



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

FIFTH SECTION

**CASE OF ANDRUSENKO AND OTHERS v. UKRAINE**

*(Application no. 41073/02)*

JUDGMENT

STRASBOURG

10 August 2006

**FINAL**

*10/11/2006*

*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 Andrusenko and Others v. Ukraine,**

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

Mr P. LORENZEN, *President*,  
Mr K. JUNGWIERT,  
Mr V. BUTKEVYCH,  
Mrs M. TSATSA-NIKOLOVSKA,  
Mr R. MARUSTE,  
Mr J. BORREGO BORREGO,  
Mrs R. JAEGER, *judges*,  
Mrs S. BOTOUCHAROVA,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 41073/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 6 Ukrainian nationals: Mr Leonid Ivanovych Andrusenko, Mr Valeriy Volodymyrovych Bondarenko, Mr Ivan Petrovych Mysnianko, Mr Oleksandr Mykolayovych Goryachykh, Mr Volodymyr Grygorovych Leontyev and Mr Ivan Yegorovich Migunov (“the applicants”) on 16 October 2002.

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

3. On 24 October 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.

4. On 1 April 2006 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly constituted Fifth Section (Rule 52 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. Mr Leonid Ivanovych Andrusenko was born in 1953 and currently resides in the village of Konstantynivka, Donetsk region, Ukraine. Mr Valeriy Volodymyrovych Bondarenko was born in 1956 and currently resides in the town of Krasnogorivka, Donetsk region, Ukraine. Mr Ivan Petrovych Mysnianko was born in 1961 and currently resides in the town of Vugledar, Donetsk region, Ukraine. Mr Oleksandr Mykolayovych Goryachykh was born in 1958 and currently resides in the town of Vugledar, Donetsk region, Ukraine. Mr Volodymyr Grygorovych Leontyev was born in 1940 and currently resides in the town of Vugledar, Donetsk region, Ukraine. Mr Ivan Yegorovich Migunov was born in 1956 and currently resides in the town of Vugledar, Donetsk region, Ukraine.

6. In 1997 Mr Andrusenko was dismissed from the “Pivdenodonbasska” State-owned mine No.3 (the “PDM No.3”). In February 1998 he instituted proceedings in the Vugledar Town Court claiming to reinstate him in his position. On 10 September 1998 the court rejected his claims. On 19 October 1998 the Donetsk Regional Court quashed this decision and remitted the case for a fresh consideration. On 28 December 1998 the Vugledar Town Court reinstated Mr Andrusenko in his position and ordered the PDM No.3 to pay him compensation in salary arrears. On 22 February 1999 the Donetsk Regional Court quashed this decision and remitted the case for a fresh consideration. The case was remitted to Petrovsky District Court of Donetsk for examination on the merits, on the basis of Mr Andrusenko’s request to change the jurisdiction. On 12 July 2000 the Petrovsky District Court found in part for Mr Andrusenko. On 28 September 2000 the Donetsk Regional Court quashed this decision and remitted the case for a fresh consideration. Mr Andrusenko lodged a petition with the Donetsk Regional Court seeking consideration of the merits of his claims, without remitting the case for fresh consideration. On 5 December 2000 the Donetsk Regional Court found in part for Mr Andrusenko and awarded him UAH 17,699.68<sup>1</sup> against the PDM No.3 in salary arrears and other payments. On 28 February 2001 the Supreme Court of Ukraine upheld this judgment. By a letter of 15 December 2004 Mr Andrusenko informed the Court that the judgment in his favour was enforced in June 2004.

7. On 13 November 2001 the Maryinsky District Court ordered the PDN No.3 to provide Mr Andrusenko with 24 tonnes of coal. It also ordered the PDN No.3 to pay Mr Andrusenko UAH 607.72<sup>2</sup> in compensation. By a

---

<sup>1</sup> EUR 3,660.06 at the material time

letter of 15 December 2004 Mr Andrusenko informed the Court that the pecuniary part of the judgment was enforced by January 2003. However, 24 tonnes of coal awarded in the judgment of 13 November 2001 have been never provided to him.

8. On 18 January 2002 the Maryinsky District Court ordered the PDN No.3 to pay Mr Andrusenko UAH 244.39<sup>3</sup> in compensation for salary arrears and moral damage. By another judgment delivered on the same date Mr Andrusenko also received UAH 56<sup>4</sup> in salary arrears. By a letter of 15 December 2004 Mr Andrusenko informed the Court that the judgments were enforced by January 2003.

