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. 63134/00
by Aleksandr KECHKO
against Ukraine

The European Court of Human Rights (Second Section), sitting on 5 April 2005 as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 27 June 2000,

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. Aleksandr Nikolayevich Kechko, is a Ukrainian national, who was born in 1945 and resides in the city of Donetsk, Ukraine. The respondent Government are represented by their Agents – Mrs V. Lutkovska and Mrs Z. Bortnovska.

A. The circumstances of the case

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

The applicant has worked as an English teacher in a secondary school since 1984.

On 23 March 1996 the Ukrainian Parliament adopted a new wording for the Education Act that provided for, in particular, payment of certain benefits to teachers.

On 2 April 1999 the applicant instituted civil proceedings in the Leninsky District Court of Donetsk against the Leninskiy District Department for Education, claiming entitlement to the benefits provided by above Act. The applicant maintained that he had more than 10 years' length of service and was thus entitled to a 20% increase in his salary from 1 January 1997. However, the defendant had not paid him the increased amount. He further maintained that the defendant had not paid him an annual bonus for the performance of excellent work or an annual payment for recreation. The defendant stated that the claimed amounts could not be paid because the State budgets for 1997-1999 did not make any provision for the appropriate expenditures.

On 5 October 1999 the court found in part for the applicant. The court rejected the applicant's claim for an annual bonus for the performance of excellent work on the ground that such a payment required an assessment to be made of the applicant's work, and this was outside the court's competence. The court also rejected the applicant's claim for benefits which had not been paid to him in 1997 and 1998 on the ground that this claim was outside the time-limit provided by the law governing employment disputes. The court further rejected the applicant's claim for benefits after 1 June 1999 on the ground that the Secondary Education Act, adopted in May 1999, suspended the provision of such benefits. The court, however, awarded the applicant the claimed increase in salary for the period between 1 January and 1 June 1999.

The applicant appealed against this decision to the Donetsk Regional Court.

On 4 November 1999 the regional court quashed the decision of the first instance court and remitted the case for a fresh consideration.

On 24 February 2000 the Leninskiy District Court of Donetsk ruled against the applicant. The court found that, under the transitional clauses of the Secondary Education Act, the provision entitling the applicant to the claimed benefits would only enter into force on 1 September 2001. Thus, at the time of the examination of the claim there was no legal basis on which the applicant could claim any of the benefits in question.

On 30 March 2000, the Donetsk Regional Court upheld the decision of the first instance court. This decision was final.

B. Relevant domestic law and practice

1. Labour Code of Ukraine of 10 December 1971 (with further amendments)

At the material time, Article 233 of the Code provided that employees could institute proceedings in respect of an employment dispute within three months from the date on which they learned or could have been expected to learn that there had been an infringement of their rights. By an act of 11 July 2001, this article was supplemented by a provision repealing time-limits for disputes concerning salary arrears.

2. Education Act of 23 May 1991 (wording of 23 March 1996 with further amendments)

Article 57 of the Act provided for a 20% increase in salary for teachers who had worked in the education system for more than 10 years. The same article provided for an annual payment for recreation and an annual bonus for the performance of excellent work.

Between June 1999 and September 2001 these provisions were suspended by the Secondary Education Act mentioned below.

3. Secondary Education Act of 13 May 1999

The second paragraph of Article 43 of the Act provided that teachers of State and municipal secondary schools shall be paid salaries and benefits provided by Article 57 of the Education Act from the State Budget of Ukraine. The transitional clause of this Act stipulated that the above provision shall enter into force on 1 September 2001.

COMPLAINT

The applicant complained under Article 1 of Protocol No. 1 to the Convention that the refusal to pay him benefits, to which he was entitled under law, for the period 1997-1999, constituted a violation of his property rights.

THE LAW

A. Objection of the Government as to the applicant's victim status

The Government submitted that the applicant could not claim to be a victim of a violation his property rights, since in their opinion, the property right in the present case did not exist.

The Court believes that this objection of the Government is closely linked to the issue of applicability of Article 1 of Protocol No. 1 in the present case and therefore joins this objection to the said issue.

B. Admissibility of the applicant's complaints

The applicant complains that the refusal to pay him benefits provided for in the law constituted a violation of his property rights. He invokes Article 1 of Protocol No. 1 that provides as relevant:

> "Every natural ... 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."

i. Applicability of Article 1of Protocol No. 1

The Government maintained that the applicant's complaint concerned neither an "existing possession" nor a "legitimate expectation" to receive such a possession.

The applicant disagreed.

The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning, which is not limited to ownership of physical goods and is independent of the formal classification in domestic law: certain other rights and interests, for instance debts, constituting assets, can also be regarded as "property rights", and thus "possessions" for the purposes of this provision. The issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 98, ECHR 2002-X).

In the instant case, the provisions entitling the applicant to a 20 % salary increase and an annual payment for recreation were introduced in 1996 and then suspended in June 1999. The applicant's claim before the domestic

authorities was based on these express and, at the material time, effective provisions of domestic law. The salary increase was to be payable with reference to a single and objective condition – the length of time worked by the applicant as a teacher. This condition having been fulfilled, the applicant can be said to have had a reasonable expectation, if not a right, to receive the payment in question. The same is true for the payment of the annual allowance for recreation, which was not made subject to any conditions. In contrast, the payment of a work performance bonus was made dependent on subjective factors and required an assessment to be made of the applicant's performance at work.

It follows that this complaint cannot be rejected as being incompatible *ratione materiae* with the provisions of the Convention. The Court accordingly dismisses the Government's preliminary objection as to the victim status of the applicant.

ii. Admissibility of the complaint

The Government maintained that there was no unjustified interference with the applicant's property rights, since the national courts did not recognise the applicant's entitlement to a 20% increase in salary and an annual payment for recreation, as the effect of the relevant legislative provision was suspended. The Government stressed again that the applicant had no "legitimate expectation" to obtain these benefits; therefore there were no unjustified interference with his property rights. They further maintained that there was a conflict of two legal acts – the Education Act and the State Budget Act for the relevant year, where the provisions of the latter should prevail, being a *lex specialis*.

The applicant disagreed.

The Court considers, in the light of the parties' submissions, that the application 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 unanimously

Declares the application admissible, without prejudicing the merits of the case.

S. DOLLÉ
Registrar

A.B. BAKA
President