



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

FIFTH SECTION

CASE OF KUCHERENKO v. UKRAINE

(Application no. 22600/02)

JUDGMENT

STRASBOURG

26 July 2007

FINAL

26/10/2007

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 Kucherenko 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 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 22600/02) 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 Oleksandr Ivanovych Kucherenko (“the applicant”), on 1 February 2001.

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

3. On 26 May 2005 the Court decided to communicate the complaint concerning the length of the proceedings 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 1969 and lives in Donetsk.

5. In 1983 the applicant, who at the time was a minor, had an accident at a summer camp belonging to the Velyka Novosilka fertilizer factory (“the Factory”; *Великоновоселківський міжгосподарський комбикормовий завод*) and sustained permanent disability.

6. On 9 March 1994 the applicant sued the Factory for damages, alleging that the accident in 1983 had been caused by the negligence of the camp's staff.

7. On 15 November 1994 the Budyonivsky District Court of Donetsk (the “District Court”; *Будьонівський районний суд м. Донецька*) ordered a medical assessment of the applicant's injuries. On 23 November 1994 a commission of five experts established that the applicant suffered from a 100% disability and needed special care.

8. On 5 August 1997 the District Court found in favour of the applicant, awarding him a lump sum in damages and monthly payments to cover his special care needs. The Factory challenged the judgment on the ground that, although the camp had been a part of its assets at the time, it was directly managed by the Velyka Novosilka Trade Union of Agricultural Workers (the “Trade Union”; *Великоновосілівський районний комітет профспілки працівників агропромислового комплексу*), which therefore should assume all liability for the accident.

9. On 27 April 1995 the Donetsk Regional Court (the “Regional Court”; *Донецький обласний суд*)¹ granted the appeal, quashed the judgment of 5 August 1997 and remitted the case for a fresh consideration.

10. On 27 November 1995 the District Court allowed the applicant's claim, awarding him damages against the Trade Union. The Trade Union appealed.

11. On 11 January 1996 the Regional Court quashed this judgment and remitted the case for a fresh consideration.

12. During its further consideration of the case, the District Court ordered another expert examination of the applicant's health. On 27 March 1996 a commission of four experts found that the applicant's special care needs had not substantially changed since the last assessment.

13. On 5 August 1997 the District Court awarded the applicant damages against the Trade Union.

14. On 25 September 1997 the Regional Court upheld this judgment and it became final.

15. In October 1997 the enforcement proceedings were initiated in respect of the judgment of 5 August 1997.

16. On 27 February 1998 the District Court Bailiff (*судовий виконавець*) informed the applicant that the judgment remained unenforced on account of the debtor's lack of funds.

17. On 7 October 1998 the Deputy President of the Supreme Court lodged a *protest* (an extraordinary appeal) against the rulings of 5 August and 25 September 1997 with the Presidium of the Regional Court.

18. On 28 October 1998 the Presidium granted the *protest* and remitted the case for a fresh examination, indicating that the liability of the Trade Union had not been sufficiently established.

1. Since July 2001 – the Donetsk Regional Court of Appeal (*Апеляційний суд Донецької області*).

19. On 9 November 1998 the Regional Court decided to assume first-instance jurisdiction over the applicant's claims.

20. In December 1998 the enforcement proceedings were terminated on account of re-opening of the judicial proceedings.

21. On 26 March 1999 the Regional Court decided again that the Factory was responsible for the actions and omissions of the camp's staff, and ordered it to pay the applicant compensation for his pecuniary and non-pecuniary damage.

22. On 28 April 1999 the Supreme Court quashed this judgment and remitted the case for a fresh consideration, finding that the conclusion of the Regional Court as to the Factory's liability was not sufficiently substantiated.

23. On 19 October 1999 the Regional Court ordered another expert opinion concerning the applicant's state of health.

24. In February 2000 a commission of five experts upheld the previous conclusions from 1994 and 1996.

25. On 14 March 2000 the Regional Court awarded the applicant compensation and monthly payments against the Factory. The Factory appealed in cassation.

26. On 31 May 2000 the Supreme Court quashed this judgment essentially for the same reasons as in 1999.

27. During this consideration of the case, two fresh medical assessments of the applicant's health were ordered. On 12 December 2000 a commission of five experts established that the applicant needed an electric wheelchair and, on 15 August 2001, another commission calculated the applicant's daily expenses for sanitary towels.

28. From September 2000 to August 2001, the applicant lodged some six unsuccessful applications for the withdrawal of Judge K. from the case.

29. On 23 August 2001 the Regional Court found that, although the funds of the summer camp belonged to the Factory and the Trade Union, the camp had separate legal liability for the acts and omissions of its staff. The court further rejected the applicant's claims, noting that he had never lodged a specific claim against the camp.

30. On 22 May 2002 the Chamber of fifteen judges of the Supreme Court rejected the applicant's cassation appeal and upheld the judgment of 23 August 2001.

31. Subsequently, the applicant unsuccessfully attempted to re-open the proceedings.

THE LAW

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

32. 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...”

33. The Government contested that argument.

34. The Court notes that the applicant instituted his proceedings 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 May 2002. It thus lasted four years and eight months for two levels of jurisdiction.

A. Admissibility

35. 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

36. 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).

37. The Court notes that the proceedings at issue concerned the applicant's compensation claim for a permanent disability and finds that they were of importance to the applicant, although he had instituted them only ten years after the injury. The Court considers that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings. It finds that a number of delays, notably, remittals of the case for a fresh consideration, repetitive expert assessments of the applicant's injury and an ultimate quashing of a final judgment given in the applicant's favour, are attributable to the Government.

38. 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 e.g., *Frydlender*, cited above; *Dulskiy v. Ukraine*, no. 61679/00, 1 June 2006; and *Golovko v. Ukraine*, no. 39161/02, 1 February 2007).

39. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. The applicant further complained under Article 6 § 1 of the Convention that the proceedings were generally unfair, in particular, as the domestic judicial authorities erred in assessment of the facts and application of the law and as Judge K., who gave the decision of 23 August 2001, was not impartial. He further invoked Articles 2, 5 § 1 and 10 of the Convention and Article 2 of Protocol No. 4 to the facts of the present case.

42. Having carefully examined the applicant's submissions 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.

43. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 1,214,075 hryvnyas (204,977 euros (EUR)) in respect of pecuniary damage and 24,500 hryvnyas (EUR 4,136) in respect of non-pecuniary damage.

46. The Government contested these claims.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, 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

48. The applicant also claimed UAH 288 (EUR 50) for the costs and expenses incurred before the Court.

49. The Government submitted that the claimed amount was reasonable.

50. Regard being had to the circumstances of the case and the submissions of the parties, the Court awards the applicant EUR 50 under this head.

C. Default interest

51. 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 1,850 (one thousand eight hundred fifty euros) in respect of non-pecuniary damage and 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 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 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President