



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

FIFTH SECTION

CASE OF SHINKARENKO v. UKRAINE

(Application no. 31105/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

24/09/2007

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 Shinkarenko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 31105/02) 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, Mr Volodymyr Semenovych Shinkarenko (“the applicant”), on 24 July 2002.

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

3. On 15 March 2005 the Court decided to communicate the complaint concerning the length of the proceedings and the lack of remedies in that respect 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 applicant was born in 1940 and lives in the town of Kremenchuk.

5. On 15 December 1997 the applicant was dismissed from his position at the Instrumentalnyy Zavod Company (hereafter the “Company”).

6. On 16 February 1998 the applicant instituted proceedings seeking his reinstatement and compensation for the loss of salary.

7. On 4 June 1999 the Kryukivsky District Court of Kremenchuk (hereafter “the District Court”) rejected the applicant's claim as unsubstantiated.

8. On 5 August 1999 the Poltava Regional Court (hereafter “the Regional Court”) upheld this judgment.

9. On 10 February 2000, at the applicant's request, the Deputy President of the Supreme Court lodged with the Regional Court a *protest* against these decisions.

10. On 29 February 2000 the Presidium of the Regional Court quashed the decisions of 4 June 1999 and 5 August 1999 and remitted the case for a fresh consideration. It indicated that the courts had failed to establish all relevant facts, particularly concerning the applicant's productivity and qualifications.

11. On 24 October 2000 the District Court rejected the applicant's claim as unsubstantiated.

12. On 14 December 2000 the Regional Court quashed this decision and remitted the case for a fresh consideration stating that the first instance court had failed to give appropriate consideration to the issue of the applicant's qualifications.

13. On 19 November 2001 the District Court rejected the applicant's claim as unsubstantiated.

14. On 31 January 2002 the Poltava Regional Court of Appeal (the former Poltava Regional Court, hereafter “the Court of Appeal”) quashed this decision and ordered a fresh consideration on the ground that the first instance court's reasoning was insufficient.

15. On 15 July 2002 the District Court rejected the applicant's claim as unsubstantiated.

16. On 5 November 2002 the Court of Appeal quashed this judgment and dismissed the applicant's claim as being out of time. The applicant did not appeal in cassation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant 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...”

18. The Government contested that argument.

19. The period to be taken into consideration began on 16 February 1998 and ended on 5 November 2002 (over four years and eight months). The Court recalls, however, that it is appropriate to take into account only those periods when the case was actually pending before the courts, that is the periods when the authorities were under an obligation to determine the issue within a “reasonable time” (*Rokhlina v. Russia*, no. 54071/00, § 82, 7 April 2005). Accordingly, the six-month-period between 5 August 1999, when the judgment of 4 June 1999 became final, and 10 February 2000, when *the protest* was lodged (paragraphs 8-10 above), should be excluded from the calculation. Thus, the period to be taken into consideration lasted over four years and two months for two levels of jurisdiction.

A. Admissibility

20. The Government pleaded non-exhaustion of domestic remedies, referring to the lack of a cassation review by the Supreme Court of the ruling of 5 November 2002.

21. The applicant disagreed.

22. 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 (*Voytenko v. Ukraine*, no. 18966/02, § 29, 29 June 2004).

23. The Court notes that in the present case recourse to the cassation procedure could neither afford the applicant compensation for any alleged breach of the right to a hearing within a reasonable time nor speed up the examination of the case.

24. In these circumstances, the Court concludes that the applicant was absolved from pursuing the remedy invoked by the Government and has therefore complied with the requirements of Article 35 § 1.

25. 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. Merits

26. The Government submitted that the need to establish whether the applicant had a preferential right to stay in the job had complicated the case, that the domestic courts considered case without substantial delay, and that the protracted length of the proceedings was primarily due to the applicant's repetitive appeals.

27. The applicant considered that the proceedings had not been conducted with sufficient diligence.

28. 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).

29. The Court further reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

30. The Court considers that the case was not particularly complicated, either factually or legally, the question of a preferential right to stay in a job being an ordinary matter for disputes of this kind. Nor does it appear that the applicant's conduct had substantially contributed to the length of the proceedings. The Court is not persuaded by the Government's argument that the applicant should be reproached for having appealed against unfavourable judgments, the more so since three out of four of his appeals were upheld by the higher courts.

31. As regards the conduct of the domestic judicial authorities, the Court notes that the protracted length of the proceedings was mainly due to the repeated re-examination of the case. Despite its relative simplicity, the applicant's claim was considered by the courts on four occasions. Although the Court is not in a position to analyse the quality of the case-law of the domestic judicial authorities, 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 (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

32. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

33. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER COMPLAINTS

34. The applicant finally complained under Article 6 § 1 of the Convention about the alleged unfairness and outcome of the proceedings.

The Court finds that the applicant has not, as required by Article 35 § 1 of the Convention, exhausted the remedies available to him under Ukrainian law (*Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002). It follows that these complaints must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government contested the claim.

38. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,800 under that head.

B. Costs and expenses

39. The applicant did not submit any claim under this head; the Court therefore makes no award.

C. Default interest

40. 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 complaint concerning the excessive length of the 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 1,800 (one thousand and eight 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 amount 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 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President