



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

FIFTH SECTION

CASE OF MOROZ AND OTHERS v. UKRAINE

(Application no. 36545/02)

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 Moroz and Others v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOCHAROVA,
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. 36545/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 8 Ukrainian nationals, Mr Ivan Vasiliyevich Moroz, Mrs Ulyana Andreyevna Nikulina, Mr Semen Grygoryevich Shehali, Mr Yuriy Ivanovich Mykhailenko, Mrs Yevgeniya Borisovna Shyryayeva, Mr Vyacheslav Vasiliyevich Parhomenko, Mr Anatoliy Dmitriyevich Dobrovanov, Mrs Valentina Ivanovna Polovets (“the applicants”), on 8 August 2002.

2. The applicants were represented by Ms N. Tkachenko, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaitsev.

3. On 13 December 2005 the Court decided to give notice of the application to the Government. 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 applicants, Mr Moroz, Mrs Nikulina, Mr Shehali, Mr Mykhailenko, Mrs Shyryayeva, Mr Parhomenko, Mr Dobrovanov, and Mrs Polovets are Ukrainian nationals, who were born in 1926, 1937, 1930,

1934, 1940, 1968, 1926, and 1931, respectively. Mrs Polovets lives in the town of Boyarka and the others live in Kyiv.

5. In 1991 the applicants gave the ATEK Company certain amounts of money in order that it could buy cars for them. The company concluded a contract with a third person, pursuant to which the latter undertook to provide the applicants with the cars.

6. In July 1994 the Ukrainian Association of Consumers' Organisations, acting in the interests of the applicants, together with thirty other persons, instituted proceedings in the Leningradskyy District Court of Kyiv (the "Leningradskyy Court") against the company for failure to fulfil its contractual obligations, namely, to provide the applicants and other persons concerned with the cars. The company denied that it had any contractual obligations in this respect.

7. On 23 August 1994 the court ordered an expert examination and suspended the proceedings. On 15 November 1994 the expert report was completed and the proceedings were resumed.

8. In 1995 the applicants, together with twenty-eight other persons, lodged with the same court their separate claims in respect of the subject matter of the proceedings. The plaintiffs sought the recovery of the amounts which they had paid to the company and compensation.

9. On 27 April 1995 the court ruled against the applicants, finding no fault on the part of the company.

10. On 12 July 1995 the Kyiv City Court (the "Kyiv Court") quashed this decision and remitted the case for a fresh consideration. It found that the first instance court had failed to take into consideration all the circumstances of the case.

11. On 8 April 1996 the court ordered an additional expert examination which was completed on 10 April 1996.

12. On 18 June 1996 the Leningradskyy Court found in part for the applicants. On 4 November 1996 the same court adopted a supplementary decision, partly changing the operative part of its judgment of 18 June 1996, which still remained favourable to the applicants. These decisions were not appealed against and became final.

13. On 28 February 1997 the President of the Kyiv Court lodged a *protest* with the Presidium of that court, seeking initiation of supervisory review proceedings in the case. On 25 March 1997 the Presidium allowed the *protest*, quashed the decisions of 18 June and 4 November 1996, and remitted the case for a fresh consideration. It held that the first instance court had failed to establish the legal nature of the contract between the applicants and the company.

14. On an unspecified date Mr N., one of the plaintiffs in the case, requested his claims to be disjoined. On 19 November 1997 the Leningradskyy Court allowed his request.

15. On 8 December 1997 the Leningradskyy Court found in part for Mr N. This decision was not appealed against and became final.

16. On 11 March 1999 the Deputy President of the Supreme Court lodged a *protest* with the Presidium of the Kyiv Court, seeking initiation of supervisory review proceedings in the case. On 29 March 1999 the Presidium allowed the *protest*, quashed the judgment of 8 December 1997, and remitted the case for a fresh consideration. It mostly reiterated the reasons for its decision of 25 March 1997.

