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. 41984/98
by Svetlana Borisovna NAUMENKO
against Ukraine

The European Court of Human Rights (Second Section), sitting on 14 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 with the European Commission of Human Rights on 6 February 1998,

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, Mrs Svetlana Borisovna Naumenko, is a Ukrainian national, who was born on 26 January 1956 and currently resides in Odessa.

A. The circumstances of the case

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

On 5 May 1991 the applicant was recognised as having been a relief worker in the Chernobyl Nuclear Plant disaster that occurred in 1986. The appropriate certificate (an identity card) was issued to the applicant by the Ministry of Health of the Ukrainian Soviet Socialist Republic.

In November 1991 the applicant was recognised as falling into a second category of invalidity in relation to her participation in the relief work at Chernobyl.

On 22 April 1992 the Ministry of Health of the Ukrainian Soviet Socialist Republic annulled the certificate issued on 5 May 1991 since the applicant had not stayed and worked in the "Chernobyl alienation zone" (*тридцятикілометрова зона або зона відчудження*)[*].

On 7 November 1992 the Ministry of Health dismissed a petition by the chief doctor of the Odessa City Ambulance Service (the applicant's place of employment) in which he requested the status of relief workers for the employees (including the applicant) of the Odessa City Ambulance Service that had worked in the alienation zone.

On 1 September 1993 the Ministry of Chernobyl Affairs informed the chief doctor of the Odessa City Ambulance Service there were no documents proving that they had stayed in the alienation zone.

In February 1994 the applicant lodged complaints with the Illichevsk District Court of Odessa, seeking to establish that she had indeed stayed in the alienation zone. On 3 March 1994 the Illichevsk District Court of Odessa gave judgment acknowledging the fact that the applicant had stayed in the alienation zone on 27 and 29 May 1986. The judgment became enforceable on 14 March 1994.

On 6 October 1994 the Odessa Regional Court dismissed as groundless the motion by the Chairman of the Commission on the Status of Victims of the Chernobyl Catastrophe of the Odessa Regional Council to reverse the judgment of 3 March 1994.

On 28 December 1994 the Odessa Regional Council issued a certificate (an identity card) acknowledging the applicant's status as a victim of the Chernobyl disaster, as established by the decision of 3 March 1994.

On 8 June 1995 the Cabinet of Ministers adopted Resolution no. 404 introducing amendments to their earlier Resolution of 25 August 1992 no. 501 on the Procedure for the Issue of Certificates (Identity Cards) to

[*] The alienation zone - the so-called "30 km zone" - was contaminated by the radiation around Chornobyl. It is a zone of special radiation and security control and has led to the compulsory re-settlement of persons who were resident there.

Victims of the Chernobyl Catastrophe. By virtue of these amendments, court judgments could not serve as a basis for the issue of certificates (identity cards) which served as proof of being a victim of the disaster and gave entitlement to special benefits and social payments from the State.

On 14 December 1995 the Commission on Disputes of the Ministry of the Chernobyl Catastrophe refused to confirm the applicant's status as a Chernobyl victim since the relief work had taken place outside the alienation zone.

On 18 January 1996 the Commission on the Status of Victims of the Chernobyl Catastrophe of the Odessa Regional Council (the "Commission") annulled the decision of 28 December 1994 issuing the certificate to the applicant.

On 6 March 1996 the Chairman of the Department of Social Security of the Odessa Regional Council adopted a decision withdrawing the certificate from the applicant, suspending the social security payments and annulling the benefits awarded to the applicant as a victim of the Chernobyl disaster, in accordance with the law.

On 18 June 1996 the Commission adopted a decision annulling the certificate.

In August 1996 the applicant lodged complaints with the Supreme Court.

On 9 August 1996 the Supreme Court informed the applicant by letter that the refusal to issue an appropriate certificate could be appealed in accordance with the procedure established by law.

On 12 January 1999 the applicant instituted proceedings in the Primorsky District Court of Odessa seeking to annul the decision of 18 January 1996 and to oblige the Commission to recognise her status as a Chernobyl victim and re-issue the certificate.

