



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

FIFTH SECTION

CASE OF TSYKHANOVSKYY v. UKRAINE

(Application no. 3572/03)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

31/03/2008

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 Tsykhanovskyy 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 Mr J.S. PHILLIPS, *Deputy Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 3572/03) 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 Leonid Khrystoforovych Tsykhanovskyy (“the applicant”), on 21 November 2002.

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 7 September 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1937 and lives in Kryvyy Rig.

5. On 19 July 1994 the applicant, who worked in the system of public education at the material time, became permanently disabled following injury to his back and legs. The injury was recorded as a work accident and since February 1995 the applicant was receiving monthly disability allowances from the Ternivsky Department of Public Education (the “Department”; *Тернівське районне відділення народної освіти*).

6. On 17 July 1997 the applicant instituted civil proceedings in the Zhovtnevy District Court of Kryvvy Rig (the “District Court”; *Жовтневий районний суд м. Кривий Ріг*) seeking a higher allowance.

7. On 4 March 1998 the Department lodged a counter-claim seeking to establish that the applicant's trauma was not work-related.

8. Between September 1997 and December 2001 the District Court scheduled some thirty hearings, with intervals ranging from two weeks to four months. On numerous occasions the hearings were adjourned on account of the parties' conduct (requests for adjournments or absences). According to the court records, five such adjournments were attributable to the applicant, twelve – to the Department, and eight – to both parties. Two hearings were adjourned in connection with court matters.

9. On 7 December 2001 the District Court left the applicant's claim and the Department's counter-claim without consideration on account of the parties' repeated failure to appear.

10. According to the applicant, he learned about this decision only in May 2002, from the District Court's response to his request for expedition of the proceedings. The applicant submitted to the Court a copy of this request dated 23 April 2002 and a copy of the District Court's response of 23 May 2002, in which the court was informing the applicant that his claims had been left without consideration on 7 December 2001. The applicant further noted that on 11 January 2002 the District Court had summoned him for a hearing for 4 February 2002. To this end he submitted a copy of a summons of 11 January 2002, which, insofar as relevant, reads as follows:

“The Zhovtnevy District Court of Kryvvy Rig summons you as a plaintiff for 10 p.m. on 4 February 2002 in connection with the case for compensation of damage...”

The applicant explained that he attended this hearing together with his witness Mr U., but it was adjourned on account of the Department's failure to appear. He presented a copy of Mr U.'s statement confirming he had appeared for the hearing of 4 February 2002.

11. According to the Government, the applicant learned about the decision of 7 December 2001 no later than on 24 December 2001, when he visited the District Court and requested certain documents from his case-file. They further noted that by the summons of 11 January 2002 the District Court had intended to invite the applicant to collect the documents he had requested. To this end, the Government presented a statement signed by Judge K. of the District Court.

II. RELEVANT DOMESTIC LAW

Code of Civil Procedure, Article 216

“The court shall send copies of ... decisions to leave the claims without consideration within a five-day period from the date of their pronouncement to the parties..., who were not in fact present at a hearing during the examination of the case”.

THE LAW

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

12. 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...”

A. Admissibility

13. The Government noted that the applicant had lodged his application with the Court on 21 November 2002, and so more than six months from the date on which the proceedings had ended. They submitted that the application had been lodged out of time.

14. The applicant submitted that the six-month period should be counted from 23 May 2002, when he learned about the decision of 7 December 2001 to leave his claims without consideration.

15. The Court recalls that, where pursuant to domestic law and practice, the applicant is entitled to be served *ex officio* with a written copy of the judgment, the six-month period under Article 35 § 1 of the Convention begins to run from the date of receipt (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, §§ 33-34).

16. Turning to the facts of the present case, the Court notes that the Government have not presented any evidence that the decision of 7 December 2001 was served on the applicant within five days of its pronouncement or at any other date preceding 23 May 2002. Furthermore, the Court recalls that the summons served on the applicant on 11 January 2002 called on him as a “plaintiff” in the proceedings and contained no reference to his requests for any documents from the case-file. The Government did not provide any plausible objection against the applicant's argument that he had attended this hearing, which had been adjourned on account of the Department's absence.

17. Under these circumstances the Court accepts the applicant's argument that it was only in May 2002 that he learned about the decision of 7 December 2001 and dismisses the Government's preliminary objection.

18. The Court finds no ground for declaring the applicant's complaint inadmissible. The Court must therefore declare it admissible.

B. Merits

19. In their observations on the merits of the case, the Government contended that there had been no violation of Article 6 § 1 of the Convention. Particularly, the delays in the proceedings were largely attributable to the parties, including the applicant himself.

20. The applicant disagreed. He maintained that the court records were incorrect. It was only the defendant, who had failed to appear for the hearings, marked as adjourned on account of both parties' absence. The applicant further contended that he could be held accountable only for two adjournments, when his lawyer was not able to appear for the hearings.

21. The Court recalls that the applicant instituted his proceedings on 17 July 1997. 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 proceedings were discontinued on 7 December 2001 after having lasted four years and three months for one level of jurisdiction. However, it was only six and a half months later that the applicant learned about that decision (see paragraph 17 above).

22. 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).

23. Turning to the facts of the present case, the Court notes that regardless of the applicant's contention that the court records were incorrect, the applicant can be held accountable for some of the adjournments in the proceedings. However, it further observes that more than half of the adjournments were attributable to the conduct (requests and absences) of the defendant – a State entity. Furthermore, it recalls that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective, particularly, to decide whether to adjourn the hearings at the parties' requests as well as whether to take any action against the parties, whose behaviour caused unjustified delays in the proceedings. It recalls that it 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., *Smirnova v. Ukraine*, no. 36655/02, 8 November 2005 and *Karnaushenko v. Ukraine*, no. 23853/02, 30 November 2006).

24. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The applicant further complained under Article 6 § 1 of the Convention that the hearings in his case were unfair, in particular as the decision of 7 December 2001 was taken in violation of applicable procedural law. He further invoked Article 8 § 1 of the Convention to the facts of the present case.

27. The Court recalls that the applicant has never appealed against the impugned court decision before the domestic courts and, having carefully examined the applicant's submissions in the light of available materials and insofar as the matters complained of are within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

28. 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

29. 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

30. The applicant claimed 280,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 1,572.60 in monthly allowances.

31. The Government submitted that these claims were exorbitant and unsubstantiated.

32. The Court does not discern any causal link between the violation found and the monthly allowances and pecuniary damage alleged; it therefore rejects these claims. 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 2,400 under that head.

B. Costs and expenses

33. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

34. 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 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 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President