges of Ukraine."

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the excessive length of the proceedings in her civil cases.

The applicant further complained under Article 13 of the Convention that she had no effective remedy for her complaint under Article 6 § 1 of the Convention.

The applicant finally complained that the Ukrainian courts failed to protect her property rights and to secure her claims. The applicant maintained that the courts failed to decide on the merits of her claim for her share in the assets of the Company, whereas the Company itself had ceased to exist.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

1. Exhaustion of domestic remedies

The Government maintained that, in so far as the applicant complained about the length of the court proceedings, she could introduce a complaint concerning the delay in the proceedings with the Regional Court relying directly on Article 6 of the Convention. As an example, the Government furnished a separate ruling passed by a Regional Court within a set of civil proceedings, where the court, with reference to the provisions of Article 6 of the Convention, decided to inform the Regional Qualifications Commission about delays in proceedings caused by a judge of a first instance court.

The applicant observed that direct appeal to the provisions of the Convention before the domestic courts in Ukraine was not a usual practice, and that the decision of the Mykolaiv Regional Court submitted by the Government in support of their objection could be considered as an exception rather than a rule.

The Court notes that this objection of the Government is closely linked to the applicant's complaint under Article 13 of the Convention about the lack

of an effective remedy for her complaint about the length of the proceedings. In these circumstances, it considers that this objection should be joined to the merits of the applicant's complaints.

2. Admissibility ratione temporis

a. As to the applicant's complaint under Article 6 § 1 of the Convention

The Government submitted that the Court's competence ratione temporis in respect to the three sets of court proceedings extends only to the periods after 11 September 1997.

The Court notes that the period to be taken into consideration only began on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account may be taken of the state of proceedings at the time.

b. As to the applicant's complaint under Article 1 of Protocol No. 1

The Government maintained that the applicant's complaint about an alleged deprivation of property should be rejected for being incompatible *ratione temporis* with the provisions of the Convention, because in their opinion the interference with the applicant's property took place in 1996 when the Company and local authorities had taken the decision on the applicant's expulsion from the Company. These events, however, had taken place in 1996, that is prior to the date when the Convention entered into force with respect to Ukraine. The Government submitted that, in contrast to the *Sovtransavto Holding* case (no. 48553/99, ECHR 2002-VII), the alleged deprivation of property in the instant case did not constitute a continuing process, but an instantaneous act which took place prior to 11 September 1997.

The Court notes that the applicant's complaint under Article 1 of Protocol No. 1 concerns the failure of the courts to protect her property rights and not the aforementioned decisions of the local authority and the Company which allegedly interfered with them. Therefore, the Court rejects this objection of the Government.

II. THE MERITS OF THE APPLICANT'S COMPLAINTS

1. The applicant's complaint relates to the length of the three sets of proceedings. The first set of the proceedings began on 20 November 1996 and ended on 3 April 2003 with the ruling on discontinuation. The second set of proceedings began on 14 January 1997 and is still pending. The third set of the proceedings began on 28 August 1997 and is still pending. The first set of the proceedings, therefore, lasted six years and four months, of

which five years and six months falls within the Court's competence *ratione temporis* (from 11 September 1997 until 3 April 2003). The second and third set of proceedings have already lasted respectively eight years and eleven months and eight years and four months, of which in both cases eight years and three months fall within the Court's competence *ratione temporis* (from 11 September 1997 until now).

According to the applicant, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal..."

The Government maintained that the length of the proceedings was caused by the applicant's behaviour. The Government submitted that the applicant instituted several sets of proceedings with mutually exclusive claims, objected to holding the court's hearings in the absence of the defendant, and made several requests for suspension of the proceedings and for substitution of the case judge.

The applicant maintained that the second and third sets of proceedings were aimed at securing her claim in the first set of proceedings. She further maintained that she had never objected to holding the court's hearings in the absence of the defendant and even requested the court to hold the hearings despite such absence.

The Court considers, in the light of the parties' submissions, that this complaint raises serious questions of fact and law, the determination of which requires an examination on the merits. The Court concludes, therefore, that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant further complained in substance under Article 6 § 1 of the Convention that the final and binding judgment in her favour was quashed under the supervisory review procedure.

The Government maintained that this complaint should be rejected for being submitted too late.

The Court notes that the judgment of the Ordzhenikidzevsky District Court of 4 June 1998 was quashed by the decision of the Presidium of the Zaporizhzhya Regional Court on 19 February 1999. The applicant received a copy of this decision on 26 February 1999. The application was lodged on 1 September 1999 and, therefore, both the date of the decision and the date of notification were more than six months before the application was submitted to the Court.

The Court reiterates that the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a re-opening of the proceedings as in the instant case (see *Sardin*

v. Russia (dec.), no. 69582/01, 12 February 2004). The Court therefore rejects this complaint of the applicant in accordance with Article 35 §§ 1 and 4 of the Convention as having been submitted too late.

3. The applicant complained under Article 13 of the Convention of the alleged lack of an effective remedy in respect of her complaint about a violation of Article 6 of the Convention.

Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government maintained that no separate issue arose under Article 13 of the Convention and that the applicant had effective domestic remedies which she had failed to exhaust.

The applicant pointed out that she had filed numerous complaints with different institutions about the proceedings but to no avail.

The Court considers, in the light of the parties' submissions, that this complaint raises serious questions of fact and law, the determination of which requires an examination on the merits. The Court concludes, therefore, that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

4. The applicant complained that the domestic courts failed to protect her property rights. She invoked Article 1 of Protocol No. 1 which provides as relevant:

> "Every ... 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 Government maintained that the applicant's claims before the domestic courts were so contradictory, that the State could not be blamed for failure to protect her property rights in the situation when the applicant could not formulate with sufficient precision which aspect of her property rights should be protected.

The applicant contended that her steps in the judicial proceedings had been logical and could be explained by her wish to secure her property rights for a share in the property and profits of the Company.

The Court considers, in the light of the parties' submissions, that this complaint raises serious questions of fact and law, the determination of which requires an examination on the merits. The Court concludes therefore that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court by a majority

Joins to the merits the Government's preliminary objection based on non-exhaustion of domestic remedies;

Declares admissible, without prejudging the merits, the applicant's complaint concerning the length of the proceedings under Article 6 § 1 of the Convention, as well as applicant's complaints under Article 13 of the Convention and Article 1 of Protocol No. 1;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President