CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF DULSKIY v. UKRAINE

(Application no. 61679/00)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Dulskiy 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,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 9 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 61679/00) 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 Ivan Ivanovich Dulskiy ("the applicant"), on 29 December 1999.

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

3. On 15 January 2002 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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1926 and lives in the town of Yalta. The applicant suffers from the diseases resulting in the highest recognised degree of disability, including arterial hypertension, sclerosis of the cerebral vessels and circulatory encephalopathy. In 1988 the authorities provided the applicant with a specially equipped car in order to facilitate his movement.

A. Origin of the case

6. On 9 June 1997 the applicant's car was damaged in a traffic accident, involving a car driven by Mrs F.

7. On the same date a traffic police officer drew up a report, stating that the applicant was responsible for the accident, and started administrative offence proceedings against him. On 19 June 1997 the Deputy Chief Officer of the Yalta Town Police Department discontinued these proceedings, finding no fault.

8. On 12 July 1997 the same officer found that Mrs F. was responsible for the accident and fined her with UAH 40[1].

9. On 26 August 1997 the Yalta Town Court quashed the decision of 12 July 1997 and ordered the police to conduct a further examination of the case. It held that the police had based their decisions on the conclusions of a person whose competence to give an official expert opinion had not been verified.

10. On 25 September 1997 the police drew up another report in which they reiterated their conclusions of 12 July 1997. The police, however, could not institute administrative proceedings against Mrs F., as they were time-barred.

B. First set of proceedings

11. In July 1997 the applicant instituted proceedings in the Yalta Town Court ("the Yalta Court") against Mrs F., seeking compensation. The applicant alleged that he had suffered pecuniary and non-pecuniary damage because of the accident. According to the applicant, his car was a write-off and unusable.

12. On 22 August and 5 September1997 the case was adjourned pending the outcome of the proceedings against Mrs F. concerning an administrative offence arising out of the incident.

13. On 11 September 1997 the applicant challenged this procedural decision of 5 September 1997 before the Supreme Court of the Autonomous Republic Crimea ("the ARC").

14. On 6 October 1997 the Supreme Court of the ARC rejected the applicant's complaint.

15. In November 1997 the Yalta Court rejected the defendant's request for an expert examination of the accident.

16. On 3 December 1997 the applicant amended his original claims.

17. On 5 December 1997 the court found for the applicant and ordered Mrs F. to pay him UAH 1,641[2] in compensation.

---

1. Around EUR 7.
2. Around 266 euros – "EUR".

18. On 19 January 1998 the Supreme Court of the ARC adjourned the consideration of the defendant's appeal in cassation due to the applicant's failure to appear for the hearing.

19. On 9 February 1998 the Supreme Court of the ARC quashed the judgment of the first instance court and remitted the case for a fresh consideration.

20. On 17 April 1998 the Yalta Court ordered an expert examination of the accident at the defendant's expense and suspended the proceedings.

21. On 29 September 1998 the Yalta Court was informed about the conclusions of the expert examination.

22. On 16 October 1998 the court postponed a hearing due to the applicant's illness.

23. On 4 November 1998 the applicant lodged a motion with the court to have the judge dealing with his case withdrawn from the proceedings.

24. On 5 November 1998 the case was transferred to another judge of the same court.

25. On 1 December 1998 the hearing was adjourned following the applicant's request.

26. On 2 December 1998 the court heard the merits of the case and adjourned the hearing until 10 December 1998.

27. On 10 December 1998 the court rescheduled the hearing for 12 January 1999 in order to allow the defendant to study the case file.

28. On 10 December 1998 the applicant challenged the judge who was hearing the case.

29. On 12 January 1999 the court rejected the applicant's complaint against the judge.

30. On the same date it found in part for the applicant and ordered Mrs F. to pay him UAH 620.50[1] in compensation for non-pecuniary damage. The court held, relying on the expert conclusions, that the parties were equally responsible for the accident.

31. On 15 January 1999 the applicant requested the court to postpone the proceedings due to his illness.

32. On 15 March 1999 the Supreme Court of the ARC quashed the judgment of the Yalta Court and remitted the case for a fresh consideration.

33. On 19 August 1999 the hearing before the Yalta Court was adjourned due to the judge's illness.

34. On 13 September 1999 the President of the Yalta Court transferred the case to another judge.

35. On 19 October 1999 Mrs F. lodged a counter-claim, seeking compensation. Mrs F. alleged that she had suffered moral distress because of the accident and had had to undergo medical treatment in a psychiatric hospital. She further alleged that the applicant had maliciously disclosed her

1. Around EUR 100.

diagnosis, of which he had become aware during the proceedings, to third parties.

