



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

SECOND SECTION

**CASE OF DEMCHENKO v. UKRAINE**

*(Application no. 35282/02)*

JUDGMENT

STRASBOURG

3 May 2005

**FINAL**

*03/08/2005*

*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 Demchenko v. Ukraine,**

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

Mr A.B. BAKA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŃ,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 5 April 2005,

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

## PROCEDURE

1. The case originated in an application (no. 35282/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Viktor Nikolayevich Demchenko (“the applicant”), on 27 August 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 30 September 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in the city of Donetsk, Ukraine.

5. In 2001 the applicant instituted civil proceedings in the Kuybyshevskiy Local Court of Donetsk against his former employer, a State-owned mining company, in order to receive salary arrears.

6. On 23 January 2002 the court found for the applicant and awarded him UAH 5,089.99<sup>1</sup>. This judgment was not appealed against and came into force on 24 February 2002. On 26 February the Kuybyshevsky Local Bailiffs' Service instituted proceedings to enforce the above judgment.

7. By letter of 9 August 2002, the Bailiffs' Service informed the applicant about the measures taken by the bailiffs to enforce the judgment and the limitations on enforcement proceedings due to the operation of the Law of Ukraine "on the Introduction of a Moratorium on the Forced Sale of Property".

8. On 29 October 2003 the Bailiffs' Service, following the restructuring of the debtor company, replaced the debtor by its legal successor, the Donetskugillya State-owned Company. The enforcement proceedings were transferred accordingly to another Local Bailiffs' Service for further actions in November 2003.

9. On 11 May 2004 the awarded amount was paid to the applicant in full and the enforcement proceedings were completed.

## II. RELEVANT DOMESTIC LAW

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

## THE LAW

11. The applicant complained of an alleged failure by the State authorities to execute the decision of 23 January 2002 given in his favour. He invoked Articles 6 § 1 and 13 of the Convention, and Article 1 of Protocol No. 1, which provide, in so far as relevant, as follows:

### **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. ..."

### **Article 13**

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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<sup>1</sup> About EUR 727

**Article 1 of Protocol No. 1**

“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.”

**I. ADMISSIBILITY****A. The Government’s preliminary objections**

12. The Government considered that the applicant could no longer claim to be a victim of a violation of the Convention as he had received full payment of the judgment debt. They also contended that the applicant had not exhausted domestic remedies regarding the Bailiffs’ Service and the expedition of proceedings.

13. The applicant did not make any comments.

14. The Court notes that similar points have already been dismissed in a number of Court judgments (see the aforementioned *Romashov* judgment, § 41). 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. Conclusion**

15. In the light of the parties’ submissions, the Court concludes 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. It finds no ground for declaring this part of the application inadmissible. For the same reasons, the applicant’s complaints under Article 13 of the Convention and Article 1 of Protocol No. 1 cannot be declared inadmissible.

## II. MERITS

### A. The applicant's complaints under Article 6 § 1 of the Convention

16. The Government maintained that the bailiffs performed all necessary actions to enforce the judgment and could not be liable for the delays in the enforcement proceedings. They further suggested that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment.

17. The applicant did not submit any additional arguments to his original complaint.

18. The Court notes that the decision of 23 January 2002 remained unenforced from 26 February 2002 (the date when the enforcement proceedings were instituted) until 11 May 2004 (the date of payment of the awarded amount to the applicant), i.e. a period of about two years and two months. It further notes that this decision was enforced in full after the communication of the application to the respondent Government.

19. The Court considers that by delaying for about two years and two months the enforcement of the judgment in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court finds that the Government have not advanced any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

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

### B. The applicant's complaints under Article 13 of the Convention

21. The Government maintained that the applicant had at his disposal effective remedies explicitly provided for by domestic legislation in order to challenge the non-enforcement of the court judgment given in his favour. They referred to their earlier argument on exhaustion of domestic remedies.

22. The applicant did not submit any additional comments.

23. The Court refers to its findings (at paragraph 14 above) concerning the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings. Accordingly, there has also been a breach of this provision.

### C. The applicant's complaints under Article 1 of Protocol No. 1.

24. The Government in their submissions confirmed that the amount awarded to the applicant by the domestic court constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, the Government maintained that the provision had not been violated since the applicant's entitlement to the award was not disputed and he was not deprived of his property. The Government further noted that the delay in payment was due to the difficult economic situation of the coal industry and its restructuring. Therefore, in the Government's opinion, the delay in enforcement was justified by the public interest of overcoming the economic crisis.

25. The applicant did not make any further comments in addition to his original complaint.

26. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a judgment 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 authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003).

27. In the instant case the Court is therefore of the opinion that the impossibility for the applicant to obtain the execution of his judgment for a period of two years and two months constituted an interference with his right to the peaceful enjoyment of his possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1.

28. By failing to comply with the judgment of the Kuybyshevskiy Local Court of Donetsk, the national authorities prevented the applicant, for a considerable period of time, from receiving in full the money to which he was entitled. The Government have not advanced any justification for this interference, and the Court considers that economic difficulties cannot justify such an omission. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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.”

30. The applicant did not submit a claim for just satisfaction within the set time-limit. Accordingly, the Court considers that there is no call to

award him any sum on that account and that, in these circumstances, the finding of a violation constitutes sufficient just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
5. *Holds* that the finding of a violation constitutes sufficient just satisfaction in the circumstances of the case;
6. *Dismisses* the applicant's claim for just satisfaction.

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

S. DOLLÉ  
Registrar

A.B. BAKA  
President