On 26 January 1999 the District Court allowed her claims and declared the actions of the Commission unlawful. It also annulled the decisions of the Commission and ordered it to issue a document recognising the applicant's status as a Chernobyl victim. The decision became enforceable on 6 February 1999.

On 6 February 1999 the Commission annulled its decision of 18 January 1996 and confirmed the applicant's status as a relief worker. The applicant's name was entered in the register of disabled Chernobyl relief workers.

In April 1999 the Deputy Chairman of the Commission on the Status of Chernobyl Victims of the Odessa Regional Council filed a motion with the President of the Odessa Regional Court, requesting the President to lodge a *protest* against the decision of 26 January 1999 so that it could be quashed.

On 7 May 1999 the President of the Odessa Regional Court dismissed this petition as unsubstantiated.

On 14 January 2000 Commission issued a Chernobyl victim identity card to the applicant. The applicant's name was also entered in the list of persons requesting an improvement of living conditions.

On 21 March 2000 the applicant lodged a motion with the Primorsky District Court of Odessa seeking the interpretation of its judgment of 26 January 1999. She also requested that the Commission calculate her benefits and pension as from 18 January 1996 and compensate her for the arrears in benefits from that same date.

On 28 March 2000 the Primorsky District Court of Odessa allowed the applicant's claims and ruled that the compensation, arrears and benefits be calculated and paid to the applicant as from 18 January 1996.

On 15 June 2000 the applicant requested that the Primorsky District Court of Odessa issue the writ of execution for the ruling of 28 March 2000. On 13 July 2000 the Primorsky District Court of Odessa issued this writ.

The execution proceedings commenced on 19 July 2000, i.e. two days after the Illichevsk District Execution Service of Odessa Region had received the writ.

On 11 August 2000 the Illichevsk District Execution Service held that it had no jurisdiction over the execution of the ruling in the applicant's case.

On 29 August 2000 (28 August 2000 according to the Government) the Deputy President of the Odessa Regional Court lodged a *protest* with the Presidium of the Odessa Regional Court, seeking re-consideration of the case and the reversal of the judgment of the Illichevsk District Court of Odessa of 3 March 1994 establishing the fact of the applicant's stay in the alienation zone.

On 6 September 2000 the Presidium of the Odessa Regional Court allowed the *protest* of its Deputy President and quashed the decision of 3 March 1994. It also remitted the case to the Illichevsk District Court of Odessa for re-consideration.

On 16 July 2001 the Illichevsk District Court of Odessa allowed the applicant's complaint and found that she had stayed in the alienation zone on 27 and 29 May 1986.

On 14 August 2001 the Odessa Regional State Administration lodged an appeal against the judgment of 16 July 2001.

On 12 October 2001 the case file was transferred to the Odessa Regional Court of Appeal. However, it was sent back to the Illichevsk District Court of Odessa on 25 October 2001 as it was necessary to rule on the request for leave to appeal against the decision of 16 July 2001.

On 12 November 2001 the Illichevsk District Court of Odessa found that the Odessa Regional State Administration had failed to comply with the formalities envisaged by law for the introduction of appeals. The Administration was given until 20 November 2001 to rectify the matter.

On 23 November 2001 the Odessa Regional Council rectified the mistakes and appealed against the decision of 16 July 2001, seeking its annulment.

On 6 December 2001 the Illichevsk District Court of Odessa extended the term for lodging a petition by the Odessa Regional State Administration until 10 December 2001.

On 28 December 2001 the Odessa Regional Court of Appeal sent the case-file to the Illichevsk District Court of Odessa requesting it to rule on the formal defects of the appeal that had been introduced out of time.

On 29 January 2002 the Illichevsk District Court of Odessa allowed the Administration's motion to extend the time-limit for filing an appeal with the Odessa Regional Court of Appeal.

On 1 February 2002 the Illichevsk District Court of Odessa sent the case file to the Odessa Regional Court of Appeal.

On 22 February 2002 the Odessa Regional Court of Appeal decided to initiate appeal proceedings in the case and scheduled a hearing on the merits for 14 May 2002.