17. On an unspecified date Mr N. joined the original proceedings as a co-plaintiff.

18. In the course of the proceedings between 11 September 1997 and 30 June 2000 the applicants amended the claims twice.

19. Of around thirty-three hearings held during the aforementioned period seven were adjourned due to the absence or at the request of the applicants' representatives. Thirteen hearings were adjourned due to the absence of the representatives of the defendant company and four hearings were postponed because of the witnesses' failure to appear. Five hearings were not held due to the absence of the judge.

20. On 21 February, 14 March, 12 April, and 26 May 2000 the court fined the representatives of the defendant company for their repeated failure to appear before the court. One of the witnesses called by the court was fined twice for the same reasons.

21. On 30 June 2000 the Leningradskyy Court found in part for the applicants. This decision was not appealed against and became final.

22. On 19 December 2000 the Deputy President of the Supreme Court lodged a *protest* with the Presidium of the Kyiv Court, seeking initiation of supervisory review proceedings in the case. On 15 January 2001 the Presidium allowed the *protest*, quashed the judgment of 30 June 2000, and remitted the case for a fresh consideration. It held that the first instance court had wrongly applied the law.

23. On 6 June 2001 the President of the Leningradskyy Court requested the President of the Kyiv Court to remit the case to the Kyiv Court, as this case had been reconsidered by the Leningradskyy Court on four occasions.

24. On the same day the President of the Kyiv Court granted the request of the President of the Leningradskyy Court and remitted the case to a judge of the Kyiv Court for a fresh consideration.

25. On 30 November 2001 the Kyiv City Court of Appeal (the former Kyiv City Court), acting as a court of first instance, scheduled a hearing for 14 December 2001, which was not held because of the judge's illness.

26. Between 14 December 2001 and 28 January 2002 there were six hearings held, out of which two were adjourned at the request of the defendant company and one was postponed due to the submission of the amended claims by the applicants' representative.

27. On 28 January 2002 the Kyiv City Court of Appeal found against the applicants.

28. On 28 April 2002 the applicants' representative lodged an appeal in cassation.

29. On 29 April 2002 the Ukrainian Association of Consumers' Organisations and Mr Shehali, acting in the interests of all the applicants and other claimants, lodged a separate appeal in cassation.

30. On 24 May 2002 the Kyiv City Court of Appeal granted the applicants a time-limit to rectify the shortcomings of the appeal in cassation of 28 April 2002 and to pay the court fees.

31. On 7 and 11 June 2002 three of the applicants, Messrs Shehali, Mykhailenko and Parhomenko, submitted to the court copies of the receipts, conforming that they had paid the court fees in respect of the latter appeal in cassation.

32. On 12 June 2002 the Kyiv City Court of Appeal rejected the appeal in cassation lodged by the applicant's representative on 28 April 2002 for failure to pay the court fees.

33. On 24 June 2002 the same court sent the appeal in cassation lodged on 29 April 2002 by the Ukrainian Association of Consumers' Organisations and Mr Shehali, acting in the interests of all the applicants and other claimants, to the Supreme Court.

34. On 8 October 2002 the panel of three judges of the Supreme Court decided to submit the latter appeal for consideration by the Civil Chamber of the Supreme Court.

35. On 10 September 2003 the Chamber quashed the decision of 28 January 2002 and remitted the case for a fresh consideration.

36. The Kyiv City Court of Appeal, sitting in a different composition, held fifteen hearings. Six hearings were postponed because of the absence of the applicants' representative or at his request, while three hearings were adjourned at the request of the defendant company.

37. In the course of the proceedings before that court, the applicants modified their claims twice.

38. On 15 April 2004 the Kyiv City Court of Appeal found in part for the applicants. It held that the company had been under the obligation to provide the plaintiffs with the cars, which the company had failed to fulfil. The court ordered the company to pay each plaintiff UAH 49,180.05¹.

