



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

FIFTH SECTION

CASE OF BLIDCHENKO v. UKRAINE

(Application no. 20339/03)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

29/02/2008

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 Blidchenko 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 Mr J.S. PHILLIPS, *Deputy Section Registrar*,
Having deliberated in private on 6 November 2007,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 20339/03) 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 Valentyn Yosypovych Blidchenko (“the applicant”), on 10 June 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, the Deputy Minister of Justice, Mrs V. Lutkovska and the Head of the Office of the Government Agent before the European Court of Human Rights, Mrs I. Shevchuk.

3. On 24 October 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 1946 and lives in Vinnytsya.

5. On 17 November 1997 the applicant was dismissed from his position as a department manager (*начальник бюро*) of the Vinnytsya State Optical Mechanical Plant (“the Company,” *Вінницький державний експериментальний оптико-механічний завод*).

6. On 17 December 1997 the applicant instituted civil proceedings in the Leninsky District Court of Vinnytsya (“the Leninsky Court,” *Ленінський районний суд м. Вінниця*), seeking his reinstatement and compensation for unlawful dismissal. On 3 June 1998 the Leninsky Court stayed the proceedings until resolution of another dispute between the applicant and the Company.

7. On 27 March 2001 the applicant requested that the proceedings be resumed, as the aforementioned dispute had been resolved to his satisfaction. On 28 May 2001 the applicant complained to the Vinnytsya Regional Department of Justice (*Управління юстиції Вінницької області*) that the Leninsky Court had never responded to his request of 27 March 2001.

8. On 6 June 2001 the Leninsky Court informed the applicant that on 26 January 1999 it had discontinued the consideration of his claims because of his repetitive failures to attend the hearings. In July 2001 the applicant appealed against this decision.

9. On 19 September 2001 the Leninsky Court granted the applicant an extension for lodging his appeal, having noted that the applicant had not been informed about the decision of 26 January 1999 in due time.

10. On 4 December 2001 the Vinnytsya Regional Court of Appeal (“the Court of Appeal,” *Апеляційний суд Вінницької області*) quashed the decision of 26 January 1999 on the ground that the Leninsky Court had not duly summoned the applicant to attend the hearings and remitted the case for a fresh consideration to the Zamostyansky District Court of Vinnytsya (“the Zamostyansky Court,” *Замостянський районний суд м. Вінниця*).

11. On 29 July 2002 the Zamostyansky Court dismissed the applicant's claims. On 27 August 2002 the applicant appealed against this judgment.

12. On 17 December 2002 the Vinnytsya Regional Court of Appeal upheld the judgment of 29 July 2002. In March 2003 the applicant appealed in cassation.

13. On 18 March 2003 the Zamostyansky Court rejected the appeal for having being lodged out of time. The applicant appealed against this decision.

14. On 14 May 2003 the Court of Appeal upheld the decision of 18 March 2003. In June 2003 the applicant appealed in cassation against the decisions of 18 March and 14 May 2003.

15. By omission of the court personnel, the applicant's cassation appeal was transferred to the Supreme Court only in June 2006.

16. On 28 November 2006 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

THE LAW

I. SCOPE OF THE CASE

17. The Court notes that, after the communication of the case to the respondent Government, the applicant additionally invoked Article 3 of the Convention and Article 1 of Protocol No. 1 to the facts of the present case. He also complained under Article 6 § 3 of the Convention about the unfairness of the cassation proceedings in his case.

18. In the Court's view, these new complaints are not an elaboration of the applicant's original complaint under Article 6 § 1, lodged with the Court almost four years earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take this matter up in the present context (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

II. 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 17 December 1997 and ended on 28 November 2006. It thus lasted almost nine years. During this period the merits of the applicant's claims were examined by two levels of jurisdiction, and the issue of admissibility of his cassation appeal – by three levels.

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 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).

24. 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 and *Golovko v. Ukraine*, no. 39161/02, 1 February 2007).

25. 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.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. Additionally, the applicant complained under Article 6 § 1 of the Convention that his reinstatement proceedings were unfair; under Articles 11 and 14 of the Convention that he had been dismissed for having been a member of an independent trade union and a public activist; and under Article 13 of the Convention that he had no effective remedies for his complaints under Articles 11 and 14.

28. 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.

29. 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

30. 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

31. The applicant claimed pecuniary damage in an unspecified amount and non-pecuniary damage of 45,000 euros (EUR).

32. The Government contested these claims.

33. 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. Ruling on an equitable basis, it awards him EUR 3,200 under that head.

B. Costs and expenses

34. The applicant also claimed EUR 600 for the costs and expenses. He presented no documentary evidence to support his claim.

35. The Government contested the claim.

36. 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. The Court considers that these requirements have not been met in the present case. It therefore makes no award.

C. Default interest

37. 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 3,200 (three thousand two 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 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President