On 14 May 2002 the Odessa Court of Appeal quashed the decision and remitted the case to the same first instance court.

On 17 July 2002 the case-file was remitted to the Illichevsk District Court of Odessa for further consideration.

Between 12 August 2002 and 23 September 2002 the case could not be heard as the judge was on vacation.

The case was scheduled for examination for 18 October 2002.

The hearings was adjourned to 8 November 2002 as the Ministry of Health, the State enterprise RUZOD and the Ministry of the Interior failed to comply with the court's order of 17 July 2002 to provide relevant documentary evidence of the applicant's involvement in relief work at Chernobyl. The evidence requested by the court only arrived on 18 October 2002.

On 8 November 2002 the Illichevsk District Court of Odessa held a hearing in the applicant's case. On the same date the court postponed the hearing until 29 November 2002 in order to summon particular witnesses.

On 29 November 2002 the hearing was rescheduled to 19 December 2002 as the Administration had requested the summons of additional witnesses.

On 19 December 2002 the court heard the additional witnesses. It also scheduled another hearing on 16 January 2003 in order to allow time for the transfer of the case file from the Primorsky District Court of Odessa relating to the applicant's status as a Chernobyl relief worker.

On 16 January 2003 the hearing was rescheduled as the Administration's representative had no valid letter of authority. The next hearing was scheduled for 22 January 2003.

On 22 January 2003 the applicant lodged a motion with the court seeking to adjourn the hearing in her case in order to specify her claims. The hearing was rescheduled for 10 February 2003.

On 6 March 2003 the Malinovsky District Court of Odessa (the case having been transferred to this court in accordance with the territorial division of the districts of Odessa) found that the applicant had been a relief worker at the Chernobyl Nuclear Power Plant in 1986 and had stayed in the "alienation zone". There was no appeal against this decision which became final on 8 April 2003.

The execution proceedings commenced on 13 March 2003.

The decision of 6 March 2003 was executed on 8 May 2003 after the applicant had received the Chernobyl victim certificate.

On 12 May 2003 the Malinovsky District State Execution Service terminated the execution proceedings as having been completed.

B. Relevant domestic law and practice

1. Constitution of Ukraine of 1996

Article 129

In the administration of justice, judges are independent and subject only to the law

"... The main principles of judicial proceedings are:

1) legality;

... 9) the mandatory nature of court decisions."

2. Code of Civil Procedure of Ukraine (these provisions were annulled on the basis of the introduction of the Law of Ukraine on the Introduction of Changes and Amendments to the Code of Civil Procedure of Ukraine of 26 June 2001)

Chapter 42

Supervisory review of enforceable court decisions, rulings and resolutions

Article 327

Enforceable decisions, rulings and resolutions, that can be reviewed

"Court decisions, rulings and resolutions can be reviewed in supervisory review proceedings following a protest lodged by the officials designated in Article 328 of the Code of Civil Procedure of Ukraine."

Article 328

Persons who have the right to lodge a protest against an enforceable decision, ruling or resolution of a court

"The following persons have the right to lodge a protest against an enforceable court judgment, ruling or resolution:

... 2) presidents of the Supreme Court of the Crimea, regional courts, Kyiv and Sevastopol City courts and their deputies - against decisions and rulings of the district (city), inter-district (county) court, and also against the cassation rulings of the civil division of the Supreme Court of the Crimea, regional courts, and the Kyiv and Sevastopol city courts; ..."

Article 329

The courts that consider protests in the supervisory review proceedings

"The following courts hear cases in supervisory review proceedings: ...

3. The Presidium of the Supreme Court of the Crimea, regional courts, Kyiv and Sevastopol city courts - upon protests lodged by the President of the Supreme Court of Ukraine, the General Prosecutor of Ukraine and their deputies, Presidents of the Supreme Court of the Crimea, regional, Kyiv and Sevastopol city courts and their deputies - against the judgments and rulings of the district (city), inter-district (county) courts and against the judgments of the district (city) courts, inter-district (county) courts and against the cassation rulings of the Supreme Court of the Crimea, regional courts, Kyiv and Sevastopol city courts; ..."

