



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

SECOND SECTION

CASE OF MYKHAYLENKY AND OTHERS v. UKRAINE

*(Applications nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02,
35949/02, 35953/02, 36800/02, 38296/02, and 42814/02)*

JUDGMENT

STRASBOURG

30 November 2004

FINAL

06/06/2005

In the case of Mykhaylenky and Others v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 November 2004,

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

PROCEDURE

1. The case originated in ten applications (nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eleven Ukrainian nationals, Ms Valentyna Mykolaivna Mykhaylenko, Mr Valentyn Andriyovych Mykhaylenko, Mr Grygoriy Stanislavovych Ganushevych, Mr Anatoliy Ivanovych Marchenko, Ms Oleksandra Romanivna Yudenok, Mr Vasyl Mykhaylovych Myshko, Mr Vasyl Kindratovych Bezpalko, Ms Galyna Stepanivna Zorenko, Mr Grygoriy Pavlovych Arkhitko, Mr Volodymyr Mykolayovych Litskevich, Mr Mykhaylo Pavlovych Tyshchenko (“the applicants”), in September and October 2002.

2. The applicants were represented by Mr G.M. Avramenko, a lawyer practising in Chernigiv. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska, succeeded by Mrs Z. Bortnovska.

3. On 28 April 2003 the Court decided to communicate the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

4. Ms Valentyna Mykolayivna Mykhaylenko was born in 1951. Mr Valentyn Andriyovych Mykhaylenko was born in 1944. Mr Grygoriy Stanislavovych Ganushevych was born in 1950. Mr Anatoliy Ivanovych Marchenko was born in 1952. Ms Oleksandra Romanivna Yudenok was born in 1948. Mr Vasyl Mykhaylovych Myshko was born in 1945. Mr Vasyl Kindratovych Bezpalko was born in 1958. Ms Galyna Stepanivna Zorenko was born in 1939. Mr Grigoriy Pavlovych Arkhitko was born in 1960. Mr Volodymyr Mykolayovych Litskevich was born in 1956. Mr Mykhaylo Pavlovych Tyshchenko was born in 1949. All the applicants live in Chernigiv, Ukraine.

5. Between 1997 and 2001 the applicants instituted separate sets of proceedings in the local domestic courts, seeking the recovery of salary arrears and other payments from their former employer, the State-owned company Atomspetsbud, which had carried out construction work at Chernobyl within the zone that had been compulsorily evacuated (see paragraphs 29-30 below).

6. By a decision of the Novozavodsky District Court of Chernigiv of 14 April 1998, Ms Valentyna Mykhaylenko was awarded 4,849 hryvnas (UAH) in salary arrears and other payments. She received UAH 173.58 on 7 February 2000 and UAH 76.09 on 17 October 2001. However, the judgment remains largely unenforced, the outstanding debt being UAH 4,599.33 (the equivalent of 707.59 euros (EUR)).

7. By a decision of the Novozavodsky District Court of Chernigiv of 15 December 2000, Mr Valentyn Mykhaylenko was awarded UAH 10,479 in salary arrears. By another decision of the same court on 16 April 2002, he was awarded UAH 2,710 in compensation for the delay in the payment of the salary arrears. The judgments remain unenforced, the total debt amounting to UAH 13,189 (the equivalent of EUR 2,029.08).

8. By a decision of the Novozavodsky District Court of Chernigiv of 13 July 1998, Mr Grygoriy Ganushevych was awarded UAH 7,394 in salary arrears. He received UAH 219.37 on 21 January 2000 and UAH 116.03 on 18 August 2000. However, the judgment remains largely unenforced, the outstanding debt being UAH 7,058.60 (the equivalent of EUR 1,085.94).

