



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

FIFTH SECTION

CASE OF INKOVTSOVA v. UKRAINE

(Application no. 39946/03)

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.

In the case of Inkovtsova v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

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. 39946/03) 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, Ms Nadezhda Mikhaylovna Inkovtsova (“the applicant”), on 23 October 2003.

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

3. On 1 December 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 1942 and lives in Sevastopol.

5. In 1996 the applicant, at the material time an employee of the National Maritime Institute (the “Institute”; *Морський гідрофізичний інститут Національної Академії Наук України*), provided services of a typist and a linen-keeper on board the Institute's ship, which was chartered by the private company “Sata” (the “Company”; *Мале приватне підприємство “Сата”*) for international sea voyages. Pursuant the contract between the Institute and the Company, the latter was responsible

for the payment of trip allowances (*іноземна валюта взамін добових*) to the crew.

6. On 14 January 1997 the applicant instituted civil proceedings in the Leninsky District Court of Sevastopol (the “District Court”; *Ленінський районний суд м. Севастополя*) against the Institute, seeking salary and trip allowance arrears in the amounts of 414.66 Ukrainian hryvnyas (UAH)¹ and 1,422 U.S. dollars (USD)² respectively. The Company was summoned to participate in the proceedings on the defendant's side.

7. On 11 March 1997 the District Court, having heard the case in the Company's absence, allowed the applicant's claims in full, having awarded her the salary arrears from the Institute and the trip allowance arrears from the Company. This decision became final.

8. On 19 September 1997 the Presidium of the Sevastopol City Court (the “City Court”; *Севастопольський міський суд*), following a “protest” lodged by its President, quashed the judgment of 11 March 1997 in respect of the trip allowance award by way of supervisory review procedure and remitted the case for a fresh consideration in that respect. Particularly, the Presidium found that the District Court had insufficiently explored the contractual relationship between the parties and their payment obligations towards the applicant in the light of the applicable law.

9. On 25 November 1997 the District Court, having held one hearing for which only the applicant appeared, ordered the Institute, as her employer, to pay her the full amount claimed. The Company had not been summoned to participate in the proceedings.

10. On 20 January 1998 the City Court quashed this judgment on the Institute's appeal in cassation and remitted the case for a fresh consideration. It found that the District Court again had insufficiently explored the contractual relationship between the parties and that it should have summoned the Company to participate in the proceedings. The court further considered that it was not necessary for it to assume first-instance jurisdiction over the case, as the matter was not complex.

11. On 5 March 1998 the City Court returned the case-file to the District Court. The District Court summoned the Company to participate in the proceedings as a co-defendant and between April and May 1998 scheduled three hearings, two of them being adjourned on account of a co-defendant's absence.

12. On 12 May 1998 the District Court heard the case in the Company's absence and found the Company liable to pay the applicant USD 1,422 in trip allowance arrears converted into the national currency. In its reasoning the court referred to the provisions of the freight contract and partial payments made by the Company to this end. The Company appealed, but its

1. 90 euros (EUR).

2. EUR 1,250.

appeal was returned as “not lodged” on account of its failures to comply with procedural formalities. The judgment became final.

13. On an unspecified date the Company paid the applicant UAH 300¹ of the award due.

14. On 27 October 2000 the City Court quashed the judgment of 12 May 1998 by way of supervisory review procedure, following a “protest” lodged by its President, and remitted the case for a fresh consideration to the District Court. In particular, the Presidium noted that the District Court had not given due regard to the fact that the applicable law allowed the applicant to claim trip allowance from either her employer or the ship charterer, irrespective of the fact that the freight contract vested the payment obligation in the latter.

15. Between April and August 2001 the court held three hearings, one of them adjourned on account of the applicant's absence. On 8 August 2001 the District Court, having heard the testimonies of the parties and the ship captain, dismissed the applicant's claims. In particular, it found that the documentary evidence necessary to establish the existence and amount of the debt was not in accordance with applicable accounting rules and therefore insufficient.

16. On 28 September 2001 the District Court found that the applicant's appeal against the judgment of 8 August 2001 did not comply with the requirements of procedural law and gave her a time-limit to rectify its shortcomings. On 11 October 2001 the District Court found that the applicant had insufficiently followed its instructions and returned the appeal to the applicant as “not lodged”. On 18 December 2001 the City Court upheld this decision on the applicant's appeal.

17. On 18 March 2002 the applicant lodged an appeal in cassation against the decisions to return her appeal against the judgment of 8 August 2001 as “not lodged”. On 20 May 2003 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

THE LAW

I. COMPLAINTS ABOUT THE LENGTH OF PROCEEDINGS

18. The applicant complained that the length of the proceedings had been unreasonable. She invoked Articles 6 § 1 and 13 of the Convention, which provide, insofar as relevant, as follows:

1. EUR 50.

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

19. The Court notes that the applicant's complaint about the length of proceedings 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 Government considered that the period to be taken into consideration began on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect, and that it thus lasted five years and eight months until 20 May 2003, when the final decision was taken in the applicant's case.

21. The Court agrees with the Government as to the starting and the ending date of the proceedings and notes that during this period the merits of the applicant's claims were examined by two levels of jurisdiction and the issue of admissibility of her appeal - by three levels. It further considers that, in assessing the reasonableness of the time that elapsed after 11 September 1997, account must be taken of the state of proceedings at the time.

