CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF DOLGOV v. UKRAINE

(Application no. 72704/01)

JUDGMENT

STRASBOURG

19 April 2005

FINAL

19/07/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dolgov v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 March 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 72704/01) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Aleksandr Olegovich Dolgov ("the applicant"), on 30 December 2000.

2. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

4. The applicant's complaints under Articles 6 § 1 of the Convention were communicated to the respondent Government on 11 February 2003. On the same date the Court decided that Article 29 § 3 of the Convention should be applied and the admissibility and merits of the case be considered together.

5. The applicant and the Government each filed observations on admissibility and merits (Rule 54A).

THE FACTS

6. The applicant, Mr Aleksandr Olegovich Dolgov, is a Ukrainian national, who was born on 2 March 1958 in Illovaisk and currently resides there.

I. THE CIRCUMSTANCES OF THE CASE

7. In September 1999 the applicant lodged two complaints with the Labour Disputes Commission (the "Commission") of the State Joint Stock Company Illovayskaya Mine (his former employer – hereafter the "Mine") seeking reimbursement of salary arrears in the amount of UAH 1,535.02[1] for work he had performed in 1997 and 1999.

8. On 19 October 1999 the Commission held that the first part of the complaint should be allowed and the Mine should pay the applicant UAH 687.61[2] in arrears for September, October, November and December 1997.

9. On 11 November 1999 the Commission ordered the Mine to pay the wages due to the applicant. On 6 December 1999 the Khartsyzsk City Baillifs initiated execution proceedings on the basis of this order. However, it was not executed due to the Mine's lack of funds.

10. In February 2000 the applicant lodged an application with the Mine, seeking termination of his employment contract.

11. On 7 March 2000 the applicant again lodged complaints with the Commission, seeking to recover the wages owed to him on termination of his employment and the enforcement of the decision of 11 November 1999.

12. On 16 May 2000 the Commission examined the second complaint of the applicant and ordered that the debts amounting to UAH 847.42[3] be paid to the applicant (for the period of March, May, June, September, October and November 1999).

13. On 14 June 2000 the Commission issued certificates Nos. 42 (for UAH 687.61[4]) and 43 (for UAH 847.42[5]) acknowledging the Mine's debts to the applicant.

14. On 10 August 2000 the Khartsyzsk State Baillifs initiated execution proceedings (*виконавче провадження*) on the basis of these certificates. The Baillifs set a time-limit for their enforcement, but the Commission's decisions were not executed due to the Mine's lack of funds.

15. On 12 June 2002 the Donetsk Regional Commercial Court instituted bankruptcy proceedings against the Mine and held that a moratorium should be imposed on the forced sale of the Mine's property.

16. On 5 August 2003 the Government informed the Court that the bankruptcy proceedings were still pending.

17. On 24 November 2003 the Khartsyzsk City Court rejected as unsubstantiated the applicant's complaints regarding the Baillifs' failure to

1. EUR 331.35.
2. EUR 143.94.
3. EUR 168.50.
4. See reference 2 above.
5. See reference 3 above.

enforce the decisions and his claim for compensation for moral damage. This judgment was not appealed and thus became final.

18. On 22 January 2004 the Mine paid UAH 1,535.00[1] to the applicant, being the full amount of the salary arrears owed to him, in compliance with the Commission's decisions.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS AS TO THE ADMISSIBILITY OF THE APPLICATION

20. The Government contended that the applicant could no longer claim to be a victim of a violation of the Convention as he had received full payment of his salary arrears in accordance with the decisions of the Labour Disputes Commission. They also contended that the applicant had not exhausted domestic remedies regarding the Bailiffs' Service and the expedition of proceedings.

21. The applicant disagreed.

22. The Court notes that these objections have already been dismissed in a number of Court judgments (see in particular the aforementioned *Romashov v. Ukraine* judgment, § 27). In such cases the Court has found that applicants may still claim to be victims of an alleged violation of Article 6 § 1 in relation to the period during which the decisions of which complaint is made remain unenforced, and that the applicants were absolved from pursuing the remedies invoked by the Government. It finds no reason to reach different conclusions in the present case and, therefore, rejects the Government's objections.

B. The applicant's complaint under Article 4 § 1 of the Convention

23. The applicant complains of slavery, invoking Article 4 § 1 of the Convention, which provides as relevant:

> "No one shall be held in slavery or servitude."

1. EUR 234.31.

24. The Court notes that the applicant's allegations under Article 4 § 1 derive from the fact that he did not receive remuneration for work he had performed. The Court further notes that the applicant performed his work voluntarily and his entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery within the meaning of this provision.

25. In these circumstances, the Court considers that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002).

C. Conclusions as to the admissibility

26. The Court considers, in the light of the parties' submissions, that the applicant's complaint under Article 6 § 1 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. No ground for declaring it inadmissible has been established. The remainder of the application is, however, inadmissible.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The Government suggested that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment.

28. The applicant disagreed.

29. The Court recalls that a decision of a Labour Disputes Commission, as in the applicant's case, can be equated to a court decision, and that the State bears responsibility for its non-execution. It observes that the State is liable for the debts of the kind of mining enterprise involved in the present case (see *Romashov v. Ukraine*, no. 67534/01, judgment of 27 July 2004, § 41). It reiterates that a delay in the execution of a judgment may be justified in particular circumstances, but may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the instant case, the applicant should not have been prevented from benefiting from the decisions given in his favour, which were of major importance to him and his family, on the ground of the State's alleged financial difficulties.

30. The Court notes that there were two decisions of the Labour Disputes Commission which remained unenforced for a lengthy period of time. The Commission's decisions of 11 November 1999 and 16 May 2000 remained wholly unenforced until 22 January 2004 when the debts were paid to the applicant. It also notes that this decision was enforced only after the communication of the application to the respondent Government.

31. The Court considers therefore that by failing for over four years and two months (certificate No. 42) and for over three years and eight months (certificate No. 43) to take the necessary measures to comply with the decisions of the Commission, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect.

32. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage and costs and expenses

34. The applicant originally claimed as pecuniary damage the unpaid salary arrears. He also claimed non-pecuniary damage amounting to UAH 4,000 (EUR 800).

35. The Government considered that the applicant's claims were unsubstantiated.

36. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 2,500 in respect of all his claims and expenses in pursuing his application before the Court.

B. Default interest

37. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint under Article 6 § 1 of the Convention admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) in respect of all his claims and expenses, plus any tax that may be chargeable, this sum to be converted into the currency of the respondent State on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President