



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

FIFTH SECTION

CASE OF TELIGA AND OTHERS v. UKRAINE

(Application no. 72551/01)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Teliga and Others 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,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 27 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 72551/01) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Ukrainian nationals, Mrs Lyubov Volodymyrivna Teliga, the first applicant, Mr Vasyl Fedorovych Zamozdra, the second applicant, and Mrs Tetyana Grygoriyivna Golovatenko, the third applicant, and Mr Volodymyr Leonidovych Bilyi, the fourth applicant (“the applicants”), on 16 March 2000.

2. The Ukrainian Government (“the Government”) were represented by their Agents (Ms Zoryana Bortnovska, Ms Valeria Lutkovska and Mr Y. Zaytsev).

3. On 20 February 2004 the Court decided to communicate the complaints concerning the alleged violation of Articles 6 § 1, 13 and 1 of Protocol No. 1 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 first applicant was born in 1949. The second applicant was born in 1946. The third applicant was born in 1951. The fourth applicant was

born in 1961. All the applicants reside in Oleksandriya, the Kirovograd region, and are Ukrainian nationals.

A. The proceedings as to annulment of the OM's property transaction.

1. Proceedings instituted by the prosecution service

5. In 1994 the applicants became minority shareholders of the privatised JSC “Oleksandriysky Myasokombinat” (the “OM”), formerly State-owned enterprise, by investing property bonds issued by the State in the statutory fund of the OM. In total, the applicants had 0.25% of the OM's shares. In particular, the first applicant owned 109 shares (0.15 % of the OM's shares), the second and third applicant each owned 39 shares (0.05% of the OM's shares). The fourth applicant also made some similar minor investments into the OM. He did not specify a number of shares he owned.

6. On 17 June 1994 the OM was officially registered as a legal entity with the Kirovograd Regional Council.

7. On 21 November 1997 the Kirovograd Regional Directorate of the JSC “Ukrsocbank” (the “USB”) signed a UAH 1,000,000¹ loan agreement with the OM, with its property used as security.

8. On 11 December 1997 the *ad hoc* arbitration court ordered the OM to pay USB a sum of UAH 1,018,493.15² in compensation for loan arrears.

9. On 12 December 1997 the USB sold the property of the OM to “Eldorado” (a private company).

10. In April 1998 five of the OM's shareholders (not including the applicants) T., P., K., M. and S. lodged a complaint with the Prosecutor of the Kirovograd Region seeking annulment of the transactions between the USB, the OM and “Eldorado”, the company that allegedly infringed their property rights. They also petitioned the Prosecutor to act as their legal representative and institute the civil proceedings against the aforementioned companies on their behalf.

11. On 2 July 1998 the Kirovograd Regional Arbitration Court rejected the *protest* lodged by the Prosecutor of the Kirovograd Region against the judgment of the *ad hoc* arbitration court of 11 December 1997 as being unsubstantiated.

12. In June 1998 the Prosecutor of the Kirovograd Region instituted proceedings on behalf of the above-mentioned shareholders T., P., K., M. and S. against the USB and “Eldorado” seeking annulment of the aforementioned property transactions. (Contract on sale of USB's property was appealed against by the State Tax Inspectorate of Kirovograd and this

1. About EUR 500,000.

2. About EUR 510,000.

appeal was subsequently joined by the court to the claims lodged by the Prosecutor of Kirovograd Region against OM).

13. On 3 July 1998 the Oleksandriya City Court (the “Oleksandriya Court”) allowed the Prosecutor's claims and annulled the secured loan agreement of 21 November 1997 concluded by the OM and the agreement of 12 December 1997 between the USB and “Eldorado”. It also ordered the restitution of property to the OM. In particular, the court found that the real value of the OM's secured property was UAH 12,478,649¹ and did not correspond to the sums paid for it by “Eldorado”. This judgment was not appealed in cassation and became final and binding.

