



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

FIFTH SECTION

CASE OF KALINICHENKO v. UKRAINE

(Application no. 25444/03)

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.

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. 25444/03) 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 Georgiy Mikhaylovich Kalinichenko (“the applicant”), on 21 June 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 5 April 2006 the Court decided to communicate the complaints under Articles 6 § 1 and 13 of the Convention 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 1948 and lives in the city of Simferopol.

5. On 29 August 1997 the Transport Prosecutor of the Crimea (hereinafter “the Prosecutor”) instituted criminal proceedings against the applicant on charge of a violation of labour legislation (Article 135 of the Criminal Code of 1960).

6. On 17 October 1997 the Prosecutor issued an indictment. The applicant was obliged not to leave the place of his permanent residence.

7. On 14 November 1997 the Prosecutor brought against the applicant an additional charge for abuse of power (Article 165 of the Criminal Code of 1960).

8. On 8 December 1997 the case was assigned to the Tsentralny District Court of Simferopol (hereinafter “the District Court”).

9. On 18 September 1998 the District Court, following the request of the applicant's representative, remitted the case for additional investigation.

10. On 2 November 1998 the Prosecutor issued a new indictment under Articles 135 and 165 of the Criminal Code.

11. On 30 November 1998 the proceedings were resumed before the District Court.

12. On 30 August 1999 the District Court, upon its own initiative, remitted the case for additional investigation.

13. On 1 October 1999 the Higher Court of the Crimea, following *the protest* of the Deputy Public Prosecutor of the Crimea, quashed this ruling and remitted the case to the first instance court.

14. On 11 November 1999 the proceedings were resumed before the District Court.

15. On 6 January 2000 the District Court, following the request of the applicant's representative, ordered a forensic medical examination of Mrs K., a victim in the case.

16. On 10 July 2000 the Crimea Medical Forensic Centre returned the case-file without conducting the examination prescribed as Mrs K. refused to appear before the medical commission.

17. On 15 September 2000 the District Court, following the request of the applicant's representative, ordered an additional forensic medical examination in the case.

18. On 24 November 2000 the case-file, together with an expert statement, was returned to the District Court.

19. On 16 March 2001 the District Court acquitted the applicant.

20. On 29 May 2001 the Higher Court of the Crimea returned the case-file to the District Court as the cassation appeal of Mrs K. had not been served upon the other parties to the proceedings and the cassation appeal of the Prosecutor did not comply with the procedural formalities.

21. On 14 August 2001 the proceedings were resumed before the Court of Appeal of the Crimea (former the Higher Court of the Crimea, hereinafter “the Court of Appeal”).

22. On 22 January 2002 the Court of Appeal quashed the decision of 16 March 2001 and sentenced the applicant to two years of correctional work for abuse of power (Article 271 of the Criminal Code of 2001).

23. On 4 April 2002 the Supreme Court, upon the applicant's cassation appeal, quashed the decision of 22 January 2002 and remitted the case for a fresh consideration by the court of appeal.

24. On 11 June 2002 the Court of Appeal, upon its own initiative, ordered a forensic technical examination in the case.

25. On 5 August 2002 the proceedings were resumed before the Court of Appeal.

26. On 17 September 2002 the Court of Appeal quashed the decision of 16 March 2001 of the District Court and remitted the case for a fresh consideration by the first instance court.

27. On 25 November 2003 the District Court sentenced the applicant to one year of correctional labour for abuse of power, suspended under the statute of limitation. The applicant did not appeal against this decision, which became final on 10 December 2003.

THE LAW

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

28. The applicant complained that the length of the criminal proceedings against him had been incompatible with the reasonable time requirement, provided in Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

29. 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. After that date, the proceedings lasted until 10 December 2003, when the decision of the District Court became final. The length of the proceedings within the Court's competence was, therefore, six years and three months. 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; *Styrkowski 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).

A. Admissibility

30. The Government submitted no observations on the admissibility of the applicant's complaints.

31. The Court notes that the applicant's complaint under Article 6 § 1 of the Convention 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

32. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

1. Complexity of the case

33. The Government maintained that the case was complicated and required examination of a wide range of evidence, including multiple forensic examinations. The applicant contended that the complexity of the proceedings did not justify their length.

34. The Court considers that, having regard to the nature of the crime with which the applicant was charged, the present case cannot be considered as complicated. The fact that several forensic examinations were conducted does not justify in itself the length of the proceedings.

2. Conduct of the applicant

35. According to the Government, the applicant is responsible for several periods of delay, as following his requests the case was remitted for additional investigation and forensic examinations were ordered on several occasions, thus these periods of delay were attributable to him.

36. The applicant disagreed. He maintained that he would not request additional forensic examinations and remittal of the case for a further investigation if there had not been serious procedural defects in his case.

37. The Court considers that the applicant's request to remit the case for additional investigation was not groundless as it had been supported by the District Court. As to forensic examinations in the case, the Court notes that the subsequent applicant's requests were allowed as the domestic courts agreed that the materials submitted by investigative authorities were incomplete. The Court concludes, therefore, that there is no evidence before the Court to suggest that the applicant contributed in a significant way to the length of the proceedings.

3. *Conduct of the national authorities*

38. The Government maintained that the authorities had not been responsible for any period of delay.

39. The applicant disagreed. He stressed that the authorities had been fully responsible for six years' duration of the case.

40. The Court notes that the decisions of the District Court and the Court of Appeal were quashed by the Supreme Court, which required a re-consideration of the case by the courts of two instances. Furthermore, after the criminal proceedings against the applicant were initiated in August 1997, the first decision of the District Court was given on 15 March 2001 only. The Court recalls that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see, *Silin v. Ukraine*, no. 23926/02, § 34, 13 July 2006). However, in the Court's opinion the national courts did not act with due diligence.

4. *Conclusion*

41. 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 *Pélissier and Sassi*, cited above).

42. 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.

43. There has accordingly been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

44. The applicant also complained that the unreasonable length of the proceedings was in violation of Article 13 of the Convention.

45. Having regard to its findings under Article 6 § 1 (see paragraphs 42-43 above), the Court concludes that this complaint is admissible, but considers that it is not necessary to rule whether, in this case, there has been a violation of Article 13 of the Convention (see, *Kukharchuk v. Ukraine*, no. 10437/02, §§ 39-40, 10 August 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

48. The Government contended that the applicant's claim was exorbitant and unsubstantiated, and that the finding of a violation would constitute sufficient just satisfaction in this case.

49. The Court considers that the applicant must have sustained non-pecuniary damage on amount of the length of the criminal proceedings against him in the course of which he was under an obligation not to leave his place of residence. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant the sum of EUR 800 in respect of non-pecuniary damage.

B. Costs and expenses

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

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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine separately the applicant's complaint under 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 800 (eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on the date of settlement;

(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;

5. *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