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. 36575/02
by Vladimir Sergeyevich KORNILOV and Others
against Ukraine

The European Court of Human Rights (Second Section), sitting on 7 October 2003 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 9 September 2002,

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

Having deliberated, decides as follows:

THE FACTS

The first applicant, Vladimir Sergeyevich Kornilov, is a Ukrainian national, who was born in 1944.

The second applicant, Victor Yegorovich Lyekontsev, is a Ukrainian national, who was born in 1948.

The third applicant, Nikolay Vasilievich Kravchuk, is a Ukrainian national, who was born in 1947.

Commented [Note1]: To be checked.

Commented [Note2]: To be checked.

Commented [Note3]: To be checked.

The fourth applicant, Nikolay Dmitrievich Samoylenko, is a Ukrainian national, who was born in 1950.

All the applicants reside in the village of Naberezhny, Odessa Region, Ukraine.

They were represented before the Court by Valeriy Valeriyevich Sudakov, a lawyer practising in Odessa, Ukraine.

Commented [Note4]: To be checked.

A. The circumstances of the case

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

All the applicants are retired military servicemen. In March 1999, they retired from the Armed Forces and were entitled to certain financial assistance. However, this aid was only partially paid.

The first applicant was entitled to 7683,55 UAH, but received only 3714,90 UAH, 3968,65 UAH remaining unpaid.

The second applicant was entitled to 9642,40 UAH, but received only 4524,80 UAH, 5117,60 UAH remaining unpaid.

The third applicant was entitled to 9457,60 UAH, but received only 4166,40 UAH, 5291,20 UAH remaining unpaid.

The fourth applicant was entitled to 5490,90 UAH, but received only 2625,15 UAH, 2865,75 UAH remaining unpaid.

The applicants each instituted separate proceedings in the Odessa Garrison Military Court against the Military Unit A-0958, seeking recovery of the unpaid part of their allowances.

The first applicant

On 17 December 2001 the Odessa Garrison Military Court (*Решения Военного местного суда Одесского гарнизона*) found in favour of the first applicant and awarded him 4019.65 UAH, including 3968.65 UAH for unpaid allowances and the delay in payment, as well as 51 UAH in court costs. On 6 March 2002, the Military Appellate Court of the Southern Region (*Определения Военного апелляционного суда Южного региона*) upheld the decision of the first instance court.

On 23 January 2002, the applicant submitted the execution writ to the Belyaevska District Bailiffs' Office of the Odessa Region (*Отдел Государственной исполнительной службы Беляевского районного управления юстиции Одесской области*).

On 21 February 2002, the same first instance court found for the applicant in another set of proceedings against the same defendant and awarded him 4511 UAH, including 4500 UAH for unpaid allowances and 111 UAH in court costs. On 25 April 2002, the Military Appellate Court of the Southern Region upheld the decision of the first instance court.

On 24 May 2002, the applicant submitted the execution writ to the Belyaevska District Bailiffs' Office of the Odessa Region.

On 12 September 2002, both judgments in the applicant's favour were fully enforced and the applicant was paid 8630.65 UAH.

The second applicant

On 17 December 2001 the Odessa Garrison Military Court found in favour of the second applicant and awarded him 5168.60 UAH, including 5117.60 UAH for unpaid allowances and the delay in payment, as well as 51 UAH in court costs. On 14 March 2002, the Military Appellate Court of the Southern Region upheld the decision of the first instance court.

In January 2002 the applicant submitted the execution writ to the Belyaevska District Bailiffs' Office of the Odessa Region.

On 12 September 2002, the judgment in the applicant's favour was fully enforced and the applicant was paid 5168.60 UAH.

The third applicant

On 17 December 2001 the Odessa Garrison Military Court found in favour of the third applicant and awarded him 5342.20 UAH, including 5291.20 UAH for unpaid allowances and the delay in payment, as well as 51 UAH in court costs. On 19 March 2002, the Military Appellate Court of the Southern Region upheld the decision of the first instance court.

On 23 January 2002, the applicant submitted the execution writ to the Belyaevska District Bailiffs' Office of the Odessa Region.

On 12 February 2002, the same first instance court found for the applicant in another set of proceedings against the same defendant and awarded him 5064 UAH, including 5004 UAH for unpaid allowances and 60 UAH in court costs. On 23 May 2002, the Military Appellate Court of the Southern Region upheld the decision of the first instance court.

On 5 June 2002, the applicant submitted the execution writ to the Belyaevska District Bailiffs' Office of the Odessa Region.

On 12 September 2002, both judgments in the applicant's favour were fully enforced and the applicant was paid 11705.20 UAH.

The fourth applicant

On 17 December 2001 the Odessa Garrison Military Court (*Решения Военного местного суда Одесского гарнизона*) gave decisions in favour of the fourth applicant and awarded him 2865.75 UAH for unpaid allowances and the delay in payment. On 5 March 2002, the Military Appellate Court of the Southern Region upheld the decision of the first instance court.

On 23 January 2002, the applicant submitted the execution writ to the Belyaevska District Bailiffs' Office of the Odessa Region.