14. On 21 September 1998 the President of the Kirovograd Regional Court suspended the execution proceedings of the judgment of 3 July 1998 due to the initiation of supervisory review proceedings in the case upon his *protest*.

15. On 7 October 1998 the Presidium of the Kirovograd Regional Court quashed the judgment of the Oleksandriya Court of 3 July 1998 following a *protest* of the President of the Kirovograd Regional Court. The Presidium remitted the case for a fresh consideration. In particular, the Presidium found that the first-instance court incorrectly assessed circumstances of the case and misapplied the procedural and substantive law. It instructed the lower court to assess evidence and the case-file in full and to adopt a lawful and substantiated judgment, based on the Presidium's considerations. A member of the Presidium of the Kirovograd Regional Court expressed a dissenting opinion in the case, disagreeing with the quashing of the judgment of 3 July 1998 that had become final and binding.

16. On 27 October 1998 the Deputy President of the Higher Arbitration Court rejected the *protest* of the President of the Kirovograd Regional Arbitration Court by which he sought to institute supervisory review proceedings on the resolution of the Kirovograd Regional Arbitration Court of 2 July 1998.

17. On 30 November 1998 the Deputy President of the Supreme Court refused to initiate a supervisory review of the resolution of the Presidium of the Kirovograd Regional Court of 7 October 1998.

18. On 29 March 1999 the President of the Kirovograd Regional Court, acting within the limits of his jurisdiction under Article 133 of the Code of Civil Procedure, decided that the case-jurisdiction should be changed to the Leninsky District Court of Kirovograd. On 31 March 1999 the case file was sent to that court for further consideration on the merits.

19. On 23 May 1999 the Oleksandriya Prosecution Service terminated the criminal investigation into financial fraud committed by the OM's management due to the absence of any *corpus juris* in their actions.

1. About EUR 2,422,803.

20. On 7 June 1999 the Leninsky District Court of Kirovograd (the “Leninsky Court”) rejected the claims of the Prosecutor of the Kirovograd Region, who acted on behalf of the OM shareholders T., P., K., M. and S. (see paragraph 13 above), as being unsubstantiated. This judgment was not appealed in cassation and became final.

21. On 22 December 1999 the Presidium of the Kirovograd Regional Court allowed the *protest* of the Deputy Prosecutor of the Kirovograd Region and quashed the judgment of 7 June 1999, remitting the case to the same court for a fresh consideration. In particular, the Presidium of the Kirovograd Regional Court stated that, as the Leninsky Court had failed to comply with the instructions laid down in its previous resolution (see paragraph 15 above), the court had breached the norms of procedural and substantive law. It also decided that the case-jurisdiction be changed to the Kirovsky District Court of Kirovograd (the “Kirovsky Court”).

22. On 13 June 2000 the Kirovsky Court, acting in accordance with Article 221 § 4 of the Code of Civil Procedure, adjourned the proceedings in the case due to other proceedings pending before the Oleksandriya Court which could affect the outcome of the case. These proceedings concerned the complaint of Ms G.V.R., the director of “Eldorado”, lodged against the OM and that concerned similar factual circumstances and legal issues.

23. On 21 August 2000 the Deputy President of the Regional Court informed the President of the Kirovsky Court of the need to expedite the case-proceedings.

24. On 24 January 2001 the Oleksandriya Prosecution Service refused the applicant's request to re-open the criminal investigation.

25. On 2 March 2001 the President of the Kirovograd Regional Court refused to initiate supervisory review proceedings upon the applicants' complaints lodged with the President of the Supreme Court. In particular, he stated that there was no final decision taken in the case and therefore, under Article 327 of the Code of Civil Procedure, there was nothing to review in the course of supervisory review proceedings.

26. On 4 April 2001 the Judge K. of the Oleksandriya Court informed the applicants that the case had not been considered on the merits on account of the court's excessive workload (in this respect judge K. mentioned that to have examined 140 civil and 17 criminal cases within the last three months), reference was also made to the fact that the Ms G.V.R., had lodged two motions on 3 March and 15 May 2001 seeking to adjourn the hearing of the case as it was being considered by other authorities.

