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. 60725/00
by Viktor Vasilyevich GAYEVSKIY
against Ukraine

The European Court of Human Rights (Second Section), sitting on 11 January 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 9 August 2000,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

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, Mr Viktor Vasilyevich Gayevskiy, is a Ukrainian national, who was born in 1958 and lives in the city of Dnepropetrovsk, Ukraine. The respondent Government were represented by their Agents – Mrs V. Lutkovska, succeeded by Mrs Z. Bortnovska.

A. The circumstances of the case

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

In 1989 the applicant's employer - the Southern Machinery Construction Factory (hereinafter – the "SMCF") put the applicant's name on a priority housing list (position no. 336 at the material time) for obtaining a dwelling to which he was entitled according to the relevant law after having been appointed as a "young specialist". This priority list was designated for persons who were entitled to receive a dwelling without waiting their turn in the general housing list. The applicant was provided with a room in a hostel (where he is currently residing) as temporary accommodation[1] in the meantime.

By a judgment of 18 November 1997, the Krasnogvardeyskiy District Court of Dnepropetrovsk found that the applicant had a right to obtain a dwelling from his employer without waiting his turn (*позачергово*), and obliged the SMCF to provide him with such accommodation. The court stated in particular:

> "Having heard the claimant and the representative of the SMCF, and having examined the case-file, the court considers that the claims of Mr. Gayevskiy are well-founded since, as a young specialist who arrived for work at the enterprise after graduation, he was entitled to receive an individual dwelling without waiting his turn, as indicated in certificate no. 189-1728. However, after his name was put on the priority housing list ... under no. 336, Mr. Gayevskiy [now holds] ... priority ... under no. 86, and the SMCF does not [yet] have the possibility to provide him with a dwelling. Since the applicant continues his labour relations with SMCF, which did not fulfil its obligations to the applicant, the SMCF [must] fulfil its obligation to provide the applicant with a separate dwelling. ...
>
> The court has therefore decided to oblige the SMCF to provide Mr. Gayevskiy with a separate dwelling."

On 1 July 1998 the State Bailiffs' Service of the Krasnogvardeyskiy District Department of Justice initiated enforcement proceedings on the basis of a writ of execution dated 18 November 1997.

On 2 February 1999, upon the bailiff's request, the judge who had decided the case provided explanations as to the enforcement of the judgment. The judge held that:

> "under the [court] decision, the SMCF, where Mr. Gayevskiy has worked and continues working, "is obliged to provide Mr. Gayevskiy with a separate dwelling" ... There were no grounds during the examination of the case, and there are no grounds

[1] In 1998 the SMCF transferred this hostel to another State entity, "VPU-17". In December 2002 "VPU-17" instituted proceedings against the applicant in the Babushkinskiy Local Court of Dniepropetrovsk seeking the applicant's eviction and the recovery of a debt for the communal charges. On 25 February 2003, the court found in part for the applicant and prohibited the hostel owner from evicting the applicant. At the same time the court ordered the applicant to pay UAH 750.20[1] for the arrears of communal charges. The applicant appealed against this decision.

now, for providing the claimant with a dwelling immediately or ahead of his turn in the housing list...”

On 29 September 1999 the enforcement proceedings were terminated on the ground that the applicant's name had been put on the priority housing list (no. 63 at the material time).

By a judgment of 18 November 1999 the Krasnogvardeyskiy District Court of Dnepropetrovsk found for the applicant and declared the decision of 29 September 1999, terminating the enforcement proceedings, null and void.

On 3 February and 9 November 2000 the Deputy Head of the State Bailiffs' Service of the Krasnogvardeyskiy District of Dnepropetrovsk informed the applicant that he was now no. 33 on the priority housing list.

In March 2004 the applicant informed the Court that he had lodged a claim against the Bailiffs' Service for failure to enforce the judgment of 18 November 1997. The proceedings are pending before the first instance court.

B. Relevant domestic law

1. The Constitution 1996

The relevant extracts of the Constitution of Ukraine read as follows:

Article 47

“Everyone has the right to housing. The State creates conditions that enable every citizen to build, purchase a property, or to rent housing.

