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. 61333/00
by Leonid TREGUBENKO
against Ukraine

The European Court of Human Rights (Second Section), sitting on 21 October 2003 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr A.B. BAKA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 23 March 1999,

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 Leonid Tregubenko, is a Ukrainian national, who was born in 1947 and resides in Toronto, Canada. He was represented before the Court by Mrs. Anne-Marie Neu, a lawyer practising in Strasbourg.

A. The circumstances of the case

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

Since 1988 the applicant ran a business in the city of Yalta, Ukraine, keeping a part of his profit in cash.

By the Presidential Decree of 22 January 1991, the bank-notes of 50 and 100 Soviet roubles issued in 1961 ceased to circulate and had to be exchanged for the notes of the same nomination issued in 1991. The Government Decree of the same date specified the procedure of exchange, providing, *inter alia*, that a special sub-commission (hereinafter the exchange commission) should be created within the executive committees of the City or District Councils to decide on the exchange of bank-notes. The exchange commissions were empowered to allow or refuse exchanges fully or in part, depending on the legality of the source of income being proved.

In January 1991 the applicant put the amount of 230 000 Soviet roubles in 50 and 100 notes into an account at the Yalta Branch of the USSR State Bank. At the same time the applicant applied to the Yalta exchange commission for an exchange of that sum. On 25 March 1991, the commission (*Решение комиссии Ялтинского Городского Совета народных депутатов по обмену денежных знаков*) refused to exchange the full amount because of an alleged lack of proof as to the legality of the source of income, and limited the exchange to 2 462 roubles. The remaining sum of 227 538 roubles was not compensated.

The applicant challenged that decision before the higher exchange commission of the Republic of Crimea. On 6 May 1991 the latter upheld the decision of the Yalta exchange commission.

The Government submit that, in accordance with the resolution of the Cabinet of Ministers of the USSR no. 2 of 22 January 1991, which regulated the procedure for the exchange of bank-notes, this decision of 6 May 1991 was final.

At the same time the State Security Service checked the legality of the applicant's business and found no irregularities.

On 19 July 1991, the applicant instituted proceedings in the Yalta City Court against the exchange commission for its refusal to exchange the full sum of 230 000 roubles.

On 22 July 1991, the court (*Определение Ялтинского городского народного суда*) rejected the claim for lack of jurisdiction.

The applicant appealed to the Crimean Regional Court against the judgment of the Yalta City Court. On 26 August 1991, the former quashed the judgment of the latter and remitted the case for further consideration.

On 16 October 1991, the Yalta City Court (*Решение Ялтинского городского народного суда*) found for the applicant and ordered the executive committee of the Yalta City Council to exchange all the money deposited by the applicant (230 000 roubles).

On 8 April 1992 the Crimean Regional Court (*Определение Крымского областного суда*) upheld this judgment.

On 17 April 1992, the judgments of 16 October 1991 and 8 April 1992 were quashed by the Presidium of the Crimean Regional Court (*Постановление Президиума Крымского областного суда*).

On 14 April 1993, the Civil Chamber of the Supreme Court of Ukraine (*Ухвала Верховного Суду України*) quashed the latter judgment and upheld the judgments of 16 October 1991 and 8 April 1992 in the applicant's favour.

This judgment was not fully enforced for several years. On several occasions the applicant lodged claims to adjust the awarded sum with the inflation rate. On 23 May and 10 December 1996, 27 May 1997 and 23 June 1998, the Yalta City Court granted the claims due to the longstanding non-enforcement of the judgment in the applicant's favour. The latter court decision increased the amount to 349,387.82 UAH.

By letter of 26 June 1998, the Yalta City Mayor requested the Deputy Prosecutor General to intervene by lodging a protest (extraordinary appeal) against the judgment of the Supreme Court of Ukraine in the applicant's favour.

On 30 June 1998, the Chairman of the Court ordered the suspension of any further enforcement of the judgement until the extraordinary appeal had been considered.

On 9 September 1998, the Deputy Chairman of the Supreme Court of Ukraine lodged an extraordinary appeal with the Plenum of the Supreme Court against the judgments in the applicant's favour.

