



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

FIFTH SECTION

CASE OF YAVOROVENKO AND OTHERS v. UKRAINE

(Application no. 25663/02 and 30 others – see list appended)

JUDGMENT

*This version was rectified on 2 March 2015
under Rule 81 of the Rules of Court.*

STRASBOURG

17 July 2014

This judgment is final. It may be subject to editorial revision.

In the case of Yavorovenko and others v. Ukraine,

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

Boštjan M. Zupančič, *President*,

Ann Power-Forde,

Helena Jäderblom, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 24 June 2014,

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

PROCEDURE

1. The case originated in 31 applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ukrainian and Russian (application no. 54769/08) nationals as well as companies based in Ukraine, Cyprus (application no. 23581/03) and Romania (application no. 22422/05). The details of the applicants are specified in the appended table (“the applicants”).

2. In application no. 34384/05 the applicant died in course of the proceedings before the Court. The next of kin of the applicant expressed the wish to maintain the application of their deceased family member.

3. In application no. 54769/08 one of the applicants, Ms Klavdiya Nikolayevna Galayda, died in course of the proceedings before the Court. No one expressed the wish to maintain her application.

4. In application no. 26330/09 a court decision was delivered in favour of the applicant’s deceased father in law. The applicant, providing documents in support, claims to be his lawful successor in title.

5. In application no. 30843/08 the court decisions were delivered in favour of the legal entity which was later liquidated. The applicant company, providing documents in support, claims to be its lawful successor in title.

6. On 10 April 2012 the Court, having accepted the unilateral declarations of the Government in applications nos. 23056/07 and 24245/10, decided to strike these applications out of its list of cases.

7. On various dates following the decision to strike out the applications nos. 23056/07 and 24245/10, the applicants informed the Court that Government had paid the compensation amount, but had failed to enforce the judgments of the domestic courts. In particular, in application no. 23056/07 the applicant complains of non-enforcement of the judgment of the Shevchenkivskyy District Court of Kyiv dated 4 February 2005 and

in application no. 24245/10 the applicant complains of non-enforcement of the judgment of the Oleksandriya Court dated 22 October 2010.

8. The applicants requested, therefore, to restore their applications in the Court's list of cases.

9. The applicants' letters were sent to the respondent Government for comments. In their replies the Government confirmed that the relevant judgments of the domestic courts remained unenforced. According to information provided by the Government in their letter dated 19 September 2013 and in view of the judgment of the Shevchenkivskyy District Court of Kyiv adopted on 9 July 2013 and annexed to that letter, the enforcement proceedings which were the subject matter of application no. 23056/07 were terminated on 17 April 2013 (decision fully enforced).¹

10. On 28 May 2013 (in application no. 23056/07) and on 17 December 2013 (in application no. 24245/10) the Court decided to grant the requests of the applicants and to restore the applications to the Court's list of cases in accordance with Rule 43 § 5 of the Rules of Court.

11. The applications listed in the Appendix to the present judgment were communicated to the Government on various dates.

12. The Government were represented by their Agent.

13. The Cypriot and Romanian Governments, having been informed of their right to intervene in the proceedings in respect of the applicants in applications nos. 23581/03 (lodged by a legal entity registered in Cyprus) and 22422/05 (lodged by a legal entity registered in Romania), indicated that they did not wish to exercise that right.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

14. On the dates set out in the appended table domestic courts delivered decisions according to which the applicants were entitled to various pecuniary amounts or to have certain actions taken in their favour. The decisions became final and enforceable. However, the applicants were unable to obtain the enforcement of the decisions in due time.

15. Some of the applicants also made submissions concerning factual and legal matters unrelated to the above non-enforcement issues.

1. Rectified on 2 March 2015: the third sentence has been added.

THE LAW

I. JOINDER OF THE APPLICATIONS

16. In view of the similarity of the applications set out in the Appendix in terms of the principal legal issues raised, the Court finds it appropriate to join them.