Citizens in need of social protection are provided with housing by the State and bodies of local self-government, free of charge or at a price affordable to them, in accordance with the law.

No one shall be forcibly deprived of housing other than on the basis of the law, pursuant to a court decision.”

Article 48

“Everyone has the right to a standard of living sufficient for himself or herself and his or her family, which includes adequate nutrition, clothing and housing.”

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.”

2. Housing Code of Ukraine of 30 June 1983

Article 46 of the Code provides for categories of persons entitled to a dwelling in an order of priority, including persons appointed to work outside the area of their habitual residence. The Article further stipulates that the persons concerned shall be included in a priority housing list. However, the Code does not set down any time-limits for the allocation of such dwellings.

3. Decree of the Council of Ministers of the USSR "on the Guarantees and Compensations in Labour Migration"

Paragraph 3 of the Decree provides that the employees sent for permanent work outside the area of their habitual residence shall be provided by their employer with priority accommodation, without having to wait their turn.

COMPLAINT

The applicant complained under Articles 6 § 1 and 13 of the Convention about the non-enforcement of the judgment of the Krasnogvardeyskiy District Court of Dnepropetrovsk of 18 November 1997.

THE LAW

The applicant alleged that the judgment in his favour had not been enforced and invokes Articles 6 § 1 and 13 of the Convention. Article 6 § 1 provides, insofar as relevant, as follows:

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

Article 13 states:

> "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 the applicant did not exhaust the domestic remedies available to him. In particular he failed to challenge a failure of the bailiffs and/or the defendant company to enforce the judgment. They stated that the applicant also failed to request a change in the manner of enforcement, to oblige the defendant company to provide him with a monetary equivalent of the dwelling to which he was entitled. The Government further maintained that the enforcement of the judgment in the

present case required the defendant to build the necessary housing, and therefore the period for compliance was understandably longer than the payment of a pecuniary award. Finally, the Government maintained that provision of accommodation for the applicant was conditional on the prior allocation of dwellings to persons higher up on the housing list. To favour the applicant would be to the detriment of the rights of these people.

The applicant maintained that he was absolved from pursuing any further remedies, having a final and binding judgment in his favour. He further maintained that he had instituted proceedings in the domestic courts precisely to obtain priority housing immediately, which had been granted by this judgment.

The Court notes that the applicant essentially complained that he was refused priority in the allocation of housing even though he had a court judgment requiring this.

The Court observes that confusion has apparently arisen in the case about the priority housing list on which the applicant was placed and any further priority that could be given within that list. In their final analysis, the domestic authorities have interpreted the judgment in question to mean the former, i.e. his placement in the list. To that extent, the judgment has been enforced. However the applicant has interpreted this judgment more broadly to mean that he should be given priority accommodation before the other persons on that list.

The Court recalls that it is not its task to substitute itself for the domestic jurisdictions. It is primarily for the national authorities, notably the courts, to resolve problems of the interpretation of domestic law and the assessment of fact (see, *inter alia*, the Pérez de Rada Cavanilles v. Spain judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 43). The Court finds no indication that the domestic authorities acted arbitrarily or otherwise exceeded the margin of appreciation afforded to them in the field of State housing regulation. Furthermore, the immediate provision of accommodation, ahead of the priority housing needs of other people, pursuant to the judgment of 18 November 1999, has not been sufficiently established in the domestic proceedings, and the applicant has thereafter failed to clarify the matter by lodging relevant appeals to the higher courts against that judgment.

The Court, moreover, considers that the applicant has not established sufficient elements to caste doubt on the interpretation given in this matter by the domestic authorities or a conclusion that the judgment has been adequately enforced in its present state.

In sum, the Court finds that the case does not disclose any appearance of a violation of the Convention, and in particular of Articles 6 and 13. It follows that the applicant's complaints must be rejected pursuant to Article 35 §§ 1, 3, and 4 of the Convention.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention;

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President