27. On 13 June 2001 the Oleksandriya Court terminated the proceedings concerning the claims of Ms G.V.R. as she had failed to appear before the court. It also found that she had been duly notified about the date and place of the hearing.

28. On 7 September 2001 Ms G.V.R. lodged fresh complaints with the Oleksandriya Court against the OM seeking compensation for pecuniary and non-pecuniary damage to her property.

29. On 11 September 2001 the Kirovograd Regional Prosecution Service informed the applicants that they could bring the proceedings in their case in the Kirovsky Court. They were further informed that the case of Ms G.V.R. was terminated on 13 June 2001 (see paragraph 27 above) and that there were now no obstacles to considering their case on the merits in the Kirovsky Court.

30. On 12 November 2001 the acting President of the Kirovograd Regional Court of Appeal (the “Court of Appeal”) requested the President of the Kirovsky Court to ensure the examination of the applicants' case within a reasonable time. He also mentioned that the competent judge of the court would have to provide plausible explanations before the judicial disciplinary board as to the applicants' claims that the examination of the Prosecutor's claims lodged against OM had taken the Kirovsky Court an unreasonable time.

31. On 5 December 2001 the President of the Kirovsky Court informed the applicants that the proceedings of which they complained (see paragraph 12 above) were suspended on 13 June 2000 in view of the outcome of the proceedings instituted by Ms G.V.R., which were pending before Oleksandriya Court.

2. Proceedings joined by the first applicant

32. On 26 December 2001 the first applicant instituted civil proceedings in the Kirovsky Court against “Eldorado-OM Ltd.” seeking to annul the above mentioned property transaction.

33. On 7 February 2002 the Prosecutor of the Kirovograd Region suggested to the court that the first applicant's claims and those of the Prosecution, instituted on 17 June 1998, acting in the interests of the State and the shareholders T., P., K., M. and S., be joined.

34. On 15 April 2002 the Prosecutor of the Kirovograd Region informed the applicants that he had lodged a motion with the Kirovsky Court requesting that the proceedings suspended on 13 June 2000 be resumed (see paragraph 22 above).

35. On 16 April 2002 the President of the Court of Appeal decided to change the case-jurisdiction from the Kirovsky Court to the Leninsky Court.

36. On 17 April 2002 the case-file was remitted to the Leninsky Court.

37. On 29 April 2002 the Oleksandriya Court informed the Leninsky Court of the judgment of 13 June 2001 rejecting the claims of Ms G.V.R. and others.

38. On 30 April 2002 the Leninsky Court joined the suits brought by the first applicant and the public prosecutor against “Eldorado” and the USB. On the same day, the judge resumed the proceedings.

39. On 14 May 2002 the court adjourned the proceedings due to the parties' failure to appear.

40. On 3 June 2002 the President of the Kirovsky Court informed the first applicant that the proceedings in the case were still adjourned. He also informed her that the case file had been remitted to the Leninsky Court for consultation due to the pending proceedings in another case.

41. On 25 July 2002 the proceedings were adjourned due to the parties' failure to appear.

42. On 8 and 29 November and on 24 December 2002 the court adjourned the hearings due to the parties' failure to appear.

43. On 22 January 2003 the Leninsky Court terminated the proceedings in the part supported by the public prosecutor (as the shareholders T., P. and M. renounced their claims and the two remaining shareholders were apparently disinterested in the proceedings). The proceedings instituted by the first applicant were remained pending.

44. On 24 February 2003 the court adjourned the proceedings to 17 March 2003 due to the defendant's representative's failure to appear before it.

45. On 17 March 2003 the Leninsky Court requested the President of the Court of Appeal to change the jurisdiction of the case to the Oleksandriya Court as the parties had failed to appear before the court for the hearing again.

46. On 19 March 2003 the Court of Appeal remitted the first applicant's claims lodged against "Eldorado" and the OM to the Oleksandriya Court for consideration on the merits.