II. AS TO THE *LOCUS STANDI* OF THE APPLICANTS IN APPLICATIONS Nos. 26330/09 AND 34384/05

17. The Court notes that applications nos. 26330/09 and 34384/05 concern a property right which is in principle transferable to the heirs. In these circumstances the Court considers that the applicants or their next of kin have standing to continue the present proceedings in their stead (see, among other authorities, *Mironov v. Ukraine*, no. 19916/04, § 12, 14 December 2006).

III. AS TO THE *LOCUS STANDI* OF THE APPLICANT IN APPLICATION No. 30843/08.

18. The Court notes that application no. 30843/08 concerns a property right which is in principle transferable to the successors. In these circumstances the Court considers that the applicant company – being a lawful successor of the liquidated creditor company - has standing to initiate the present proceedings instead of it (see, among other authorities, *Mironov v. Ukraine*, no. 19916/04, § 12, 14 December 2006).

IV. AS TO THE *LOCUS STANDI* OF Mr VADYM YEVGENOVYCH MYKHAYLENKO (THE SECOND APPLICANT IN APPLICATION No. 18330/05)

19. In application no. 18330/05 the applicants, a legal entity *Galon, TOV* (first applicant) and Mr Vadym Yevgenovych Mykhaylenko (second applicant), complain about the lengthy non-enforcement of the judgment of the Higher Arbitration Court dated 26 December 2000. The domestic court allowed the claim of the first applicant. On 27 June 2003, on 1 August 2003 and on 29 October 2003 the Kyiv City Commercial Court modified the enforcement of the judgment dated 26 December 2000 and obliged the Ministry of Defence to pay the first applicant UAH 701,926².

2. equivalent of about EUR 70,000 as to February 2014

On 16 May 2006 the amount was transferred to the bank account of the first applicant. The decision was enforced after 5 years and 4 months.

20. In their observations the Government, *inter alia*, informed the Court that Mr Mykhaylenko (second applicant) was not a party in the domestic Court proceedings and he could not, therefore, claim to be a victim of the alleged violations of the Convention.

21. The Court agrees with the Government and declares this application as concerns the complaints of Mr Vadym Yevgenovych Mykhaylenko (second applicant) inadmissible pursuant to Article 35 § 3 (a) of the Convention.

V. STRIKE OUT OF THE APPLICATION LODGED BY Ms KLAVDIYA MYKOLAYIVNA GALAYDA (ONE OF THE APPLICANTS IN APPLICATION No. 54769/08)

22. By letter dated 12 July 2011 the Court was informed that Ms Klavdiya Mykolayivna Galayda, one of the applicants in application no. 54769/08, had died after lodging the application before this Court. No person expressed the wish to support her application.

23. In view of the above the Court decides to strike out from its list of cases the application lodged by Ms Klavdiya Mykolayivna Galayda, since the applicant died and there are no persons wishing to pursue the application. Furthermore, in accordance with Article 37 § 1 in fine, there are no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the complaints.

VI. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

24. The applicants listed in the Appendix complained about the lengthy non-enforcement of the decisions given in their favour, as specified in the Appendix, and about the lack of the effective domestic remedies in respect of those complaints. Expressly or in substance they relied on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1.

25. The Court notes that the above complaints (with the exception of the complaints raised by Ms Klavdiya Mykolayivna Galayda, one of the applicants in application no. 54769/08 and by Mr Mykhaylenko, second applicant in application no. 18330/05, see paragraphs 17-19 above) are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

26. The Court finds that the decisions in the applicants' favour were not enforced in due time, for which the State authorities were responsible.

27. Having regard to its well-established case-law on the subject (see *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 56-58 and 66-70, 15 October 2009) the Court finds that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the prolonged non-enforcement of the decisions in the applicants' favour. It also considers that there has been a violation of Article 13 of the Convention in that the applicants did not have an effective domestic remedy to redress the damage created by such non-enforcement.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. Some of the applicants raised other complaints under the Convention, which the Court has examined carefully. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

29. It follows that those complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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."