Article 331

Suspension of execution of judgments, rulings and resolutions that entered into force

"The officials that have the right to lodge a protest can suspend execution of the relevant judgments, rulings and resolutions until the end of the supervisory review proceedings.

The lodging of a protest against a judgment adopted upon a complaint about the unlawful actions of an official that interferes with the lawful rights of the citizen suspends execution of the decision until the end of the supervisory review proceedings."

Article 333

The right of persons participating in the case to lodge explanations with regard to the lodged protest and to take part in the consideration of the case

"Parties and other persons participating in the case have the right to lodge written explanations regarding the protest.

Persons informed about the place and time of consideration of the case can at their request participate in the consideration of the case. Their absence does not influence the consideration of the case."

Article 337

The powers of the court that considers a case in supervisory review proceedings

"When considering a case in supervisory review proceedings, the court has the right by its ruling or resolution to:

1) leave a judgment, ruling, resolution without changes, and refuse a protest;

2) annul a judgment, ruling or resolution in whole or in part and remit the case for re-consideration to the court of first or cassation instance;

3) annul a judgment, ruling or resolution fully or partially and terminate proceedings in a case or leave it without consideration;

4) leave one of the previously adopted judgments in the case, or one of the rulings or resolutions without satisfaction;

5) change a judgment, ruling or resolution or adopt a new decision, without remitting the case for new consideration, if the case does not require the collection or an additional verification of evidence, the circumstances of the case are established by the court of first instance fully and correctly, but the error was made in the application of the norms of substantive law."

Article 341

Obligatory nature of the instructions of the court that considers the case in the supervisory review proceedings

"The instructions of the court that made the supervisory review are of an obligatory nature for the court which later re-examines the case. These instructions are obligatory within the boundaries established by Article 319 of this Code.

Considering the case in supervisory review proceedings, annulling the cassation decision, the court has no authority to determine the conclusions that could be made in the course of re-consideration of the case by the cassation court."

3. The Law of Ukraine on the Introduction of Changes to the Code of Civil Procedure of Ukraine of 21 June 2001

Chapter II

Transitional provisions

"1. This Law shall enter into force on 29 June 2001...

3. Appeals in civil cases lodged before 29 June 2001 shall be considered in accordance with the procedure adopted for the examination of appeals against local court judgments.

4. Protests against judgments lodged before 29 June 2001 shall be sent to the Supreme Court of Ukraine for consideration in accordance with the cassation procedure.

5. Judgments that have been delivered and which have become enforceable before 29 June 2001 can be appealed against within three months in accordance with the cassation procedure (*to the Supreme Court of Ukraine*)."

4. The Law of Ukraine on the Status and Social Security of Victims of the Chernobyl Nuclear Plant Disaster (28 February 1991)

Section 10

Determination of persons belonging to the participants in the relief works at the Chernobyl nuclear power plant

"Relief workers dealing with the consequences of the Chernobyl nuclear power plant disaster are citizens who directly took part in any works related to dealing with the disaster itself, of its consequences in the alienation zone in 1986-1987 regardless of the number of working days, and in 1988-1990 - for not less than 30 calendar days, including the evacuation of persons and property from this zone, and those temporarily present there or persons assigned there from their place of employment within the designated terms for the execution of works in the alienation zone, including military servicemen, civil servants (*якщо це державні службовці*), the public, enterprises, institutions and organisations regardless of their jurisdiction and those who worked not less than 14 calendar days in 1986 in the acting ambulance stations for the decontamination of the population and the deactivation of the equipment or their buildings. The list of these stations is drawn up by the Cabinet of Ministers of Ukraine."

Section 11

Determination of persons belonging to the category of victims of the Chernobyl nuclear power plant disaster

"Persons who are considered victims of the Chernobyl nuclear power plant disaster are the following: ...