47. On 7 April 2003 the Court of Appeal informed the first applicant that the case-jurisdiction had been transferred to the Oleksandriya Court (in accordance with Article 133 of the Code of Civil Procedure). On the same date a judge of the Oleksandriya Court invited the parties for a meeting to decide on the proceedings in the case.

48. On 17 April 2003 the judge of the Oleksandriya Court decided that the hearing be held on 27 May 2003.

49. On 27 May and 10 June 2003 the hearings were adjourned due to the defendant's failure to appear.

50. On 10 July 2003 the Kirovograd Commercial Court declared the OM bankrupt.

51. On 19 August and 1 September 2003 the defendant failed to appear again.

52. On 17 September 2003 the Oleksandriya Court rejected the first applicant's claims due to her failure to comply with the statute of limitation, finding that she had lodged her complaint more than three years after the transaction took place.

53. On 14 November 2003 the Oleksandriya Court ordered the first applicant to pay the court fee.

54. On 8 December 2003 the judge of the Oleksandriya Court refused leave to appeal to the first applicant as she failed to pay the court fee for its introduction.

55. On 5 February and 22 April 2004 the Court of Appeal quashed the decisions of the Oleksandriya Court of 14 November and 8 December 2003, respectively, and remitted the case for a fresh consideration.

56. 26 February 2004 the Oleksandriya Court rejected the first applicant's appeal as she failed to comply with formalities for its introduction, namely to provide a copy of the appeal.

57. On 4 March 2004 the applicant filed a copy of her appeal.

58. On 1 April 2004 the Court of Appeal ruled that it had jurisdiction to examine the appeal.

59. On 22 April 2004 the Court of Appeal quashed the judgment of 17 September 2003 and remitted the case for a fresh examination to the Oleksandriya Court in a different composition.

60. On 21 May 2004 the first applicant amended her claims.

61. On 2 July 2004 the Oleksandriya Court terminated the proceedings in the case. In particular, the court stated that the first applicant was not a party to the above mentioned property transaction.

62. On 10 March 2005 the Court of Appeal quashed this ruling and remitted the case for an examination of its merits.

63. On 22 May 2006 the Oleksandriya Court rejected the first applicant's claims lodged against "Eldorado" and the USB as to the unlawfulness of the security and sales agreement of the property belonging to OM.

64. On 7 June 2006 the Kremenchuk District Prosecutor informed the first applicant that the criminal investigation into allegations of financial fraud during the sale of OM's property was still pending.

65. On 9 June 2006 the first applicant appealed against the judgment of 22 May 2006.

66. On 17 July 2006 Mr G., a judge of the Court of Appeal, refused leave to appeal to the first applicant as the first-instance court had failed to rule on the payment of a court fee for the introduction of the complaint [(as provided by the Decree of the Cabinet of Ministers of Ukraine "On State Tax" from 1% from the cost of the claim or from 3 to 100 minimal citizen's revenue free from taxation).] The case-file was returned to the Oleksandriya Court for decision as to the payment of the State court fee that was to be adopted before 28 August 2006.

67. The proceedings appear to be still pending before the domestic courts.

B. The proceedings as to the enforcement of the judgments given against the OM in the first applicant's favour

68. On 28 June 1998 the Oleksandriya Court ordered the OM to pay the first applicant UAH 767.28¹ in salary arrears.

69. In January 2004 the first applicant instituted civil proceedings against the Oleksandriya Bailiffs' Service seeking to find unlawful the failure to enforce the judgment given in her favour.

70. On 27 December 2004 the Oleksandriya Court allowed the first applicant's claim and ordered the Oleksandriya Bailiffs' Service to pay her UAH 1,383² in compensation for pecuniary and non-pecuniary damage.

71. On 12 April 2005 the Court of Appeal quashed this decision and remitted the case for a fresh consideration.

72. The proceedings are still pending before the first instance court.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine of 1996

73. The relevant provisions of the Constitution of Ukraine provide as follows:

Article 129

“...The main principles of judicial proceedings are:

1) legality; ...