31. The Court notes that application nos. 23056/07 and 24245/10 were initially struck out of the Court's list of cases by two separate decisions on 10 April 2012 in the light of unilateral declarations in which the Government, as well as acknowledging a violation of the Convention and offering to pay 1,020 euros (EUR) in application no. 23056/07 and 540 euros (EUR) in application no. 24245/10, "expressed their readiness to enforce the judgments which [had] not been enforced yet" (application no. 23056/07) and "declared that they were ready to pay to the applicants the outstanding judgment debts" (application no. 24245/10). Those cases were restored to the Court's list of cases at the applicants' request as the underlying judgment debts were not paid, although the compensation payments had been duly effected. The Government accepted that the judgment had not been enforced in application no. 23056/07, and referred to "technical errors" which had taken place in application no. 24245/10. They did not contend that the judgment debts did not fall to be enforced, for example because they had been enforced in the interim. In these

circumstances, the Court considers that the “failed” unilateral declaration process should not be taken into consideration in determining any Article 41 award which should be made in these two applications, and will deal with them in the same manner as the remaining applications in the present case, that is, without deduction of the amounts already paid.

32. The Court considers it reasonable and equitable (see *Kononova and Others v. Ukraine* [Committee], no. 11770/03 and 89 other applications, § 24, 6 June 2013; *Tsibulko and Others v. Ukraine* [Committee], no. 65656/11 and 249 other applications, § 19, 20 June 2013; *Pysarskyy and Others v. Ukraine* [Committee], no. 20397/07 and 164 other applications, § 24, 20 June 2013) to award 2,000 euros (EUR) to each of the applicants (except Ms Klavdiya Mykolayivna Galayda, one of the applicants in application no. 54769/08; in application no. 18330/05 only to the first applicant, *Galon, TOV*). This sum is to cover any pecuniary and non-pecuniary damage, as well as costs and expenses.

32. The Court further notes that the respondent State has an outstanding obligation to enforce the decisions which remain enforceable.

33. The Court considers it appropriate that the default interest rate 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 set out in the Appendix;
2. *Declares* the complaints of the applicants listed in the Appendix (in application no. 18330/05 only with regard to the first applicant, *Galon, TOV*) under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the decisions given in their favour and about the lack of effective domestic remedies in respect of those complaints admissible and the remainder of their applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1;
4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds*

(a) that within three months the respondent State is to enforce the domestic decisions in the applicants' favour which remain enforceable, and is to pay EUR 2,000 (two thousand euros) to each applicant (or his or her estate) listed in the Appendix (except Ms Klavdiya Mykolayivna Galayda, one of the applicants in application no. 54769/08; in application no. 18330/05 only to the first applicant, *Galon, TOV*) in respect of pecuniary and non-pecuniary damage, and costs and expenses, plus any tax that may be chargeable to the applicants on the above amounts, which are to be converted into the national currency at the rate applicable at 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Decides* to strike application no. 54769/08 in part lodged by Ms Klavdiya Mykolayivna Galayda out of its list of cases.

Done in English, and notified in writing on 17 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Boštjan M. Zupančič
President