22. The Court also takes note that the period, during which the proceedings were pending before the domestic courts, was some three years and three months, excluding eight days between 11 and 19 September 1997 and twenty-nine months between 12 May 1998 and 27 October 2000, when there existed final judgments in the case. In this context, the Court notes that these final judgments, which were given in the applicant's favour, remained unenforced, but the parties have not furnished any information on whether the formal enforcement proceedings had been instituted.

23. The Court reiterates that the reasonableness of the length of the 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. The Government pointed out that the judicial authorities scheduled hearings at reasonable intervals, while the parties were responsible for failures to attend and for delaying the proceedings by lodging appeals and requests for supervisory review.

25. The applicant contested these arguments, noting that on two occasions the case had been remitted for a fresh consideration of the authorities' own motion after the judgment had become final and that the City Court repetitively failed to provide sufficient guidelines to the District Court, leading to further re-considerations. She also noted that the case was important for her, as it concerned remuneration for her labour.

26. The Court recalls that the applicant provided services of a typist and a linen-keeper during international sea voyages. It finds that the trip allowance was an important supplement to her salary as a source of subsistence. Consequently, what was at stake for the applicant called for expeditious decision on her claims (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17 and *Golovko v. Ukraine*, no. 39161/02, §§ 54-55, 1 February 2007).

27. The Court further finds that the case at issue was not particularly complex. The applicant claimed a certain sum of money and the judicial authorities decided her claims based on documents and testimonies, submitted by the parties and one witness during the few hearings held in the case. Furthermore, on one occasion the appellate court specifically stated that the case was simple, explaining its refusal to act in it as a first-instance court (see paragraph 10).

28. The Court considers that certain protractions can be attributed to the applicant. Notably, she did not attend one hearing and failed to rectify the procedural shortcomings of her appeal against the judgment of 8 August 2001. However, the Court cannot share the Government's argument that the applicant delayed the proceedings by lodging several appeals. Having lodged them timely, the applicant cannot be blamed for using the avenues available to her under domestic law in order to protect her interests (see, e.g. *Silin v. Ukraine*, no. 23926/02, § 29, 13 July 2006). Given the above considerations, the Court concludes that the applicant did not contribute in a significant way to the length of the proceedings.

29. The State authorities, on the other hand, can be held responsible for several delays, particularly, for three remittals of the case for reconsideration, the quashing of the final judgments and several prolonged periods of inactivity.

30. In particular, the City Court refused to adjudicate the merits of the case and repetitively remitted the case for a fresh consideration referring to the trial court's failure to establish the contractual responsibilities of the parties. Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, 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 deficiency in the operation of a judicial system (*Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). In this regard the Court notes that it was only during the fourth examination of the merits, which took place four and a half years after the applicant had lodged her claims and presented the debt evidence, that the District Court heard both co-defendants and the ship captain and found the debt evidence flawed.

31. Moreover, the judicial activity was not continuous throughout the proceedings. Two of the three remittals took place by way of the supervisory review procedure set in motion not by either party, but by the City Court, after a period of time had elapsed from the final disposition of the case. The Court recalls that in a number of cases it has found that the supervisory review procedure by itself constituted an infringement of the guarantees enshrined in Article 6 § 1 of the Convention (see e.g., *Tregubenko v. Ukraine*, no. 61333/00, § 38, 2 November 2004). However, in context of the proceedings at issue the applicant raised no specific complaint and, therefore, the matter is only taken into account as a contributing factor in the context of the length of proceedings (see, e.g., *Volosyuk v. Ukraine*, no. 60712/00, §§ 34-35, 29 June 2006).

32. The Court further notes considerable periods of inactivity in the proceedings between the quashing of a judgment on 27 October 2000 and scheduling the first hearing for 12 April 2001 (five and a half months) and between the applicant's lodging of her cassation appeal on 18 March 2002 and its examination by the Supreme Court on 20 May 2003 (fourteen months).

33. In sum, having regard to the circumstances of the instant case as a whole, the Court concludes that there was unreasonable delay in disposing of the applicant's case. There has accordingly been a breach of Article 6 § 1.

34. The Court does not find it necessary in the circumstances to examine under Article 13 of the Convention the same complaint as under Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicant also invoked Articles 6 § 1, 13 and 14 of the Convention complaining that the proceedings were generally unfair and that they resulted in an unlawful dismissal of her claims concerning the trip allowance.

36. The Court recalls that the applicant failed to fulfil procedural requirements established by applicable law in lodging her appeal against the judgment of 8 August 2001, and thus has not exhausted the available domestic remedies in respect of the above claims. Therefore, this part of the application should be rejected in accordance with Article 35 §§ 1, 3 and 4 for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

37. The applicant claimed USD 1,422 (EUR 1,222) in respect of pecuniary damage and USD 5,000 (EUR 4,297) in respect of non-pecuniary damage.

38. The Government contested these claims.

39. 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 her EUR 400 under that head.

B. Costs and expenses

40. The applicant also claimed USD 1,000 (EUR 860) under this head. She presented the receipts for legal fees and printing services for the total amount of UAH 507 (EUR 80).

41. The Government noted that the applicant failed to substantiate the amount claimed.

42. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the applicant EUR 80.

C. Default interest

43. 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* that there is no need to examine the same 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 480 (four hundred eighty euros) in respect of non-pecuniary damage, 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;
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