On 12 February 2002, the same first instance court found for the applicant in another set of proceedings against the same defendant and awarded him 3768 UAH, including 3708 UAH for unpaid allowances and 60 UAH in court costs. On 16 May 2002, the Military Appellate Court of the Southern Region upheld the decision of the first instance court.

On 9 August 2002, the applicant submitted the execution writ to the Belyaevska District Bailiffs' Office of the Odessa Region.

On 3 October 2002, both judgments in the applicant's favour were fully enforced and the applicant was paid 6635.75 UAH.

B. Relevant domestic law

1. Civil Code of Ukraine

Under Article 214 of the Civil Code, in case of delay in the fulfilment of its financial obligations, the debtor must, upon a claim by the creditor, pay the amount of the debt, plus any interest payable at an established inflation rate during the default period.

2. Law of Ukraine of 21 April 1999 "on Enforcement Proceedings"

Under Article 2 of the Law, the enforcement of judgments is entrusted to the State Bailiffs' Service. Under Article 85 of the Law, the creditor may file a complaint against actions or omissions of the State Bailiffs' Service with the head of the competent department of that Service or with a local court. Article 86 of the Law entitles the creditor to institute court proceedings against a legal person, entrusted with enforcement of a judgment, for inadequate enforcement or non-enforcement of a judgement, and to receive compensation.

3. Law of Ukraine of 24 March 1998 "on the State Bailiffs' Service"

Article 11 of the Law provides for the liability of bailiffs for any inadequate performance of their duties, and compensation for damages caused by a bailiff when enforcing a judgment. Under Article 13 of the Law, acts and omissions of the bailiff can be challenged before a superior official or the courts.

COMPLAINTS

The applicants originally complained under Article 1 of Protocol No. 1 to the Convention that the State had infringed their right to the peaceful enjoyment of their possessions. The applicants further alleged that the judgments in their favour had not been enforced and invoked Article 6 § 1 of the Convention. They finally complained that the inactivity of the State Bailiffs' Service and the State Treasury led to long delays in the enforcement proceedings and they requested compensation for this.

THE LAW

The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No.1 of the non-enforcement of the judgments of the Odessa Garrison Military Court of 17 December 2001. They further complained of the enforcement proceedings having been too long and the existence of statutory restrictions which delayed the enforcement of judgments in their favour.

Article 6 § 1 of the Convention provides as relevant:

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

Article 1 of Protocol No. 1 provides as relevant:

> "Every natural or 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 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 (...)."

The Court notes that the applicants' complaints are in two parts that will be examined separately.

1. Non-enforcement of the judgments in the applicants' favour

In their observations, the respondent Government maintained that the applicants could no longer claim to be victims of a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 since the judgments of 17 December 2001 had been fully executed. The applicants confirmed this

in their letter of 22 January 2003 and in their reply to the Government's observations of 24 June 2003.

The Court recalls its case-law that if the applicant received redress at the domestic level for an alleged violation of the Convention he can no longer claim to be a "victim" of a violation by one of the Contracting States.

In so far as the applicants complained of the non-enforcement by the Ukrainian authorities of the judgments of the Odessa Garrison Military Court in December 2001 and February 2002, the Court notes that these decisions were fully executed by 12 September 2002 with respect to the first three applicants and by 3 October 2002 with respect to the fourth applicant, that was prior to the registration of their application with the Court. This fact was not contested by the applicants. In these circumstances, the Court considers that the applicants can no longer claim to be "victims", within the meaning of Article 34 of the Convention, of a violation of the aforementioned rights.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

2. *Length of enforcement proceedings*

The Government submitted that, in so far as the applicants complain of a delay in enforcement proceedings allegedly attributable the State Bailiffs' Service, they did not challenge the actions or omissions of the bailiffs before the domestic courts and, therefore, did not exhaust, as required by Article 35 § 1 of the Convention, the remedies available under Ukrainian law. The Government maintained that such remedies were effective both in theory and in practice.

The applicants contested this submission and pointed out that the recourse against the bailiffs would have been ineffective, since the delay was due to actions and regulations of the State Treasury. They further submitted that the delay in enforcement violated their right to peaceful enjoyment of their possessions for six months.

The Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the "determination of ... civil rights and obligations", not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see the *Estima Jorge v. Portugal* judgment of 21 April 1998, *Reports* 1998-II, p. 772, § 35).

However, the Court notes that in the present case the enforcement of judgments in the applicants' favour ranged from two to eight months, which in the Court's opinion was not excessive and raises no arguable claim under Article 6 § 1 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

As to the applicants' claim of an unjustifiable interference with the right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1, the Court notes that Ukrainian legislation provided for several possibilities to receive compensation for delays in recovering a debt, either from the actual debtor or from any legal person responsible for the enforcement of judgments (see the relevant domestic law described above). Moreover, the applicants had already been awarded compensation from the debtor for the delay in payments for the period prior to the judgments in their favour.

The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The applicants did not pursue any domestic remedy seeking compensation for any further prejudice that may have been caused by the delay after the delivery of the judgments but prior to their execution. The applicants accordingly cannot be regarded as having exhausted all the domestic remedies available to them under Ukrainian law as required by Article 35 § 1 of the Convention (see, for example, *Popov v. Ukraine*, no. 13243/02, dec. 8 July 2003).

It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President