8) ensuring complaints against court decisions by way of appeal and cassation, except in cases finalised by law;

9) the mandatory nature of court decisions.

The law may also determine other principles of judicial procedure in courts of specific jurisdiction.”

B. The Law “on the Introduction of Changes to the Code of Civil Procedure” of 21 June 2001

74. The relevant provisions of the Law of 21 June 2001 read as follows:

1. About EUR 150.

2. EUR 197.16.

Chapter II

Transitional provisions

“1. This Law shall enter into force on 29 June 2001 ...

3. Appeals in civil cases lodged before 29 June 2001 shall be considered in accordance with the procedure adopted for the examination of appeals against local court judgments.

4. Protests against judgments lodged before 29 June 2001 shall be sent to the Supreme Court of Ukraine for consideration in accordance with the cassation procedure.

5. Judgments that have been delivered and which have become enforceable before 29 June 2001 can be appealed against, within three months, in accordance with the cassation procedure [to the Supreme Court of Ukraine].”

THE LAW

I. PRELIMINARY CONSIDERATIONS

A. The fourth applicant

75. The Court notes that the last and only letter sent to it by the fourth applicant dated 10 August 2000. It further observes that on 10 July 2003 the first, the second and the third applicant submitted a letter, stating to be the only applicants in the case.

76. Having regard to Article 37 § 1 (a) of the Convention, the Court concludes that the fourth applicant does not intend to pursue his application. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the further examination of his complaints.

B. Scope of the case

77. On 12 July 2005 the first applicant lodged an additional new complaint with the Court concerning the non-enforcement of the judgment given in her favour against the OM, a privatised company, by the Oleksandriya City Court on 28 June 1998. 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. ADMISSIBILITY

78. The first, second and third applicants complained about the excessive length of the civil proceedings in their case. They also alleged that they had no effective remedies by which to complain about the excessive length of the proceedings and the lack of effective access to the domestic courts. They referred to Articles 6 § 1 and 13 of the Convention, which in so far as relevant, provide:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

79. The applicants further complained about the infringement of Article 1 of Protocol No. 1 to the Convention. They alleged that the OM's shares, which they owned had lost their value as a result of unlawful commercial transactions by the OM's management. This provision reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. The complaints raised by the second and the third applicants

80. The Government submitted that the complaints of the applicants Ms Zamorozda and Ms Golovatenko should be found inadmissible since they were not participants in the civil proceedings concerning the invalidation of the OM's property transaction. For this reason, their complaints under Articles 6 § 1 and 13 of the Convention should be rejected as incompatible *ratione personae* in accordance with Article 34 of the Convention. As to their complaints under Article 1 of Protocol No. 1, they

should be rejected under Article 35 §§ 1 and 4 of the Convention as these applicants failed exhaust the domestic remedies.

81. The applicants disagreed. In particular, they stated that the fact that the public prosecutor instituted proceedings on behalf of T., P., K., M. and S., five of the OM's shareholders (see paragraph 10 above), does not exclude the interest of other shareholders in the outcome of the proceedings.

82. The Court observes that the public prosecutor's claims, joined with the claims of the Tax Inspection (see paragraph 12 above), were lodged in the interests of the aforementioned shareholders by a public official (see *Merit v. Ukraine*, no. 66561/01, § 63, 30 March 2004), who had a power to intervene in order to protect particular shareholders' constitutional rights, State and public interests. The dispute at issue concerned the “determination of the civil rights and obligations” of the shareholders T., P., K., M. and S., who *inter alia*, asked the prosecutor to intervene on their behalf and initially participated in the proceedings (see paragraph 10 above).