9. By a decision of the Novozavodsky District Court of Chernigiv of 11 September 1997, Mr Anatoliy Marchenko was awarded UAH 4,528 in salary arrears. By another decision of the same court on 19 September 2001, he was awarded UAH 9,671.75 in compensation for the delay in payment of those arrears. He received UAH 1,000 on 17 February 1998, UAH 126.29 on 7 February 2000 and UAH 55.27 on 20 October 2000. However, the

judgments remain to a large extent unenforced, the outstanding debt being UAH 13,018.19 (the equivalent of EUR 2,002.80).

10. By a decision of the Novozavodsky District Court of Chernigiv of 18 November 1998, Ms Oleksandra Yudenok was awarded UAH 5,664 in salary arrears and UAH 883 in compensation for the delay in their payment. On 7 February 2000 the applicant received UAH 234.37. The judgment remains largely unenforced, the outstanding debt being UAH 6,312.63 (the equivalent of EUR 971.17).

11. By a decision of the Novozavodsky District Court of Chernigiv of 24 March 1999, Mr Vasyl Myshko was awarded UAH 8,130 in salary arrears, but only UAH 418.62 were paid to him. The judgment remains to a large extent unenforced, the outstanding debt being UAH 7,711.38 (the equivalent of EUR 1,186.37).

12. By a decision of the Novozavodsky District Court of Chernigiv of 17 April 2001, Mr Vasyl Bezpalko was awarded UAH 14,764 (the equivalent of EUR 2,271.38) in salary arrears. The judgment remains unenforced.

13. By a decision of the Novozavodsky District Court of Chernigiv on 4 February 1999, Ms Galyna Zorenko was awarded UAH 6,596 in salary arrears. She received UAH 236.12 on 7 February 2000 and UAH 103.51 on 10 November 2000. However, the judgment remains largely unenforced, the outstanding debt being UAH 6,256.37 (the equivalent of EUR 962.52).

14. By a decision of the Novozavodsky District Court of Chernigiv of 1 April 1999, Mr Grygoriy Arkhitko was reinstated in his post and awarded UAH 6,348.62 in salary arrears. He received UAH 226.17 on 7 February 2000 and UAH 99.64 on 18 August 2000. However, the judgment remains to a large extent unenforced, the outstanding debt being UAH 6,022.81 (the equivalent of EUR 926.59).

15. By a decision of the Ivankivsky District Court of the Kiev Region of 10 June 1999, Mr Volodymyr Litskevich was awarded UAH 6,444.45 in salary arrears. He received UAH 61.12 on 16 November 1999, UAH 171.57 on 8 February 2000 and UAH 101.13 on 18 August 2000. However, the judgment remains largely unenforced, the outstanding debt being UAH 6,110.63 (the equivalent of EUR 940.10).

16. By a decision of the Novozavodsky District Court of Chernigiv of 16 October 2001, Mr Mykhaylo Tyshchenko was awarded UAH 8,340 (the equivalent of EUR 1,283.08) in salary arrears. The judgment remains unenforced.

17. By a letter of 17 June 1999, the Ministry of Energy informed Mr Grygoriy Ganushevych that the delay in the payment of salary arrears was due to the debtor company's difficult economic situation, caused by the failure of third parties to pay their debts to the company. According to the Ministry, the company's situation required a solution at State level.

18. By a letter of 5 May 2001, the same Ministry informed Mr Grygoriy Ganushevych that, despite its efforts, the debtor company's economic situation had not improved. The Ministry mentioned that the Ministry for Emergencies and the Protection of the Population from the Consequences of the Chernobyl Catastrophe¹ ("the Ministry for Emergencies") was Atomspetsbud's largest debtor. The Ministry informed the applicant that the company's management had asked it to decide on the expediency of the company's continued existence.

19. At the end of 2001 the sixth, seventh and ninth applicants instituted separate proceedings in the Pechersky District Court of Kiev against the Ukrainian President, the Ukrainian Cabinet of Ministers, the Ministry of Energy and the Ministry of Justice, seeking compensation for the pecuniary and non-pecuniary damage caused by the non-enforcement of the judicial decisions in their favour. In three separate decisions of 29 January 2002, that court found against the applicants, stating that, in the event of non-enforcement, the applicants had the option of lodging the appropriate claims for damages against the State Bailiffs' Service, rather than the above defendants, whose responsibility for the non-enforcement had not been proved by the claimants. The applicants did not appeal against those decisions under the ordinary appeal procedure or on points of law.

