



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

FIFTH SECTION

CASE OF RUDYSH v. UKRAINE

(Application no. 18957/03)

JUDGMENT

STRASBOURG

15 November 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 Rudysh v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

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 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 18957/03) 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, Mrs Mariya Dmytrivna Rudysh (“the applicant”), on 27 May 2003.

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

3. On 15 November 2006 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 1940 and lives in Stryy, the Lviv region. She is a former director of a municipal preschool educational establishment (“the Establishment,” *Дитяча дошкільна установа №1 санаторного типу*).

5. In May 1996 the applicant was dismissed, following the City Council's (*Стрийська Рада народних депутатів Львівської області*) decision to liquidate the Establishment.

6. In June 1996 the applicant lodged a civil action against the Municipal Education Department (*Відділ освіти виконавчого комітету Стрийської міської ради*), seeking her reinstatement and compensation for unlawful dismissal. Subsequently, the applicant also challenged the legality of the decision to liquidate the Establishment. The Drohobych Court (*Дрогобичський міський суд Львівської області*) decided to examine the two complaints jointly and held some three hearings before September 1997.

7. No procedural actions are reported to have taken place between September 1997 and December 2000.

8. Between December 2000 and October 2001 the court scheduled some seven hearings, one of them having been adjourned on account of the applicant's absence, and two – on account of the absence of the defendant.

9. On 12 October 2001 the court dismissed the applicant's claims, having found that the liquidation of the Establishment and the applicant's dismissal had been carried out in compliance with applicable law.

10. On 12 November 2001 the applicant appealed.

11. On 11 March 2002 the Lviv Regional Court of Appeal (*Апеляційний суд Львівської області*) upheld the judgment of 12 October 2001.

12. On 6 June 2002 the applicant appealed in cassation.

13. On 14 February 2003 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

THE LAW

I. COMPLAINT ABOUT THE EXCESSIVE LENGTH OF THE PROCEEDINGS

14. The applicant complained about the unreasonable length of the proceedings in her case. The Government contested her claim.

15. The Court finds that this complaint falls to be examined under Article 6 § 1 of the Convention which reads as follows:

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. ...”.

16. 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 February 2003. It thus lasted five years and five months for three levels of jurisdiction.

A. Admissibility

17. 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

18. 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). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

19. The Court notes that the case at issue was somewhat complex, as in addition to complaining about her allegedly unlawful dismissal, the applicant also challenged the liquidation of the preschool establishment. However, the Court finds that the complexity of the case cannot explain the overall length of the proceedings. It notes that no procedural actions are reported to have taken place for a period exceeding three years, between September 1997 and December 2000 (see paragraph 7 above), and this delay has remained unexplained by the respondent Government.

20. 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 e.g., *Frydlender*, cited above; *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 49-50, 6 September 2005; and *Moroz and Others v. Ukraine*, no. 36545/02, § 59, 21 December 2006).

21. 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.

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

II. OTHER COMPLAINTS

23. The applicant further complained under Articles 6 § 1 and 13 of the Convention about the unfair dismissal of her claims and under Article 1 of Protocol No. 1 about an unlawful liquidation of the preschool establishment. She also invoked Article 17 of the Convention to the facts of the present case.

24. 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.

25. 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

26. 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

27. The applicant claimed 132,000 hryvnias (18,860 euros (EUR)) in compensation for the loss of income and EUR 20,000 in respect of non-pecuniary damage.

28. The Government contested these claims.

29. 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, it considers that the applicant must have sustained non-pecuniary damage on account of the length of her reinstatement proceedings. Ruling on an equitable basis, it awards her EUR 800 under that head.

B. Costs and expenses

30. The applicant also claimed 1,000 hryvnias (EUR 145) for the costs and expenses incurred before the domestic courts and before the Court. She presented receipts for EUR 20 in postal expenses concerning her correspondence with the Court.

31. The Government left the matter to the Court's discretion.

32. 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 20 under this head.

C. Default interest

33. 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 820 (eight hundred and twenty 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 15 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President