



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

FIFTH SECTION

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

*(Application no. 2644/04 and 23 other applications)*

JUDGMENT

*This version was rectified on 5 June 2013  
under Rule 81 of the Rules of Court*

STRASBOURG

11 April 2013

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



**In the case of Rozhenko 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 19 March 2013,

Having noted that the underlying legal issue in the applications is already the subject of well-established case-law of the Court (see *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, 15 October 2009),

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

**PROCEDURE**

1. The case originated in 24 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 nationals, whose details are specified in the appended tables (“the applicants”).

2. The applicants in applications nos. 17176/07 and 48229/07 died. The applications were pursued in their name by the persons of the required standing, their relatives or heirs to their estate.

3. The Ukrainian Government (“the Government”) are represented by their Agent, Mr Nazar Kulchytskyy.

4. The applications, which mainly concern the issues of lengthy failure to enforce domestic decisions given in the applicants’ favour, were communicated to the Government on various dates.

5. On various dates the Government submitted to the Court a number of unilateral declarations aimed at resolving the non-enforcement issues. The Government requested the Court to strike the applications concerned out of the list of cases pursuant to Article 37 § 1 (c) of the Convention on the basis of the declarations. The Court examined the declarations and decided to reject the Government’s request.

## THE FACTS

### THE CIRCUMSTANCES OF THE CASE

6. On the dates set out in the appended tables domestic courts delivered judgments according to which the applicants were entitled to various pecuniary amounts or to have certain actions taken in their favour. The judgments became final and enforceable. However, the applicants were unable to obtain the enforcement of the judgments in due time because of State's failure to comply with these decisions.

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

## THE LAW

### I. JOINDER OF THE APPLICATIONS

8. In view of the similarity of the applications in terms of the principal legal issue raised, the Court finds it appropriate to join them.

### II. THE STANDING OF THE APPLICANTS IN APPLICATIONS Nos. 17176/07 AND 48229/07

9. The Court considers that the applicants' heirs or next-of-kin in the applications nos. 17176/07 and 48229/07 (see paragraph 2 above) have standing to continue the proceedings in the applicants' stead (see, among other authorities, *Mironov v. Ukraine*, no. 19916/04, § 12, 14 December 2006).

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

10. The applicants complained about the lengthy non-enforcement of the judgments given in their favour and about the lack of effective domestic remedies in respect of those complaints. They relied on, expressly or in substance, Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 which read, in so far as relevant, as follows:

**Article 6**

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] tribunal ...”

**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.”

**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 ...”

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.

**A. Admissibility**

11. On various dates the Government submitted observations as to the admissibility of the applications, claiming that the applicants' complaints were inadmissible or partly inadmissible for various reasons.

12. The applicants disagreed with the Governments' submissions.

13. The Court notes that similar objections have already been dismissed in a number of its judgments (see, *Voytenko v. Ukraine*, no. 18966/02, §§ 32-35, 29 June 2004). Accordingly, the Court dismisses the Government's preliminary objections and declares the applicants' complaints with respect to lengthy failure to enforce the judgments given in their favour admissible.

**B. Merits**

14. The Government submitted, with respect to application no. 11442/04 only, that no violation of the applicant's rights occurred as the judgments in that case could not be enforced and property returned to the applicant in view of the fact that after transfer of the seized property to third private parties it was embezzled by them.

15. The applicant disagreed.

16. As the applicant's property was seized by the investigating officer of the Prosecutor's Office of the Dnipropetrovsk Region, the Court finds that

*the Government's responsibility for the debt is not affected by their contention that the property in question was embezzled by third parties.* The Court accordingly dismisses the Government's objection as to the merits of the applicant's complaints in application no. 11442/04.

17. The Court concludes, with respect to all the applications, that the judgments in the applicants' favour were not enforced in due time, for which the State authorities were responsible.

18. Having regard to its well-established case-law on the subject (see *Yuriy Nikolayevich Ivanov*, cited above, §§ 56-58 and 66-70), 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 judgments in the applicants' favour. It also considers that there had 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.

#### IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. Some of the applicants raised other complaints under the Convention which the Court has carefully examined. 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.

20. 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.

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

21. 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."

22. In the present case, bearing in mind its previous decision on the matter (see *Kharuk and Others v. Ukraine* [Committee], no. 703/05 and 115 other applications, § 25, 26 July 2012), the Court considers it reasonable and equitable to award 3,000 euros (EUR) to each applicant in the applications which concern non-enforcement delays exceeding three years (the applications tabulated in Appendix 1) and EUR 1,500 to each applicant in the other applications (the applications tabulated in Appendix 2). These sums are to cover any pecuniary and non-pecuniary damage, as well as costs and expenses.

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

24. 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;
2. *Declares* the applicants' complaints 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 the 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 the respondent State is to enforce the domestic decisions in the applicants' favour which remain enforceable, and is to pay, within three months, EUR 3,000 (three thousand euros) to each applicant or his or her estate in the applications tabulated in Appendix 1 and EUR 1,500 (one thousand five hundred euros) to the applicant in the application tabulated in Appendix 2 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.