20. In their joint letter of 31 October 2002 to the Ukrainian Prime Minister, all the applicants gave notice that they had lodged applications with the European Court of Human Rights and proposed a friendly settlement of the matter. They requested full enforcement of the decisions and compensation for damage ranging from UAH 20,000 to 50,000 each.

21. In reply, the Agent of the Government informed the applicants that friendly-settlement proceedings could only be started following the Court's admissibility decision. She further informed the applicants of the large number of writs of execution pending against the debtor company, amounting to UAH 3,849,312². However, enforcement of the judgments through the seizure of property required special authorisation from the Ministry for Emergencies, since the debtor company's property was located within the Chernobyl area, which was contaminated by radiation. No such authorisation was granted.

22. By an order of the Ministry of Energy dated 27 June 2002, the debtor company was liquidated and a liquidation commission established.

23. As a result, between 7 October 2002 and 9 July 2003 the State Bailiffs' Service terminated the enforcement proceedings in the applicants' cases and all the writs of execution were forwarded to the liquidation commission as creditors' claims. The liquidation proceedings are still pending.

1. In July 2004 the Ministry was divided into the Ministry for Emergencies and the State Committee for Chernobyl Affairs.

2. Equivalent to EUR 592,201.87.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The 1996 Constitution

24. The relevant part of the Ukrainian Constitution provides:

Article 124

“... Judicial decisions are adopted by the courts in the name of Ukraine and are mandatory for execution throughout the entire territory of Ukraine.”

2. The Civil Code of 18 July 1963 (repealed on 1 January 2004)

25. The relevant provisions of the Civil Code provided:

Article 32 Liability of a legal entity

“A legal entity shall be liable for its obligations to the extent of the property owned by it (attached to it), unless legislation provides otherwise.

The founder of the legal entity or the owner of its property shall not be liable for its obligations, and the legal entity shall not be liable for the obligations of its owner or founder unless legislation or the legal entity’s statutory documents provide otherwise.

A legal entity which is financed by the owner and which has property attached to it with the right to operational control ... shall be liable for its obligations to the extent of the funds in its possession. In the event of a lack of funds, the owner of the property shall be liable for the entity’s obligations.”

Article 33 Separation of liability between the State and State organisations

“The State shall not be liable for the obligations of State organisations which possess legal personality, and those organisations shall not be liable for the obligations of the State.

The conditions and procedure for providing funds to cover the debts of institutions and other State organisations which are funded by the State budget, if such debts cannot be covered by their own budget, shall be established by the legislation of the USSR and the Ukrainian SSR.”

Article 38 Liquidation of State organisations which possess legal personality

“The liquidation of State organisations which possess legal personality shall be conducted by the body which created them.”

3. *The Civil Code of 16 January 2003 (in force since 1 January 2004)*

26. The relevant Articles of the new Civil Code provide:

Article 81
Types of legal entities

“...

2. Legal entities shall be divided into private-law legal entities and public-law legal entities, depending on the procedure for their creation.

A private-law legal entity shall be established on the basis of statutory documents, in accordance with Article 87 of this Code.

Public-law legal entities shall be established by a decision of the President of Ukraine, a duly authorised State body, a duly authorised body of the Autonomous Republic of Crimea or a body of local self-government.

3. This Code provides for a procedure to establish the organisational and legal forms and legal status of private-law entities.

The procedure for the creation and legal status of public-law entities shall be laid down by the Constitution of Ukraine and the law.”

Article 96
Liability of legal entities

“1. A legal entity shall be liable for its own obligations.

2. A legal entity shall be liable for its obligations to the extent of all of its property.

3. The participant (founder) of a legal entity shall not be liable for the obligations of that entity, and the legal entity shall not be liable for the obligations of its participant (founder), unless the statutory documents or legislation provide otherwise ...”