36. On 25 October 1999 the applicant amended his claims for the second time. He sought a higher amount of compensation.

37. On 10 December 1999 the Acting Deputy President of the Supreme Court of the ARC transferred the case to the Alushta Town Court ("the Alushta Court").

38. On 3 February 2000 the Alushta Court ordered another expert examination of the accident at the applicant's expense and suspended the proceedings.

39. On 27 March 2000 the Supreme Court of the ARC rejected the applicant's cassation appeal against the ruling of 3 February 2000.

40. On 14 June 2000 the Supreme Court of the ARC informed the applicant that his request for a supervisory review of the ruling of 3 February 2000 had been rejected.

41. On 26 June 2000 the Alushta Court sent the case file for an expert examination. The latter was not carried out because of the applicant's failure to pay for it.

42. On 16 January 2001 the case was sent back to the Alushta Court.

43. On 6 February 2001 the court adjourned the hearing due to the applicant's failure to appear before it.

44. On 22 February 2001 the Alushta Court left the case without consideration due to the parties' failure to appear.

45. On 9 April 2001 the Supreme Court of the ARC quashed the decision of 22 February 2001 and remitted the case for a fresh consideration. It held that there was no documentary evidence in the case file indicating that the applicant had been duly summoned to the hearing of 22 February 2001.

46. The hearings of 6 August and 1 October 2001 were adjourned following the applicant's motions in which he sought the participation of the defendant's husband, Mr F., as a co-defendant in the proceedings and objected to the hearing in the absence of the latter.

47. On 15 October 2001 the court heard the merits of the case and rescheduled the hearing pending receipt of additional documents.

48. On 12 November 2001 the court, following the defendants' motion, to which the applicant objected, ordered a forensic medical examination of the state of the mental health of Mrs F., and suspended the proceedings.

49. On 5 February 2002 the examination was completed.

50. On 25 February 2002 the court postponed the hearing due to the defendants' failure to appear.

51. On 12 March 2002 the court heard the merits of the case.

52. On 14 March 2002 the court delivered a judgment by which it rejected both the applicant's claim and the defendant's counter-claim. Referring to the expert conclusions of 1998, the court held that the parties were equally responsible for the accident.

53. On 24 April 2002 the court made certain textual amendments to its judgment of 14 March 2002.

54. On 27 May 2002 the Court of Appeal of the ARC upheld the judgment of the first instance court.

55. On 19 September 2002 the same court extended the time-limit for lodging the applicant's appeal in cassation.

56. On 28 May 2003 the Supreme Court of Ukraine held that the applicant had failed to comply with the formalities envisaged for the introduction of appeals and rejected the applicant's request for leave to appeal in cassation.

57. On 2 July 2003 the Alushta Court granted the applicant a time-limit to rectify the shortcomings of his appeal in cassation.

58. On 17 July 2003 the applicant lodged with the Alushta Court the corrected version of his appeal in cassation.

59. On 1 February 2005 the Supreme Court of Ukraine rejected the applicant's appeal in cassation as unsubstantiated.

C. Second set of proceedings

60. In July 1999 the applicant lodged a complaint with the prosecutors, alleging that on 12 July 1999 he had been beaten by the President of the Yalta Court, Mr R.

61. On 17 August 2000 the Yalta Town Prosecutor refused to start a criminal investigation into the matter, finding the above complaint unsubstantiated.

62. On 20 October 2004 the Prosecutor's Office of the ARC quashed the decision of 17 August 2000 and ordered a further enquiry into the applicant's complaint.

63. On 10 November 2004 the Yalta Town Prosecutor's Office refused to start a criminal investigation into the matter, finding no factual basis for the applicant's allegations.

64. The applicant did not challenge the decision of 10 November 2004 before the national courts.

THE LAW

I. SCOPE OF THE CASE

65. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced new complaints, alleging that on 7 July 2004 Mr F., the co-defendant in the first set of proceedings, had beaten him and that the State authorities had failed to start a criminal investigation into the matter.

66. In the Court's view, the new complaints are not an elaboration of the applicant's original complaints to the Court, lodged approximately five 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 (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. COMPLAINT ABOUT THE LENGTH OF THE FIRST SET OF PROCEEDINGS

67. The applicant complained that the length of the first set of proceedings had been incompatible with the "reasonable time" requirement, provided in 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

68. The Government maintained that the length of the proceedings was not unreasonable and that there were no significant periods of delay that could be attributed to the domestic authorities. In particular, they stated that it was the applicant who was responsible for the delays in the case.

69. The Government contended that the intervals between 17 April and 29 September 1998, 26 June 2000 and 16 January 2001, and 12 November 2001 and 5 February 2002, should be excluded from the overall length of the proceedings for the purposes of Article 6 § 1 of the Convention, as these proceedings had been stayed pending the outcome of the expert examinations.