On 25 September 1998, the Plenum of the Supreme Court of Ukraine (*Постанова Пленуму Верховного Суду України*) allowed the appeal and quashed the said judgments, upholding the initial judgment of the Yalta City Court of 22 July 1991 to reject the applicant's claim for lack of jurisdiction.

The Yalta Mayor then requested the Yalta City Court to reverse the enforcement of the quashed judgment and to recover from the applicant the money which had been already paid to him (15% of the sum originally awarded). According to the Government, the court did not examine that request because under the agreement between the parties the applicant returned the money which had been paid to him. The city authorities allowed the applicant further use of a plot of land, where his cafe was situated.

By a letter of 25 November 1998, the Constitutional Court of Ukraine informed the applicant that it had no jurisdiction to review the decisions of the ordinary courts.

By a resolution of 9 December 1998, the proceedings on the applicant's case were closed due to the quashing of the judgment of 16 October 1991 by the Plenum of the Supreme Court.

B. Relevant domestic law

At the material time, Chapter 42 of the Civil Code of Procedure allowed a final and binding judgment to be subject to a supervisory review. When a final judgment was given by the Supreme Court of Ukraine, it could be appealed under the supervisory review procedure by the Chairman of the Supreme Court of Ukraine, the Prosecutor General of Ukraine and his or her Deputies (Article 328), and had to be considered by the Plenum of the Supreme Court (Article 329). The judgments of the Plenum were not subject to any further review.

The supervisory review procedure was repealed in June 2001.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that his right to a fair hearing was violated by the quashing of the judgment in his favour. He further complains that the proceedings before the Supreme Court were unfair. The applicant claims that he had no effective remedy against the judgment of the Supreme Court and invokes Article 13 of the Convention. He finally submits that his right to the peaceful enjoyment of his possessions, within the meaning of Article 1 of Protocol No. 1, was violated as a result of the quashing of the court decision in his favour.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

The respondent Government maintain that the application is inadmissible *ratione temporis* and that the opposite conclusion would amount to giving retroactive effect to the Convention, which would be contrary to the general principles of international law. The Government submit that the proceedings in the applicant's case were conducted prior to 11 September 1997, the date on which the Convention entered into force in respect of Ukraine. In the Government's opinion, the decision of the Plenum of the Supreme Court of Ukraine rectified the mistake made by the courts in 1993 and highlighted the impossibility under the law at that time to challenge the decisions of the exchange commission.

The applicant disagrees with the Government's submissions and maintains that his rights were violated not by the legislation that was in force in 1991, but by the decision of the Plenum of the Supreme Court of Ukraine, which was given on 25 September 1998. Both the supervisory review proceedings and the decision of the Plenum fell within the Court's competence *ratione temporis*. Therefore, he requested the Court to dismiss the preliminary objections of the respondent Government.

The Court observes that, in accordance with the 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 application in the instant case 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 applicant never challenged the fairness of the proceedings of 1991-1993 which resulted in the judgment in his favour. Neither did he complain about the subsequent court decisions to increase the awarded amount due to inflation. The applicant complained about the judgment of the Plenum of the Supreme Court of Ukraine which allowed the extraordinary appeal for supervisory review (the protest) of the Deputy Chairman of the Supreme Court of Ukraine and quashed the final and binding court decision in favour of the applicant. Therefore, in the instant case, the issue under consideration is whether the decision of 25 September 1998 by the Plenum of the Supreme Court of Ukraine, which is within the competence of the Court *ratione temporis*, runs contrary to the principle of legal certainty and therefore raises issue under Article 6 § 1 of the Convention. The Court, therefore, find itself competent to consider the applicant's complaint under this Convention provision.

As regards the complaint about an unjustifiable interference with the applicant's property rights, the Court notes that the judgment in the applicant's favour, and Government agreed on this point, constituted a "possession" within the meaning of Article 1 of Protocol No. 1. This was the applicant's situation until 25 September 1998, when the Plenum of the Supreme Court of Ukraine interfered with the applicant's property rights by quashing the final and binding decision which had been in the applicant's favour. The Court considers that nothing in the text of the said Article suggests, or can be interpreted, in such a way that the scope of its application extends only to property acquired by an applicant after Protocol No. 1 has entered into force with respect to the High Contracting Party concerned.

