



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

FIFTH SECTION

CASE OF BALOGA v. UKRAINE

(Application no. 620/05)

JUDGMENT

STRASBOURG

16 September 2010

FINAL

21/02/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Baloga v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 620/05) 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 Petro Ivanovych Baloga (“the applicant”), on 23 December 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 14 May 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant, Mr Petro Ivanovych Baloga, is a Ukrainian national who was born in 1963 and lives in Fediyivka village, Kirovograd region, Ukraine.

5. At the material time, the applicant was a district police officer.

6. On 25 October 2000 the local prosecutor's office instituted criminal proceedings against the applicant, charging him with abuse of authority and forgery. It was alleged, in particular, that during February and March 1999 the applicant had drawn up a number of reports of administrative offences

and forged the signatures of imaginary offenders in order to embellish his work statistics. However, the offenders mentioned therein did not exist.

7. On 27 June 2002 the Bobrynets District Court (hereinafter referred to as “the District Court”) found that the applicant had ceased to be a danger to society. Accordingly, it ruled that he was no longer liable and discontinued the proceedings against him. The applicant appealed.

8. On 26 November 2002 the Kirovograd Regional Court of Appeal (hereinafter referred to as “the Court of Appeal”) quashed the decision of 27 June 2002, having noted that the lower court had not verified whether the applicant had consented to the discontinuation of the proceedings against him, and that it had examined the case in the applicant's absence. It ruled, however, to discontinue the proceedings against the applicant. According to the applicant's submissions he was not provided with a copy of that decision in due time and this therefore caused delays in appealing in cassation against it.

9. From 27 November 2002 to 8 March 2004 no hearings were held.

10. On 9 March 2004, having allowed the applicant's appeal in cassation, the Supreme Court found that, contrary to the requirement of the law, the courts in both instances had examined the case in the applicant's absence and that they had discontinued the proceedings against him without his consent. Accordingly, it quashed the ruling of 26 November 2002 and remitted the case for fresh consideration to the Court of Appeal.

11. On 22 June 2004 the Court of Appeal quashed the decision of 27 June 2002 and ordered a retrial.

12. On 7 September and 12 November 2004 the court hearings were adjourned owing to the applicant's failure to attend them. The applicant asserted in this regard that he had not been duly summoned.

13. On 12 November 2004 the District Court ordered the police to secure the applicant's attendance at the next court hearing. According to the applicant, he was brought to the hearing on 24 November 2004.

14. According to the applicant, on 25 January 2005, he was again brought by the police to the District Court. However, he alleges that this was without a proper court order.

15. According to the Government's submissions, the applicant failed to appear on 8 February 2005.

16. On 16 February 2005 the District Court found the applicant guilty of abuse of authority and forgery but amnestied him.

17. On 12 April 2005 the Court of Appeal, pointing out a number of shortcomings of the lower court (for example, the failure to indicate in the judgment the punishment given to the applicant, the failure to indicate the date of the amnesty act referred to, the failure to resolve the matter of court fees), quashed the judgment of 16 February 2005 and ordered a retrial.

18. The applicant appealed in cassation. On 18 July 2005 the Supreme Court rejected his request for leave to appeal.

19. Meanwhile, on 11 and 18 May 2005 the applicant failed to appear. Owing to the applicant's failure to comply with the court summons, the District Court ordered the police to secure the applicant's attendance at the court hearing. According to the applicant, these orders were enforced on 25 May 2005.

20. On 25 May 2005 the District Court found the applicant guilty of the aforesaid crimes and sentenced him to one year's imprisonment. The court also banned the applicant from holding positions in the organs of the Ministry of the Interior. By the same judgment the court annulled the applicant.

21. On 16 August 2005 the Court of Appeal upheld the judgment of 25 May 2005.

22. On 25 April 2006 the Supreme Court rejected the applicant's appeal in cassation. However, it ruled that the applicant should be exempted from punishment because the statutory time-limit for prosecuting him had elapsed.

23. According to the records provided by the Government the adjournments due to the applicant's failure to appear caused a delay of almost six months.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

25. The Government contested that argument.

26. The period to be taken into consideration began on 25 October 2000 and ended on 25 April 2006. It thus lasted five years and six months.

A. Admissibility

27. The Court notes that this complaint 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

28. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II) What is at stake for the applicant has also to be taken into consideration. In this respect the Court recalls that an accused in criminal proceedings should be entitled to have his or her case conducted with special diligence and Article 6 is, in criminal matters, designed to ensure that a person who has been charged does not remain for too long in a state of uncertainty about his or her fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

29. Although some delays could be attributed to the applicant, the Court notes that the major delays in the case were caused by remittals of the case. In this respect the Court reiterates that a repetitive re-examination of the case within one set of proceedings can disclose a serious deficiency in the domestic judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). It also notes the extended period of procedural inactivity from 27 November 2002 to 8 March 2004.

30. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

31. Having examined all the material submitted to it, 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. Having regard to its case-law on the subject, it considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. Referring to Article 6 § 1 of the Convention, the applicant complained that the courts' assessment of evidence and interpretation of the law had been inaccurate and challenged the outcome of the criminal proceedings against him. The applicant further complained under Article 5 of the Convention and Article 2 of Protocol No. 4 that it was unlawful for him to be forcibly taken to the court hearings, that he had not been duly notified about the dates of those hearings and that, when he had been forcibly taken to the court on 25 January 2005, this had not been ordered by the court. Relying on Article 2 of Protocol No. 7, he also submitted that he had not been provided with a copy of the decision of 27 June 2002 and,

therefore, his right to appeal against that decision had been impaired. The applicant also invoked this provision with regard to the refusal of the Supreme Court of 18 July 2005 to review his case in cassation.

33. Having carefully examined the applicant's submissions 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.

34. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 55,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

37. The Government contested the claim.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to the non-pecuniary damage, it considers that in the circumstances of the case a mere finding of a violation constitutes sufficient just satisfaction.

B. Costs and expenses

39. In the present case the applicant failed to submit any claim; the Court therefore makes no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of excessive length of the proceedings;
3. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President