Article 167
Legal forms of State participation in civil-law relations

“1. In civil-law relations, the State shall act on an equal basis with other participants in such relations.

2. The State may create public-law legal entities (State companies, educational institutions, etc.) in the circumstances and under the procedure established by law.

3. The State may create private-law legal entities (entrepreneurial associations, etc.) to participate in its activities ... unless the law stipulates otherwise.”

Article 176**Separation of liability for the obligations of the State, the Autonomous Republic of Crimea, territorial communities and the legal entities established by them**

“1. The State ... shall not be liable for the obligations of the legal entities established by it, unless the law provides otherwise.

2. Legal entities established by the State ... shall not be liable for the obligations of the State ...”

4. *The Companies Act of 27 March 1991 (repealed on 1 January 2004)*

27. The relevant sections of the Act provided:

Section 2**Types of companies**

“Companies of the following type may operate in Ukraine:

...

– State-owned companies [*derzhavne pidpryemstvo*]^[1], founded on State property, which may include a public company [*kazenne pidpryemstvo*]^[2]

...”

Section 10**Creation and use of property**

“...

(3) Property which is owned by the State and attached to a State-owned company (with the exception of a public company) shall belong to that company, which shall have the right to full economic control over it.

In exercising its right to full economic control, a State-owned company shall own, use and dispose of the above property at its discretion, performing any actions in relation to it which are not contrary to the legislation in force or to the company's statutes.

Property owned by the State and attached to a public company shall belong to that company, with the right of operational control.

In exercising its right to operational control, the public company shall possess and use the above property.

1. A State-owned company was one in which the State owned at least 25% of the shares.

2. A public company was one whose creation was governed by section 37(2) of the Companies Act of 27 March 1991.

A public company may dispose of property in its capital fund which is State-owned and has been given to the company with the right to operational control only with the permission of the body authorised to manage the relevant State property. The arrangements for the disposal of the public company's other property shall be defined in its statute."

Section 37

Special features governing the creation, liquidation, and reorganisation of a public company

"(1) A State-owned company that is not subject to privatisation under Ukrainian legislation may be transformed into a public company by a decision of the Cabinet of Ministers of Ukraine.

(2) The decision to transform a State-owned company into a public company shall be taken subject to one of the following conditions:

- the company carries out manufacturing or other activities which, under the legislation, may be performed only by a State-owned company;
- the State is the principal consumer of the company's production (more than 50%);
- the company is subject to natural monopolies.

(3) The liquidation and reorganisation of the public company shall take place on the basis of a decision of the Cabinet of Ministers of Ukraine in accordance with the legislation of Ukraine."

Section 39

Specific features of a public company's activities

"...

(3) The public company shall be liable for its obligations through its funds and the other property which it possesses, except for capital assets. Should such funds and property be insufficient, its owner shall be liable for its obligations."

5. The Law of 27 February 1991 on the legal status of the area of radioactive contamination resulting from the Chernobyl disaster

28. Section 6 of this Law provides that the Cabinet of Ministers of Ukraine shall determine the planning, material and technical maintenance, the scope of financial contributions and the salaries of employees of all companies involved in work on eliminating the consequences of the Chernobyl catastrophe, regardless of those companies' status and ownership.

29. Section 12 of the Law prohibits the withdrawal of construction materials, equipment and other property from the alienation zone and zone of compulsory evacuation without special permission from the Ministry for

Emergencies. It also requires that ministry's permission to carry out any economic activity, including construction, in the zone.

6. The Enforcement Proceedings Act of 21 April 1999

30. Under section 2 of this Act, the enforcement of judgments is entrusted to the State Bailiffs' Service. Under section 85 of the Act, a creditor may lodge a complaint in respect of actions or omissions by the State Bailiffs' Service with the head of the department with responsibility for that service or with a local court. Section 86 of the Act entitles the creditor to institute court proceedings against a legal person entrusted with the enforcement of a judgment, for inadequate enforcement or non-enforcement of a judgment through fault, and to receive compensation.