Accordingly, the Court dismisses the Government's preliminary objections.

II. ARTICLE 6 § 1 OF THE CONVENTION

The applicant complains under Article 6 § 1 of the Convention that the final and binding judgment in his favour was quashed following the supervisory review and that the procedure before the Plenum of the Supreme Court of Ukraine was "unfair". The applicant further complains that, by the Plenum's judgment, he was denied access to a court in the determination of his civil rights. Article 6 § 1 provides as relevant:

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

The Government maintain that the supervisory review procedure existed in the Ukrainian civil procedural legislation until 21 June 2001. In the Government's opinion, this procedure aimed at "the strengthening of legality and the legal order, the protection of the rights and legitimate interests of citizens and organisations, and the observance of legal principles in the administration of justice." The Government further maintain that this procedure was explicitly provided for by the legislation and contained considerable procedural guarantees. The Government also point out that, unlike the *Brumărescu v. Romania* case ([GC} no. 28342/95, judgment of 28 October 1999), in the instant application the protest was lodged not by the prosecutor but by the Deputy Chairman of the Court. The Government conclude that the supervisory review procedure was actively used by citizens and was considered by them to be an effective remedy. In the instant case, in the Government's view, the judgment of the Plenum of the Supreme Court of Ukraine corrected the wrong application of the law in force in 1991. Moreover, the supervisory review procedure provided the necessary guarantees of independence and impartiality and, therefore, there had been no violation of the applicant's right to fair hearing under Article 6 § 1 of the Convention.

The Court considers, in the light of the parties' submissions, that this complaint under Article 6 § 1 of the Convention raises serious questions of fact and law, the determination of which requires an examination on the merits. The Court concludes therefore that it 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.

III. ARTICLE 13 OF THE CONVENTION

The applicant complained that the resolution of the Plenum of the Supreme Court of Ukraine under the extraordinary appeal procedure could

not be challenged, and alleged a lack of effective domestic remedies against such a resolution. He invokes Article 13 of the Convention which provides as relevant:

> "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."

The Court reiterates that Article 13 of the Convention does not, as such, guarantee a right of appeal or a right to a second level of jurisdiction (cf. the decisions in *Kopczynski v. Poland*, No. 28863/95, 1 July 1998, and *Csepyová v. Slovakia*, no. 67199/01, 14 May 2002).

In the present case, the Court considers that the mere fact that the judgment of the highest judicial body is not subject to further judicial review, does not constitute an arguable claim under the provisions of the Convention. The Court therefore rejects this part of the application as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. ARTICLE 1 OF PROTOCOL No. 1

The applicant complains that his right to the peaceful enjoyment of his possessions was violated as a result of the quashing of the final and binding court decision in his favour. He invokes Article 1 of Protocol No. 1 which provides as relevant:

> "Every natural ... 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 Government agree that the judgment of 14 April 1993 conferred a "possession" on the applicant and that the quashing of the said judgment by the Plenum of the Supreme Court of Ukraine constituted an interference with the applicant's right to the peaceful enjoyment of his possessions, within the meaning of Article 1 of Protocol No. 1. Nevertheless, the Government maintain that the initial interference with the applicant's right under Article 1 of Protocol No. 1 took place in 1991, when the exchange commission refused to convert the whole amount of money deposited by the applicant. The Government submit that the interference was justifiable in order to ensure the correct application of procedural legislation and served the general interest, because diverting the awarded amount from the local budget would have made it impossible for the local authorities to effect all the social and other kinds of budget payments which were needed.

The applicant submits in reply that, by quashing the final and binding judgment in his favour, the State failed to strike a fair balance between the general interests and his property rights.

The Court considers, in the light of the above and 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.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the quashing of favourable final judgments and an allegedly unjustified interference with his property rights;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P. COSTA
President