83. In this respect, the Court reiterates that a person cannot complain about a violation of his or her rights in the proceedings, to which he or she was not a party, despite the fact that she or he was a shareholder of the company that these proceedings concerned (see, e.g., *F. Santos Lda. and Fachadas v. Portugal* (dec.), no. 49020/99, 19 September 2000; *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005). Taking into account that the second and the third applicants have never been parties to proceedings concerning the invalidation of the OM's property transaction, the Court concludes that they may not be regarded as victims in respect of the allegations they raise (see *Fédération chrétienne des témoins de Jéhovah de France v. France* (dec.), no. 53430/99, ECHR 2001-XI).

84. It follows that the complaints lodged by the second and the third applicants must be rejected as being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. The complaints lodged by the first applicant

85. The Government submitted that the complaints of the first applicant under Articles 6 § 1 and 13 of the Convention should also be found inadmissible since she joined the above mentioned proceedings only in December 2001, and that that part of the proceedings complained about was not unreasonably long. As to her complaints under Article 1 of Protocol No. 1, they should be rejected under Article 34 of the Convention as the applicant was a minor shareholder of the OM.

86. The applicant disagreed. In particular, she stated that the fact that the public prosecutor instituted proceedings on behalf of five the OM's shareholders did not exclude the interest of other shareholders in the proceedings. As to the observations regarding her complaints under Article 1 of Protocol No. 1, she claimed, without providing any specific

facts or documents, that the contested transaction of the OM's property had caused the significant loss in value of her shares.

C. The Court's assessment

87. The Court notes at the outset, as to the applicant's complaints under Article 1 of Protocol No. 1 to the Convention, that the applicant as a minor shareholder, who owned 0.15% of the OM's shares (see paragraph 6 above), cannot in principle claim to be a victim of a violation of Article 1 of Protocol No. 1 as a result of actions aimed at the property of the company (see *Penton v. Turkey* (dec.), no. 24463/94, 14 April 1998), as piercing the corporate veil can be justified only in exceptional circumstances (see *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330-A, § 66). The Court does not discern any exceptional circumstances in the present case. It therefore decides that this part of the first applicant's complaints must be rejected in accordance with Articles 34 of the Convention as being incompatible *ratione personae*.

88. The Court further notes, in relation to Article 6 § 1 of the Convention, that the parties have not commented on its applicability as to whether the dispute involved “determination of civil rights and obligations”. It therefore will examine the case on the assumption that this provision is applicable.

89. The Court considers, in the light of the parties' submissions, that the first applicant's complaints under Articles 6 § 1 and 13 of the Convention as to the unreasonable length of the proceedings and as to the lack of effective remedies in that respect, raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established. They should therefore be declared admissible.

III. MERITS

A. Alleged violation of Article 6 § 1 of the Convention

90. The Government maintained that there were no significant periods of delay that could be attributed to the domestic authorities. In particular, they stated that the applicant was herself responsible for the delays in April – December 2002.

91. The applicant disagreed. In particular, she stated that the domestic courts protracted hearings in the case.

92. The Court finds that the period under consideration started on 26 December 2001, when the first applicant lodged claims in her own behalf. It further, observes that the proceedings are still pending before the first instance court, after more than four years and eleven months.

93. The Court recalls that the “reasonableness” of the 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 *Svetlana Naumenko v. Ukraine*, no. 41984/98, § 77, 9 November 2004).

94. It considers that the subject matter of the litigation was not especially complex.

95. As to the applicant's conduct, the Court sees no periods of substantial delay for which she was responsible. Moreover, the Government have failed to submit any evidence thereof. The Court also notes that the delays that could be attributed to the applicant related to periods when the hearings were adjourned five times as both the applicant and the defendant failed to attend the hearings (see paragraphs 38, 40 and 41 above). These delays amount to a total of about six months and the authorities cannot be responsible for them. They cannot also be responsible for adjournments of the case, for four months, due to the defendant's failure to appear on five occasions (see paragraphs 48 and 50 above). However, they should have taken reasonable steps to assure defendant's presence in the course of the hearing or could have proceeded with the final examination of the case in defendant's absence.

