

Press release issued by the Registrar

CHAMBER JUDGMENT
SALOV v. UKRAINE

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Salov v. Ukraine* (application no. 65518/01). The Court held, unanimously, that there had been:

- a **violation of Article 5 § 3** (right to liberty and security) of the European Convention on Human Rights,
- a **violation of Article 6 § 1** (right to a fair trial) of the Convention, and
- a **violation of Article 10** (freedom of expression).

Under Article 41 (just satisfaction), the Court awarded the applicant 227.55 euros (EUR) for pecuniary and EUR 10,000 for non-pecuniary damage. (The judgment is available only in English.)

1. Principal facts

The applicant, Sergey Petrovich Salov, is a Ukrainian national who was born in 1958 and lives in Donetsk (Ukraine). He is a lawyer and, at the time of the events in question, was the legal representative of Olexander Moroz, a candidate for the presidency of Ukraine in the 1999 elections.

On 30 and 31 October Mr Salov allegedly distributed a number of copies of a forged special edition of the Verkhovna Rada (Parliament) newspaper, *Holos Ukrayiny* (газета “Голос України”), which included a statement attributed to the Speaker of the Verkhovna Rada, claiming that presidential candidate and incumbent President Leonid Kuchma was dead. On 1 November 1999 Mr Salov was arrested and placed in detention for having disseminated false information about Mr Kuchma.

On 10 November 1999 he lodged a petition seeking his release from detention with Voroshylovsky District Court of Donetsk, which was dismissed on 17 November 1999.

On 7 March 2000 the district court ordered an additional investigation to be undertaken into the circumstances of the case, having found no evidence to convict the applicant of the offences with which he was charged.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

However, on 5 April 2000 the Presidium of the Regional Court allowed a *protest* lodged by the prosecution against the ruling of 7 March 2000 and remitted the case for further judicial consideration.

The applicant was released from detention on 16 June 2000.

On 6 July 2000 he was given a five-year suspended prison sentence for interfering with the citizens' right to vote for the purpose of influencing election results by means of fraudulent behaviour. As a result, he also lost his licence to practise law for three years and five months.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 January 2000 and declared admissible on 27 April 2004. A hearing took place in public in the Human Rights Building, Strasbourg, on 22 March 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
Ireneu **Cabral Barreto** (Portuguese),
Riza **Türmen** (Turkish),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Mindia **Ugrekhelidze** (Georgian),
Antonella **Mularoni** (San Marinese), *judges*,

and also Stanley **Naismith**, *Deputy Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant complained that he was not brought promptly before a judge or other judicial authority to have his arrest reviewed.

He also alleged that he did not have a fair trial, in particular, because the Presidium of the Regional Court quashed the ruling of 7 March 2000. He further expressed doubts about the impartiality of the trial judge, claiming that Ukrainian domestic legislation and the system for financing the courts did not prevent outside pressure on judges.

He maintained that he had not known whether or not the information about the death of the candidate Mr Kuchma was genuine and that he had been trying to verify it. The information had not been widely disseminated, as he had had only eight copies of the paper and had only spoken to a limited number of people.

He relied on Article 5 § 3 (right to liberty and security), Article 6 § 1 (right to a fair trial) and Article 10 (freedom of expression) of the Convention.

¹ This summary by the Registry does not bind the Court.

Decision of the Court

Article 5 § 3

The European Court of Human Rights noted that the applicant was apprehended by the police on 1 November 1999 but that his detention was not reviewed by a court until 17 November 1999, 16 days after his arrest. Even if the Court were to accept the Ukrainian Government's argument that the applicant had contributed to the delay by not applying for release until 10 November, his detention for even seven days without any judicial control fell outside the strict constraints of time laid down by the Convention. The Court therefore held, unanimously, that there had been a violation of Article 5 § 3.

Article 6 § 1

The Court found that the applicant's doubts as to the impartiality of the judge of the Kuybyshevsky District Court of Donetsk might be said to have been objectively justified, taking into account the insufficient legislative and financial guarantees against outside pressure on the judge hearing the case and, in particular, the lack of such guarantees in respect of possible pressure from the President of the Regional Court, the binding nature of the instructions given by the Presidium of the Regional Court and the wording of the relevant intermediary judicial decisions in the case.

In addition, the principle of equality of arms dictated that the public prosecutor's *protest* lodged with the Presidium of the Donetsk Regional Court should have been communicated to the applicant and/or his advocate, who should have had a reasonable opportunity to comment on it before it was considered by the Presidium. Furthermore, the applicant should have been provided with a copy of the resolution of the Presidium of the Donetsk Regional Court so as to give him the opportunity to prepare his defence in advance of the trial. As that did not happen and neither the applicant nor his lawyers were present when the *protest* was considered by the Presidium, the applicant found himself at a substantial disadvantage *vis-à-vis* his opponent, the State prosecution service.

The Court further found that the domestic courts gave no reasoned answer as to why the district court had originally found no evidence to convict the applicant of the offences with which he was charged and yet, on 6 July 2000, found him guilty of interfering with voters' rights. The lack of a reasoned decision also hindered the applicant from raising those issues at the appeal stage.

Lastly, the resolution by the Presidium of the Donetsk Regional Court to consider the prosecution's late request to review the resolution of 7 March 2000 and to set it aside a month after it had been adopted could be described as arbitrary, and as capable of undermining the fairness of the proceedings.

The Court therefore considered that the criminal proceedings in their entirety were unfair and held, unanimously, that there had been a violation of Article 6 § 1.

Article 10

The Court was of the view that the impugned article, disseminated in a copy of a forged newspaper, concerned issues of public interest and concern, the elections in general and the question of support for a particular candidate.

Article 10 did not prohibit discussion or dissemination of information received even if it was strongly suspected that the information might not be truthful. To suggest otherwise would deprive people of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on freedom of expression, as set out in Article 10.

The Court noted that the applicant emphasised that he had not known whether the information was true or false while he was discussing it with others. He alleged that he was trying to verify it. Moreover, the impact of the information contained in the newspaper was minor as he only had eight copies of the forged newspaper and spoke to a limited number of people about it, a fact that should have been taken into account by the domestic courts. The guarantees of free expression and free discussion of information enshrined in Article 10, bearing in mind the particular context of the presidential elections, should have also been taken into account by the domestic courts in considering the applicant's case.

The Court reiterated that, when assessing the proportionality of an interference, the nature and severity of the penalties imposed were also factors to be taken into account. In the applicant's case, his sentence and the resulting annulment by the Bar Association of his licence to practise law constituted a very severe penalty.

The Court found that the interference complained of was not necessary in a democratic society. Furthermore, the decision to convict the applicant for discussing information disseminated in the forged copy of a newspaper about the death of President Kuchma was manifestly disproportionate to the legitimate aim pursued. Accordingly, the Court held, unanimously, that there had been a violation of Article 10.

Judges Cabral Barreto and Mularoni expressed dissenting opinions, which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.