



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

FIFTH SECTION

CASE OF GOLOVKO v. UKRAINE

(Application no. 39161/02)

JUDGMENT

STRASBOURG

1 February 2007

FINAL

01/05/2007

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 Golovko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

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. 39161/02) 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 Mariya Vasylivna Golovko (“the applicant”), on 20 September 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 applicant's complaint under Article 6 § 1 of the Convention concerning the length of civil proceedings in the applicant's case on her claim for salary arrears. 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in the town of Netishyn, Khmelnytsk region, Ukraine.

5. The applicant worked as a guard in the private enterprise “Eksprompt”. She was allegedly dismissed on 1 November 1998.

A. First set of proceedings

6. On 25 November 1999 the applicant instituted proceedings in the Netishynskyy Town Court against her former employer claiming salary arrears.

7. On 22 December 1999, 1 February and 22 February 2000 the hearings in the applicant's case were postponed due to the defendant's failure to appear before the court.

8. On 13 June 2000 the defendant failed to appear again. The court decided to consider the case in the absence of defendant. The applicant was heard and the court adjourned the hearing in order to summon witnesses.

9. On 23 June 2000 the court heard a witness and adjourned the hearing in order to collect additional evidence.

10. On 10 July 2000 the court sent a letter to the defendant informing it that if it failed to appear at court, a sanction would be imposed.

11. On 19 September 2000 the court heard another witness and adjourned the hearing.

12. On 20 September 2000 the court found in part for the applicant. The applicant was not present in court hearing.

13. On 17 October 2000 the applicant requested the court to replace the judge in her case and was informed that the judgment had already been adopted.

14. On 27 June 2001 the Khmelnytskyi Regional Court quashed this judgment upon the *protest* of the Deputy Head of the Khmelnytskyi Regional Court under the extraordinary review procedure and remitted the case for a fresh consideration.

15. On 20 May 2002 proceedings in the case were resumed.

16. On 11 June 2002 the proceedings in the applicant's case were stayed pending the consideration of her second labour case (see *Second set of proceedings*).

17. On 12 July 2002 the applicant requested the court to replace judge Kh. in her case. The applicant's representative, Mr L., alleged that judge Kh. adopted particularly unfavourable decisions in Mr L.'s cases.

18. On 30 August 2002 the court satisfied the applicant's request "in order to avoid such statements in the future". On the same date the proceedings were resumed.

19. On 28 January 2003 the defendant failed to appear. The hearing was adjourned as the applicant allegedly insisted on the defendant's presence.

20. On 15 April 2003 the defendant again failed to appear. The hearing was adjourned.

21. On 3 July 2003 the prosecutor inquired with the police about the address of the defendant.

22. On 27 August 2003 the prosecutor inquired the Slavuta Tax Inspection about the address of the defendant.

23. On 3 September 2003 the hearing in the case was postponed as the parties failed to appear.

24. On 10 October 2003 the hearing was postponed as the defendant failed to appear.

25. On 20 October 2003 the applicant was heard. The court adjourned the hearing on the applicant's request because of the unsatisfactory state of her health.

26. On 23 October 2003 the applicant informed the court that she would be represented by her brother and by a prosecutor's assistant.

27. On 6 April 2004 the court heard the parties and adjourned the hearing in order to summon witnesses.

28. On 25 May 2004 the hearing was postponed as the defendant's representative and witnesses failed to appear.

29. On 1 June 2004 the court heard a witness and adjourned the hearing.

30. On 10 June 2004 the court heard the applicant's representative and a witness and adjourned the hearing.

31. On 14 June 2004 the hearing was postponed as the parties' representatives failed to appear.

32. On 23 June 2004 the court heard a witness.

33. On 30 June 2004 the Netishynskyy Town Court found in part for the applicant and awarded her UAH 2,135.33 of salary arrears. The applicant did not appeal against this judgment.

B. Second set of proceedings

34. On 16 October 2000 the applicant instituted another set of proceedings in the Netishynskyy Town Court challenging her dismissal.

35. On 29 December 2000 the court found against the applicant.

36. On 26 April 2001 the Khmelnytsky Regional Court quashed this judgment and remitted the case for a fresh consideration.