5) persons who had been working for at least 14 days from the time of the accident until 1 July 1986 or at least for three months during 1986-1987 outside the exclusion zone in particularly harmful working conditions (taking into account the radioactivity factors) where this work was related to the elimination of the consequences of the Chernobyl nuclear plant disaster and was carried out on the basis of instructions received from the Government. The types of work and territories to be covered are determined by the Cabinet of Ministers of Ukraine."

5. Resolution of the Cabinet of Ministers of Ukraine no. 501 of 25 August 1992 on the Procedure for the Issue of Certificates to Victims of the Chernobyl Nuclear Plant Disaster

Section 10. Certificates are issued in the following cases:

"... persons assisting in dealing with eliminating the consequences of the nuclear power plant disaster are issued certificates on the basis of one of the following documents:

a) a certificate of assignment to the alienation zone;

b) a military certificate;

c) a certificate of proof of bonus payments for participation in the relief work;

d) (excluded on the basis of the Resolution of the Cabinet of Ministers of Ukraine no. 404 of 8.06.1995) a decision of a court establishing direct participation in any works for a certain period related to dealing with the consequences of the nuclear power plant disaster, its consequences in the alienation zone, including evacuation of persons and property from such a zone. ...

The decision to issue or not to issue the relevant certificate shall be adopted within one month from the date of receipt of the necessary documents by the body issuing such a certificate."

6. Resolution of the Cabinet of Ministers of Ukraine no. 106 of 23 July 1991

The list of the localities referred to as zones of radioactivity as a result of the Chernobyl nuclear power plant disaster

"... Commentary: The town of Ivankiv to which the applicant was assigned from the place of his employment (Odessa) is not included in the list of localities..."

7. Resolution of the Cabinet of Ministers of Ukraine No. 404 of 8 June 1995

On the Introduction of Amendments to paragraph 10 of the Rules for Issue of Certificates to Victims of the Chernobyl nuclear power plant disaster

"1. (delete paragraph 10 from the Resolution of the Cabinet of Ministers of Ukraine No. 501 of 25 August 1992).

2. Commissions on disputed issues as to the determination of the status of a person who assisted in dealing with the consequences of the nuclear power plant disaster created at the Ministry of Protection from the Chernobyl Nuclear power plant disaster, with consequences before 1 January 1997, shall verify the issue of certificates to victims of the Chernobyl nuclear plant disaster on the basis of judicial decisions and shall react in the event of finding a violation of the procedure for establishing such status."

8. The Resolution of the Plenary Supreme Court of Ukraine on the Judicial Practice as to the Establishment of the Facts that are of legal consequence (31 March 1993)

"2. ... - in accordance with the Law of Ukraine on the Status and Social Security of Victims of the Chernobyl Nuclear Power Plant Disaster and the Resolutions of the Cabinet of Ministers of Ukraine of 25 August 1992 on the Procedure for the Issue of Certificates to Victims of the Chernobyl Nuclear Plant Disaster adopted in accordance with the Law, certificates can be issued on the basis of a court judgment establishing the particular participation of the person in any kind of work for a certain period of time (determined by the legislation) related to eliminating the consequences of the disaster, its consequences in the alienation zone, including the evacuation of persons and property from such zones, and/or the works on the acting ambulances stations for the decontamination of the population and the deactivation of equipment. All other issues concerning the status of the victims of the Chernobyl nuclear power plant disaster shall be determined on the basis of the relevant documentation of the commissions of the executive bodies of the Kyiv and Zhytomyr Regional Municipal Councils, and disputes shall be settled by the commissions of the Executive Committees of Kyiv and Zhytomyr and of the Ministry of Protection of the Population from the Consequences of the Chernobyl Nuclear Power Plant Disaster."

COMPLAINTS

The applicant complains, under Article 6 § 1 of the Convention, about a lack of fairness and an unreasonable length in the consideration of her case.

The applicant complains, under Article 13 of the Convention, about the lack of effective remedies for her complaints.

The applicant complains, under Article 1 of Protocol No. 1 to the Convention, that she was deprived of her pension.