9. On 29 October 1999 and 15 November 2000 the Maryinsky District Court of the Donetsk Region awarded Mr Bondarenko UAH 8,542.85<sup>5</sup> and UAH 3,785.74<sup>6</sup>, respectively, against his employer, the State-owned Krasnogorivsky Vognetryvnyj Zavod factory (the “KVZ”), in salary arrears. On 8 June 2000 the Commercial Court of the Donetsk Region initiated a reorganisation procedure (*процедура санації*) for the KVZ factory and the enforcement of the judgments was suspended. On 29 May 2003 Mr Bondarenko withdrew the writs of enforcement and the enforcement proceedings were closed. The judgments in his favour remain unenforced.

10. On 17 and 22 December 1998, and on 10 April 2001 the Vugledar Town Court awarded Mr Musnianko UAH 27,457<sup>7</sup>, UAH 1,605<sup>8</sup> and UAH 20,974.69<sup>9</sup>, respectively, against his employer, PDM No.3, in compensation for a work-related illness and in salary arrears. By a letter of 20 December 2004 Mr Musnianko informed the Court that the judgments in his favour were enforced by instalments, the final amounts being paid in August and December 2002, and in May 2004, respectively.

11. On 29 September 2000 the Vugledar Town Court awarded Mr Goryachykh a lump sum of UAH 29,352.24<sup>10</sup> and monthly payments of UAH 420.94<sup>11</sup> until 13 September 2001 against his former employer, the PDM No.3, in compensation for an industrial injury. By a letter of 20 December 2004 Mr Goryachykh informed the Court that the judgment in his favour was enforced in May 2004.

12. On 2 November 1998 the Vugledar Town Court awarded Mr Leontyev UAH 38,620.60<sup>12</sup> against his former employer, the

---

<sup>2</sup> EUR 126.91 at the material time

<sup>3</sup> EUR 52.25 at the material time

<sup>4</sup> EUR 11.97 at the material time

<sup>5</sup> EUR 1,805.49 at the material time

<sup>6</sup> EUR 811.64 at the material time

<sup>7</sup> EUR 6,082.52 at the material time

<sup>8</sup> EUR 369.87 at the material time

<sup>9</sup> EUR 4,317.63 at the material time

<sup>10</sup> EUR 6,309.90 at the material time

<sup>11</sup> EUR 90.45 at the material time

<sup>12</sup> EUR 8,336.58 at the material time

“Pivdennodonbasska” State-owned mine No.1 (“PDM No.1”), in compensation for an industrial injury. On 25 January 1999 the Vugledar Town Court awarded Mr Leontyev UAH 2,140<sup>13</sup> against the PDM No.1 in compensation for moral damage. On 30 August 1999 the Vugledar Town Court awarded him UAH 6,864.20<sup>14</sup> in compensation for an industrial injury. It also awarded Mr Leontyev UAH 1,575<sup>15</sup> as a single-payment retirement benefit. By a letter of 20 December 2004 Mr Leontyev informed the Court that the judgments in his favour were enforced by April-June 2001 and by January 2003, respectively.

13. On 3 December 1998 the Vugledar Town Court awarded Mr Migunov UAH 33,625.42<sup>16</sup> against the PDM No.1 in compensation for an industrial injury. On 5 December 2000 the Vugledar Town Court awarded him UAH 2,269.80<sup>17</sup> against the PDM No.1 in additional compensation for the delay in payment. On 15 November 2002 the Vugledar Town Court awarded Mr Migunov UAH 25,706.26<sup>18</sup> against the PDM No.1 in compensation for the delayed payment of salary. By a letter of 25 December 2004 Mr Migunov informed the Court that the judgments in his favour were enforced by February - May 2004.

## II. RELEVANT DOMESTIC LAW

14. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 29 June 2004).

## THE LAW

### I. ADMISSIBILITY

#### A. Non-enforcement of judgments

15. The applicants complained about the State authorities’ failure to enforce the court judgments in their favour in due time. The applicants invoked Articles 6 § 1, which provides, insofar as relevant, as follows:

---

<sup>13</sup> EUR 459.39 at the material time

<sup>14</sup> EUR 1,499.33 at the material time

<sup>15</sup> EUR 344.02 at the material time

<sup>16</sup> EUR 7,258.33 at the material time

<sup>17</sup> EUR 460.93 at the material time

<sup>18</sup> EUR 4,969.18 at the material time

**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. ...”

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

*1. Non-enforcement of the judgments of 18 January 2002 in Mr Andrusenko’s favour*

17. The Court notes that the period of enforcement of the judgments of 18 January 2002 (see paragraph 8) in Mr Andrusenko’s favour lasted around one year. The Court further notes that this period is not so excessive as to raise an arguable claim under the Convention. Furthermore, it is observed that the judgments’ debts did not concern the applicant’s basic subsistence and there were no other special, urgent circumstances that would lead to the conclusion that the delays in the enforcement of the judgments were unreasonable. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

*2. Non-enforcement of other judgments*

18. The Court concludes that the rest of the applicants’ complaints under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments in their favour 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 these complaints inadmissible.