37. On 7 November 2001 the Netishynskyy District Court reinstated the applicant in her position and awarded her UAH 2,610 in salary arrears.

38. On 20 March 2002 the Khmelnytsky Regional Court upheld this judgment.

39. On 4 January 2003 the Supreme Court of Ukraine rejected the applicant's cassation appeal.

II. RELEVANT DOMESTIC LAW

40. Article 172 of the Code of Civil Procedure provides that if the duly summoned defendant repeatedly fails to appear in courtroom the court may, of its own motion, decide to proceed with the case in his/her absence. If the defendant's repetitive failure to appear had no valid reasons, the court may fine him/her three times the monthly minimum wage (see *Sukhovetskyy v. Ukraine* (dec.) no. 13716/02, 1 February 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

41. The applicant complained under Articles 6 § 1 and 13 of the Convention about the unfair hearings and the outcome of the proceedings in her cases. She further complained under Article 6 § 1 of the Convention about the length of the proceedings. These Articles provide, 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. ...”

Article 13

“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

1. Fair hearing

42. The applicant complained in a very general manner about the unfairness and the outcome of the proceedings.

a) First set of proceedings

43. The Court notes that the applicant failed to appeal against the judgment of 30 June 2004 of the Netishynskyy Town Court and, therefore, has not exhausted, as required by Article 35 § 1 of the Convention, the remedies available to her under Ukrainian law. This part of the application is rejected in accordance with Article 35 §§ 1 and 4.

b) Second set of proceedings

44. The Court is not called upon to examine the alleged errors of facts and law committed by the domestic judicial authorities. Moreover, no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. Within the framework of the proceedings the applicant was able to introduce all necessary arguments in defence of her interests, and the judicial authorities gave them due consideration. No issue arises under Article 13 of the Convention either.

The Court rejects this part of the application as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Length of the proceedings

a) First set of proceedings

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

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) Second set of proceedings

47. The Court notes that the proceedings in question lasted from 16 October 2000 until 4 January 2003 that is approximately two years and two months. That length did not exceed the "reasonable time" requirement referred to in Article 6 § 1 of the Convention. In particular, there is no discernible period of inactivity which can be attributed to the domestic courts. 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

48. 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).

1. Period to be taken into consideration

49. The Court notes that the proceedings in question lasted from 25 November 1999 until 20 September 2000, when the final decision in the applicant's case was adopted. This decision was subsequently quashed on 27 June 2001 under the extraordinary review procedure and the case was remitted for a fresh consideration to the first instance court. The Court considers it appropriate to take into account only the period when the case was actually pending before the courts, that is the periods when there was no effective judgment and when the authorities were under an obligation to pass such a judgment (see, *mutatis mutandis*, *Rudan v. Croatia* (dec.), no. 45943/99, 13 September 2001; *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004). Therefore, in the present case, it will not take into account the period between the final decision of 20 September 2000 and

27 June 2001, when the Khmelnytskyi Regional Court allowed the extraordinary appeal (see, *mutatis mutandis*, *Yaroslavtsev v. Russia*, no. 42138/02, § 22, 2 December 2004, and *Klyakhin v. Russia*, no. 43082/99, § 91, 30 November 2004).

50. The Court also notes that the quashing of the final and binding court decision, though not explicitly raised by the applicant, could raise an issue under Article 6 § 1 of the Convention, but cannot be considered because of the six months rule contained in Article 35 of the Convention (see, *Voloshchuk v. Ukraine* (dec.), no. 51394/99, 14 October 2003).

51. After the case had been remitted for fresh consideration, the proceedings lasted from 27 June 2001 until 30 June 2004, during which time the case was considered by the first instance court only. The overall length of the proceedings is, therefore, three years and ten months.

2. Complexity of the case

52. The Government maintained that the civil proceedings in the present case were complicated from legal and factual points of view. Firstly, the national courts considered the applicant's two civil cases which were interrelated. In particular, the court proceedings in the first case were stayed for two months and 19 days until the end of consideration of the second case. Secondly, it was particularly difficult to determine the date of the applicant's dismissal as it had not been recorded. Thirdly, the applicant several times changed her claims. Finally, the case was complicated by the necessity to carry out a number of financial and accounting inquiries, and its consideration was delayed as the prosecutor's office requested the case file from the court for inquiries.