Done in English, and notified in writing on 11 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Deputy Registrar

Boštjan M. Zupančič  
President

**APPENDIX 1**  
(non-enforcement delays more than three years)

No.	Application no. and date of introduction	Applicant name date of birth place of residence	Relevant domestic decisions
1.	2644/04 08/12/2003	<b>Ruslan Yevgenovych ROZHENKO</b> 10/11/1965 Kyiv	Kyiv Regional Court of Appeal, 12/03/2003
2.	11442/04 11/02/2004	<b>Stanislav Grigoryevich KIRICHENKO</b> 02/12/1964 Dnipropetrovsk	1) Kirovskyy (district) Court of Dnipropetrovsk, 27/06/2003 <sup>1</sup>  2) Kirovskyy (district) Court of Dnipropetrovsk, 25/08/2003
3.	17410/05 25/04/2005	<b>Anatoliy Aleksandrovich BAZELYUK</b> 16/05/1949 Odessa	Suvorovskyy (district) Court of Odesa, 28/02/2003
4.	17176/07 29/03/2007	<b>Aleksandr Pavlovich MIKHAYLOV</b> 01/04/1939 Krasnyy Luch	1) Krasnyy Luch Court, 01/08/2001  2) Krasnyy Luch Court, 13(28)/05/2003 <sup>2</sup>  3) Krasnyy Luch Court, 10/12/2003  4) Krasnyy Luch Court, 04/11/2004  5) Krasnyy Luch Court, 26/05/2006
5.	42782/07 19/09/2007	<b>Vitaliy Nikolayevich SIMUSHIN</b> 07/12/1958 Torez	Torez Court, 23/03/2005
6.	46001/07 29/09/2007	<b>Viktor Vasilyevich BEZRUK</b> 25/08/1962 Torez	Torez Court, 23/03/2005
7.	48229/07 24/10/2007	<b>Klavdiya Ivanovna KASPEROVICH</b> 14/06/1937 Krasnyy Luch	1) Krasnyy Luch Court, 16/01/2002  2) Krasnyy Luch Court, 06/10/2005
8.	13818/08 05/03/2008	<b>Nadezhda Petrovna KARPUKHINA</b> 05/06/1956 Knyaginevka	Krasnyy Luch Court, 12/05/2005
9.	13835/08 05/03/2008	<b>Yelena Vladimirovna PLETYONKINA</b> 05/12/1975 Vakhrukhevo	Krasnyy Luch Court, 27/07/2005
10.	23406/08 08/05/2008	<b>Nikolay Vasilyevich GORBUNOV</b> 08/11/1949 Kherson	Komsomolskyy (district) Court of Kherson, 24/05/2004
11.	23427/08 21/11/2007	<b>Vadym Volodymyrovych VYGOVSKYY</b> 02/05/1967 Mykolayiv	Mykolayiv Regional Court of Appeal, 15/03/2006
12.	30858/09 30/03/2009	<b>Anatoliy Pavlovich SHAMIN</b> 19/02/1957 Makiyivka	Tsentralno-Miskyy (district) Court of Makiyivka, 26/12/2007
13.	35901/09 24/06/2009	<b>Tetyana Mykolayivna PAVYTSKA</b> 06/10/1965 Zhytomyr	1) Zhytomyr Regional Administrative Court, 21/11/2007  2) Zhytomyr Regional Administrative Court, 05/10/2007
14.	39123/09 09/07/2009	<b>Larysa Mykolayivna KOSYGINA</b> 15/03/1970 Zhytomyr	1) Zhytomyr Regional Administrative Court, 21/11/2007  2) Zhytomyr Regional Administrative Court, 05/10/2007
15.	48131/09 27/08/2009	<b>Viktor Georgiyovych ZAGRANYCHNYI</b> 28/11/1949 Ivanivka	Pecherskyy (district) Court of Kyiv, 28/02/2002
16.	48596/09 25/08/2009	<b>Vladyslav Viktorovych KRYZHANIVSKYY</b> 14/02/1961 Oliyivka	1) Zhytomyr Regional Administrative Court, 21/11/2007  2) Zhytomyr Regional Administrative Court, 05/10/2007

1. Rectified on 5 June 2013: the text read “27/07/2003”;

2. Rectified on 5 June 2013: the text read “13/05/2003”.

No.	Application no. and date of introduction	Applicant name date of birth place of residence	Relevant domestic decisions
17.	50861/09 04/09/2009	<b>Motrona Pavlivna BOGDANETS</b> 07/11/1914 Rokytno	Rivne Regional Administrative Court, 28/04/2009
18.	14165/10 20/02/2010	<b>Oleksandr Volodymyrovych YEVDOKYMOV</b> 14/09/1950 Kharkiv	Frunzensky (district) Court of Kharkiv, 26/11/2007
19.	15965/10 01/03/2010	<b>Yevgeniy Petrovich DOLINSKIY</b> 05/11/1947 Dzerzhynsk	Dzerzhynsk Court, 29/11/2005
20.	29139/10 10/05/2010	<b>Aleksandr Vyacheslavovich KOVALENKO</b> 17/11/1964 Lysychansk  <b>Nadezhda Vasilyevna KOVALENKO</b> 06/12/1959 Lysychansk	1) Lysychanskiy Court, 04/11/2008 2) Lysychanskiy Court, 25/11/2008 3) Lysychanskiy Court, 20/11/2008
21.	71869/10 19/11/2010	<b>Galyna Opanasivna FEDORENKO</b> 08/09/1951 Kremenchuk	Kryukivsky (district) Court of Kremenchuk, 23/01/2003
22.	74285/10 09/11/2010	<b>Arkadiy Ivanovych SHAPOVALOV</b> 23/05/1964 Kremenchuk	Avtozavodsky (district) Court of Kremenchuk, 27/12/2001
23.	5737/11 14/01/2011	<b>Oleksandr Davydovych CHAKIR</b> 18/10/1968 Starokostyantyni	Starokostiantyniv Court, 08/08/2007

**APPENDIX 2**  
(non-enforcement delays less than three years)

No.	Application no. and date of introduction	Applicant name date of birth place of residence nationality	Final domestic decision details
24.	12022/07 03/03/2007	<b>Viktor Viktorovich SLOBODYANYUK</b> 21/01/1966 Novaya Kakhovka	Kherson Regional Commercial Court, 06/10/2006