



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

SECOND SECTION

**CASE OF GAVRILENKO v. UKRAINE**

*(Application no. 24596/02)*

JUDGMENT

STRASBOURG

20 September 2005

**FINAL**

*20/12/2005*

*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 Gavrilenko 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 K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

## PROCEDURE

1. The case originated in an application (no. 24596/02) 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 Anatoliy Ivanovich Gavrilenko (“the applicant”), on 1 June 2002.

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

3. On 2 July 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 1960 and lives in the city of Lysychansk, the Lugansk region, Ukraine.

5. By two separate decisions of 7 July 1999, the labour disputes commission ordered the Pryvolnyanska State Mine (the “Mine”) to pay the applicant UAH 1,418.27 (around 236 euros – “EUR”) in salary arrears.

6. In August 1998 the Lysychansk City Bailiffs’ Service instituted enforcement proceedings in respect of the above decision.

7. On 2 January 2001 the Lugansk Regional Arbitration Court initiated bankruptcy proceedings against the Mine.

8. On 15 February 2002 the Lysychansk City Court ordered the Mine to pay the applicant UAH 2,931.63 (around EUR 488) in salary arrears.

9. On 11 April 2002 the Bailiffs' Services instituted enforcement proceedings in respect of the decision of 15 February 2002.

10. According to the Government, on 28 November 2003 the sum of UAH 4,259.90 was transferred to the applicant's bank account.

11. According to the applicant, he was not paid all the amounts awarded by the decisions at issue, the outstanding debt being UAH 42.60 (around EUR 7).

12. On 1 December 2003 the Bailiffs' Service discontinued the enforcement proceedings in respect of the decisions of 7 July 1999 and 15 February 2002 on the ground that these decisions had been enforced in full.

13. The applicant did not challenge the Bailiffs' decision of 1 December 2003 before the domestic courts.

## II. RELEVANT DOMESTIC LAW

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

## THE LAW

15. The applicant complained about the State authorities' failure to enforce the decisions of the labour disputes commission of 7 July 1999 and the judgment of the Lysychansk City Court of 15 February 2002 in full and in due time. He invoked Article 6 § 1 of the Convention, which provides, insofar 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. ...”

## I. ADMISSIBILITY

### 1. *The applicant's victim status*

16. The Government submitted that, since the decisions at issue had been enforced, the applicant can no longer be considered a victim of a violation of his rights under Article 6 § 1. They therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

17. The applicant disagreed. In particular, he argued that the decisions had not been enforced in full.

18. The Court observes that it is not clear from the parties' submissions whether these decisions have been enforced in full. However, it assumes that the decisions were so enforced by 1 December 2003, given the fact that, on that date, the Bailiffs' Service established that the amounts due under the decisions had been paid to the applicant in full, which the applicant did not contest at the national level.

19. However, the fact that the decisions in the applicant's favour were enforced does not deprive the applicant of his victim status in relation to the period during which the court decisions in his favour remained unenforced (see the *Romashov* judgment, cited above, §§ 26-27). Accordingly, the Court rejects the Government's preliminary objection.

### 2. *Exhaustion of domestic remedies*

20. The Government further contended that the applicant had not exhausted domestic remedies as he had not challenged the actions or inactivity of the State Bailiffs' Service before the domestic courts.

21. The applicant disagreed.

22. The Court considers that, in the light of its findings in similar cases, the Government's objection must be rejected (see the *Romashov* judgment, cited above, §§ 30-33).

### 3. *Conclusion*

23. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in enforcement of the decisions of the labour disputes commission of 7 July 1999 and the judgment of the Lysychansk City Court of 15 February 2002 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 application inadmissible.

## II. MERITS

24. In their observations, the Government put forward arguments similar to those in the case of *Romashov v. Ukraine*, contending that there was no violation of Article 6 § 1 of the Convention (see the *Romashov* judgment, cited above, § 37).

25. The applicant disagreed.

26. The Court notes that the decisions of the labour disputes commission of 7 July 1999 and the judgment of the Lysychansk City Court of 15 February 2002 remained unenforced for more than four years and four months and one year and ten months, respectively.

27. The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the present application (see the *Romashov* judgment, cited above, § 45).

28. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

## 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.”

### A. Damage, costs and expenses

30. The applicant claimed UAH 4,046 (around EUR 674) in respect of pecuniary damage and UAH 20,000 (around EUR 3,328) in respect of non-pecuniary damage. He also claimed UAH 348.30 (around EUR 58) in relation to his translation and postal expenses incurred both in the domestic and Convention proceedings.

31. The Government contended that the applicant had not substantiated the amount claimed in respect of pecuniary and non-pecuniary damage and submitted that the finding of a violation would constitute sufficient just satisfaction. As to the amount claimed in relation to the applicant’s translation and postal expenses, the Government maintained that this amount was reasonable and justified.

32. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 2,150 in respect of all his claims.

### **B. Default interest**

33. 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 application admissible;
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 2,150 (two thousand one hundred and fifty euros) in respect of pecuniary and non-pecuniary damage, costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President