7. The State Bailiffs' Service Act of 24 March 1998

31. Section 11 of the Act provides for the liability of bailiffs for any inadequate performance of their duties and compensation for damage caused by a bailiff when enforcing a judgment. Under section 13 of the Act, the bailiff's acts and omissions may be challenged before a superior official or the courts.

8. Decree no. 8-92 of the Cabinet of Ministers of 15 December 1992 on the management of State-owned property

32. The decree provides that ministries and other executive bodies are authorised to adopt decisions concerning the creation, reorganisation and liquidation of companies, institutions and organisations founded on State property. The decree further provides that the ministries shall not interfere directly in the activities of State-owned companies.

9. Decree no. 306-p of the Cabinet of Ministers of 11 May 1998 on the list of companies, institutions and organisations that are transferred to the management of the Ministry of Energy

33. The decree provides for the transfer of a number of companies, including the State Construction and Commerce Company Atomspetsbud, to the management of the Ministry of Energy on account of changes in the government's structure.

THE LAW

I. JOINDER OF THE APPLICATIONS

34. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

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

35. The applicants complained of the non-enforcement of court decisions in their favour. They relied on Article 6 § 1 of the Convention, the relevant part of which provides:

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

A. Admissibility

1. Exhaustion of domestic remedies

36. The Government submitted preliminary objections concerning non-exhaustion of domestic remedies by the applicants, on the ground that they had not lodged a claim with the domestic courts challenging the inactivity of the State Bailiffs' Service and claiming compensation for irregular enforcement proceedings or for devaluation of the amounts awarded.

37. The applicants contested that argument, observing that the main reason for the continued non-enforcement of the judgments given in their favour was the debtor company's difficult economic situation, which required a solution at State level (see paragraphs 17-18 above).

38. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are those which are effective. “Effective” means either preventing the alleged violation or its continuation, or providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see *Khokhlich v. Ukraine*, no. 41707/98, § 149, 29 April 2003).

39. However, in the instant case, the judgments in the applicants' favour remain unenforced in full or in part despite the bailiffs' considerable efforts, which have been acknowledged by the Government (see paragraph 49 below). Furthermore, the State Bailiffs' Service is no longer involved in the debt recovery procedure, since the enforcement proceedings have been terminated and the applicants' claims transferred to the commission overseeing the debtor company's liquidation (see paragraphs 22-23 above). Therefore, the Court is of the opinion that this preliminary objection of the Government is irrelevant to the applicants' principal complaint and cannot be accepted, since the remedy the Government have referred to cannot prevent the continuation of the alleged violation.

40. Accordingly, the Court dismisses the objection.

2. *Compatibility ratione personae (responsibility of the State)*

41. In their further observations, the Government maintained that, although the debtor company was State-owned, it was a separate legal entity and the State could not be held responsible for its debts under domestic law. Accordingly, the enforcement of judgments given in the applicants' favour could not be carried out at the expense of the State budget.

42. The applicants maintained that the company was a public one working under State contract. The work performed by the company had not been paid in full by the Ministry for Emergencies. This situation created debts for the company. The applicants further maintained that, under domestic law, the owner was liable for an entity's debts if that entity lacked funds to honour its obligations.

43. The issue arises therefore whether the State is liable for the debts of a State-owned company which is a separate legal entity and whether it can be held responsible for the ultimate failure to pay the applicants the amounts awarded to them in the judgments against that company.

44. In this respect the Court considers that the Government have not demonstrated that Atomspetsbud enjoyed sufficient institutional and operational independence from the State to absolve the latter from responsibility under the Convention for its acts and omissions (see, *mutatis mutandis* – and with reference to Article 34 of the Convention – *Radio France and Others v. France* (dec.), no. 53984/00, ECHR 2003-X).