The applicant also complains about an infringement of Articles 5, 8, 14, 15 and 17 of the Convention since she worked in Chernobyl involuntarily; there was an interference with her family life; she was discriminated against in comparison to other relief workers; and she was exposed to radiation and forced to participate in the relief work at the Chernobyl nuclear power plant.

THE LAW

1. Government's preliminary objections

(a) The admissibility *ratione temporis*

The Government submitted that the applicant's complaints about the decision of the Odessa Regional State Administration on 18 January 1996 fall outside the scope of the Court's competence *ratione temporis.* In particular, they stated that the Court's competence *ratione temporis* in the instant case covers events in so far as they took place after 11 September 1997, that is, it covers the judicial proceedings initiated upon the applicant's complaints against the decision of 18 January 1996.

The Court observes that, in accordance with generally accepted principles of international law, Contracting Parties are only bound by the Convention in respect of events occurring after it has entered into force in respect of that State. It notes that the date on which the Convention entered into force in respect of Ukraine and of the Ukrainian declaration accepting the right of individual application was 11 September 1997 and that some of the events referred to in the present application occurred prior to that date. The Court must therefore determine whether and to what extent it has jurisdiction to examine the applicant's complaints.

As regards the complaints under Article 6 § 1 of the Convention, the Court notes that the proceedings in issue began in February 1994, so that part of those proceedings falls outside its jurisdiction *ratione temporis*. However, it may take note of events prior to 11 September 1997 when examining the complaints as a whole (see, *mutatis mutandis*, *Bagetta v. Italy*, 25 June 1987, Series A no. 119, p. 32, § 20). The same would apply to

the applicant's complaints under Article 1 of Protocol No. 1 to the Convention, in so far as the alleged violation can be regarded as being of a continuous character.

(b) The applicant's victim status

The Government submitted that the applicant cannot be considered a victim of the infringement of her right to the status of a Chernobyl relief worker, as the decision of the Presidium of the Odessa Regional Court of 6 September 2000, allowing the *protest,* had no practical impact on her standing as a victim of the Chernobyl nuclear plant disaster. Furthermore, the Government maintained that the judgment of the Primorsky District Court of Odessa of 26 January 1999 quashed the decision of the Odessa Regional Council of 18 January 1996 depriving her of the status as a Chernobyl relief worker. They maintained that since the decision of 18 January 1996 was quashed the applicant could no longer claim to be a victim in this respect.

The Court notes that the judgment of the Illichevsk District Court of 3 March 1994, establishing the fact of the applicant's involvement in the relief work at Chernobyl was quashed on 6 September 2000 by the Presidium of the Odessa Regional Court, which deprived the judgment of 26 January 1999 of all legal effect since the applicant no longer had the status of a Chernobyl relief worker, and could no longer receive compensation and make use of the relevant privileges established for that status. The Court considers therefore that the Government's objection under this heading is unsubstantiated and must be rejected.

(c) Non-exhaustion of domestic remedies

The Government pointed out that the applicant's complaints about the failure of the State authorities to execute the ruling of the Primorsky District Court of Odessa of 28 March 2000, interpreting its judgment of 26 January 1999, should be rejected for non-exhaustion of the domestic remedies as she did not complain about it to the domestic courts in accordance with Article 85 and 86 of the Law on Execution Proceedings. They also mentioned that the applicant did not complain about the refusal of the State Social Security Department of the Odessa Regional Council to recalculate her pension, as envisaged by Article 104 of the Law on Pensions.

The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden of proof has been

satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Dankevich v. Ukraine,* no. 40679/98, § 107, 29 April 2003).

The Court emphasises that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. The Court has recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically. In reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned**,** but also of the general legal and political context in which they operate**,** as well as the personal circumstances of the applicant. It must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected in order to exhaust domestic remedies (see *Akdivar and Others v. Turkey,* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 69).