70. The applicant disagreed.

71. The Court does not share the Government's opinion that the intervals during which the proceedings were suspended pending the experts' reports should be excluded from the overall period to be considered. An expert examination ordered by a court is one of the means to establish or evaluate the factual circumstances of a case, and therefore constitutes an inherent

part of the court procedure. Moreover, it is within the competence of a court to decide whether to seek outside advice and to set a time-limit for receiving it. Consequently, the mere fact that the proceedings were formally suspended does not exclude the intervals at issue from the overall duration of the proceedings, the reasonableness of which the Court will consider below.

72. The Court notes that the proceedings at issue began in July 1997 and were completed in February 2005. Their overall duration is therefore almost seven years and seven months. The Court recalls that the Convention entered into force in respect of Ukraine on 11 September 1997, thus the period falling within the Court's competence *ratione temporis* lasted seven years and five months.

73. 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

74. The Court recalls that the "reasonable" length of proceedings must be assessed in accordance with the circumstances of the case and the following criteria: the complexity of the case, the behaviour of the applicant and that of the competent 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).

a. Complexity of the case

75. The Court observes that the dispute at issue concerned a traffic accident in which only two cars were involved and as a result of which no party was injured. The national courts were to establish the person responsible for the accident and to rule on the amount of compensation for the injured party. They determined the case on the basis of two expert reports, the conclusions of which were clear enough to avoid conflicting interpretations. Although the case might have been somewhat complicated by the counter-claim lodged by the defendant, it did not take much time for the courts to dispose of it. Thus, the Court concludes that the subject matter of the litigation at issue could not be considered particularly complex.

b. Conduct of the applicant

76. According to the Government, the applicant failed to appear for two hearings due to his illness, requested an adjournment of hearings on three occasions, amended his initial claims and challenged the judges twice, as well as contesting two judgments of the first instance courts. The applicant also failed to appear for the hearings of 6 and 22 February 2001 without a

reasonable excuse. The Government further mentioned that the protraction of the proceedings from 3 February 2000 until 16 January 2001 was caused due to the fact that the applicant had challenged the decision of the Alushta Court, ordering the second expert examination, and had failed to pay for this examination. In these circumstances, the Government contended that the applicant could be regarded as having had no interest in a speedy adjudication of his case.

77. The applicant disagreed.

78. The Court observes that the applicant was over seventy years old and suffered from serious diseases when he lodged his initial claim, and that it was for these reasons that he did not attend and requested adjournment of several hearings. The applicant, thereby, somewhat contributed to the length of the proceedings. In this context, the Court observes that the applicant did not attend the hearing of 22 February 2001, as he had not been informed of this hearing, which was confirmed by the Supreme Court of the ARC.

79. Furthermore, the Court finds that the two modifications in the amount of the applicant's compensation claims did not influence the overall duration of the proceedings. Similarly, the Court observes that the proceedings were not significantly interrupted because of the applicant's motions against judges, as one of these motions was allowed within a day, while the other was resolved approximately within a month.

80. As to the Government's argument that the applicant was responsible for the delay of almost a year (3 February 2000 - 16 January 2001), the Court observes that, at the hearing of 3 February 2000, the applicant objected to the expert examination ordered by the court on the same date, alleging that the latter would interrupt the proceedings and requesting the court to rule on the case as it stood. He further contested the decision ordering the examination before the higher courts. As the second examination was never carried out and the courts based their decisions on the first expert report, the Court doubts whether the second examination was necessary at all. Furthermore, it appears from the wording of the applicant's appeal in cassation that he contested the decision on the second examination with the aim of expediting the proceedings, rather than postponing them. It cannot therefore be said that the applicant abused his procedural rights; rather, he engaged in legitimate procedural activity in asserting his claims. Therefore, the Court does not share the Government's view that the applicant was responsible for that delay.

81. At the same time, the Court observes that the applicant challenged the judgments of 12 January 1999 and 14 March 2002. His appeal in cassation against the earlier judgment was allowed and the proceedings were resumed, while his appeals against the latter judgment were dismissed. In this connection, the Court recalls that, although a party to civil proceedings cannot be blamed for using the avenues available to him under domestic law in order to protect his interests, he must bear the consequences

when it leads to delays (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001). It is therefore possible to accept that, by contesting the judgment of 14 March 2002, the applicant contributed to the delay, which was then aggravated when the applicant had to resubmit his appeal in cassation against that judgment for failure to comply with the procedural formalities. However, it is hardly the applicant's fault in that the proceedings were delayed following his appeal against the judgment of 12 January 1999, as the latter was quashed by the Supreme Court of the ARC.

