CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 70898/01
by Yevgeniy Ivanovich LUPANDIN
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 A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 19 July 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Yevgeniy Ivanovich Lupandin, is a Ukrainian national, who was born in 1948 and is currently serving a prison sentence at Penitentiary No. 8 in Zhytomyr.

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

1. Criminal proceedings against the applicant

On 16 January 1997 the Donetsk Regional Court sentenced the applicant to the death penalty following his conviction for the murder of two persons. The court found that the applicant to be a "very dangerous recidivist". On 20 March 1997 the Supreme Court of Ukraine upheld this decision.

On 4 July 2000 the Donetsk Regional Court commuted the applicant's death sentence to life imprisonment following legislative changes.

On 9 November 2001 the Bogunskiy District Court of Zhytomyr deleted from the text of the decision of the Donetsk Regional Court of 16 January 1997 the reference to the applicant being "a very dangerous recidivist" following changes in the Criminal Code.

2. Pension proceedings

From 2000 to 2002 the applicant requested on many occasions the Pension Fund and the Ministry of Labour and Social Politics to give him an old age pension. These requests were refused as, in accordance with the Law "on Pensions", a pension could not be assigned (*призначення пенсії*) to a person serving a prison sentence. In particular, the Pension Fund of Ukraine stated that, as the applicant had reached pensionable age while serving such a sentence, no pension could be assigned to him.

On 4 July 2000 the Donetsk Regional Court rejected the applicant's pension complaint for having been brought before the wrong court.

3. Industrial injury proceedings

Prior to the aforementioned events, on 23 September 1995 the applicant had had a serious accident at work in the Petrovskaya Mining Company (the "PMC"), his former employer. On 24 September 1996 the PMC decided to pay the applicant immediate compensation for the injury.

In 1997 the applicant instituted proceedings against the PMC as the compensation awarded to him had not been paid. On 20 March 1997 the Petrovsky District Court of Donetsk found in favour of the applicant and ordered the PMC to pay the applicant UAH 16,445.74 in compensation. This decision was not appealed and became final on 30 March 1997.

On 10 April 1997 the Petrovsky District Execution Service initiated execution proceedings in the applicant's case.

On 12 June and 15 and 25 October 2002, the Execution Service notified the applicant that the sum could not be paid due to the debtor's lack of funds and due to the entry into force of the Law "on the Introduction of a Moratorium on the Forced Sale of Property" which prohibited the sale of assets belonging to undertakings in which the State held at least 25% of the share capital.

In February 2002 the Execution Service ordered the auction of the PMC's property, but the auction did not take place due to a lack of buyer demand.

On 20 March 2002 the Commercial Court of the Donetsk Region prohibited the sale of the PMC's property, due to pending bankruptcy proceedings against the PMC.

On 9 March 2003 the applicant informed the Court that the execution proceedings were still pending.

COMPLAINTS

The applicant complains about the non-execution of the judgment of 20 March 1997. He invokes, in substance, Article 6 § 1 of the Convention.

The applicant complains under Article 6 § 1 of the Convention that the domestic courts denied him a fair trial in that they wrongly convicted him. He also complains that they erred in their assessment of the facts and in the application of the law. He also invokes Article 4 § 2 of Protocol No. 7 in this respect.

The applicant alleges that the refusal of the State authorities to pay him an old age pension whilst in prison constituted an interference with his right to the peaceful enjoyment of his possessions. In substance, he relies on Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant complains that the judgment of the Petrovsky District Court of Donetsk of 20 March 1997 was not executed. He relies in substance on Article 6 § 1 of the Convention, which in so far as relevant provides:

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

The Court considers that it cannot, on the basis of the case-file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant complains that he was tried and convicted of murder unfairly, invoking Article 6 § 1 of the Convention, cited above, and Article 4 § 2 of Protocol No. 7 to the Convention, which in so far as relevant provides:

> "The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case."

The Court finds that the final domestic decision within the meaning of Article 35 § 1 of the Convention was given by the Supreme Court of Ukraine on 20 March 1997, prior to 11 September 1997, which is the date of entry of the Convention into force in respect of Ukraine (see *Kucherenko v. Ukraine,* (dec.), no. 41974/98, decision of 4 May 1999). As to the decisions of the Donetsk Regional Court of 4 July 2000 and the Bogunskiy District Court of Zhytomyr of 9 November 2001, the Court considers that they cannot be taken into account as the proceedings before these courts did not concern the bringing of a new "criminal charge" within the meaning of Article 6 § 1 of the Convention, nor did they re-determine the applicant's conviction and sentence when commuting the death penalty to life imprisonment (cf. *Phillips v. the United Kingdom*, no. 41087/98, § 32, ECHR 2001-VII).

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

3. The applicant also complains about the allegedly unlawful refusal of the State authorities to give him an old age pension and to pay him disablement benefits which had already been assigned to him. He invokes, in substance, Article 1 of Protocol No. 1 to the Convention, which provides:

> "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 or to secure the payment of taxes or other contributions or penalties."

The Court observes that the applicant failed to raise these complaints before any domestic court in accordance with the formalities prescribed by the Ukrainian law and has therefore not, as required by Article 35 § 1 of the Convention, exhausted all the remedies available to him under Ukrainian law. The refusal of the Donetsk Regional Court cannot be taken into account as it was brought before the wrong court and the applicant's complaints were not considered on their merits.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Article 6 § 1 of the Convention regarding the non-execution of a judgment;

Declares inadmissible the remainder of the application.

S. DOLLÉ	J.-P. COSTA
Registrar	President