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. 19443/03
by Petr Petrovich KUKTA
against Ukraine

The European Court of Human Rights (Second Section), sitting on 22 November 2005 as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 14 March 2003,

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,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Petr Petrovich Kukta, is a Ukrainian national who was born in 1959 and lives in Dniprodzerzhynsk.

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

A. First set of proceedings

On 5 October 2001 the Zavodskyi District Court of Dniprodzerzhynsk ordered the Elektrotekhservice Collective Enterprise, a private company, to pay the applicant UAH 2,623.92[1] in salary arrears and compensation for pecuniary and non-pecuniary damage.

On 7 November 2001 the Zavodskyi District Bailiffs' Service of Dniprodzerzhynsk instituted enforcement proceedings.

On 1 March 2003 the applicant was paid UAH 1,623.92[2].

On 7 October 2004 the Bailiffs' Service terminated the enforcement proceedings in view of the debtor's lack of funds. The applicant did not challenge that decision before the domestic courts.

The judgment of 5 October 2001 remains partially unenforced (UAH 1,000[3]).

B. Second set of proceedings

In February 2003 the applicant lodged with the Zavodskyi District Court of Dniprodzerzhynsk two separate defamation claims against the newspapers "Litsa" and "Dneprovskaya Pravda", and a journalist Mrs Z. The applicant sought refutation of the information contained in two articles published by the defendants and compensation for non-pecuniary damage.

The applicant failed to provide any further information as to the outcome of these proceedings.

COMPLAINTS

The applicant complained about the non-execution of the judgment of the Zavodskyi District Court of Dniprodzerzhynsk of 5 October 2001. He invoked Articles 4 and 13 of the Convention, Article 1 of Protocol No. 1, and, in substance, Article 6 § 1 of the Convention.

The applicant further complained under Article 6 § 1 of the Convention about the unfairness of the defamation proceedings, which he allegedly instituted in the Zavodskyi District Court of Dniprodzerzhynsk.

---

1. Around 438 euros – "EUR".
2. Around EUR 271.
3. Around EUR 167.

THE LAW

A. First set of proceedings

The applicant complained about the State authorities' failure to enforce the judgment of the Zavodskyi District Court of Dniprodzerzhynsk of 5 October 2001. He relied on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which provide, insofar as relevant, as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

Article 13

"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."

Article 1 of Protocol No. 1

"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 ...."

In their observations, the respondent Government submitted that the State was not responsible for the debts of the defendant, which was a private company.

They further maintained that the applicant neither challenged the decision of Bailiffs' Service to discontinue the enforcement proceedings nor claimed compensation for its alleged omissions or inactivity before the domestic courts. The Government therefore contended that the applicant had not exhausted, as required by Article 35 § 1 of the Convention, the remedies available to him under Ukrainian law. The Government maintained that such remedies were effective both in theory and in practice.

The applicant did not submit any additional comments to his original complaint.

The Court observes that the non-enforcement of the judgment given in the applicant's favour was due to the private entity's lack of funds. The Court agrees with the Government that the State cannot be considered

responsible for such lack of funds and its responsibility extends no further then the involvement of State bodies in the enforcement proceedings (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

Moreover, as the Court has already held in similar cases, the Ukrainian legislation provides for a possibility to challenge before the courts the lawfulness of actions and omissions of the State Bailiffs' Service in enforcement proceedings and to claim damages from that Service for the delays in payment of the awarded amount (see, for instance, *Dzizin v. Ukraine* (dec.), no. 1086/02, 24 June 2003). In the present case, the applicant did not apply to any domestic court against the Bailiffs to challenge their alleged omissions or inactivity. The applicant, accordingly, cannot be regarded as having exhausted the domestic remedies available to him under Ukrainian law.

It follows that this part of the application must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

The applicant further complained about a violation of Article 4 of the Convention (freedom from slavery) on account of the non-enforcement of the judgment in his favour.

The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Second set of proceedings

The applicant finally complained under Article 6 § 1 of the Convention about the unfairness of the defamation proceedings.

The Court observes that the applicant failed to elaborate on this complaint. The Court finds, therefore, that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

A.B. BAKA
President