APPENDIX

No.	Application no. and date of introduction	Applicant name date of birth place of residence	Relevant domestic decision
1.	25663/02 21/06/2002	Mykola Mykhaylovych YAVOROVENKO 05/01/1949 Vinnytsya	1) Zamostyanskyy District Court of Vinnytsya, 01/03/2004 2) Leninskyy District Court of Vinnytsya, 28/03/2006 3) Zamostyanskyy District Court of Vinnytsya, 16/10/2006 4) Zamostyanskyy District Court of Vinnytsya, 06/04/2007 5) Leninskyy District Court of Vinnytsya, 27/11/2006
2.	23581/03 16/06/2003	LINDELL ENTERPRISES LIMITED	1) Odesa Regional Commercial Court, 14/12/2000 as rectified by the Odesa Regional Commercial Court on 23/04/2001 2) Odesa Regional Commercial Court, 17/12/2001 as amended by the Odesa Commercial Court of Appeal on 20/01/2003, on 11/02/2004 and on 12/05/2004
3.	4097/04 17/12/2003	GRIG Simferopol	Crimea Commercial Court, 17-21/04/2003
4.	17556/04 05/04/2004	Vadym Volodymyrovych VASKO 03/05/1972 Kyiv	Pecherskyy District Court of Kyiv, 04/12/2000 in the light of the judgment of the Golosiyivskyy District Court of Kyiv, 13/10/2003
5.	27218/04 21/04/2004	AKVATON, TOV Rivne	Cherkasy Regional Commercial Court, 18/03/2003
6.	10000/05 25/02/2005	Raisa Vladimirovna TKACHOVA 24/05/1951 Chornomorsk Yelena Vasilyevna PETLYAK 08/07/1966 Chornomorsk Valentina Nikolayevna IYEVLEVA 29/06/1960 Chornomorsk Tatyana Anatolyevna VETROVA 10/01/1962 Chornomorsk Yelena Alekseyevna KLIMENKO 02/10/1964 Chornomorsk	1) Chornomorskyy District Court of Crimea, 13/11/2002 as amended by the Court of Appeal of Crimea, 31/03/2003 2) Chornomorskyy District Court of Crimea, 21/04/2006 3) Chornomorskyy District Court of Crimea, 26/12/2007
7.	18330/05 13/05/2005	GALON, TOV Kyiv Vadym Yevgenovych MYKHAYLENKO³ 21/03/1964 Kyiv	Higher Arbitration Court, 26/12/2000 in the light of the ruling of the Kyiv City Commercial Court of 27/06/2003
8.	21463/05 30/04/2005	Mykola Prokopovych KOROL 05/06/1943 Polihnya	Zhytomyr Regional Court of Appeal, 31/01/2005

3. The complaints of the second applicant, Mr Vadym Yevgenovych Mykhaylenko, are inadmissible *ratione personae*.

No.	Application no. and date of introduction	Applicant name date of birth place of residence	Relevant domestic decision
9.	21954/05 27/05/2005	ZODIAK, ZAT Sumy	1) Donetsk Regional Commercial Court, 19/12/2000 as amended by the Donetsk Regional Commercial Court on 17/04/2001 2) Enforcement writ of Sumy private notary Olga Areshyna, 26/04/2001 3) Order no. 4251 - 12/270 of the Sumy Regional Commercial Court, 26/05/2003 4) Order no. 9/254 of the Sumy Regional Commercial Court, 18/09/2003
10.	22422/05 10/06/2005	INDUSTRIALEXPORT S.A. Kyiv	International Commercial Arbitration Court at the Ukrainian Chamber of Commerce, 20/02/1997 in light of the judgment of the Kyiv City Commercial Court dated 29/08/2007
11.	30706/05 04/08/2005	Lenina Abramivna MAREKHBEYN 04/11/1944 Lviv	Frankivskyy District Court of Lviv, 10/07/2003
12.	34384/05 10/09/2005	Yevgeniy Petrovich ORLOV 26/01/1937 Dneprodzerzhynsk	Bagliyskyy District Court of Dniprodzerzhynsk, 26/01/2004
13.	41082/05 02/11/2005	Oleg Mykolayovych GRISHYN 28/06/1952 Cherkasy	Cherkasy Regional Court of Arbitration, 20/05/1998
14.	3093/06 21/12/2005	Irina Vladislavovna MARKOVA 03/01/1962 Simferopol Yelena Petrovna MONASHOVA 08/10/1940 Simferopol Viktor Ivanovich SHYBAYEV 21/09/1950 Simferopol	Crimea Court of Appeal, 28/10/2003
15.	16021/06 11/04/2006	Borys Oleksandrovych YELETSKYI 25/08/1949 Kyiv	Kyiv City Commercial Court, 21/02/2005, as amended by the Kyiv Commercial Court of Appeal on 31/05/2005 and by the Higher Commercial Court on 13/10/2005
16.	25186/06 19/05/2006	Petr Mikhaylovich KORZHIKOV 12/07/1947 Chernigiv	Desnyanskyy District Court of Chernigiv, 28/04/2001
17.	29072/06 05/07/2006	Sergey Nikolayevich SIDORENKO 06/03/1961 Chyguyev	Chuguyev Court 13/12/2002
18.	23056/07 23/04/2007	Maria Leonidovna SEREDA 10/02/1935 Kyiv	Shevchenkivskyy District Court of Kyiv, 04/02/2005
19.	49871/07 08/11/2007	Nikolay Aleksandrovich YAMPOLSKIY 01/02/1962 Georgiyivka	Leninskyy District Court of Lugansk, 05/06/2006
20.	54469/07 03/12/2007	Viktor Alekseyevich RASPOPOV 20/10/1935 Kyiv	1) Pecherskyy District Court of Kyiv, 17/04/2006 2) Pecherskyy District Court of Kyiv, 05/03/2007 3) Pecherskyy District Court of Kyiv, 12/02/2007
21.	2316/08 04/01/2008	Vasyl Mykolayovych MUZYCHENKO 06/05/1956 Kyiv	Minskyy District Court of Kyiv, 19/11/1998