39. On 14 and 19 May 2004, respectively, the defendant company and the applicants appealed in cassation.

40. On 8 February 2006 the Supreme Court rejected the parties' appeals in cassation.

1. Around 7,938 euros – “EUR”.

THE LAW

I. SCOPE OF THE CASE

41. The Court notes that, after the communication of the case to the respondent Government, the applicants introduced new complaints, alleging a violation of Article 1 of Protocol No. 1 on account of the delay in the enforcement of the decision of the Kyiv City Court of Appeal of 15 April 2004.

42. In the Court's view, the new complaints are not an elaboration of the applicants' original complaints to the Court about the length of the proceedings, lodged approximately four 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 PROCEEDINGS

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

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

A. Admissibility

44. The Government maintained that the applicants had not exhausted the domestic remedies available to them, in that they had failed to lodge with the higher courts complaints about the first instance court's alleged failure to consider the case in due time. The Government stated that such complaints might have resulted in disciplinary proceedings against the first instance judges, dealing with the case.

45. The applicants disagreed.

46. The Court recalls that the purpose of Article 35 § 1 of the Convention is to afford Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are those which are effective. To be effective the remedy must be capable of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see, *mutatis mutandis*, *Krasuski v. Poland*, no. 61444/00, § 66, ECHR 2005–...).

47. The Court notes that the Government did not show that in the present case recourse to the disciplinary proceedings against judges could either afford the applicants compensation for any alleged breach of their right to a hearing within a reasonable time or speed up the examination of the case.

48. In these circumstances, the Court concludes that the applicants were absolved from pursuing the remedy invoked by the Government and have therefore complied with the requirements of Article 35 § 1.

49. The Court concludes that this part of 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

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

51. 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, which started in July 1994 and ended on 8 February 2006, excluding the intervals between 4 November 1996 and 25 March 1997, 27 September 2000 and 15 January 2001, when no proceedings were pending, lasted over ten years and seven months (see *Yemanakova v. Russia*, no. 60408/00, § 41, 23 September 2004, and *Efimenko v. Ukraine*, no. 55870/00, § 51, 18 July 2006). The period falling within the Court's competence *ratione temporis* lasted around eight years and one month (from 11 September 1997 until 8 February 2006) for three levels of jurisdiction.

2. Reasonableness of the length of the proceedings

52. The Government contended that the case was complicated because of the large number of the plaintiffs and due to the fact that the applicants had modified their claims twelve times.

53. The Government further stated 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 applicants and that this had caused general delay of about seven months. They maintained that there had been significant delays (for a total of around one year) attributable to the defendant company, for which its representatives were fined by the court on four occasions.

54. The applicants disputed the Government's submissions. In particular, they maintained that the case was not complicated, as the claims of all the plaintiffs concerned the same legal and factual issues. They further stated that the delay in the proceedings was caused due to the numerous reconsiderations of their case.

55. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

56. As to the question of the complexity of the present dispute, the Court observes that the courts were to establish whether there had been contractual relations between the plaintiffs and the defendant company and whether the company had complied with its contractual obligations. The courts heard two witnesses and based their decisions largely on the written evidence submitted by the parties. Although the case might have been somewhat complicated by the large number of the plaintiffs and their numerous modifications of the claims, the Court observes that the plaintiffs' claims concerned similar facts and the same legal issues. Therefore, the Court considers that the subject matter of the litigation at issue could not be considered particularly complex.

57. The Court further notes that the proceedings were of some importance for the applicants. Nonetheless, the Court does not find any ground for the domestic courts to deal with this case with particular urgency *vis-à-vis* other cases pending before them.

58. As to the applicants' behaviour throughout the proceedings, the Court considers that there are some periods of delay which could be attributed to them, while there is no evidence before the Court to suggest that the proceedings were particularly lengthy exclusively due to their behaviour.