45. The Court notes that it is not suggested by the Government or by the materials in the case file that the State's debts to the company (see paragraph 18 above) had ever been paid in full or in part, which implies that the State is liable for the company's ensuing debts. The debtor company had operated in the highly regulated sphere of nuclear energy and conducted its construction activities in the Chernobyl zone of compulsory evacuation, which is placed under strict governmental control on account of environmental and public-health considerations (see paragraph 29 above). This control even extended to the applicants' terms of employment by the

company, including their salaries (see paragraph 28 above). The State prohibited the seizure of the company's property on account of possible contamination (see paragraph 21 above). Moreover, the management of the company was transferred to the Ministry of Energy as of May 1998 (see paragraph 33 above). In the Court's opinion, these elements confirm the public nature of the debtor company regardless of its formal classification under domestic law. Accordingly, the Court concludes that there are sufficient grounds to deem the State liable for Atomspetsbud's debts to the applicants in the special circumstances of the present case, despite the fact that the company was a separate legal entity.

46. Accordingly, the Court finds that the applicants' complaint is compatible *ratione personae* with the provisions of the Convention, and dismisses the Government's objection in this respect.

3. Conclusion

47. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

48. The Government noted that the State Bailiffs' Service had ensured the enforcement of the judgments in the applicants' favour as far as possible, and that some of those judgments had been executed in part. They submitted that the debtor company's property was in the zone of radioactive contamination and therefore could not be seized without authorisation, and that such authorisation had been refused by the Ministry for Emergencies.

49. The Government considered that the applicants' complaint regarding non-enforcement of the judgments in their favour due to alleged inactivity by the State Bailiffs' Service was unsound, since the State Bailiffs' Service had taken all necessary measures to enforce the judgments and was no longer responsible for enforcement once the decision to liquidate the debtor company had been taken.

50. The applicants contested the Government's submissions. They maintained that their complaint concerning non-enforcement of the judgments was not limited to alleged inactivity by the State Bailiffs' Service, as the Government had suggested. The applicants noted that the judgments in their favour could not be executed without measures being taken at State level, and referred to the letter from the Ministry of Energy to that effect (see paragraph 17 above). They further submitted that the company was State-owned, and that the State should pay the debts owed by its companies.

51. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her 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. However, that right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law, which the Contracting States undertook to respect when they ratified the Convention. The execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III).

52. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. However, it may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the instant case, the applicants should not have been prevented from benefiting from the success of their litigation.

53. The Court notes that, to date, the judgments given in favour of the applicants during the period 1997-2001 remain unenforced in full or to a large extent. In the Court’s opinion, given the finding of State liability for the debts owed to the applicants in the present case, the period of non-execution should not be limited to the enforcement stage only, but should also include the ongoing period of debt recovery in the course of the liquidation proceedings. Consequently, the period of debt recovery in the applicants’ cases has so far lasted between three and seven years.

54. By failing for several years to take the necessary measures to comply with the final judgments in the instant case, the Ukrainian authorities deprived the provisions of Article 6 § 1 of all useful effect.

55. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

56. The applicants further complained that the State had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1, which provides:

“Every natural or legal 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 preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

57. The Court refers to its reasoning under Article 6 § 1 of the Convention, dismissing the Government’s objections to the admissibility of the application (see paragraphs 35-47 above), which is equally pertinent to the applicants’ claim under Article 1 of Protocol No. 1. Consequently, the Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

58. The Government, in their submissions, confirmed that the amount awarded to the applicants by the domestic courts constituted a possession within the meaning of Article 1 of Protocol No. 1. They acknowledged that the failure to enforce the judgments in favour of the applicants could be considered to be an interference with the applicants’ rights to the peaceful enjoyment of their possessions. However, the Government claimed that such interference was justified in the general interest, namely the need to control the removal of contaminated materials from the Chernobyl area. The liquidated company’s large number of creditors required that the liquidation commission and the State draw up comprehensive measures to satisfy all the claims.

59. The applicants submitted that the State was liable for the outstanding debts due to them and that, having failed to pay those debts, the State had deprived them of the actual possession of their property, in violation of Article 1 of Protocol No. 1.

