



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

SECOND SECTION

**CASE OF ANTONOVSKIY v. UKRAINE**

*(Application no. 22597/02)*

JUDGMENT

STRASBOURG

13 December 2005

**FINAL**

*13/03/2006*

*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 Antonovskiy 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 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 22 November 2005,

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

## PROCEDURE

1. The case originated in an application (no. 22597/02) 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 Vasiliy Ivanovich Antonovskiy (“the applicant”), on 26 May 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

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 1967 and lives in the town of Torez, the Donetsk region.

5. On 1 June 1999 the Torez Town Court ordered the Progres State Mine to pay the applicant UAH 11,695.98<sup>1</sup> in occupational disability allowances and salary arrears.

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1. Around 1,948 euros – “EUR”.

6. On 28 June 1999 the Torez Town Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

7. By three decisions of 19 January 2001, the labour disputes commission of the mine awarded the applicant UAH 16,197.63<sup>1</sup> in arrears of salary and occupational disability allowances.

8. According to the Government, the judgment and the commission's decisions were partly enforced in instalments: in November 1999, December 2000, June and September 2001 the applicant received a total of UAH 6,329.45<sup>2</sup>, on an unspecified date he received a total of UAH 8,500.79<sup>3</sup>, and in July and September 2003 he was paid UAH 2,984.74<sup>4</sup>.

9. The parties did not specify the date on which the applicant was paid the remaining amount of the awards of the judgment and the commission's decisions awards (UAH 10,078.63<sup>5</sup>).

10. On 22 September 2003 the Bailiffs' Service terminated the enforcement proceedings in view of the full enforcement of the judgment and the commission's decisions given in the applicant's favour.

## II. RELEVANT DOMESTIC LAW

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

## THE LAW

12. The applicant complained about the State authorities' failure to enforce the judgment of the Torez Town Court of 1 June 1999 and the decisions of the Progres State Mine's labour disputes commission of 19 January 2001 in due time. He invoked Articles 6 § 1 and 13 of the Convention, which provide, 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. ..."

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1. Around EUR 2,698.

2. Around EUR 1,054.

3. Around EUR 1,416.

4. Around EUR 497.

5. Around EUR 1,679.

**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.”

**I. ADMISSIBILITY**

13. The Government raised objections regarding the applicant’s victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

14. The Court concludes that the application 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 it inadmissible.

**II. MERITS**

15. In their observations, the Government contended that there had been no violation of either Article 6 § 1 or Article 13 of the Convention (as in the case of *Romashov*, cited above, §§ 28-33 and 37).

16. The applicant disagreed.

17. The Court notes that the judgment and the labour commission’s decisions remained unenforced for four years and three months, and two years and eight months, respectively.

18. The Court recalls that it has already found violations of Articles 6 § 1 and 13 of the Convention in cases raising issues similar to the present application (see, for instance, the *Romashov* judgment, cited above, §§ 42-46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

19. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention.

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

20. 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

21. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

22. The Government did not express an opinion on the matter.

23. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant EUR 2,040 in respect of non-pecuniary damage.

#### B. Costs and expenses

24. The applicant did not submit any claim under this head. The Court therefore makes no award.

#### C. Default interest

25. 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* that there has been a violation of Article 13 of the Convention;
4. *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 2,040 (two thousand and forty euros) in respect of non-pecuniary damage, 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 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

A.B. BAKA  
President