CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF KARNAUSHENKO v. UKRAINE

(Application no. 23853/02)

JUDGMENT

STRASBOURG

30 November 2006

FINAL

28/02/2007

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 Karnaushenko 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,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 6 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 23853/02) 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, Ms Natalya Vladimirovna Karnaushenko ("the applicant"), on 27 April 2002.

2. The Ukrainian Government ("the Government") were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 7 September 2005 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 1960 and lives in the town of Chervonozavodskoye, Poltava region, Ukraine. She is a widow who raises two daughters.

5. The applicant worked as a salesperson in the "Kram" shop at the State-owned "Lokhvitskiy Spirtkombinat" distillery.

6. In July 1998, in accordance with the findings of an inspection, which revealed the shortage of goods, the applicant was dismissed from her position.

7. On 25 August 1998 the applicant instituted proceedings in the Lokhvytskiy District Court against her former employer challenging her dismissal.

8. On 14 November 1998 the court found the case ready for examination and scheduled the hearing for 25 November 1998.

9. On 21 November 1998, following the results of the inspection, a criminal case was instituted.

10. On 25 November 1998 the court postponed the hearing due to failure of the defendant's representative to appear.

11. On 27 November 1998 the civil proceedings in the applicant's case were suspended until the investigation of the criminal case was completed.

12. On 25 March 1999 the criminal proceedings were terminated due to the lack of *corpus delicti* in the applicant's actions.

13. On 14 December 2001 the hearing was adjourned upon the applicant's request.

14. On 17 December 2001 the court requested the Lokhvitsky District Prosecutor's Office to provide information about the results of the investigation.

15. On 20 December 2001 the court was informed that the criminal proceedings against the applicant had been terminated.

16. On 15 January 2002 the hearing was adjourned upon the defendant's request.

17. On 14 June 2002 the court heard the merits of the case and adjourned the hearing.

18. On 22 July 2002 the applicant modified her claim.

19. On 23 July 2002 the court heard the merits of the case and adjourned the hearing in order to allow the defendant to study the new documents submitted by the applicant.

20. On 2 October 2002 the court postponed the hearing due to the failure of the defendant's representative to appear.

21. On 22 November 2002 the hearing was adjourned due to illness of the defendant's representative.

22. On 13 August 2003 the court partly allowed the applicant's claim and reinstated the applicant in her position.

23. On 18 August 2003 the Poltava Regional Court of Appeal left the defendant's appeal against the above decision without a course and gave him the time to rectify the procedural shortcomings.

24. On 18 December 2003 the Court of Appeal quashed this judgment and remitted the case for a fresh consideration.

25. On 17 May 2004 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

26. On 11 August 2004 the proceedings before the Lokhvytskiy District Court commenced.

27. On 19 August 2004 the court sent requests for information to the Lokhvitsky District Prosecutor's Office and the "Lokhvitskiy Spirtkombinat" distillery.

28. On 12 November 2004 the hearing was adjourned due to illness of the defendant's representative.

29. On 20 December 2004 the defendant challenged Judge K. who was hearing the case, alleging his lack of impartiality. On the same day this complaint against Judge K. was allowed.

30. On 2 February 2005 the newly appointed Judge S. referred the case to the President of the District Court for reassignment. On 23 February 2005 his self-disqualification was allowed.

31. On 1 June 2005 the court adjourned the hearing due to the parties' failure to appear.

32. On 30 June 2005 the defendant challenged Judge G.S. who was hearing the case, alleging his lack of impartiality.

33. On 30 September 2005 this complaint against Judge G.S. was allowed and the case was referred to the Chornukhinskiy District Court.

34. On 21 October 2005 the Chornukhinskiy District Court received the case.

35. On 28 December 2005 the court partly allowed the applicant's claim.

36. On 30 March 2006 the Poltava Regional Court of Appeal partly allowed the applicant's appeal and increased the salary awarded for the period of unlawful dismissal.

37. The proceedings concerning the appeal in cassation filed by the applicant are currently pending before the Supreme Court.

