



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

FIFTH SECTION

CASE OF LITVINYUK v. UKRAINE

(Application no. 9724/03)

JUDGMENT

STRASBOURG

1 February 2007

FINAL

09/07/2007

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 Litvinyuk 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. 9724/03) 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 Lyudmila Antonovna Litvinyuk (“the applicant”), on 25 February 2003.

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 complaint concerning the length of proceedings in the applicant's civil 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 1955 and lives in the city of Simferopol, the Autonomous Republic of Crimea (“the ARC”), Ukraine. She is a single mother and has a son who at the time of the accident was eight years old.

5. On 24 July 1995 the applicant was knocked down by a trolley bus. She suffered an open craniocerebral injury and a brain contusion. As a result of these injuries the applicant received a status of a disabled person with the lowest degree of disability (*третья група інвалідності*).

6. In January 1996 the applicant instituted proceedings in the Tsentralnyy District Court against the Simferopol Trolley-Bus Company, claiming compensation for pecuniary and non-pecuniary damage to her health caused by the accident. In particular, as a part of pecuniary damage the applicant claimed compensation for medicaments, additional nutrition, sanatorium treatment and transport expenses, and compensation for the loss of earnings.

7. On 1 August 1997 the Tsentralnyy District Court awarded the applicant 4,604.17¹ Ukrainian hryvnias (“UAH”) in pecuniary damages and UAH 10,000² in non-pecuniary damages.

8. On 17 September 1997 the Supreme Court of the ARC (“the SARC”) upheld this judgment.

9. On 19 December 1997 the SARC, upon the protest of its Head (initiated by the applicant), quashed the above judgments under the extraordinary review procedure in the part concerning compensation for medicaments, additional nutrition, sanatorium treatment and transport expenses and in the part concerning compensation for the loss of earnings and remitted the case for a fresh consideration.

10. On 21 March 1998 the hearing was postponed because the defendant failed to appear.

11. On 20 April 1998 the court hearing took place.

12. On 23 June 1998, upon the applicant's request, the case was transferred to the Simferopolsky District Court.

13. On 26 August 1998 the case was transferred to another judge.

14. On 4 November 1998 the court ordered a bookkeeping expertise. The expertise was performed by 30 November 1998.

15. On 22 December 1998 the hearing was postponed as the parties failed to appear.

16. On 20 January 1999 the court hearing took place.

17. On 9 February 1999 the court found in part for the applicant. The applicant was awarded UAH 4,259.68³ in compensation for additional nutrition and UAH 220.62⁴ in compensation for transport expenses. The remainder of the applicant's claims was rejected.

18. On 29 March 1999 the SARC quashed this judgment in part concerning compensation for the loss of earnings. The court failed to state in the operational part that the quashed part of the case should be remitted for fresh consideration, however, in the text of the judgment it expressly held that during the new examination the first instance court should take into consideration the findings of the SARC.

1. ECU 2,322.22.

2. ECU 5,043.72.

3. 984.13 euros (“EUR”).

4. EUR 50.97.

19. On 7 July 2000 the SARC, upon the protest of its Head (initiated by the applicant) quashed the above judgments in the part concerning compensation for additional nutrition and sanatorium treatment under the extraordinary procedure and remitted the case for a fresh consideration.

20. On 16 November 2000 the court ordered a bookkeeping expertise. The expertise was completed by 31 June 2001.

21. On 21 May 2001 the judge withdrew from the case.

22. On 6 November 2001 and 18 December 2002 two hearings took place.

23. On 27 March 2002 the hearing was adjourned because the parties failed to appear. From the materials submitted by the parties it is unclear whether the applicant was duly informed about this hearing.

24. On 22 April 2002 the Simferopolskiy District Court left the applicant's case without consideration because the applicant had twice failed to appear in court without plausible reason.

25. The applicant appealed against this decision, asking *inter alia* that her case be considered on the merits by the higher court because the examination by the lower courts had already been too lengthy.

26. On 8 July 2002 the Court of Appeal of the ARC (the former SARC, hereafter the CAARC) quashed this decision and remitted the case for a fresh consideration to the first instance court. The applicant appealed against this decision in cassation as the court failed to consider her request to transfer her case to the higher court.

27. On 31 October 2002 the applicant was provided with a time-limit to submit her cassation appeal in compliance with procedural requirements.

28. On 16 December 2002 the Simferopolskiy District Court returned the applicant's appeal in cassation against this decision for non-compliance with the procedural formalities prescribed by law.

29. On 24 June 2003 the CAARC upheld this decision.

30. On 1 July 2005 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

31. On 19 July 2005 the Simferopolskiy District Court postponed the hearing as the parties failed to appear.

32. On 29 July 2005 the Court left the applicant's case without consideration because the applicant had twice failed to appear in court without plausible reason.

33. On 15 December 2005 the CAARC quashed this decision and remitted the case for a fresh consideration. In particular, the court stated that there were no indications in the case file that the applicant had been duly informed about the hearings in her case.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF PROCEEDINGS

34. The applicant complained under Article 6 § 1 of the Convention of the length of the proceedings in her case. 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

35. 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. Therefore, the applicant's complaints related to the events prior to that date should be rejected as inadmissible *ratione temporis*.