53. The Court does not agree with the Government's submission. In the present case the national courts were to establish the salary arrears due to the applicant. In the Court's view this case does not present any significant factual or legal difficulties. The period of two months and 19 days, during which the court proceedings were stayed, though such procedural measure can be regarded as necessary, is not lengthy enough to contribute significantly to the total length of the proceedings in the applicant's case. The Court further notes that the hearings in the applicant's case were not adjourned following the prosecutor's request to see the case file and there is no record that the applicant ever changed her claims. Thus, the Court concludes that the subject matter of the litigation at issue could not be considered particularly complex.

3. What was at stake for the applicant

54. The Court observes that at the domestic level the applicant sought recovery of her salary arrears. The Court notes that the salary was the main source of income for the applicant and that special diligence is necessary in employment disputes (see, *mutatis mutandis*, 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).

55. 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.

4. Conduct of the applicant

56. According to the Government, the applicant was responsible for some delays in her case as she insisted on the presence of the defendant and lodged requests to replace the judge in her case because of his lack of impartiality and independence.

57. The applicant disagreed. She accepted that she had twice asked for the judges in her case to be replaced, but maintained that neither occasion influenced the length of proceedings as they both took place when the final decision had been already taken (see paragraph 13) or when the proceedings had been stayed (see paragraphs 17-18). She further stated that the court had the means to sanction the defendant for not appearing in court instead of simply adjourning the hearings.

58. The Court observes that the requests to replace the judge in the applicant's case both took place when the proceedings had already been finished or stayed. Therefore, these requests of the applicant did not contribute to the total length of proceedings.

59. The Court also notes that the applicant did indeed insist that the defendant should be present in court. However, although the domestic courts could have either brought the person responsible to the court or considered the case in his or her absence, and in spite of the fact that the majority of the court hearings was adjourned because of the defendant's or its representative's failure to appear, the court repeatedly adjourned the hearings.

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

5. Conduct of the national authorities

61. The Court notes that the first instance court had to resume the civil proceedings after the decision of 27 June 2001. However, the proceedings were resumed only in May 2002. The Court further notes that between 30 August 2002 and 29 January 2003, and from 23 October 2003 and 6 April 2004, no hearings took place. The Government did not provide any explanation for these intervals. Therefore, these significant periods of delay (the total of one year and 9 months) are attributed to the authorities.

62. Furthermore, the Court notes the Government's submissions according to which the case was adjourned six times for failure of the defendant 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.

63. 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.

64. In sum, having regard to the circumstances of the instant case, the overall duration of the proceedings in the first instance court, which was three years and ten months, including one year and nine months of inactivity completely attributable to the authorities, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 2,850 euros ("EUR") in respect of pecuniary damage and EUR 16,400 in respect of non-pecuniary damage.

68. The Government contended that the applicant's claim for pecuniary damage was related to the subsequent non-enforcement of judgments in her favour and not to the lengthy consideration of her case by the court which was the subject matter of the present application. The Government therefore considered such claims as irrelevant. As for the applicant's claims for non-pecuniary damage, the Government agreed that the applicant might have suffered some distress but it left this matter for the Court's consideration.

69. 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 1,400 in this respect.

B. Costs and expenses

70. The applicant also claimed EUR 270 in costs and expenses in domestic proceedings and in Strasbourg. In particular, she claimed UAH 79.55¹ in postal expenses and UAH 1,550² in legal fees.

71. The Government stated that they did not object to reimbursement of those expenses if confirmed by relevant bills.

72. 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. However, the applicant may have incurred some costs and expenses in connection with her 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 in costs and expenses (see *mutatis mutandis*, *Romanchenko v. Ukraine*, no. 5596/03, § 38, 22 November 2005).

C. Default interest

73. 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 proceedings in her case on salary arrears 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 1,400 (one thousand four 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

1. Around EUR 14.

2. Around EUR 256.

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