**B. Other complaints**

19. Mr Andrusenko complained under Article 6 § 1 of the Convention, cited above, of an unfair hearing and the lengthy consideration of his labour dispute concerning his dismissal (see paragraph 6 above).

20. The Court notes that it is not called upon to examine alleged errors of facts and law committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. Within the framework of the proceedings, the applicant was able to put forward all necessary arguments in defence of his interests, and the judicial authorities gave them due consideration. The Court further notes that the court proceedings in Mr Andrusenko’s labour case lasted for three years and in the circumstances of the present case such

length did not exceed the "reasonable time" requirement referred to in Article 6 § 1 of the Convention. In particular, there is no discernible period of inactivity which can be attributed to the domestic courts. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## II. MERITS

21. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention (as in the case of *Romashov*, cited above, § 37). The Government maintained that the length of the enforcement proceedings in the applicants' cases was reasonable and, moreover, had been caused by the critical financial situation of the debtor companies and the Ukrainian economy in general. The Government further maintained that the Bailiffs' Service performed all necessary actions and cannot be blamed for the delay. They finally stated that as on 29 May 2003 Mr Bondarenko withdrew his writs of enforcement, the Government were not responsible for the non-enforcement of the judgments after this date.

22. The applicants disagreed.

23. The Court notes that the judgments in the applicants' favour have remained unenforced for a considerable period of time. Notably, the period of debt recovery in the applicants' cases has lasted between two and more than five years.

24. The Court further considers that, notwithstanding the fact that on 29 May 2003 Mr Bondarenko withdrew the writs of enforcement, by failing for three years and seven months, and for more than two years and six months to take the necessary measures to comply with the judgments of 29 October 1999 and 15 November 2000, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect. It further considers that the Government have not advanced any convincing justification for these delays.

25. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, for instance, *Romashov*, cited above, §§ 39-46).

26. 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 Article 6 § 1 of the Convention.

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

27. 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

28. All of the applicants claimed UAH 30,000 (approximately EUR 5,000) in respect of non-pecuniary damage, except for Mr Andrusenko, who claimed UAH 40,000 (approximately EUR 7,000).

29. The Government maintained that the applicants had not substantiated their claims.

30. The Court considers that the Government should enforce the non-pecuniary part of the judgment of 13 November 2001 in favour of Mr Andrusenko and to pay Mr Bondarenko the outstanding debt awarded to him by the national court.

31. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards on the basis of the length of the periods of non-enforcement in each case:

- Mr Leonid Andrusenko - EUR 1,800;
- Mr Valeriy Bondarenko - EUR 1,300;
- Mr Ivan Mysnianko - EUR 1,600;
- Mr Oleksandr Goryachykh – EUR 1,300;
- Mr Volodymyr Leontyev – EUR 1,300 and
- Mr Ivan Migunov – EUR 1,800.

#### B. Costs and expenses

32. The applicants did not submit any claim under this head. The Court therefore makes no award.

#### C. 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 complaint under Article 6 § 1 of the Convention concerning the lengthy non-enforcement of the court judgments of 18 January 2002 in Mr Andrusenko's favour inadmissible;
2. *Declares* the rest of complaints under Article 6 § 1 of the Convention concerning the lengthy non-enforcement of the court judgments in the applicants' favour admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
  - (a) that the respondent State is to enforce the remaining non-pecuniary part of judgment of 13 November 2001 in favour of Mr Leonid Andrusenko and to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, as follows:
    - to Mr Leonid Andrusenko, EUR 1,800 (one thousand eight hundred euros) for non-pecuniary damage;
    - to Mr Valeriy Bondarenko, the judgments debt still owed to him, as well as EUR 1,300 (one thousand three hundred euros) for non-pecuniary damage;
    - to Mr Ivan Mysnianko, EUR 1,600 (one thousand six hundred euros) for non-pecuniary damage;
    - to Mr Oleksandr Goryachykh, EUR 1,300 (one thousand three hundred euros) for non-pecuniary damage;
    - to Mr Volodymyr Leontyev, EUR 1,300 (one thousand three hundred euros) for non-pecuniary damage;
    - to Mr Ivan Migunov, EUR 1,800 (one thousand eight hundred euros) for non-pecuniary damage.
  - (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;
5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President