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. 17044/02
by Anatoliy Vasiliyevich ZHOVTAN
against Ukraine

The European Court of Human Rights (Second Section), sitting on 22 November 2005 as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 13 March 2002,

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 Anatoliy Vasiliyevich Zhovtan, is a Ukrainian national who was born in 1960 and lives in Lugansk.

A. The circumstances of the case

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

Between 26 and 29 November 1998, the applicant was detained in a cell at the Lugansk City Police Station, where he was beaten by police officers, who forced him to confess to the murder of a certain Mr Z.

On 14 January 2000 the Leninsky District Court of Lugansk sentenced the police officers concerned to imprisonment for an aggravated abuse of power. The court also awarded the applicant a total of UAH 7,000[1] against the officers in moral damages.

In February 2001 the applicant instituted proceedings against the Lugansk Regional and City Police Departments claiming compensation for material and moral damage suffered as the result of the ill-treatment. On 24 May 2001 the Leninsky District Court partly allowed this claim, ordering the Lugansk City Police Department to pay the applicant a total of UAH 4,249[2] in compensation for material damage. The court, however, rejected the claim for moral suffering as it had already been redressed by the award against the convicted officers in the criminal proceedings. The applicant appealed against the latter finding. On 13 September 2001 the Lugansk Regional Court of Appeal upheld the judgment of 24 May 2001. On 18 December 2001 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

On 8 November 2001 the Leninsky District Bailiffs' Service instituted enforcement proceedings in respect of the judgment of 24 May 2001.

According to a letter of the Lugansk City Bailiffs' Service of 10 July 2002, the enforcement proceedings were impeded by the lack of budgetary funds earmarked for such purposes. Nevertheless, from March 2002 onwards the applicant received from the debtor monthly instalments of UAH 500[3]. Thus, by 28 November 2002, when the enforcement proceedings were formally terminated, the applicant had been repaid the full amount of the award (the last payment of UAH 749[4] being made on 9 October 2002).

B. Relevant domestic law

The relevant domestic law is set out in the judgments of 29 June 2004 in the case of *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25) and of 5 April 2005 in the case of *Afanasyev v. Ukraine* (no. 38722/02, §§ 47-52).

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[1] approximately 1,157 euros (EUR)
[2] approximately EUR 703
[3] approximately EUR 83
[4] approximately EUR 124

According to Article 231 of the Code of Civil Procedure of 1963, the first instance judgment becomes final upon the expiry of the time limit for appeal or, if an appeal is lodged, after the examination of the case by the appellate court.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the domestic courts' refusal to award him compensation for moral damage against the Lugansk City Police Department was unfair. He also complains of an alleged delay in the non-execution of the judgment in his favour.

THE LAW

A. Allegedly excessive length of the enforcement proceedings

The applicants complained about the State authorities' failure to execute expediently the judgment of 24 May 2001. He relied on Article 6 § 1 of the Convention, which in so far as relevant provides:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

1. Preliminary objection of the Government

a. The applicant's victim status

The Government stressed that, as the judgment in the applicant's favour had been executed by the national authorities in full, the applicant could no longer be considered a victim of a violation of their rights under the Convention.

The applicant disagreed.

The Court notes that this issue has already been discussed in a number of the Court's judgments (see *Voytenko v. Ukraine,* no. 18966/02, judgment of 6 June 2004, § 35; *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 34). In these cases the Court found that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 and Article 1 of Protocol No.1 in relation to the period during which the decision of which complaint is made remained unenforced. It

therefore rejects the Government's objection as to the present applicants' lack of victim status.

b. Objection as to the exhaustion of domestic remedies

The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since he had not challenged the Bailiffs' alleged inactivity before the domestic courts.

The applicant did not respond to that particular submission of the Government.

The Court notes that the facts of the case show that, throughout the period under consideration, the enforcement of the judgments was hindered by legislative measures, rather than by the Bailiff's misconduct. In this respect the Court recalls its established case law that the claim for damages against the Bailiffs' Service cannot be considered an effective remedy where the delay in the enforcement of the judgments was due to reasons beyond the Bailiffs' control (see, among many others, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, and the following, §§ 38-39, ECHR 2004-...).

2. The merits of the complaint

The Government maintained that the judgment in issue was fully enforced without unreasonable delays attributable to the domestic authorities.

The applicant did not advance any arguments in addition to those he had already made at the early stages of the proceedings.

The Court notes that the judgment in issue became enforceable on 13 September 2001, when it was confirmed by the Court of Appeal, and ended on 28 November 2002. Therefore, the period of non-enforcement under consideration lasted over one year and one month.

The Court recalls that appropriations for the payment of State debts may cause some delay in the enforcement of judgments from the Government's budget (see *Voytenko v. Ukraine*, no. 18966/02, § 42, 29 June 2004). The Court further notes that in certain previous cases against Ukraine, it has held that periods one year and two months (*Shmalko v. Ukraine*, no. 60750/00, §§ 44-47, 20 July 2004) and a year and a half (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 37, 6 September 2005) were not so excessive as to raise an arguable claim under Article 6 § 1 of the Convention. The Court finds no reason to come to a different conclusion, given the particular circumstances of the present case.

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

B. Alleged unfairness of the rejection of the applicant's claim for moral damages

The applicant complained under Article 6 § 1 of the Convention that the domestic courts' refusal to award him compensation for moral damage from the Lugansk City Police Department was unfair.

The Court notes that the applicant had the benefit of adversarial proceedings before the domestic courts. Throughout those proceedings he was able to submit arguments in support of his claim. The Court does not discern any arbitrariness or procedural unfairness in the decisions of the domestic courts. Therefore, The Court finds that this part of the application is manifestly ill-founded and rejects it pursuant to Article 35 §§ 3 and 4 of the Convention.

In so far as these submissions can be understood as a complaint under Article 3 of the Convention about the insufficiency of compensation for ill-treatment, the Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3290, § 102 and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

The Court notes that in the present case the domestic proceedings had achieved both the identification and punishment of those responsible for the ill-treatment (compare and contrast, *inter alia*, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV) and the payment of compensation to the applicant (see *Krastanov v. Bulgaria*, no. 50222/99, § 48, 30 September 2004). Thus, both elements of the State's positive obligation under Article 3 appear to be fulfilled. The Court considers that the mere fact that the applicant, having received compensation for his moral suffering from the perpetrators, was not provided with an additional non-pecuniary payment from the State does not justify finding a violation of this provision. This is particularly so in view of the fact that the applicant never challenged (on appeal or otherwise) the amount he was awarded against the convicted officers and thus appears to be satisfied with the outcome of the criminal proceedings in January 2000.

Therefore, the Court considers that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

A.B. BAKA
President