



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

FIFTH SECTION

CASE OF BARSKIY v. UKRAINE

(Application no. 10569/03)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

05/10/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Barskiy 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 12 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 10569/03) 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, Mr Vyacheslav Vladimirovich Barskiy (“the applicant”), on 20 March 2003.

2. The Ukrainian Government (“the Government”) were represented by Mr Y. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

3. On 15 December 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 1946 and lives in Odessa.

5. In September 1994 the applicant instituted civil proceedings in the Central District Court of Odessa (the “District Court”; *Центральний районний суд м. Одеса*)¹ against the Publishing House “Chornomorya” (the “Company”; *Видавництво “Чорномор’я”*), seeking his reinstatement as a typographer and various compensations in connection with his allegedly unlawful dismissal. Subsequently, the Company and Mr L., its lawyer, brought libel proceedings against the applicant, claiming to have been defamed by certain of his submissions before the court. The applicant lodged a counterclaim for libel, alleging that certain submissions were defamatory. All of these complaints were joined.

6. On 26 April 1996 the District Court reinstated the applicant in his position, partly allowed his compensation and other claims, and dismissed all claims for libel brought by both parties.

7. On 1 October 1996 the Odessa Regional Court (the “Regional Court”; *Одеський обласний суд*)² quashed the judgment of 26 April 1996 in respect of the libel claims and remitted them for a fresh consideration to the District Court. As regards the applicant's reinstatement and compensation awards, the judgment was upheld and became final.

8. On 26 June 1997 the District Court partly allowed the Company's and Mr L.'s libel claims and dismissed the applicant's counterclaim. The applicant appealed in cassation.

9. On 25 November 1997 the Regional Court upheld, in its final decision, the judgment of 26 June 1997 to the extent that the applicant's claims had been dismissed. The court further quashed the judgment concerning the claims of the applicant's opponents and dismissed them.

10. On various dates the applicant, seeking to obtain higher compensation for his wrongful dismissal, petitioned the State authorities to re-open the proceedings.

11. On 21 April 1999, following a *protest* lodged by the Deputy President of the Supreme Court on the applicant's behalf, the Regional Court quashed the judgment of 26 April 1996 concerning the compensation claims and remitted the case for a fresh consideration in that respect.

12. On 21 November 2000 the District Court found no reason to change the amount of compensation payable to the applicant. The applicant appealed. On 6 March 2001 the Regional Court quashed this judgment on appeal and remitted the case for a fresh consideration to the District Court.

1. Pursuant Presidential Decree No. 41/2003 of 25 January 2003, the Central District Court of Odessa merged with another district court and became the Prymorskiy District Court of Odessa (*Приморський районний суд м. Одеса*).

2. Since July 2001 – the Odessa Regional Court of Appeal (*Апеляційний суд Одеської області*).

13. Between March 2001 and May 2004 the applicant amended his compensation claims on three occasions by indexing their amount. In the same period the District Court scheduled 21 hearings, the adjournment of three of them being attributable to the applicant. Other reasons for adjournments included the judge's sickness, the defendant's requests and the ordering of an accountant's opinion. No hearings were scheduled between September 2001 and June 2002, as the applicant had lodged a cassation appeal against the judgment of 1 October 1996 under the newly instituted cassation procedure. This appeal was dismissed by the Supreme Court on 17 May 2002.

14. On 14 May 2004 the District Court partly allowed the applicant's claims and awarded him UAH 2,406.10¹ in additional compensation. Both parties appealed. On 4 November 2004 the Odessa Regional Court of Appeal upheld this judgment.

15. On 3 December 2004 the applicant lodged a cassation appeal against the above judgments. On 22 March 2006 the Supreme Court rejected, by a final decision, the applicant's request for leave to appeal in cassation.

THE LAW

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

16. 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...”

17. The Government contested that argument.

18. The Court notes that the proceedings at issue were instituted in 1994. However, 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. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question ended on 22 March 2006. It thus lasted eight years and six months for three levels of jurisdiction. 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

1. 393.53 euros (EUR).

“reasonable time” (*Rokhlina v. Russia*, no. 54071/00, § 82, 7 April 2005). Accordingly, the seventeen-month period between 25 November 1997 and 21 April 1999, when there existed a final judgment in the case (paragraphs 9-10 above), should be excluded from the calculation. Thus, the period to be taken into consideration lasted seven years and one month.

A. Admissibility

19. 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

20. 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). The Court 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).

21. The Court notes that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings and finds that a number of delays (remittals of the case for a fresh consideration and prolonged periods of inactivity) are attributable to the Government.

22. The Court has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see e.g., *Frydlender*, cited above; *Svetlana Naumenko v. Ukraine*, no. 41984/98, 9 November 2004 and *Karnaushenko v. Ukraine*, no. 23853/02, 30 November 2006).

23. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicant further complained that he had no effective remedies for his complaint about the excessive length of the proceedings. He relied on Article 13 of the Convention.

25. The Government contended that Article 13 did not apply to the circumstances of the case, as there was no violation of Article 6 § 1.

26. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

27. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). Referring to its findings in paragraph 21 above, the Court dismisses the Government's arguments as to applicability of Article 13 to the facts of the present case.

28. The Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention (see *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006).

III. OTHER COMPLAINTS

29. The applicant further complained under Articles 6 § 1 of the Convention about the amount of compensation awarded to him in connection with his unlawful dismissal and under Article 17 about corruption in Ukrainian courts.

30. In the light of all the material 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.

31. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 5,940 Ukrainian hryvnias (965 euros (EUR)) in respect of pecuniary and EUR 30,000 in non-pecuniary damage.

34. The Government contested these claims.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,200 under that head.

B. Costs and expenses

36. The applicant also claimed UAH 752.58 (EUR 123) for the costs and expenses incurred before the Court and submitted copies of receipts for postal and other services.

37. The Government left the matter to the Court's discretion.

38. Regard being had to the circumstances of the case and the submissions of the parties, the Court awards the applicant the full amount claimed.

C. Default interest

39. 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 and the lack of effective remedies for this complaint 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 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 and EUR 123 (one hundred twenty three 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President