The Court observes that the complaints against the State Execution Service that terminated the execution proceedings in her case on 3 August 2000 would have had no relevance as, by the judgment of the Presidium of the Odessa Regional Court, the applicant was *de facto* deprived of her status as a Chernobyl relief worker. Furthermore, the proceedings concerning the fact of her stay in the "alienation zone" were still pending before the Primorsky District Court of Odessa. The Court considers that, in the presence of two judgments that have contrary legal meanings (i.e. the applicant could not have the status of a Chernobyl relief worker not having worked in the Chernobyl "alienation zone"), the complaints against the State Execution Service and the State Pension Department would have had no effective result for the applicant as the fact of the applicant's work in the Chernobyl "alienation zone" was not determined finally by the domestic courts until 3 March 2003.

The Government also contradicted themselves, mentioning in their letter to the Court of 26 May 2003 that the decisions of 26 January 1999 and 28 March 2000 could not be executed by the State Execution Service as the said judgments contained no enforcement measures, being mere declarations.

The Court considers therefore that the Government have failed to show that these remedies would have been effective and accessible in the applicant's particular situation, i.e. would have led to specific redress for the alleged infringement of applicant's rights. Consequently, the applicant was not required to exhaust them.

(d) The admissibility *ratione materiae*

The Government maintained that the applicant's complaints about the unreasonable length of the proceedings concerning the fact of her involvement in the relief work at the Chernobyl "alienation zone" did not involve the determination of civil rights and obligations, within the meaning of Article 6 § 1 of the Convention. In particular, the Government stressed that the fact of her involvement did not concern her status as a relief worker and therefore did not concern her right to receive privileges and compensation ensuing from that status. Furthermore, the proceedings were not decisive for her civil rights and obligations. They concluded therefore that Article 6 § 1 of the Convention is not applicable to these proceedings.

The Court recalls that, according to the principles laid down in its case law, Article 6 § 1 of the Convention extends only to "*contestations*" (disputes) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. Article 6 § 1 is not aimed at creating new substantive rights, without a legal basis in the Contracting State, but at providing procedural protection of rights already recognised in domestic law (see *Zander v. Sweden,* judgment of 25 November 1993, Series A no. 279, p. 39, § 24). The dispute over a right must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question (see the *Balmer-Schafroth and Others v. Switzerland* judgment of 26 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1357, § 32). Lastly, the right must have a "civil" character.

The Court, firstly, takes note of the close link between the proceedings concerning the fact of the applicant's stay in the Chernobyl "alienation zone" and the proceedings concerning her status as a Chernobyl relief worker. As a result of both proceedings, the applicant obtained the right to receive compensation and to make use of certain privileges envisaged by law for Chernobyl relief workers that were not otherwise available to her. The Court considers therefore that the right at issue was a "civil" right within the meaning of Article 6 § 1 of the Convention. Moreover, this right was recognised by domestic law and was confirmed by domestic court decisions on a number of occasions. The Court considers therefore that the Government's objection should be rejected.

It concludes that Article 6 § 1 of the Convention is applicable to the proceedings at issue.

2. The parties' submissions on the applicant's claims

(a) The applicant alleged that the proceedings in her case were unreasonably long. She maintained that they were initiated in February 1994 and that the final decision was adopted on 3 March 2003. They therefore

lasted nine years and one month. She relied in her submissions on Article 6 § 1 of the Convention which provides as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Government maintained that the length of the proceedings was not unreasonable as the period to be taken into consideration commenced after 11 September 1997, the date of entry into force of the Convention in respect of Ukraine. In particular, they considered that the period to be taken into consideration should only be counted as of 6 September 2000, when the decision of Illichevsk District Court of Odessa on 3 March 1994 was quashed by the Presidium of the Odessa Regional Court. The Government were of the view, *inter alia*, that the case was complex as the courts lacked relevant documentary evidence in order to establish the fact of the applicant's stay in the Chernobyl alienation zone. Furthermore, the parties, not the courts, were responsible for some periods of delay. The Government considered that the length of the proceedings constituted only two years and five months. They concluded that this period was not "unreasonable" within the meaning of Article 6 § 1 of the Convention.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities) and the parties' submissions, that this issue raises serious questions of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint 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.