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

37. 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.

38. 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.

B. Merits

1. Period to be taken into consideration

39. The Court notes that after the date on which the Convention came into force in respect of Ukraine the proceedings lasted until 17 September 1997 when the final decision in the applicant's case was adopted. On 19 December 1997 this decision was quashed and part of the case was sent back to the first instance court for fresh examination. The proceedings are still pending. The length of the proceedings within the Court's competence

is, therefore, so far, nine years and twenty two 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; *Styranski 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

40. 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).

41. 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's case was complicated on the points of law and it were the parties who were responsible for the delays in the proceedings. The Government also pointed out that the length was caused by a number of expertises prepared in the case. The Government maintained, in particular, that it was the applicant who appealed against the final judgment of 17 September 1997 in her case under the extraordinary procedure thus causing the quashing of this judgment and new considerations of her claims. The applicant further requested to transfer her case from the Tsentralnyy District Court to the Simferopolsky District Court which also prolonged the proceedings. She also appealed against the decision of the CAARC of 8 July 2002 in cassation which caused another prolongation of the proceedings for three more years. Therefore, the Government considered that they could not be held responsible for the length of proceedings in the applicant's case.

42. The applicant disagreed. She maintained that her case was not complicated. The applicant further argued that she had appealed against the final judgment in her case under the extraordinary procedure because this judgment had been adopted contrary to law requirements and this was proved by the fact that it had been subsequently quashed.

43. Concerning the question of complexity of the present dispute, the Court observes that it concerned the amounts of different compensations due to the applicant as a result of a traffic accident. Although the national court was to request two bookkeeping expertises in order to determine the amount of compensation for the loss of earnings to be paid to the applicant, in the Court's view the applicant's case cannot be ranked as a complex one neither factually, nor from a legal point of view.

44. As regards the Government's contentions that the applicant was responsible for some delays in the impugned proceedings, the Court observes that, the proceedings were re-opened in December 1997 following the applicant's appeal under the extraordinary procedure. Although this procedure is not considered as an effective remedy (see, *mutatis mutandis*, *Kucherenko v. Ukraine* (dec.), no. 41974/98, 4 May 1999), as a result of such an appeal the case can be sent to the first instance court for fresh consideration and the court should examine it with due regard to the "reasonable time" requirement.

45. The Court further notes that the applicant's appeal in cassation against the decision of 8 July 2002 indeed caused a further delay of nearly three years as the decision by which the court returned the applicant's appeal for non-compliance with procedural formalities was appealed by her in two more instances.

46. However, 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 domestic authorities. In this respect the Court notes first the repeated re-examination of the case. The Court further 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). The Court further notes that by the judgment of 29 March 1999 a part of the applicant's case was sent for fresh consideration. However, it was only on 16 November 2000, after the decision of 7 July 2000 by which other parts of the applicant's case were remitted for new consideration, that the court scheduled a first hearing and ordered a bookkeeping expertise to be held. The expertise was completed only by June of next year and the hearings in the applicant's case were resumed only on 6 November 2001. Therefore, this period of inactivity of two years and seven months excluding the time of an expertise, which was also quite lengthy, is completely attributable to authorities. Finally, the Court notes that the domestic courts twice closed the proceedings in the applicant's case as she allegedly failed to appear in a court hearing without valid reason while the court of appeal established that the applicant had not been properly informed about the hearings.

47. As for the issues that were at stake for the applicant, the Court notes that following the traffic accident the applicant was seriously injured and received a disability degree. Given that the applicant was a single mother and had a child to raise, the compensations for loss of earnings and for expenses sustained as a result of a poor state of her health were of undeniable importance for the applicant. The Court therefore considers that what was at stake for the applicant called for an expeditious decision on her claims.

48. 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.

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

II. OTHER COMPLAINTS

Admissibility

50. The applicant complained under Article 6 § 1 of the Convention of an unfair hearing and the outcome of the proceedings in her cases. The applicant further complained that the failure of the courts to consider her complaints within a reasonable time and to award her appropriate compensation violated her rights under Articles 2 and 3 of the Convention. The applicant finally complained under Article 14 of the Convention that she had been discriminated on the ground of her social and property status.

51. 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.

52. 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

53. 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

54. The applicant claimed UAH 200,000¹ in respect of pecuniary damage and EUR 250,000 in respect of non-pecuniary damage.

55. The Government contended that the applicant's claims were exorbitant and unsubstantiated.

1. Around 32,684.70 euros (“EUR”).

56. 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 2,400 in this respect.

B. Costs and expenses

57. The applicant submitted bills for the amount of UAH 672¹ in costs and expenses.

58. The Government did not comment on the costs and expenses claimed.

59. In the light of all the materials in its possession, the Court awards the applicant EUR 110 in costs and expenses.

C. Default interest

60. 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 civil case 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 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage and EUR 110 (one hundred ten 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 110.

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