



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

FIFTH SECTION

CASE OF OGURTSOVA v. UKRAINE

(Application no. 12803/02)

JUDGMENT

STRASBOURG

1 February 2007

FINAL

23/05/2007

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 Ogurtsova 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 8 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 12803/02) 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 Valentina Yegorovna Ogurtsova (“the applicant”), on 13 August 2001.

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

3. On 5 September 2005 the Court decided to communicate the complaint concerning the length of civil proceedings in the applicant's case to the respondent 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 applicant was born in 1938 and lives in the city of Kharkiv, Ukraine.

5. In December 1988, following the appraisal results, the applicant was dismissed from her position in a scientific institute.

First set of proceedings

6. In 1988-1994 the applicant instituted several proceedings against her former employer raising numerous issues related to her employment and subsequent dismissal. All of the judgments and decisions adopted upon the applicant's complaints became final in 1989-1994.

7. In August 1994 the applicant instituted new proceedings in the Dzerzhynskyy District Court against her former employer asking to modify her labour record, to provide her with a duplicate of her labour record, claiming salary arrears allegedly due to her and raising a number of other issues related to her employment and dismissal. During the consideration of her case the applicant several times changed her complaints and claims, and introduced new ones.

8. On 6 December 1995 the court found in part for the applicant.

9. On 20 February 1996 the Kharkiv Regional Court quashed this judgment in part and remitted the case for a fresh consideration.

10. On 18 September 1997 the hearing was postponed because the parties failed to appear before the court.

11. On 12 December 1997 the hearing was postponed because the defendant's representative failed to appear.

12. In 1998 fourteen court hearings took place. Twice they were adjourned because of the defendant's failure to appear and three times because the court requested additional documentary evidence and the judge participated in another hearing. Also on 23 October 1998 the applicant introduced an additional complaint.

13. In January-February 1999 four court hearings took place.

14. On 22 February 1999 the Dzerzhynskyy District Court found in part for the applicant.

15. On 18 May 1999 the Kharkiv Regional Court quashed this judgment in part and remitted the case for a fresh consideration.

16. From May 1999 until July 2001 six hearings were scheduled but none of them took place. On 16 December 1999, 8 June 2000, 28 December 2000 and 27 February 2001 the hearings were postponed because the parties failed to appear and on 2 April 2001 and 3 July 2001 - because the defendant failed to appear.

17. On 24 July 2001 the hearing was adjourned following the request of the defendant's representative to obtain additional documents.

18. From 31 July until 28 November 2001 eight hearings took place and two were postponed because the defendant failed to appear and because the judge was considering another case.

19. On 28 November 2001 the Dzerzhynskyy District Court found against the applicant. The applicant appealed against this judgment.

20. On 7 March 2002 the Kharkiv Regional Court of Appeal (former Kharkiv Regional Court) satisfied the applicant's request to replace judge K. in her case.

21. On 1 April 2002 the Kharkiv Regional Court of Appeal upheld the judgment of 28 November 2001. The applicant appealed against the judgment of 1 April 2002.

22. On 12 June and 15 August 2002 the Dzerzhynskyy District Court returned the applicant's cassation appeal and refused to renew the time-limit for its lodging.

23. On 17 September 2003 the Kharkiv Regional Court of Appeal quashed these decisions and renewed the above time-limit.

24. On 14 November 2003 the Dzerzhynskyy District Court sent the applicant's cassation appeal to the Supreme Court of Ukraine.

25. On 30 June 2005 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

26. The applicant lodged numerous requests with the Ministry of Justice of Ukraine and with the Bar Association asking to provide her with a lawyer. By letters of 11 March 2001 and 4 April 2002 the Ministry informed the applicant that free legal aid was available only in criminal proceedings.

Second set of proceedings

27. In January 1992, upon the complaint of Mr P., the Dzerzhynskyy District Court instituted criminal proceedings against the applicant for defamation. In May 1996 the case was closed.

28. In February 1997 the applicant instituted proceedings in the same court against the Ministry of Justice of Ukraine claiming compensation for moral damage caused by the institution of a criminal case against her.

29. On 30 January 1998 the court found against the applicant. On 7 March 1998 the Kharkiv Regional Court upheld this judgment.

30. In July 2003 the applicant requested the court to review her case in the light of new circumstances. On 7 November 2003 the Dzerzhynskyy District Court rejected the applicant's request. On 20 January 2004 the Kharkiv Regional Court of Appeal upheld this decision.

Third set of proceedings

31. In March 1998 the applicant instituted proceedings in the Frunzenskyy District Court challenging the amount of her pension.

