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. 50966/99
by Ivan Stepanovych TRUKH
against Ukraine

The European Court of Human Rights (Second Section), sitting on 4 March 2003 as a Chamber composed of

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

Having regard to the above application lodged on 20 March 1999,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ivan Stepanovych Trukh, is a Ukrainian national, who was born on 20 October 1950 in the city of Zhovti Vody, Dniepropetrovsk Region, and currently resides in Armiansk, Crimea.

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

From 23 November 1990 until 23 June 1993 the applicant worked as head of the technical department of the Perekopkhimstroy company (hereafter "the company"). He also was required to perform the functions of a building engineer.

In September 1993 the applicant instituted proceedings in the Krasnoperekopsky City Court against the company, seeking the recovery of his salary, since he claimed that he was not paid for the building engineer functions. On 27 October 1993 the Krasnoperekopsky City Court ordered the commencement of the proceedings in the case. A hearing was held on 11 November 1993. On 25 April 1994 the Krasnoperekopsky District Court ordered the seizure of documents relating to the salary paid to the applicant by the company. By a judgment on 18 May 1994, the Krasnoperekopsk City Court partly allowed the applicant's claims, and ordered the company to pay the applicant 1 879 557 krb.* On 14 September 1994 the Supreme Court of Crimea quashed this decision and remitted the case for further consideration.

On 12 September 1995 the Krasnoperekopsk City Court ordered an economic-accounting expertise in the case. By a judgment of 24 June 1996, the Krasnoperekopsk City Court partly allowed the applicant's claims and ordered the company to pay the applicant the sum of 2 796 250 000 krb. On 26 November 1997 the applicant was paid 701 UAH in execution of the decision.

On 24 July 1997 the President of the Supreme Court of Crimea lodged a *protest* against the decision of 24 June 1996, seeking its annulment. On 20 March 1998 the Supreme Court of Crimea allowed the *protest* of the President of the Supreme Court of Crimea and remitted the case for further consideration to the Krasnoperekopsk City Court.

In July 1998 the applicant lodged complaints with the President of the Supreme Court of Crimea against the decision of 20 March 1998, seeking to initiate supervisory review proceedings. On 20 August 1998 the Deputy President of the Supreme Court of Crimea, by letter, rejected his claims as unsubstantiated.

On 20 August 1998 the Krasnoperekopsk City Court rejected the applicant's claims for the recovery of salary and compensation.

The applicant complained about the Supreme Court decision of 20 March 1998 to the President of the Supreme Court of Crimea, seeking to initiate supervisory proceedings. The complaint was rejected by the President of the Supreme Court of Crimea on 11 February 1999 as being unsubstantiated.

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* Krb. (*karbovantsi*) is an abbreviation for the transitional currency of Ukraine. UAH (hryvnias) have been in use since the 1996 money reform.

In April 1999 the applicant lodged his complaint with the President of the Supreme Court of Ukraine against the decision of the Krasnoperekopsk City Court of 20 August 1998, seeking its annulment. He also complained that he was not provided with a copy of the *protest* itself or a copy of the ensuing decision. On 21 May 1999 the Supreme Court of Ukraine refused to initiate supervisory review proceedings and consider his claims since the said decision was not appended to the complaints. It also recommended that the applicant address the Main Department of Justice of the Ministry of Justice of Ukraine in Crimea with a view to receiving a copy of the decision of 20 March 1998 by the Supreme Court of Crimea.

On 28 April 1999 the Main Department of Justice of the Ministry of Justice of Ukraine in Crimea rejected the applicant's request for the decision since he should have applied directly to the court which issued the decision.

In February 2001 the applicant lodged a complaint with the President of Supreme Court of Crimea requesting the initiation of supervisory review proceedings against the decision of 20 August 1998 of the Krasnoperekopsk City Court rejecting the applicant's claims. On 10 March 2001 the Registrar of the Supreme Court of Crimea informed the applicant of the need to rectify mistakes in his complaint (the need to pay the State tax for the introduction of the complaint, and the need to provide copies of the relevant judicial decisions). The applicant complained to the President of the Supreme Court of Crimea of the answer given by its Registrar. On 29 June 2001 the President of the Supreme Court of Crimea rejected the applicant's complaints as being unsubstantiated and refused to initiate supervisory review proceedings in his case.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention about:

a. an unreasonable length of proceedings;

b. unfairness and legal uncertainty in respect of the examination of the *protest* of the President of the Supreme Court of Crimea by that court on 20 March 1998;

c. the lack of a public hearing before the Supreme Court of Crimea upon consideration of the *protest;* and

d. the lack of information to the applicant about the decision of the Krasnoperekopsk City Court, thus compromising his right of complaint against it.

2. The applicant complains of the infringement of Article 14 of the Convention (in conjunction with Article 6) due to alleged discrimination by the judiciary because of his social status.

THE LAW

1. The applicant complains about unreasonable length and unfairness of civil proceedings, legal uncertainty and a lack of publicity and information. He invokes Article 6 § 1 of the Convention, which in so far as relevant provides as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time ..."

a. In so far as the applicant complains of the length of the proceedings, the Court notes that the proceedings lasted from September 1993 until 20 August 1998. That is a total of 4 years and 11 months before three levels of jurisdiction. However, the Convention entered into force in respect of Ukraine on 11 September 1997, and the Court may only examine the period after that date, i.e. 11 months, albeit taking into account the state of proceedings at the date of ratification.

Nevertheless, having regard to the criteria established by the case-law of the Convention, i.e. the complexity of the case, the conduct of the applicant and the conduct of the judicial authorities (see, *Kudla v. Poland* [GC], no. 30210/96, ECHR 2000-XI, 26.10.00, § 124), the Court is of the opinion that the length of the proceedings in the present case did not exceed a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

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

b. In so far as the applicant complains that the decision of the Supreme Court of Crimea of 20 March 1998 infringed the principles of "fairness" and legal certainty envisaged by Article 6 § 1 of the Convention, and that the proceedings were not public, the Court notes that the applicant found out about this decision in April 1998, more than six months before the introduction of his application to the Court on 20 March 1999. The complaints lodged by the applicant with a view to initiating supervisory review proceedings cannot be taken into account as this procedure is not a remedy within the meaning of Article 35 § 1 of the Convention (see, *mutatis mutandis,* no. 41974/98, *Kucherenko v. Ukraine*, dec. 4 May 1999). It follows therefore that these complaints have been lodged out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

c. In so far as the applicant complains that he was not informed about the decision of the Krasnoperekopsk City Court of 20 August 1998 and therefore could not lodge a complaint against it within the period prescribed by law, the Court considers that it cannot, on the basis of the case-file, determine its admissibility at this stage 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. Finally, the applicant complains of discrimination due to his social status, referring to Article 14 of the Convention (in conjunction with Article 6), which in so far as relevant provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

However, the Court finds no evidence whatsoever in the case-file which could substantiate this allegation. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint relating to a lack of information about the decision of the Krasnoperekopsk City Court of 20 August 1998;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President