II. RELEVANT DOMESTIC LAW

38. Article 221-4 of the Code of Civil Procedure of Ukraine envisages that a court must suspend proceedings if it is impossible to examine the case until determination of another case which is examined in civil, criminal or administrative procedure. According to Article 224-1, in such a situation the proceedings are suspended until the decision, on which the proceedings depend, became final.

THE LAW

I. SCOPE OF THE CASE

39. The Court notes that the applicant introduced a new complaint about non-enforcement of the judgment in her favour of 30 March 2006 after the communication of the case to the respondent Government.

40. The Court recalls that the parties have commented on the applicant's original complaint about the length of the proceedings. Thus, the scope of the case before the Court is limited to that complaint (see, *Leshchenko and Tolyupa v. Ukraine*, no. 56918/00, § 48, 8 November 2005).

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

41. The applicant complained that the length of the 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

42. The Government argued that the applicant's complaint was inadmissible, as the applicant had failed to exhaust domestic remedies. In particular, she had not challenged the decision of 27 November 1998, by which the Lokhvytskiy District Court had suspended the hearing until the full investigation of the criminal case.

43. The applicant disagreed. She maintained that she had been never informed about this procedural ruling which had not been included in the case-file. She further submitted that the criminal investigation into her case had lasted for about four months, and that this period had not dramatically influenced the overall length of the proceedings.

44. The Court observes that the applicant had a statutory right to challenge the above decision. However, the Court has held that the rule on exhaustion of domestic remedies was neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that the Court must take realistic account of the general legal context in which the remedies operate (see, *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports of Judgments and Decisions* 1997-VIII, § 58).

45. The Court notes that in the circumstances like in the present case, the first instance court was obliged, in accordance with Article 221-4 of the Code of Civil Procedure (see paragraph 38), to suspend the proceedings. In any event, even assuming that this remedy could be considered an effective one for the purpose of avoiding delays due to an unwarranted suspension, the Court considers, as the applicant rightly mentioned, that the period of criminal investigation was only four months, whereas the overall duration of the applicant's case is about eight years. It is this overall length of the proceedings which is at stake in the present case.

46. 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

47. 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. Period to be taken into consideration

48. The Court notes that the proceedings at issue began on 25 August 1998 and are still pending. Their overall duration is, so far, about eight years and two[1] months.

b. Complexity of the case

49. The Government maintained that the civil proceedings were complicated in this case as they were connected to the criminal investigation.

50. The Court does not agree with the Government's submission and refers to its findings (at paragraph 45 above) that the period of criminal investigation had not substantially prolonged the proceedings in this case. The Court further observes that the proceedings at issue concerned a labour dispute. The national courts were to establish the lawfulness of the applicant's dismissal and an amount of her salary during the period of unlawful dismissal. Thus, the Court concludes that the subject matter of the litigation at issue could not be considered particularly complex.

[1] To be amended

c. Conduct of the applicant

51. According to the Government, the applicant is responsible for periods of delay from 14 to 17 December 2001, when she requested to adjourn the hearing, and from 1 to 30 June 2005, as she failed to appear. The Government further mentioned that on 22 July 2002 the applicant changed her initial claim and submitted new documents which requested additional examination. The Government also submitted that the applicant contributed to the length of proceeding by lodging an appeal with certain procedural shortcomings which had to be rectified, as well as by lodging an appeal in cassation.

52. The applicant disagreed. She maintained that neither she nor her lawyer was informed that the hearing had been scheduled for 1 June 2005. She further submitted that the courts failed to constrain the defendant's obstruction of the progress of the case, as the defendant was a State enterprise.

53. The Court observes that the period of delay of three days as well as modification of the initial claim, attributed to the applicant, cannot justify the length of court proceedings of more than eight years. The Court further notes that the applicant challenged the decisions of 18 December 2003, 28 December 2005 and 30 March 2006 before the higher courts. However, she cannot be blamed for using the avenues available to her under domestic law in order to protect her interests (see, *Silin v. Ukraine*, no. 23926/02, § 29, 13 July 2006).

54. The Court also notes that, according to the case-materials, it was the defendant who had to resubmit its appeal against the judgment of 13 August 2003 for failure to comply with the procedural formalities, whereas the Government maintained that it was the applicant. Thus this period of delay cannot be attributed to the applicant.