32. On 21 December 1999 the court found against the applicant. On 8 February 2000 the Kharkiv Regional Court quashed this judgment and remitted the case for a fresh consideration.

33. On 24 January 2001 the Frunzenskyy District Court found in part for the applicant. On 13 March 2001 the Kharkiv Regional Court upheld this judgment. On 5 October 2001 the Supreme Court of Ukraine rejected the applicant's appeal under the new cassation procedure.

Fourth set of proceedings

34. In 2001 the applicant instituted proceedings in the Moskovskyy District Court challenging the results of her appraisal.

35. On 27 June 2001 the court returned the applicant's complaint. On 24 January 2002 the Kharkiv Regional Court of Appeal upheld this decision. In particular, the court stated that the applicant did not submit her complaint in accordance with the procedural formalities prescribed by law. On 8 April 2002 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

Fifth set of proceedings

36. In April 2001 the applicant instituted further proceedings in the Kharkiv Regional Court challenging the results of her appraisal.

37. On 25 April 2001 the Kharkiv Regional Court of Appeal returned the applicant's complaint because it should have been considered by a lower court. On 27 June 2001 the Supreme Court of Ukraine upheld this decision and forwarded the applicant's case to the Dzerzhynskiy Local Court.

38. On 5 June 2002 the Dzerzhynskiy Local Court closed the case on the ground that the applicant had lodged similar complaint with the Moskovskyy Local Court and on 27 June 2001 it had been considered. On 11 November 2002 the Kharkiv Regional Court of Appeal upheld this decision as a whole. However, it changed the reasoning of the lower court stating that the applicant's complaint was not to be considered by the court because in 1988 the legislation had not provided for possibility to challenge in the court a dismissal based on the results of the appraisal. On 20 November 2003 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

Sixth set of proceedings

39. In 2001-2003 the applicant instituted several sets of proceedings in the Kharkiv Regional Court of Appeal and the Supreme Court of Ukraine complaining that the local courts did not consider her complaints properly. All of the applicant's complaints were rejected on the ground that judges bear no civil liability for decisions taken in their official capacity.

Seventh set of proceedings

40. In 2003-2004 the applicant instituted several sets of proceedings in the Moskovskyy District Court against the Moskovskyy District Pension Fund Department in Kharkiv challenging their actions and claiming to recalculate the amount of her pension.

41. On 13 June 2003 and 28 September 2004 the court found in part for the applicant. On 23 March 2005 the Kharkiv Regional Court of Appeal upheld the judgment of 28 September 2004.

42. The applicant requested the Moskovskyy District Court to adopt an additional decision in her case. On 1 October 2004 the court rejected the applicant's request and this decision was upheld on 10 August 2005 and on 10 November 2005 by the Kharkiv Regional Court of Appeal and the Supreme Court of Ukraine, respectively.

Eighth set of proceedings

43. The applicant instituted two more sets of proceedings in the Chervonozaodskyy District Court against the “Evropeyskiy” company (a successor of her former employer) requesting to issue her a number of documents and labour records to be submitted to the Pension Fund. The applicant also claimed compensation for non-pecuniary damage. On 22 May 2003 the court found in part for the applicant. On 21 October 2003 the Kharkiv Regional Court of Appeal upheld this judgment.

44. On 26 January 2005 the court found in part for the applicant and awarded her UAH 5,000 in compensation for non-pecuniary damage. On 18 January 2006 the Kharkiv Regional Court of Appeal quashed this judgment and found against the applicant.

THE LAW

I. COMPLAINTS ABOUT THE LENGTH OF PROCEEDINGS

45. The applicant complained under Article 6 § 1 of the Convention of the length of the proceedings in her cases. This Article provides, insofar as relevant, as follows:

Article 6 § 1

“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. ...”

A. Admissibility

1. First set of proceedings

46. The Government did not submit any observations on the admissibility of the applicant's complaint.

47. The Court notes that part of the proceedings complained of relates to the period prior to 11 September 1997, the date on which the Convention came into force in respect of Ukraine. Therefore, this part of the application is incompatible *ratione temporis* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention.

48. As to the proceedings after that date, the Court notes that the applicant's 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.