96. The Court further observes that there were certain delays attributable to the judicial authorities caused by their various remittals of the case for a fresh consideration from the court of appeal to the first-instance courts and reassignments of the case from one court to the other. In particular, it is to be noted that the case had been remitted for a fresh consideration on three occasions by the court of appeal and the case-jurisdiction had been reassigned twice (see paragraphs 35, 45, 58 and 61 above).

97. In conclusion, regard being had to the circumstances of the instant case, the length of the proceedings from December 2001 to present date, namely four years and eleven months, the Court concludes that there was an unreasonable delay in disposing of the applicant's case.

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

B. Alleged violation of Article 13 of the Convention

99. Lastly, the first applicant complained that in Ukraine there were no effective remedies which could be used to obtain redress for the excessive length of the civil proceedings. She relied on Article 13 of the Convention.

100. The Government submitted that the first applicant had a possibility to introduce different procedural petitions with the courts hearing her case seeking to expedite its processing. For instance, in case of a failure of the respondent party to appear for hearings it was open for the applicant to ask for examination of the case without its participation or require that the respondent party's representatives be obliged to appear before the court. The Government concluded that there had been no violation of Article 13 of the Convention, in respect of the lack of effective remedies for the applicant's complaints under Article 6 § 1 of the Convention as to the length of the proceedings.

101. 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). It recalls that a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Kudła v. Poland*, cited above, §§ 157-159). Moreover, the remedy required by Article 13 must be “effective” in practice as well as in law (cf. *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). The existence of such a remedy must be sufficiently certain not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness (see, *inter alia*, *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

102. As to the remedies mentioned above and referring to the constant case-law of the Court on the matter of length of proceedings, the Court notes that the Government have not shown how recourse to such remedies could have expedited the proceedings in the case or how it could provide a redress for the delays in the applicant's proceedings that were pending. Furthermore, the Government have not supplied any example from domestic case-law to show that such proceedings by a litigant were successful. The Court also notes that the letter of 12 November 2001 by the acting President of the Kirovograd Regional Court had no effect on the course of the ensuing proceedings (see paragraph 30 above).

103. In these circumstances, the Court considers that it has not been sufficiently established that recourse to the remedies suggested by the Government would have been capable of affording redress to the first applicant in relation to his complaints concerning the length of the proceedings (see *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006).

104. Accordingly, the Court concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the first applicant's complaint in respect of the length of his civil proceedings.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The first applicant claimed UAH 80,000¹ in lost profits, UAH 60,000² in lost income and she also sustained losses to her unpaid yearly pension that amounted to UAH 1,200³. She also claimed USD 100,000⁴ in non-pecuniary damage.

107. The Government submitted that the pecuniary damage claims were unsubstantiated and exorbitant. They have requested the Court to determine the amount of compensation on equitable basis in accordance with the Court's previous case-law.

108. The Court makes no award in relation to the pecuniary damage claimed by the first applicant since there is no substantiation that that damage flowed from the Convention breaches found. Nevertheless, the Court finds that the first applicant may be considered to have suffered some degree of frustration and distress, given the length of proceedings in her case. It therefore awards her on an equitable basis EUR 1,700 (euros) in respect of non-pecuniary damage.

B. Costs and expenses

109. The first applicant claimed no costs and expenses for the Convention proceedings neither for the proceedings before the domestic courts.

110. The Court therefore makes no award under this head (see *Dulskiy v. Ukraine*, no. 61679/00, § 100, 1 June 2006).

C. Default interest

111. 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.

1. EUR 12,779.

2. EUR 9,584.

3. EUR 191.68.

4. EUR 82,754.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the fourth applicant's complaints out of its list of cases;
2. *Declares* the first applicant's complaints concerning the length of the proceedings and the lack of effective remedies in that respect admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,700 (one thousand seven hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) the aforementioned sums shall be converted into the national currency of Ukraine, at the rate applicable at the date of settlement;
 - (c) 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;
6. *Dismisses* unanimously the remainder of the first applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

CLAUDIA WESTERDIEK
Registrar

PEER LORENZEN
President