



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

SECOND SECTION

CASE OF BAGLAY v. UKRAINE

(Application no. 22431/02)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Baglay v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 22431/02) 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 Aleksandr Pavlovich Baglay (“the applicant”), on 21 April 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 19 September 2003 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1938 and lives in the city of Dnipropetrovs’k, Ukraine.

5. On 4 August 1993, the applicant was attacked and injured by Mr Ts., when trying to prevent the latter from stealing State property.

6. The next day a criminal investigation was started by the Apostolivskiy District Police Department.

7. On 5 October 1993 the applicant was granted the status of an aggrieved party.

8. The criminal investigation under Article 101 of the Criminal Code (grievous bodily harm) was completed by the Kryvyi Rig Prosecutors' Office on 8 May 1994 and referred to the court.

9. On 21 November 1994 the applicant introduced a civil claim against Mr Ts. in the framework of the pending criminal proceedings.

10. On 11 June 1996, Apostolivsky District Court of Dnipropetrovs'k Region found Mr Ts. guilty of inflicting grievous bodily harm on the applicant and sentenced him to four years' imprisonment, suspended for two years pending probation. The civil claim of the applicant was not granted due to a lack of supporting documents.

11. On 27 August 1996, the Dnipropetrovs'k Regional Court quashed the decision of the first instance court on the ground that the sentence was too lenient and remitted the case for fresh consideration.

12. On 20 May 1998, the Apostolivsky District Court found Mr Ts. guilty and sentenced him to five years' imprisonment, suspended for two years pending probation.

13. On 21 July 1998, the Dnipropetrovs'k Regional Court quashed the decision of the first instance court, again for imposing too lenient a sentence, and remitted the case for fresh consideration to another first instance court.

14. The same day, by a separate decision, the Regional Court found that the first instance court had not complied with its previous decision of 27 August 1996 and had delayed the consideration of the case on the merits for two years. The court decided to inform the Chairman of the Dnipropetrovs'k Regional Court about this so that the appropriate measures would be taken.

15. On 6 August 2001, the Nikopolskiy District Court sentenced Mr Ts. to four years' imprisonment. By the same decision, the court awarded the applicant UAH 212.35 (around 34 euros – "EUR") in material damages and UAH 5,000 (around EUR 806) in moral damages.

16. On 30 October 2001, the Dnipropetrovs'k Regional Court quashed the decision of the first instance court and remitted the case for fresh consideration.

17. On 10 April 2003 the Nikopolskiy District Court sentenced Mr Ts. to five years' imprisonment, suspended for three years pending probation. By the same decision, the court awarded the applicant UAH 875.33 (around EUR 141) in material damages and UAH 8,000 (around EUR 1,290) in moral damages.

18. On 18 August 2003 the Dnipropetrovs'k Regional Court of Appeal quashed the judgment of the first instance court and terminated the proceedings on the ground that a further prosecution of Mr Ts. was time-barred. The court also advised the applicant to lodge a separate civil claim against Mr Ts.

19. On 8 April 2004 the Supreme Court of Ukraine upheld the decision of the appellate court and confirmed that the applicant had to lodge a separate civil claim against Mr Ts. for compensation for damages. The Court has not been informed whether the applicant lodged a separate civil claim.

20. According to the Government, during the period between 11 September 1997 and 18 August 2003, the applicant caused delays by:

- being absent from 18 hearings;
- failing to give proper authority to his lawyer (once);
- failing to notify his change of address (once);
- challenging judges (twice); and
- failing to submit one of his cassation appeals within the prescribed time limits.

21. The Government further noted that on several occasions the proceedings were suspended for some months due to the illness of the defendant.

22. According to the applicant only 6 hearings had been suspended due to his absence. He also submitted that he had been present, or his absence had been authorised by the court, at some of the hearings mentioned by the Government.

THE LAW

I. THE SCOPE OF THE CASE

23. The Court notes that the applicant introduced a new complaint after the communication of the case to the respondent Government, based on an alleged infringement of Article 1 of Protocol No. 1. In the Court's view, this complaint is not an elaboration of his original complaint to the Court lodged one and a half years earlier and on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (cf. *Piryanik v. Ukraine*, no. 75788/01, §§ 19-20, 19 April 2005).

II. 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 of Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

25. 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

1. *Period to be taken into consideration*

26. The Government submitted that part of the proceedings was outside the Court's competence *ratione temporis*.

27. The Court notes that the period to be taken into consideration only began on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. Thus, the proceedings lasted over 9 years and 4 months, of which 6 years and 7 months falls within the Court's competence *ratione temporis* (from 11 September 1997 until 8 April 2004). The case was heard four times by two instances and once, at the end, by the Supreme Court.

2. *Reasonableness of the length of the proceedings*

28. The Government contested the applicant's complaint, stating that there were no significant periods of inactivity attributable to the State. They submitted that some periods of delay in the proceedings had been attributable to the applicant (see paragraph 20 above) and that this had caused general delay of about a year. They further maintained that there had been significant periods of inactivity attributable to the defendant and there had been no significant periods of inactivity attributable to the State authorities.

29. The applicant challenged some of the facts as presented by the Government (see paragraph 22 above). He further maintained that on many occasions when a hearing had been adjourned, the following hearing had been scheduled with a month's interval. However, sometimes the intervals between hearings had lasted from two to five months. He considered that the delay attributable to him could be only a few weeks, not months as the Government had suggested.

30. 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 and what was at stake

for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

31. In the instant case it does not appear that the issue under consideration was particularly complex or that any long periods of delay could be attributed to the applicant. Moreover, the Court notes that on several occasions the case was remitted for fresh consideration and that the regional court in a separate ruling criticised the first-instance court for its delay of two years before reconsidering the case (see paragraph 14 above). Although the Court is not in a position to analyse the quality of the adjudication by the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

The Court also takes into account the fact that, prior to the period under consideration, the proceedings had already been pending nearly three years.

32. The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see *Svetlana Naumenko v. Ukraine*, no. 41984/98, §§ 77-87, 9 November 2004).

33. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed EUR 25,000 in respect of non-pecuniary damage.

36. The Government considered that the finding of a violation would constitute sufficient just satisfaction in the present case.

37. The Court acknowledges that the applicant must have sustained some non-pecuniary damage as a result of the violation found which cannot be made good by the Court’s mere finding of a violation. Nevertheless, the

particular amount claimed is excessive. Ruling on an equitable basis, it awards the applicant EUR 2,000.

B. Costs and expenses

38. The applicant also claimed EUR 7,000 for the costs and expenses incurred before the domestic courts and the Court.

39. The Government maintained that the applicant did not substantiate his claim.

40. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and they were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award a global sum of EUR 500 under this head.

C. Default interest

41. 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*
 - (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 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses;
 - (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, plus any tax that may be chargeable;
 - (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;

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

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President