2. Other proceedings

49. The Court notes that the other sets of proceedings initiated by the applicant lasted for the maximum of three years and seven months. The Court, having regard to all material before it, finds that the length of the proceedings complained of did not exceed the "reasonable time" requirement referred to in Article 6 § 1 of the Convention. The Court rejects this part of the application as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Period to be taken into consideration

50. The Government maintained that the period to be taken into consideration began only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect, and ended on 30 June 2005, when the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

51. The applicant argued that the period in question began in 1994, when she lodged her claim with the domestic courts.

52. The Court notes that the proceedings at issue began in 1994 and were completed in June 2005. Their overall duration was around eleven years. 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, nine months and twenty days. However, in assessing the reasonableness of the time that elapsed after 11 September 1997, account must be taken of the state of proceedings on that date (see *Milošević v. "the former Yugoslav Republic of Macedonia"*, no. 15056/02, § 21, 20 April 2006; *Styrkowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII; *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

2. Reasonableness of the length of the proceedings

53. The Government contested the applicant's complaint, stating that there were no significant periods of inactivity attributable to the State. According to the Government, the applicant and the defendant were responsible for some periods of delay in the proceedings. The Government further submitted that there had been seven hearings postponed due to the parties' failure to appear and four hearings postponed due to the defendant's failure. The case has been considered by three levels of jurisdiction and it was the applicant who introduced all of the appeals. The Government finally maintained that the length of proceedings in the applicant's case was not unreasonable.

54. The applicant disagreed.

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

56. Concerning the question of the complexity of the present dispute, the Court observes that it concerned a number of employment issues raised by the applicant following her dismissal. In particular, the applicant challenged some records in her labour record card as well as a number of decisions taken in her respect during her employment and requested to issue her a duplicate of her labour record card. Although the court was required to examine quite an extensive amount of documentary evidence, the issues before the court were not complicated enough to cause an extensive prolongation of the consideration of the applicant's case. Therefore, the Court concludes that the subject matter of the litigation at issue could not be considered particularly complex.

57. As regards the Government's contentions that the applicant was responsible for some delays in the impugned proceedings, the Court observes that there are no indications in the materials submitted by the parties that the court proceedings had been considerable retarded because of the applicant's behaviour. In particular, no hearings were postponed for the sole reason of the applicant's failure to appear. Although it was always the applicant who initiated the appellate proceedings, the Court notes that such argument did not justify the lengthy consideration of the case by the first instance court as in the present case the major part of proceedings took place in the first instance court (almost four years). Furthermore, the applicant's cassation appeal was sent to the Supreme Court only one year and a half after it was lodged since the court erroneously refused to prolong a time-limit for its submission.

58. Even assuming that there are some periods of delay which could be attributed to the applicant, the Court considers that the protracted length of the proceedings was to a large extent caused by the repeated re-examination of the case. The Court 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).

59. The Court further notes that during two years (from May 1999 until July 2001) only six hearings were scheduled and none of them took place. There is no indication that the court took any measures to sanction the parties' (mostly the defendant's) failure to appear or to consider the case in the parties' absence (see, *mutatis mutandis*, *Smirnova v. Ukraine*, no. 36655/02, § 69, 8 November 2005).

60. 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 applicant's case.

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

II. OTHER COMPLAINTS

Admissibility

62. The applicant complained under Articles 6 and 13 of the Convention of the alleged unfairness and the outcome of the proceedings in her cases. She further complained that she had not been able to obtain any legal assistance in her cases as the insufficient amount of her pension had not allowed her to pay a lawyer and the law did not provide for free legal assistance in civil cases. In the applicant's opinion, the absence of qualified legal assistance significantly delayed and complicated the consideration of her cases.

63. The applicant also complained under the same Articles about a violation of her right of access to court in the fourth and fifth sets of proceedings.

64. The applicant complained under Article 1 of Protocol No. 1 about a violation of her property rights because her pension had been allegedly calculated improperly.

65. The applicant further complained under Article 14 of the Convention that she was discriminated on the ground of her political beliefs and property status.

66. The applicant finally invoked Articles 1, 10, 17, 34, 35 and 45 of the Convention without any further consideration.

67. In the light of all the materials in its possession, and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

68. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 55,168 euros (“EUR”) in respect of pecuniary damage and EUR 2,000,000 in respect of non-pecuniary damage.

71. The Government contended that the applicant's claim for pecuniary damage was not related to the lengthy consideration of her case by the court which was the subject matter of the present application. The Government therefore considered such claim as irrelevant. As for the applicant's claims for non-pecuniary damage, the Government stated that they should be rejected for the same reasons.

72. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and, deciding on an equitable basis, awards her EUR 1,200 in this respect.

B. Costs and expenses

73. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

74. 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 applicant's complaint under Article 6 § 1 of the Convention about the length of the first set of 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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President