CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL 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 14 October 2003 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
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 partial inadmissibility decision of 4 March 2003,

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, the Crimea. The respondent Government are represented by Mrs Valeria Lutkovska, the Agent of the Government of Ukraine before the Court.

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

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

In September 1993 the applicant instituted proceedings in the Krasnoperekopsk City Court against the company, seeking the recovery of the building engineer's salary that was allegedly due to him. On 27 October 1993 the Krasnoperekopsk City Court ordered the commencement of proceedings. A hearing was held on 11 November 1993. On 25 April 1994 the Krasnoperekopsk City 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 karbovantsi (hereafter "krb"; 27,962.5 ukrayinski hryvni - the present currency - hereafter "UAH").

On 14 September 1994 the Supreme Court of the Crimea quashed this decision and remitted the case for further consideration.

On 12 September 1995 the Krasnoperekopsk City Court ordered an economic-accounting expertise (*бухгалтерсько-економічна експертиза*) 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 UAH 701 in execution of the decision.

On 24 July 1997 the President of the Supreme Court of the Crimea lodged a *protest* against the decision of 24 June 1996, seeking its annulment. On 20 March 1998 the Supreme Court of the Crimea allowed the *protest* of the President of the Supreme Court of the 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 the Crimea against the decision of 20 March 1998, seeking to initiate supervisory review proceedings (*перегляд рішення в порядку нагляду*). On 20 August 1998 the Deputy President of the Supreme Court of the 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.

On 21 August 1998 the applicant lodged a cassation appeal with the Supreme Court of the Crimea, seeking to quash the judgment of the Kransnoperekopsk City Court of 20 August 1998.

On 23 August 1998 the applicant informed the President of the Krasnoperekopsk City Court that he had no intention of lodging the cassation appeal through the first instance court.

On 14 September 1998 the Krasnoperekopsk City Court suspended the referral of the cassation appeal to the Supreme Court of the Crimea on the ground that it had not been lodged in compliance with Article 292 of the Code of Civil Procedure. In particular, the applicant had not supplied

enough copies of the cassation appeal and had failed to pay the State tax. The applicant was allowed one month (until 14 October 1998) to rectify the mistakes. He was also informed that, unless he rectified them, his cassation appeal would be returned to him without consideration.

On 14 December 1998 the Krasnoperekopsk City Court refused the applicant leave to lodge a cassation appeal against its judgment of 20 August 1998 due to the applicant's failure to comply with its ruling of 14 September 1998.

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

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 **(***перегляд рішення в порядку нагляду***)** since the impugned 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 the Crimea with a view to receiving a copy of the decision of 20 March 1998 by the Supreme Court of the Crimea.

On 28 April 1999 the Main Department of Justice of the Ministry of Justice of Ukraine in the Crimea rejected the applicant's request for a copy of the decision, as he should have applied directly to the court which had given it.

In February 2001 the applicant lodged a complaint with the President of the Supreme Court of the Crimea requesting the initiation of supervisory review proceedings against the decision of 20 August 1998 of the Krasnoperekopsk City Court. On 10 March 2001 the Registry of the Supreme Court of the 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 the Crimea about the Registry's response. On 29 June 2001 the President of the Supreme Court of the Crimea rejected the applicant's complaints as being unsubstantiated and refused to initiate supervisory review proceedings in the case (*перегляд рішення в порядку нагляду*).

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the lack of information available to him in respect of the decision of the Krasnoperekopsk City Court of 20 August 1998. He therefore maintained that his right of appeal against it was compromised. He further complained of an unreasonable denial of access to court, a right guaranteed by Article 6 § 1 of the Convention.

THE LAW

The applicant complained that he was not informed about the decision of the Krasnoperekopsk City Court and that, therefore, his right to lodge a cassation appeal against it was impaired. He invoked Article 6 § 1 of the Convention, which in so far as relevant provides:

> "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 submitted that, in accordance with the legislation of Ukraine in force at the material time and, in particular, Article 289 of the Code of Civil Procedure, parties to the proceedings had a right to lodge cassation appeals against a judgment or its relevant parts to the court of cassation. However, the Government stressed that the applicant had failed to comply with the formalities prescribed by law for the introduction of the cassation appeal. In particular, the applicant had failed to pay the State tax and to provide the relevant number of copies of his cassation appeal. The Government maintained that the applicant had been properly informed about the judgment of the Krasnoperekopsk City Court, as is proved by the fact that he lodged his cassation appeal against it on 21 August 1998, one day after its delivery. Furthermore, the Government indicated that the ruling of 14 December 1998 rejecting the applicant's cassation appeal was not appealed against to the Supreme Court of the Crimea.

The Government also stressed that the applicant was present at the hearing before the Krasnoperekopsk City Court on 20 August 1998. The operative part of the judgment was pronounced in open court to the parties at the end of this hearing. They also noted that the parties were invited to familiarise themselves with the substantive part of the judgment on 25 August 1998. However, the applicant did not avail himself of this opportunity, neither did he request that a copy of the judicial decision be given to him.

The applicant did not agree with these submissions: he alleged that the judgment in his case was not publicly pronounced, contrary to Article 6 § 1 of the Convention. He therefore maintained that he was not informed about it properly, in violation of this Convention provision.