59. The Court notes that there were some substantial periods of inactivity, in particular between 15 January and 30 November 2001, 8 October 2002 and 15 October 2003, 19 May 2004 and 8 February 2006 (see paragraphs 22-25, 34-35, and 39-40 above), for which the Government have not put forward any explanation. Accordingly, the Court finds that the State authorities were responsible for the delay in the proceedings of more than three years.

60. Furthermore, the Court observes that the case was reconsidered on four occasions. Therefore, it considers that the delay in the proceedings was also caused by the repeated re-examination of the case. Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it observes that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of

proceedings discloses a serious deficiency in the judicial system (*Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). Moreover, it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see, as a recent authority, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-...).

61. In sum, having regard to the circumstances of the instant case as a whole, the Court concludes that there was unreasonable delay in disposing of the applicants' case.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

63. The applicants further complained that they had no effective domestic remedies for their complaint about the length of the proceedings. They invoked Article 13 of the Convention, which provide as follows:

“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.”

A. Admissibility

64. The Court refers to its reasoning in relation to Article 35 § 1 (see paragraphs 46-48 above), which is equally pertinent to the applicants' Article 13 claim. Consequently, the Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

65. The Government contended that the applicants had had effective channels of complaint on the same basis that they had argued that the applicants had not exhausted domestic remedies in respect of their complaint about the length of the proceedings.

66. The Court refers to its findings (at paragraphs 47-49 above) in the present case concerning the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicants did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings. Accordingly, there has been a breach of this provision.

IV. OTHER COMPLAINTS

67. The applicants further complained under Article 6 § 1 of the Convention about the unfairness of the proceedings. The applicants alleged that the judges of the first instance courts, including the Kyiv City Court of Appeal, who had dealt with their case between March 1999 and January 2002, had not been independent and impartial, as they had been bound by the instructions contained in the decisions of the Presidium of the Kyiv City Court and the conclusions contained in the *protests* of the Deputy President of the Supreme Court of 11 March 1999 and 19 December 2000.

68. The applicants also complained that the decision of the Kyiv City Court of Appeal of 28 January 2002 violated their right to peaceful enjoyment of their possessions. They invoked Article 1 of Protocol No. 1.

69. The Court observes that all the decisions of the first instance courts adopted between March 1999 and January 2002 have been quashed, and in particular the decision of the Kyiv City Court of Appeal of 28 January 2002 was annulled by the Supreme Court on 10 September 2003 (see paragraphs 21, 22, 27, and 34 above). The Court further notes that there are no grounds to doubt that the proceedings as a whole were fair within the meaning of Article 6. Therefore, this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicants claimed UAH 49,180.05¹ each in respect of pecuniary damage. They also submitted that they had suffered some non-pecuniary damage because of the length of the proceedings. However, the applicants were not able to specify the amounts of their claims and left the matter to the Court's discretion.

72. The Government did not express an opinion on the matter.

73. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards each applicant EUR 1,200 in respect of non-pecuniary damage.

1. Around EUR 7,938.

B. Costs and expenses

74. Messrs Shehali, Mykhailenko and Parhomenko also claimed UAH 228¹ each for the costs and expenses incurred before the domestic courts. Mr Mykhailenko also claimed UAH 482² for the costs of correspondence and translations incurred in the proceedings before the Court.

75. 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, regard being had to the information in its possession and the above criteria, the Court rejects the claims for costs and expenses in the domestic proceedings and considers it reasonable to award Mr Mykhailenko the requested sum of EUR 80 for the proceedings before the Court.

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 applicants' complaint under Article 6 § 1 of the Convention concerning the excessive length of the proceedings and their complaint under Article 13 of the Convention 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* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, each applicant EUR 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and Mr Mykhailenko EUR 80 (eighty euros) for costs and expenses, plus any tax that may be chargeable on the above amounts;

1. Around EUR 38.

2. Around EUR 80.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] 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 applicants' claims 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