60. The Court reiterates its case-law to the effect that the impossibility for an applicant to obtain the execution of a judgment making an award in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other judgments, *Burdov*, cited above, § 40, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003).

61. In the instant case the Court is therefore of the opinion that the impossibility for the applicants to obtain enforcement of the judgments in

their favour for a considerable period of time (between three and seven years) constituted an interference with their right to the peaceful enjoyment of their possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1.

62. The interference was justified in part by the prohibition on removing the debtor company's contaminated property from the Chernobyl zone of compulsory evacuation. However, in the Court's opinion, such a prohibition, undeniably involving a legitimate public interest, did not strike a fair balance between the State's interests and those of the applicants, on whom the entire financial burden fell.

63. By failing to comply with the judgments given in favour of the applicants, the national authorities for a considerable period prevented – and still prevent – the applicants from receiving in full the money to which they were entitled.

64. Consequently, there has also been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing, together with the relevant supporting documents, failing which the Court may reject the claim in whole or in part.

1. Pecuniary damage

67. The applicants claimed the following amounts for pecuniary damage, giving their euro equivalents (EUR)¹:

- Ms Valentyna Mykhaylenko: 4,849 hryvnas (UAH) (EUR 746);
- Mr Valentyn Mykhaylenko: UAH 13,189 (EUR 2,029.08);
- Mr Grygoriy Ganushevyh: UAH 7,129.30 (EUR 1,096.82);
- Mr Anatoliy Marchenko: UAH 13,018.09 (EUR 2,002.78);
- Ms Oleksandra Yudenok: UAH 6,327 (EUR 973.38);
- Mr Vasyl Myshko: UAH 7,711 (EUR 1,186.31);

1. These sums correspond approximately either to the entire amount awarded or to its unpaid part (see paragraphs 6-16 above).

- Mr Vasyl Bezpalko: UAH 14,764 (EUR 2,271.38);
- Ms Galyna Zorenko: UAH 6,260 (EUR 963.08);
- Mr Grygoriy Arkhitko: UAH 6,348.62 (EUR 976.71);
- Mr Volodymyr Litskevich: UAH 6,110.45 (EUR 940.07);
- Mr Mykhaylo Tyshchenko: UAH 8,340 (EUR 1,283.08).

68. The Government maintained that the State should not bear responsibility under domestic law for the debts of its companies.

69. The Court reiterates its rejection of this objection above (see paragraphs 43-45). For the same reasons, it rejects this argument under Article 41.

70. In the light of the documents in its possession, the Court awards in respect of pecuniary damage the following amounts, which correspond to the outstanding debts due to the applicants:

- Ms Valentyna Mykhaylenko: EUR 707.59;
- Mr Valentyn Mykhaylenko: EUR 2,029.08;
- Mr Grygoriy Ganushevych: EUR 1,085.94;
- Mr Anatoliy Marchenko: EUR 2,002.80;
- Ms Oleksandra Yudenok: EUR 971.17;
- Mr Vasyl Myshko: EUR 1,186.37;
- Mr Vasyl Bezpalko: EUR 2,271.38;
- Ms Galyna Zorenko: EUR 962.52;
- Mr Grygoriy Arkhitko: EUR 926.59;
- Mr Volodymyr Litskevich: EUR 940.10;
- Mr Mykhaylo Tyshchenko: EUR 1,283.08.

2. Non-pecuniary damage

71. The applicants claimed the following amounts for non-pecuniary damage suffered as a result of the authorities' failure to enforce the judgments:

- Mr Anatoliy Marchenko: UAH 75,000 (EUR 11,538.46);
- all the other applicants: UAH 50,000 (EUR 7,692.30) each.

72. The Government submitted that the finding of a violation would constitute sufficient just satisfaction in the present case.

