CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

**CASE OF CHECHA v. UKRAINE**

*(Application no. 5326/04)*

JUDGMENT

STRASBOURG

22 November 2007

**FINAL**

*22/02/2008*

*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 Checha v. Ukraine,**

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 23 October 2007,

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

# PROCEDURE

1. The case originated in an application (no. 5326/04) 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 Pavel Petrovich Checha ("the applicant"), on 9 January 2004.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mrs Valeriya Lutkovska.

3. On 15 March 2005 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 1964 and lives in the city of Dniprodzerzhynsk.

5. On 29 January 2003 the Pavlograd Court awarded the applicant UAH 19,381.50[1] in industrial disease benefits arrears against the State-owned mining company "Geroyiv Kosmosu", which on 3 March 2003 was joined to the State-owned Holding Company "Pavlogradvugillya".

[1] EUR 2,821.42

6. On 2 April 2003 the Pavlograd Bailiffs' Service (hereinafter "the Bailiffs") instituted the enforcement proceedings.

7. On 29 April 2004 the Pavlograd Court assigned the "Pavlogradvugillya" as the debtor in the enforcement proceedings.

8. On 23 September 2004 the Pavlograd City Court rejected the applicant's complaint against the Bailiffs. The court indicated, *inter alia*, that the award could not be paid due to the debtor's lack of funds. The scope of action for the Bailiffs was also limited by the funds allocated from the State Budget to the Ministry of Fuel and Energy for payment of the industrial benefits.

9. On 25 October 2004 the debtor company was privatised.

10. On 27 December 2004 the judgment debt was paid to the applicant and the Bailiffs terminated the enforcement proceedings.

## II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

# THE LAW

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

12. The applicant complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment given in his favour. The above provisions read, 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. ..."

**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.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...."

## A. Admissibility

13. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies similar to those already dismissed in a number of the Court's judgments regarding non-enforcement against the State-owned companies (see e.g. *Sokur v Ukraine* (dec.), no. 29439/02, 16 December 2003 and *Trykhlib v. Ukraine*, no. 58312/00, §§ 39-43, 20 September 2005). The Court considers that these objections must be rejected for the same reasons.

14. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

15. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect as the judgment given in his favour had been enforced in full.

16. The applicant disagreed.

17. The Court notes that the judgment given in the applicant's favour remained unenforced for almost twenty-three months.

18. The Court recalls that it has already found violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 45, ECHR 2004 and *Dubenko v. Ukraine*, no. 74221/01, § 51, 11 January 2005).

19. Having examined all the materials in its possession, 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.

20. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

21. The Court does not find it necessary in the circumstances to examine the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed UAH 5,825 (EUR 896) of inflation and interest rate and EUR 1,000 in compensation of non-pecuniary damage.

24. The Government maintained that the State was not liable for the lengthy non-enforcement of the judgment in the applicant's favour and that the applicant should have claimed compensation for inflation and interest rate at the domestic level. The Government agreed to pay the applicant EUR 1,000 by way of compensation for non-pecuniary damage in the event of the Court's finding a violation.

25. As regards the applicant's claims for interest on monies unpaid and for compensation for losses due to inflation, the Court notes that these claims are not supported by any relevant material which would enable the Court to determine the amounts claimed. Consequently, it rejects these claims (see e.g., *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006).

26. As to the remainder of the applicant's just satisfaction claim, the Court, having regard to the Government's comments on the point, awards the applicant EUR 1,000 (one thousand euros) in respect of non-pecuniary damage.

### B. Costs and expenses

27. The applicants did not submit any separate claim under this head; the Court therefore makes no award.

### C. Default interest

28. 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 1 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage to 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;
(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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Claudia WESTERDIEK<br>Registrar | Peer LORENZEN<br>President |