



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

FIFTH SECTION

CASE OF KISELYOVA v. UKRAINE

(Application no. 21047/02)

JUDGMENT

STRASBOURG

22 November 2007

FINAL

22/02/2008

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 Kiselyova 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 Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 21047/02) 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, Mrs Valentyna Mykolayivna Kiselyova (“the applicant”), on 16 March 2002.

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

3. On 8 February 2007 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 1954 and lives in the town of Sukhodolsk, Lugansk region.

5. On 31 March 1997 the Krasnodon Court awarded the applicant's husband UAH 27,669 from his former employer, the State Mining Company “Duvannaya”, in compensation for health damage inflicted by a work accident.

6. In May 1998 the applicant's husband died.

7. On 27 June 2000 the Presidium of the Lugansk Regional Court, upon the prosecutor's protest lodged under the extraordinary review procedure, quashed the judgment of 31 March 1997 and remitted the case for a fresh consideration. The outcome of these proceedings is unknown.

8. On 21 August 2000 the applicant instituted proceedings in the Krasnodon Court against the State Mining Company "Duvannaya" claiming compensation for health damage allegedly due to her late husband.

9. Between September 2000 and November 2001 seven out of nineteen hearings were adjourned due to the respondent's representative failure to appear before the court.

10. On 18 March 2002 the Krasnodon Court found against the applicant.

11. On 4 July 2002 the Lugansk Regional Court of Appeal (former Lugansk Regional Court) upheld this judgment.

12. On 2 August 2002 the applicant lodged with the Krasnodon Court her appeal in cassation. She was requested by the court's secretary to pay the postal expenses for sending her case-file to the Supreme Court.

13. On 27 November 2002 the Supreme Court returned the case-file to the Krasnodon Court as the applicant also challenged the ruling of 27 June 2000, which was not attached to the case-file.

14. On 24 October 2003 the Supreme Court returned the case-file to the Krasnodon Court as its ruling of 27 November 2002 was not fulfilled. The Supreme Court further explained that the ruling of 27 June 2000 could not be appealed within the pending proceedings.

15. On 30 October 2003 the case-file was sent back to the Krasnodon Court.

16. On 12 April 2004 the Krasnodon Court allowed the applicant until 27 May 2004 to rectify the shortcomings of her appeal in cassation. Following the applicant's request, the time-limit was extended until 25 June 2004.

17. On 2 August 2004 the case-file was transferred to the Supreme Court.

18. On 6 November 2006 the Supreme Court rejected the applicant's appeal in cassation.

THE LAW

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

19. 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...”

20. The Government contested that argument.

21. The period to be taken into consideration began on 21 August 2000 and ended on 6 November 2006. It thus lasted more than six years and two months for three levels of jurisdiction.

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

23. The Government submitted that the domestic courts considered the case within a reasonable time and without substantial delays attributable to the State.

24. The applicant did not comment on this.

25. 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).

26. The Court notes that the length of the proceedings exceeded six years, from which the cassation proceedings lasted more than four years. The Court observes that though some period of delay could be attributed to the fact that the applicant's appeal in cassation had to be rectified, the case-file was repeatedly returned by the Supreme Court due to the first instance court's failure to assure that the appeal in cassation and the case-file were properly prepared. Furthermore, the case was pending before the Supreme Court awaiting for a final decision for two years and three months.

27. The Court further notes that significant delays were caused by repetitive adjournments of the case by the first instance court due to the respondent's representative failure to appear before the court. However, the domestic court failed to take any steps to assure his presence in order to proceed with the case.

28. 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 *Frydlender*, cited above).

29. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

32. Having regard to its findings under Article 6 § 1 (see paragraphs 21 -22 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant further complained under Article 6 § 1 of the Convention about the quashing of the final judgment of 31 March 1997 under the extraordinary review procedure. She also complained under Articles 12 and 14 of the Convention that she was the victim of discrimination as the widow of a mineworker. She finally complained under Article 5 of Protocol No.7 about the impossibility to receive compensation allegedly due to her late husband.

34. However, in the light of all the materials in its possession, and in so far 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 or its Protocols.

35. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed UAH 50,000 (EUR 7,350) in respect of non-pecuniary damage.

38. The Government contested the claim as unsubstantiated.

39. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 600 under that head.

B. Costs and expenses

40. In the present case the applicant failed to submit any claims; the Court therefore makes no award.

C. Default interest

41. 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 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 600 (six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at 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 22 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President