(b) The applicant further complained under Article 6 § 1 of the Convention, cited above, about the lack of fairness of the decision of 6 September 2000 and the lack of impartiality of the Presidium of the Odessa Regional Court in quashing the decision of the Illichevsk District Court of Odessa of 3 March 1994. In particular, she noted that the hearing before the Presidium of the Odessa Regional Court took place in her absence. She alleged that she only found out about it after the hearing had already taken place and the decision of the Presidium of the Odessa Regional Court had been adopted.

The Government stressed that, even though the instant case concerns the quashing of a final judgment, it is still distinguishable from the case of *Brumarescu v. Romania* ([GC], no. 28342/95, ECHR 1999-VII, judgment of 28.10.99), as the *protest* was lodged by the Deputy President of the Odessa Regional Court, and not the prosecutor. Furthermore, even though the Deputy President heard his own *protest*, the Presidium was chaired by the President of the Odessa Regional Court, and other judges of that court heard the case sitting in a chamber. The supervisory review procedure *(процедура*

розгляду справ в порядку нагляду) was expressly regulated by the Code of Civil Procedure. It contained guarantees for a fair hearing; it was used by Ukrainian citizens to defend their rights and aimed at correcting judicial errors. They concluded that the supervisory review did not contradict the principles of the rule of law and legal certainty. In particular, this procedure was transparent, foreseeable and was an effective legal mechanism of appeal by citizens against erroneous judicial decisions.

The Government pointed out that the Presidium's decision did not influence the status of the applicant, as the case was remitted for fresh consideration and, after three years, the courts ruled in her favour. They maintained that the principles of independence and impartiality were not infringed by the Presidium of the Odessa Regional Court and, therefore, there had been no violation of the applicant's rights under Article 6 § 1 of the Convention.

The Court considers, in the light of the parties' submissions, that this issue raises serious questions of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint 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.

(c) The applicant further complained about the lack of fairness in the consideration of her case. She also alleged that the unreasonable length of its consideration led to an infringement of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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 Government pointed out that there was no violation of the applicant's rights as the instant case raised similar issues as the case of *Skyrkiewidz v. Poland* (no. 39860/98, decision on admissibility of 1 June 1999). In particular, the Government mentioned that, even though the applicant lost her status as a Chernobyl relief worker at one point, she nevertheless retained the right to receive the pension granted to persons within another disability group (*друга група інвалідності*). Moreover, the Government recalled that, in accordance with the judgment of the Primorsky District Court of Odessa, the applicant's status as a relief worker was restored and she was granted the pension for her Chernobyl-related disability. As regards the refusal of the Department of the Odessa Municipal Council to increase her pension due to her relief work, the Government

pointed out that the applicant had no documents to confirm the number of hours spent in the alienation zone. The Government also mentioned that the applicant did not appeal against this refusal.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint 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.

(d). As to the applicant's complaints under Article 13 of the Convention, the Court considers it unnecessary to examine them separately as they repeat and are analogous to those under Article 6 § 1. Moreover, as the Court has already examined the applicant's complaints under Article 6 of the Convention, there is no need for the matter to be considered in the context of Article 13 which has less stringent requirements (see *Svinarenkov v. Estonia* (dec.), no. 42551/98, 15 February 2000).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

(e). Finally, the applicant complained that Articles 5, 8, 14, 15 and 17 of the Convention were infringed as she had been working in Chernobyl involuntarily; there was an interference with her family life; she was discriminated against in comparison to other relief workers; and she was exposed to radiation and forced to participate in the relief work.

As to the applicant's complaints under Article 14 of the Convention, the Court finds that they are wholly unsubstantiated and should therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

As to the remainder of the applicant's complaints, the Court observes that they refer to events which took place prior to 11 September 1997, which is the date on which the Convention entered into force in respect of Ukraine and on which the declaration whereby Ukraine accepted the right of individual petition took effect. This part of the application is therefore incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention, and must therefore be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the unreasonable length and alleged unfairness of the proceedings under Article 6 § 1 of the Convention, as well as the applicant's complaints of an infringement of Article 1 of Protocol No. 1 to the Convention;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P.COSTA
President