



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

FIFTH SECTION

CASE OF SERDYUK v. UKRAINE

(Application no. 15002/02)

JUDGMENT

STRASBOURG

20 September 2007

FINAL

20/12/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Serdyuk 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 R. MARUSTE,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*.

Having deliberated in private on 28 August 2007,

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

PROCEDURE

1. The case originated in an application (no. 15002/02) 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 Viktor Viktorovich Serdyuk (“the applicant”), on 7 December 2001.

2. The applicant is represented by Mrs L. Serdyuk, his mother. 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 29 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1986 and lives in Dzhankoy, Ukraine.

5. On 24 July 1997, when the applicant, a minor at the time, was playing in the yard near home and climbed the concrete wall surrounding the Dzhankoy State Boarding School (the “School”; *Джанкойська республіканська загальноосвітня школа-інтернат*), a concrete slab from the wall, weighing 1,500 kg, fell on him. The applicant survived, but became permanently and severely disabled.

A. Criminal proceedings concerning the applicant's injury

6. According to the applicant, between 1997 and 1999 his parents lodged numerous unsuccessful requests for investigation into the accident, however, he did not submit any relevant documents predating 7 June 1999.

7. On 7 June 1999 the Dzhankoy Prosecutors' Office refused to initiate criminal proceedings into the accident, which decision was subsequently quashed by the Dzhankoy Court (*Джанкойський міський суд*). Between June 1999 and May 2001 the criminal proceedings were terminated and resumed on several occasions. The last decision terminating the proceedings was given by the Prosecutors' Office on 15 May 2001. The applicant did not challenge this decision before the domestic courts.

8. According to an expert assessment ordered in the course of the investigation, the wall had been designed in breach of relevant technical standards, which fact, augmented by lack of regular renovations, caused the fall of the slab. The investigation further established that the wall had been built in 1980s without a planning permission or other relevant documents and that the School's staff performed some *ad hoc* renovation works on it. However, the investigation was terminated on the ground that it was not possible to establish either the constructor or the owner of the wall, since the wall did not feature in either the School's or the city records. These records listed, instead, a non-existent fence of wood and wire-net belonging to the School. Furthermore, a criminal investigation against the constructor would have been time-barred.

B. Civil proceedings for compensation of damage

9. In October 2000 the applicant instituted civil proceedings in the Zhankoy Court against the School and the Ministry of Education of the Autonomous Republic of the Crimea, seeking compensation for damages caused by his injury.

10. On 25 January 2001 the Court suspended the proceedings at the request of one of the parties in view of the re-opening of the criminal proceedings. In May 2001, after the criminal proceedings were terminated, the court resumed the hearings.

11. Between December 2000 and November 2001 the court scheduled some eleven hearings, three of them being adjourned on account of the absence of a School representative, and one in view of the judge's sickness.

12. On 20 November 2001 the Dzhankoy Court rejected the applicant's claims as being unsubstantiated. In particular, it confirmed that the wall surrounding the School did not belong to it and therefore the defendants bore no liability for its maintenance.

13. On 13 February 2002 the Court of Appeal of the Autonomous Republic of the Crimea (the "Court of Appeal"; *Апеляційний суд Автономної Республіки Крим*) quashed this judgment and remitted the case for a fresh consideration to the first instance court. The court ordered to take additional measures for establishing the parties responsible for the construction and maintenance of the wall.

14. Between June and December 2002 the City Court scheduled some six hearings, two of them being adjourned on account of the defendant's absence, and one – on account of absence of an expert.

15. On 12 December 2002 the City Court rejected the applicant's complaints, having noted that all its efforts to establish a party responsible for the construction or maintenance had been to no avail.

16. On 26 March 2003 the Court of Appeal quashed the judgment of 12 December 2002 and remitted the case for a fresh consideration on essentially the same grounds as before.

17. Between June and October 2003 the court scheduled four hearings, all adjourned on account of the defendants' conduct (absences and requests for adjournments).

18. On 22 October 2003 the City Court allowed the School's request for leave to appeal in cassation out of time against the ruling of 26 March 2003, having found that the School had not been duly informed of this ruling.

19. On 6 June 2005 the Supreme Court rejected the School's cassation appeal.

20. Since then the proceedings have been pending before the first instance court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF PROCEEDINGS

21. The applicant complained that the length of the proceedings in his case 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

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

1. *Period to be taken into consideration*

23. In his complaint, the applicant referred to the proceedings in their entirety, including their criminal and civil limb.