55. Given the above considerations, the Court concludes that the applicant did not contribute in a significant way to length of the proceedings.

d. What was at stake for the applicant

56. The Court observes that at the domestic level the applicant sought reinstatement in her position and recovery of her salary for the period of unlawful dismissal. The Court notes that her salary was the main source of income for the applicant, who was a widow, and her two daughters. The Court recalls that an employee who considers that he has been wrongly suspended by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly and that special diligence is necessary in employment disputes (see, among many other, *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, § 72 and *Trevisan v. Italy*, judgment of 26 February 1993, Series A no. 257-F, § 18).

57. The Court therefore considers that the proceedings were of undeniable importance for the applicant, and what was at stake for her called for an expeditious decision on her claims.

e. Conduct of the national authorities

58. The Court notes that, according to the domestic law (paragraph 38 above), the first instance court had to resume the civil proceedings after the decision to terminate the criminal proceedings against the applicant. The decision was adopted on 25 March 1999; however the proceedings were resumed only in December 2001. Therefore, this significant period of delay is attributed to the authorities.

59. Furthermore, the Court notes the Government's submissions according to which the case was adjourned nine times for failure of the defendant, a State-owned entity, to appear. These periods of delay should be attributed to the authorities, as apparently no appropriate steps were taken to ensure the defendant's presence in court.

60. 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 situation.

61. In sum, having regard to the circumstances of the instant case, the overall duration of the proceedings, their reconsideration on two occasions and repeated challenges of judges which caused almost ten months delay, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

63. The applicant complained under Article 13 of the Convention about the lack of effective remedies for her complaint about the excessive length of the civil proceedings in her case.

64. The Government submitted in their observations that the civil procedure in Ukraine did not foresee a possibility to challenge lengthy examination of civil cases. However, they argued that this complaint was inadmissible since the applicant had failed to exhaust domestic remedies as she had not challenged the decision of 27 November 1998, by which the Lokhvytskiy District Court had suspended the hearing until the full investigation of the criminal case.

65. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The Court rejects the argument on non-exhaustion of domestic remedies referring to the findings

above (see paragraphs 44-45 above). The Court further refers to its finding in the *Efimenko* case that any challenge of procedural decisions led to further delays in the proceedings (see, *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006).

66. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law for the applicant's complaint in respect of the length of the proceedings in her civil case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 9,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government contended that the applicant's claim for non-pecuniary damage was exorbitant and unsubstantiated, and that the finding of a violation would constitute sufficient just satisfaction in the case.

70. The Court considers this claim excessive. However, the Court considers that the applicant must have sustained non-pecuniary damage as regards the excessive length of the civil proceedings concerning her dismissal. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant the sum of EUR 2,100 in respect of non-pecuniary damage.

B. Costs and expenses

71. The applicant also claimed UAH 200 (EUR 33.3) in postal expenses and UAH 2,000 (EUR 333.3) in legal fees. She presented a certificate issued by a lawyer, indicating that the latter provided her with legal aid; however she failed to submit postal invoices.

72. The Government argued that the presented certificate could not be taken into consideration as it was not a financial document. They further maintained that the applicant had not submitted any evidence that she had obtained any legal assistance in the proceedings before the Court. They finally stated that no document supported the applicant's claim for her postal expenses.

73. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the applicant did not present evidence of her postal costs.

74. As regards the applicant's claim for legal fees, the Court notes that the applicant never informed the Court of any legal representation. The lawyer concerned did not file any submissions to the Court on the applicant's behalf. This claim, therefore, should be rejected.

75. However, the applicant may have incurred some costs and expenses in connection with his Convention proceedings. Regard being had to the Court's case-law and the information in its possession, the Court awards the amount of EUR 100 (see *mutatis mutandis*, *Romanchenko v. Ukraine*, no. 5596/03, § 38, 22 November 2005).

C. Default interest

76. 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 has been a violation of 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, EUR 2 100 (two thousand one hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses to 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;
   (b) 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;

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

Done in English, and notified in writing on 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President