82. Given the above considerations, the Court concludes that, while there are some periods of delay which could be attributed to the applicant, there is no evidence before the Court to suggest that the proceedings were particularly lengthy exclusively due to the applicant's behaviour or that he contributed in a significant way to their length.

c. What was at stake for the applicant

83. The Court observes that at the domestic level the applicant sought compensation for damage to the car which had been provided by the State due to his health condition and which he allegedly could not use because of the accident of 1997. The Court therefore considers that the proceedings were of undeniable importance for him, especially with regard to the fact that the applicant was over seventy years old at the time when he lodged his initial claim. Accordingly, what was at stake for the applicant called for an expeditious decision on his claims.

d. Conduct of the national authorities

84. The Government submitted that the domestic authorities were not responsible for any delays.

85. The Court does not agree with the Government's submission and refers to its findings (at paragraph 80 above) that the judicial authorities were primarily responsible for the delay of approximately one year. The Court also considers that there were some other periods of delay that must be attributed to the judicial authorities. These include, two delays of around three months each when the case file was remitted to the first instance courts, once the Supreme Court of the ARC quashed the judgments of 12 January 1999 and 22 February 2001, and there were no hearings scheduled, and the period of one year and a half during which the applicant's appeal in cassation was pending before the Supreme Court of Ukraine.

86. Moreover, the Court recalls that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective. However, in the Court's opinion the national courts did not act with due diligence, having regard to the applicant's age and state of health.

87. In sum, having regard to the circumstances of the instant case, the overall duration of the proceedings and their reconsideration on three occasions, the Court concludes that there was an unreasonable delay in disposing of the applicant's case.

88. There has accordingly been a violation of Article 6 § 1.

III. COMPLAINT ABOUT A VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

89. The applicant alleges that on 12 July 1999 he was beaten by the President of the Yalta Court, Mr R., and that the national authorities failed to investigate this matter. In this respect the applicant invoked Article 7 § 2 of the Convention. In substance he complains about a violation of Articles 3 and 13 of the Convention.

90. The Government argued that the applicant's complaint was inadmissible, as the applicant had failed to exhaust domestic remedies. In particular, he did not challenge the decision of 10 November 2004, by which the Yalta Town Prosecutor's Office rejected the applicant's allegations, before the domestic courts. The Government further maintained that the prosecutors carried out relevant enquiries and properly established that there was no evidence in support of the applicant's allegations.

91. The Court observes that the applicant had a statutory right to challenge the conclusions of the prosecutors before the domestic courts, the latter being competent to rule on the merits of the applicant's complaint. However, the applicant failed to use this remedy. He also failed to make sufficient efforts to demonstrate that the further pursuit of domestic remedies was futile (see, *a contrario*, *Afanasyev v. Ukraine*, no. 38722/02, §§ 75-77, 5 April 2005). The Court therefore agrees with the Government that the applicant cannot be regarded as having exhausted the domestic remedies available to him under Ukrainian law. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. OTHER COMPLAINTS

92. The applicant further complained under Article 6 § 1 of the Convention about the outcome and unfairness of the first set of proceedings.

93. The Court observes that this complaint is of a so-called "fourth instance" nature, insofar as no unfairness of the proceedings can be detected and the court decisions reached were neither arbitrary nor otherwise manifestly unreasonable. The applicant enjoyed the right to adversarial proceedings with the participation of interested parties and was able to introduce all necessary arguments in defence of his interests, and the judicial authorities gave them due consideration. Accordingly, this part of

the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

94. The applicant finally complained about a violation of Article 14 (the prohibition on discrimination) and Article 17 (the prohibition on an abuse of rights) of the Convention on account of the length of the first set of proceedings.

95. The Court finds that this part of the application is wholly unsubstantiated and therefore must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicant claimed USD 4,000 (approximately 3, 355 euros – "EUR") in respect of pecuniary damage. That amount represented the price of a car which the applicant intended to purchase to replace the car irrevocably damaged in the accident. He also claimed USD 1,000 (approximately EUR 840) in respect of non-pecuniary damage.

98. The Government contested these claims. They maintained that there was no casual link between the alleged violation and the pecuniary damage alleged. They also claimed that the finding of a violation would constitute sufficient just satisfaction in respect of any non-pecuniary damage.

99. The Court agrees with the Government that it is not possible to discern any causal link between the violation found and the pecuniary damage alleged; the Court therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and finds the applicant's claim of EUR 840 reasonable.

B. Costs and expenses

100. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

101. 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 complaint 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;

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 840 (eight hundred and forty euros) in respect of non-pecuniary damage, 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;

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

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President