24. The Government presented no specific comments as to the period to be taken into account. However, in their observations they commented on the conduct of the applicant and that of the authorities taking the date of the accident as the starting date.

25. The Court recalls that the right to institute criminal proceedings and to secure the conviction of a third party is not a right which is included among the rights and freedoms guaranteed by the Convention (see, e.g., *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). Article 6 § 1 may, nevertheless, apply to those proceedings, where the civil limb remains so closely linked to the criminal limb, that the outcome of the criminal proceedings may be decisive for the civil claims (see e.g. *Calvelli and Ciglio v. Italy*, no. 32967/96, § 62, 17 January 2002).

26. Turning to the facts of the present case, the Court agrees that there was a certain nexus between the criminal investigation into the accident and the applicant's claim for damage. Particularly, both proceedings concerned the same facts and at one point of time the civil proceedings were suspended on account of the criminal proceedings being pending.

27. At the same time the Court recalls that the applicant's injury had not been inflicted intentionally and the accident at issue did not necessarily qualify as a criminal offence. There is no evidence that a criminal investigation into the events was necessary to enable the applicant to lodge a civil complaint or, for that matter, that he attempted to lodge a claim for damage within the framework of the criminal investigation (see, *a contrario*, *Baglay v. Ukraine*, no. 22431/02, §§ 9 and 27, 8 November 2005). Moreover, the applicant failed to challenge the termination of the criminal proceedings on 15 May 2001 and deliberately chose instead to pursue his civil action lodged in October 2000.

28. In view of the above, the Court finds that the period to be taken into consideration began only in October 2000, when the applicant lodged his civil claim. The period in question has not yet ended. It has thus lasted six years and eleven months. During this period the case was examined in three levels of jurisdiction, due to the remittal of the case, seven instances were involved.

2. Reasonableness of the length of the proceedings

29. 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).

30. The Government argued that the length of the proceedings in the present case can largely be attributed to the complexity of the case and to the conduct of the parties (notably, requests for adjournments and appeals). They submitted that there were no significant periods of inactivity attributable to the judicial authorities, except for a nineteen-month protraction in consideration of the School's appeal in cassation (see paragraphs 18-19 above).

31. The applicant disagreed.

32. The Court recalls that the proceedings concerned compensation for the applicant's permanent disability and finds that what was at stake for the applicant called for an expeditious decision on his claims (see e.g., *Litvinyuk v. Ukraine*, no. 9724/03, § 47, 1 February 2007).

33. The Court further notes that the case originated in the events dating back to 1980s and accepts that it was of certain complexity. However, this complexity appears to have been largely generated by the lack of any municipal or other public records concerning ownership of a wall surrounding a State-owned educational facility (see paragraph 8 above). The Court finds that since the State entities were in any way responsible for the keeping of the records, by their prolonged failure to clarify the situation, the domestic authorities largely contributed to the protraction in the proceedings. The Court further considers that the State authorities were responsible for deficient communication of the decision of 26 March 2003 to the School, several adjournments of the hearings attributable to the defendants (the State entities) and for the nineteen-month delay in consideration of the School's cassation appeal, which was mentioned by the Government.

34. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings has been excessive and fails to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. The applicant further complained under Article 2 of the Convention about ineffective investigation into the accident and insufficient funding of his medical, educational, rehabilitation, and other needs and under Article 13 of the Convention about lack of the effective remedies in this regard. Lastly he complained under Article 6 § 1 of the Convention about the unfairness of the civil proceedings.

37. 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.

38. 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

39. 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

40. The applicant claimed various health-related and caretaking expenses as well as compensation for the loss of potential earnings by way of compensation for pecuniary damage. He also claimed 1,000,000 hryvnias (EUR 169,788) in respect of non-pecuniary damage.

41. The Government contested these claims.

42. The Court recalls that the matter before it is the excessive length of civil proceedings and does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have suffered non-pecuniary damage and awards him EUR 2,800 in this respect.

B. Costs and expenses

43. The applicant claimed UAH 683 (EUR 116) in legal fees and postal expenses. He presented copies of receipts for the amount claimed.

44. The Government did not comment on this claim.

45. The Court considers it reasonable to award the applicant the amount claimed.

C. Default interest

46. 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 2,916 (two thousand nine hundred sixteen 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 20 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President