73. The Court takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. The particular amounts claimed are, however, excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court makes the following awards depending on the length of the periods of non-enforcement in each case, which varied from three to seven years:

- Ms Valentyna Mykhaylenko: EUR 3,080;
- Mr Valentyn Mykhaylenko: EUR 1,800;
- Mr Grygoriy Ganushevych: EUR 2,960;
- Mr Anatoliy Marchenko: EUR 3,360;

- Ms Oleksandra Yudenok: EUR 2,800;
- Mr Vasyl Myshko: EUR 2,680;
- Mr Vasyl Bezpalko: EUR 1,680;
- Ms Galyna Zorenko: EUR 2,720;
- Mr Grygoriy Arkhitko: EUR 1,680;
- Mr Volodymyr Litskevich: EUR 2,560;
- Mr Mykhaylo Tyshchenko: EUR 1,400.

B. Costs and expenses

1. Domestic proceedings

74. The applicants did not submit any claim under this head within the prescribed time-limit. The Court therefore makes no award.

2. Convention proceedings

75. Each of the applicants claimed EUR 1,035 for the costs and expenses incurred before the Court.

76. The Government maintained that these claims were unsubstantiated and excessive. They pointed out that the applicants had failed to submit details of the work performed by their lawyer, his hourly rates, etc. They noted that the lawyer had submitted a joint reply to the Government's observations in all ten applications. They further submitted that, given the similarity of the applicants' complaints and the fact that their lawyer had not addressed any specific issues in respect of their individual situations, and given the straightforward legal issues, the total amount claimed by the applicants was too high.

77. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and are reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

78. The Court considers that these requirements have not been met in the instant case. However, it is clear that the applicants incurred some costs and expenses for being represented before the Court.

79. Regard being had to the information in its possession and to the above criteria, the Court considers it reasonable to award each applicant EUR 135 for costs and expenses.

C. Default interest

80. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
5. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - to Ms Mykhaylenko, EUR 707.59 (seven hundred and seven euros fifty-nine cents) for pecuniary damage, EUR 3,080 (three thousand and eighty euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Mr Mykhaylenko, EUR 2,029.08 (two thousand and twenty-nine euros eight cents) for pecuniary damage, EUR 1,800 (one thousand eight hundred euros) for non-pecuniary damage, and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Mr Ganushevych, EUR 1,085.94 (one thousand and eighty-five euros ninety-four cents) for pecuniary damage, EUR 2,960 (two thousand nine hundred and sixty euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Mr Marchenko, EUR 2,002.80 (two thousand and two euros eighty cents) for pecuniary damage, EUR 3,360 (three thousand three hundred and sixty euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Ms Yudenok, EUR 971.17 (nine hundred and seventy-one euros seventeen cents) for pecuniary damage, EUR 2,800 (two thousand eight hundred euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;

- to Mr Myshko, EUR 1,186.37 (one thousand one hundred and eighty-six euros thirty-seven cents) for pecuniary damage, EUR 2,680 (two thousand six hundred and eighty euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Mr Bezpalko, EUR 2,271.38 (two thousand two hundred and seventy-one euros thirty-eight cents) for pecuniary damage, EUR 1,680 (one thousand six hundred and eighty euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Ms Zorenko, EUR 962.52 (nine hundred and sixty-two euros fifty-two cents) for pecuniary damage, EUR 2,720 (two thousand seven hundred and twenty euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Mr Arkhitko, EUR 926.59 (nine hundred and twenty-six euros fifty-nine cents) for pecuniary damage, EUR 1,680 (one thousand six hundred and eighty euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Mr Litskevich, EUR 940.10 (nine hundred and forty euros ten cents) for pecuniary damage, EUR 2,560 (two thousand five hundred and sixty euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses;
 - to Mr Tyshchenko, EUR 1,283.08 (one thousand two hundred and eighty-three euros eight cents) for pecuniary damage, EUR 1,400 (one thousand four hundred euros) for non-pecuniary damage and EUR 135 (one hundred and thirty-five euros) for costs and expenses.
- (b) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
- (c) 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President