CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF SHTURKHALEV v. UKRAINE

(Application no. 10947/04)

JUDGMENT

This version was rectified on 1 September 2008 under Rule 81 of the Rules of Court.

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Shturkhalev v. Ukraine,

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 10947/04) 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 Vladimir Leonovich Shturkhalev[1], on 24 February 2004.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Yuriy Zaytsev.

3. On 5 April 2006 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 1961 and lives in Donetsk.

5. On 7 November 2000 and 28 February 2003 the Kuybyshevsky District Court of Donetsk (hereinafter "the Kuybyshevsky Court") ordered

---

1. The applicant's name was given in the judgment as Vladimir Leonidovich Sturkhalev. On 1 September 2008, paragraph 1 of the judgment was rectified pursuant to Rule 81.

the State-owned mining company “Zhovtnevy Rudnyk” (Z.) to pay the applicant, respectively, UAH 3,641[1] and 4,403[2] in salary arrears.

6. On 18 December 2000 and 22 April 2003 the Kuybyshevsky Bailiffs’ Office of Donetsk instituted enforcement proceedings.

7. In October 2004 the execution writs were transferred to the Voroshylivsky Bailiffs’ Office of Donetsk.

8. In May 2003 Z. was liquidated and the State-owned company “Donetskvugillya” assumed its debts.

9. In December 2004 “Donetskvugillya” was divided into three State-owned companies “Donetska Vugilna Energetychna Kompaniya”, “Donetska Vugilna Koksova Kompaniya” and the coal-mine “Gorkogo”.

10. During January – September 2005 the applicant was paid UAH 2,456[3] under the judgment of 7 November 2000 and UAH 2,781[4] under the judgment of 28 February 2003.

11. According to the ruling of 31 March 2006 of the Kuybyshevsky Court, “Donetska Vugilna Energetychna Kompaniya” was assigned as a debtor.

12. In the remainder, the judgments given in the applicant’s favour are still unenforced.

II. RELEVANT DOMESTIC LAW

13. 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

14. Relying on Articles 6 § 1 and 13 of the Convention, the applicant complained about the non-enforcement of the final judgments given in his favour. These provisions read, insofar as relevant, as follows:

1. EUR 777.61
2. EUR 791.11
3. EUR 369.78
4. EUR 418.72

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."

A. Admissibility

15. 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

16. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect.

17. The applicant disagreed.

18. The Court notes that the judgments given in the applicant's favour remain unenforced for seven years and four months and almost four years and one month.

19. The Court recalls that it has already found violation of Article 6 § 1 of the Convention in a number of similar cases (see, for instance, *Sokur v. Ukraine*, cited above and *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).

20. 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.

21. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

22. The Court does not find it necessary in the circumstances to examine the same complaints 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

23. 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

24. The applicant claimed the judgments' debts owed to him. He also claimed non-pecuniary damage and requested the Court to calculate its amount.

25. The Government agreed to pay the applicant the outstanding judgments' debts and rejected his claim for non-pecuniary damage.

26. In so far as the judgments' debts in the applicant's favour have not been paid (paragraph 5 above), the Court notes that the State's outstanding obligation to enforce these judgments is not in dispute. Accordingly, the Court considers that, if the Government were to pay the remaining debts owed to the applicant, it would constitute full and final settlement of the case.

27. The Court also considers that the applicant must have sustained non-pecuniary damage as a result of the violations found (see *Kryachkov v. Ukraine*, no. 7497/02, § 30, 1 June 2006). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,600 in this respect.

B. Costs and expenses

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

C. Default interest

29. 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 is no need to examine the complaint under 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 in accordance with Article 44 § 2 of the Convention,

- the judgments' debts still owed to him;
- EUR 2,600 (two thousand and six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

(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;

(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.

Done in English, and notified in writing on 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President