The Court considers that there are two issues that require further elaboration as to their admissibility:

– whether the applicant was duly informed about the decision of 20 August 1998 of the Krasnoperekopsk City Court; and

– whether, if not, the applicant's right to lodge a cassation appeal against this decision was impaired as a result.

(a) The right to be informed about a judgment

The Court notes that the applicant was present throughout the hearing before the Krasnoperekopsk City Court on 20 August 1998. At the end of the hearing he was properly informed about the operative part of the court's judgment rejecting his complaints. The judge hearing the case also informed the parties to the proceedings that the written text of the judgment, its substantive and operative provisions, would be available to them as from 25 August 1998. The judge also informed the parties that the ten-day period for lodging a cassation appeal commenced on 25 August 1998.

The Court considers that the availability of a written copy of the finalised first instance judgment to the parties is an important factor in the effective preparation of appeals. It is therefore necessary for the Court to decide whether there was an obligation on the applicant to familiarise himself with the written text of the judgment or an obligation of the Krasnoperekopsk City Court themselves to notify the written judgment to the applicant.

The Court observes that the applicant lodged his cassation appeal against the judgment of the Krasnoperekopsk City Court the day after its oral delivery on 21 August 1998. It also notes that, in accordance with Article 293 of the Code of Civil Procedure, the cassation appeal against the judgment of 20 August 1998 had to be lodged by the applicant through the Krasnoperekopsk City Court, where the case file was archived. This court had to grant the applicant leave to appeal and transfer the case-file with the appeal, in the event that it complied with the formalities prescribed by law, to the Supreme Court of the Crimea. From the facts of the case, it appears that the applicant was informed of the possibility of familiarising himself with the written judgment on 25 August 1998. However, he did not avail himself of this opportunity, and it appears from the verbatim record of the hearing that he did not ask the Krasnoperekopsk City Court to send him the judgment by mail. The Court considers that the provisions of Article 203 of the Code of Civil Procedure which allow domestic courts a reasonable time to produce the text of the written judgment are not arbitrary or unreasonable.

Whilst Article 6 § 1 of the Convention obliges the State to inform the parties to proceedings about the judicial decision taken (see, *mutatis*

mutandis, *Sutter v. Switzerland*, judgment of 22 February 1984, Series A no. 74, §§ 31-33), this does not presume that a party need not take reasonable steps in order to familiarise itself with the full text of the written judgment when it becomes available. The fact that the applicant has failed to take cognisance of the full text of the judgment cannot be imputable to the State (see, *mutatis mutandis*, *Zoon v. the Netherlands*, no. 29202/95, § 38, ECHR 2000-XII). Such steps would have included in the present case an oral or written request from the applicant to the Krasnoperekopsk City Court to send or provide him with a copy of the judgment.

The Court considers therefore that the applicant has failed to show that he took reasonable steps in order to familiarise himself with the full text of the written judgment of 20 August 1998. It also considers that the applicant's allegations that the judgment was not in his favour or that it was *prima facie* unlawful or arbitrary, did not absolve him from taking these measures.

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

(b) The restrictions on the applicant's right of access to a court of appeal

Firstly, the Court notes that the applicant did lodge a cassation appeal, but with the wrong court. Moreover, his appeal did not satisfy the formal requirements of Articles 292 and 293 of the Code of Civil Procedure as to the introduction of cassation appeals. The Court considers therefore that the issue under consideration is not whether the applicant was able to lodge an appeal, but whether the refusal to allow the applicant's appeal to proceed by the Krasnoperekopsk City Court was in any way arbitrary.

The Court observes that the Krasnoperekopsk City Court refused the applicant leave to appeal because he failed to pay the UAH 127 in State tax. The applicant also failed to provide sufficient copies of his cassation appeal for the number of parties to the proceedings, as required by Article 292 of the Code of Civil Procedure. The Court considers therefore that the refusal to consider the cassation appeal was based on law and discloses no element of arbitrariness.

As to the question of access to court, the Court recalls that the procedural guarantees laid down in Article 6 secure to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36). However, the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or

reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 295, § 33).

The Court considers that regulations concerning the payment of a State tax for the introduction of an appeal and supplying sufficient copies of the appeal undoubtedly serve the purpose of assuring a proper administration of justice. The parties concerned may reasonably expect those rules to be applied. However, such rules or their application should not drastically deprive litigants of the opportunity to appeal. The Court observes that in the instant case the applicant was allowed time to rectify the mistakes in his appeal application. The applicant never claimed that the rulings of the Krasnoperekopsk City Court of 14 September and 14 December 1998 were arbitrary or unjustified in the circumstances of the case. Nor did he challenge the State tax imposed on him in the domestic proceedings. The applicant never complained to the court that the amount of the tax was unreasonable. Furthermore, he failed to appeal against the rulings of the Krasnoperekopsk City Court of 14 September and 14 December 1998 to the Supreme Court of the Crimea.

In the light of these considerations, and even assuming that the applicant may be said to have exhausted the domestic remedies available to him under Ukrainian law, the Court finds that the applicant has not shown that the rulings of the Krasnoperekopsk City Court on 14 September and 14 December 1998 were arbitrary or unjustified in the circumstances of his case. An examination of this complaint does not therefore disclose any appearance of a violation of Article 6 § 1 of the Convention.

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

For these reasons, the Court by a majority

Declares inadmissible the remainder of the applicant's complaints.

S. DOLLÉ
Registrar

J.-P.COSTA
President