



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

FIFTH SECTION

CASE OF SHANKO v. UKRAINE

(Application no. 39970/02)

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 Shanko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *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. 39970/02) 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 Oleg Nikolayevich Shanko (“the applicant”), on 22 October 2002.

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

3. On 27 June 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 1934 and lives in Poltava. He is a former manager of the State Company “Znamya” (the “Company”; *Державне підприємство «Виробниче об'єднання «Знамя»*).

5. In 1996 the applicant was convicted and sentenced for embezzlement of the Company funds and his conviction became final. Since then the

applicant has unsuccessfully attempted to have the proceedings re-opened and the conviction repealed.

6. In August 1996 the Poltava Regional Prosecutors' Office, acting on behalf of the Company, brought a civil claim against the applicant for compensation of damage caused by his offence.

7. The hearings began in March 1998. Until February 2000 the court scheduled some thirteen hearings with intervals ranging from one week to six months. Seven hearings were adjourned on account of the applicant's absences or requests and four hearings on account of the absence of both parties. According to the applicant, most of his absences were attributable to defective notifications about the date of a hearing. The Government did not comment on this issue.

8. On 17 February 2000 the District Court allowed the claim and awarded the Company 96,682 hryvnias¹ against the applicant. The applicant appealed.

9. On 20 May 2000 the District Court returned the applicant's appeal as "not lodged" on account of his failure to pay the court fee. The applicant appealed, seeking to be exempted from the payment.

10. On 12 October 2000 the local municipal council exempted the applicant from paying the court fee and on 16 November 2000 the Regional Court declared his appeal admissible.

11. On 7 December 2000 the Regional Court quashed the judgment of 17 February 2000.

12. Between January 2001 and May 2002 the District Court scheduled three hearings (in April and November 2001 and March 2002). One hearing was adjourned on account of the judge's sickness and two other hearings on account of the parties' failure to appear.

13. On 22 May 2002 the District Court left the claim without consideration due to the parties' second failure to appear for the hearings. This decision was not appealed against within the statutory time-limit and became final.

14. On 11 December 2002 the Prosecutor's Office applied to the District Court for leave to appeal out of time against the decision of 22 May 2002 maintaining, that it had not been informed of this decision within the time-limit for lodging an appeal. The application was granted on 17 January 2003.

15. On 15 May 2003 the Regional Court allowed the appeal and re-opened the proceedings, having found that the parties had not appeared as the District Court had not duly notified them about the dates of the hearings. The applicant lodged a cassation appeal against the decision to re-open the proceedings.

1. EUR 15,924.

16. On 20 September 2004 the Supreme Court rejected the applicant's cassation appeal.

17. Between October 2004 and July 2005 the District Court scheduled three hearings (one in May and two in July 2005).

18. In July 2005 the plaintiff dropped the claims and on 14 July 2005 the proceedings were terminated.

THE LAW

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

19. 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...”

20. The Government contested that argument.

21. The Court notes that the proceedings at issue were instituted in 1996. 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 14 July 2005, when the plaintiff dropped the claims. It thus lasted seven years and ten months, during which period the merits of the case were examined by two levels of jurisdiction.

A. Admissibility

22. 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

23. 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).

24. Turning to the facts of the present case, the Court finds that the domestic authorities are largely responsible for delays in the civil proceedings at issue (notably, for the prolonged periods of inactivity and defective communication practices, such as failures to inform the parties of the hearing dates and to notify the plaintiff about the decision of 22 May 2002 in due time). 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., *Moroz and Others v. Ukraine*, no. 36545/02, § 59, 21 December 2006 and, *mutatis mutandis*, *Sukhorubchenko v. Russia*, no. 69315/01, §§ 53-56, 10 February 2005).

25. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant also complained about breach of his rights set forth by Articles 5, 6, 7 and 13 of the Convention in the course of the criminal proceedings against him and about infringement of the guarantees of Article 2 of Protocol No. 7 on account of the authorities' refusal to review his final conviction. He further stated that the civil proceedings against him were unfair contrary to Article 6 § 1. Lastly, the applicant invoked Articles 3, 14 and 17 of the Convention to the facts of the present case.

28. 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.

29. 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

30. 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

31. The applicant claimed 1,281,351,008 dollars (1,084,328,517 euros (EUR)) in respect of pecuniary and 91,000 dollars (EUR 77,007) in respect of non-pecuniary damage.

32. The Government contested these claims.

33. 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. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards him EUR 2,400 under that head.

B. Costs and expenses

34. The applicant also claimed 7,000 dollars (EUR 5,924) in legal fees incurred by him in connection with the criminal proceedings and 300 dollars (EUR 254) for postal, translation, and other costs and expenses.

35. The Government contested these claims.

36. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court recalls that the legal fees claimed by the applicant were incurred not in connection with the civil proceedings at issue in the present case. It further notes that the applicant presented no receipts or other evidence of postal and other expenses claimed. Having regard to the information in its possession and the Court's case-law, the Court dismisses the claim under this head.

C. Default interest

37. 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 civil 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 2,400 (two thousand four 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 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President