No.	Application no. and date of introduction	Applicant name date of birth place of residence	Relevant domestic decision
22.	10908/08 20/02/2008	Petro Oleksiyovych DZYUBKO 01/09/1947 Kyiv	Vyshgorodskyy District Court of the Kyiv Region, 01/10/2002, upheld by the Supreme Court on 22/01/2004
23.	19939/08 28/03/2008	ANIS, FERMERSKE GOSPODARSTVO Petrovske	Dnipropetrovsk Commercial Court of Appeal, 16/11/2001
24.	30843/08 20/03/2008	UKRENERGOSTROY, TOV Dnipropetrovsk	1) Zaporizhzhya Regional Commercial Court, 05/02/2002 2) Zaporizhzhya Regional Commercial Court, 12/02/2002
25.	35948/08 21/07/2008	Mariya Oleksiyivna DOBROVOLSKA 18/08/1954 Kyiv Mykola Tarasovych DOBROVOLSKYY 27/11/1949 Kyiv	Applicant 1: 1) Kyiv Commercial Court of Appeal, 29/01/2003 2) Kyiv City Commercial Court, 13/07/2006 Applicant 1 and Applicant 2: 2) Podilskyy District Court of Kyiv, 26/06/2008
26.	54769/08 31/10/2008	Engels Ivanovych NOVOKHATKO 15/08/1925 Lugansk Sergiy Oleksiyovych KALININ 26/07/1956 Klimovsk Mykhaylo Oleksandrovych TARASOV 19/08/1956 Kovrov Volodymyr Mykolayevych SYURYAYEV 09/12/1945 Orenburg Yuriy Petrovych GALAYDA 19/06/1974 Lugansk Klavdiya Mykolayivna GALAYDA⁴ 22/05/1945 Lugansk	1) Leninskyy District Court of Lugansk, 18/08/2004, 2) Leninskyy District Court of Lugansk, 28/04/2007
27.	23057/09 07/04/2009	Galyna Mykolayivna DONETS 05/10/1963 Lviv	Lviv Circuit Administrative Court, 30/12/2008
28.	26330/09 04/03/2009	Dmitriy Vladimirovich VOLNA 03/05/1973 Mykolayivka	Sloviansk Court, 31/01/2000
29.	55864/09 09/10/2009	NAIRI, IPP Protopopivka	Kirovograd Regional Commercial Court, 14/05/2004
30.	16112/10 01/03/2010	Nikolay Aleksandrovich KOCHEGAROV 26/02/1951 Novogorodovka	1) Novogorodivka Court, 10/02/1999 2) Novogorodivka Court, 24/03/1999 3) Novogorodivka Court, 05/05/1999 4) Novogorodivka Court, 22/03/2000 5) Novogorodivka Court, 25/01/2001
31.	24245/10 20/04/2010	Volodymyr Ivanovych KRAVCHENKO 01/02/1949 Marto-Ivanivka	Court order of the Oleksandriya Court, 22/10/2008

4. The application of Klavdiya Mykolayivna Galayda was struck out of the Court's list of cases as the applicant died on 26/01/2011 and no persons expressed their wish to support the application.