CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

Application no. 33097/02
by Sergey Grigoryevich KHOROLSKIY
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 3 April 2007 as a Chamber composed of:

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

Having regard to the above application lodged on 26 July 2002,

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 formal declarations accepting a friendly settlement of the case,

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 Sergey Grigoryevich Khorolskiy, is a Ukrainian national who was born in in 1969 and resides in the village of Grodovka, Donetsk Region, Ukraine. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

A. The circumstances of the case

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

In 2001, the applicant instituted proceedings in the Novogrodovsky Town Court of Donetsk Region against the Novogrodovskaya Mining Company - a State-owned enterprise - to recover unpaid salary.

On 3 May 2001, the Novogrodovsky Town Court found in favour of the applicant (*Решение Новогродовского городского суда Донецкой области*) and awarded him UAH 3,315.5 (around 550 euros).

As the judgment of 3 May 2001 had not been enforced, the applicant instituted proceedings in the Novogrodovsky Town Court against the Novogrodovsky Bailiffs' Service challenging their omission. On 11 September 2001, the court rejected the applicant's claim, finding that no fault had been committed by the Bailiffs' Service. On 1 November 2001, the Donetsk Region Court of Appeal dismissed the applicant's appeal. On 7 March 2002, the panel of three judges of the Supreme Court of Ukraine rejected the applicant's request for leave to appeal.

On 26 December 2001, the ban on the forced sale of assets belonging to undertakings in which the State holds at least 25% of the share capital, was entrenched in the Law on the Introduction of a Moratorium on the Forced Sale of Property.

The judgment of 3 May 2001 was fully enforced on 6 October 2005.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the lengthy non-enforcement of the judgment in his favour. He further complained that the lengthy non-enforcement infringed his right to life under Article 2 § 1 of the Convention, given his low standard of living. The applicant finally alleged that he had been subjected to slavery due to the fact that his work had not been remunerated. He invoked Article 4 § 1 of the Convention.

THE LAW

On 19 February 2007 the Court received the following declaration, signed by the applicant:

> I, Sergey Grigoryevich KHOROLSKIY, note that the Government of Ukraine are prepared to pay me *ex gratia* the sum of EUR 800 euros with a view to securing a

friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

The sum of EUR 800 will be converted into the national currency of the respondent State at the rate applicable on the date of payment, and free of any taxes that may be applicable. It will be payable within three months from the date of notification of the [decision taken by the Court pursuant to Article 37 § 1] of the European Convention on Human Rights. 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.

I accept the proposal and waive any further claims against Ukraine in respect of the facts of this application. I declare that this constitutes a final resolution of the case.

On 7 March 2007 the Court received the following declaration from the Government:

I, Yuriy ZAYTSEV, Government Agent before the European Court of Human Rights, declare that the Government of Ukraine offer to pay *ex gratia* the sum of EUR 800 to Mr Sergey Grigoryevich Khorolskiy with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

The sum of EUR 800 will be converted into the national currency of the respondent State at the rate applicable on the date of payment, and free of any taxes that may be applicable. It will be payable within three months from the date of notification of the [decision taken by the Court pursuant to Article 37 § 1] of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention). Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President