



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

FIFTH SECTION

CASE OF GITSKAYLO v. UKRAINE

(Application no. 17026/05)

JUDGMENT

STRASBOURG

14 February 2008

FINAL

14/05/2008

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 Gitskaylo v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 17026/05) 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 Ivan Yosifovich Gitskaylo (“the applicant”), on 26 April 2005.

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

3. On 27 November 2006 the Court decided to give notice of the application 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 1936 and lives in the village of Yasonovskiy, Lugansk Region, Ukraine.

5. The applicant is a former employee of the Frunze State Mine (*ДЮАО шахта ім. Фрунзе*, hereafter “the Mine”). He is suffering from an occupational disease.

6. In 1994 a medical commission established that due to his occupational disease the applicant had permanently lost 25% of his ability to work.

7. As during his employment with the Mine the applicant had served in several different capacities, on 13 June 1997 he brought proceedings against his former employer, seeking to have identified the work which had caused his occupational disease. He also sought recovery of his occupational disability allowance arrears.

8. On 9 July 1997 the judge of the Rovenkovskiy Town Court (*Ровеньківський міський суд*, hereafter “the Town Court”), dealing with the applicant's case, ordered an additional medical examination to determine the degree of his disability.

9. On 12 December 1997 the Lugansk Bureau of the Regional Bureau of Forensic Medical Examinations (*Луганське обласне бюро судово-медичних експертиз*) confirmed the applicant's previous diagnosis and the fact that he had lost 25% of his ability to work.

10. On 6 March 1998 the Town Court terminated the proceedings as the parties had reached a friendly settlement under which the Mine was to pay the applicant 947.50 Ukrainian hryvnas (UAH) in compensation.

11. On an unspecified date in 1998 the applicant requested a supervisory (*наглядове*) review of the above decision, stating that he had agreed to the friendly settlement under unlawful pressure from the trial judge.

12. On 23 December 1998 the Presidium of the Lugansk Regional Court (*Луганський обласний суд*, hereafter “the Regional Court”), acting upon an extraordinary appeal (*протест в порядку нагляду*) of the Deputy President of this court, quashed the decision of 6 March 1998 and remitted the case for a fresh consideration. It was found that the first-instance court had not examined the possible consequences of this decision for the parties.

13. Of seven hearings scheduled for the period between February 1998 and February 2000 one was adjourned at the applicant's request and four were cancelled on account of the applicant's and his lawyer's absence from the courtroom. This delayed the proceedings for a total of seven months.

14. On two occasions during this period the Mine's representative failed to appear. During this period the applicant filed one successful and three unsuccessful challenges to the impartiality of the presiding judge.

15. On 29 February 2000 the Town Court, having heard the parties and examined the case file, allowed the applicant's claims in part. The applicant appealed, considering that the sum of the disability allowance arrears which had been awarded to him was insufficient.

16. On 1 March 2001 the Regional Court quashed this decision on the ground that the first-instance court had failed to give due consideration to all the applicant's claims and that the amount of his allowance had been calculated wrongly. The case was remitted for a fresh hearing.

17. Of five hearings fixed for the period from June to September 2001 four were quashed due to the failure of the Mine's representative to appear.

18. On 27 July 2001 the Supreme Court (*Верховний Суд України*), in response to the applicant's complaint about the length of the proceedings, urged the Lugansk Regional Court of Appeal (*Апеляційний суд Луганської області*, the Lugansk Regional Court as renamed on 29 June 2001, hereafter “the Court of Appeal”) to take the necessary measures to ensure the prompt determination of the applicant's claims.

19. On 26 September 2001 the Town Court found for the applicant in part. The court identified the work which had caused the applicant's occupational disease. However, his compensation claims were rejected in their entirety. The applicant appealed against the latter part of the judgment.

20. On 17 December 2001 the Court of Appeal quashed the appealed part of the judgment and remitted the question of disability allowance arrears for a fresh consideration. The Court of Appeal indicated that the first instance court had failed to examine thoroughly the applicant's statements as to the wrong calculation of the amount of his allowance.

21. On 26 April 2002 the Town Court rejected the applicant's compensation claims as unsubstantiated. The applicant appealed.

22. On 8 August 2002 the Court of Appeal quashed this judgment and remitted the case for a fresh consideration, relying on the same grounds as those stated in its decision of 17 December 2001.

23. On 1 November 2002 the Town Court, based on the case file and the parties' oral submissions, rejected the applicant's claims for recovery of disability allowance arrears as unsubstantiated. The applicant lodged an appeal against this judgment.

24. On 5 May 2003 the Court of Appeal changed this decision and ordered the Mine to pay the applicant a lump sum of UAH 103.72. Considering this sum insufficient the applicant appealed in cassation.

25. On 17 November 2004 the Supreme Court dismissed the applicant's appeal in cassation.

26. This decision was served on the applicant on 14 February 2005.

THE LAW

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

27. The applicant complained about the allegedly unreasonable length and unfair outcome of the proceedings in his case. He invoked Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

28. In so far as the applicant complained of the unfairness of the proceedings, the Court, in the light of all the material in its possession, and in so far as the matter complained of was within its competence, finds that this complaint does not disclose any appearance of a violation of Article 6 § 1 of the Convention. The Court, therefore, rejects this part of the application in accordance with Article 35 §§ 3 and 4 as being manifestly ill-founded.

29. As to the applicant's complaint about the allegedly unreasonable length of the proceedings in his case, 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. The Parties' submissions

30. The applicant maintained that the proceedings in his case had lasted unreasonably long due to the domestic courts' failure to act.

31. The Government argued that the case was of some complexity as the trial court had had to order an expert examination to determine the degree of the applicant's disability. They also stated that on four occasions the hearings had been adjourned because of the applicant's and his lawyer's failure to appear and once following a request by the applicant. The applicant had made four challenges to the presiding judge, which had further contributed to the length of the proceedings. The Government submitted that even though the applicant was entitled to make use of his right of appeal, he had in fact appealed on five occasions and had thereby prolonged the proceedings for a considerable time. The domestic courts had fixed hearings at reasonable intervals and had not been responsible for any delays. In sum, the Government contended that there had been no violation of Article 6 of the Convention on account of the length of the proceedings.

2. The Court's assessment

a. Period to be taken into consideration

32. The applicant took his case to the court on 13 June 1997, however, the Court's jurisdiction *ratione temporis* covers only the period after the entry into force of the Convention with respect to Ukraine, on 11 September 1997. 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.

33. The Court also reiterates that it can take into account only those periods when the case was actually pending before the courts, thus excluding from the calculation those periods between the adoption of the final and binding judgments and their revocation in the course of extraordinary proceedings (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 41, 6 September 2005). Therefore the period from 6 March 1998, when the proceedings were terminated by a final decision of the Town Court, to 23 December 1998, when they were reopened by the Presidium of the Regional Court, acting as a supervisory instance, cannot be taken into account.

34. The period to be taken into consideration ended on 14 February 2005 when the applicant was informed of the Supreme Court's decision on his cassation appeal (see *Widmann v. Austria*, no. 42032/98, § 29, 19 June 2003). It thus lasted for six years and eight months for three levels of jurisdiction, considering the case on five occasions.

b. Reasonableness of the length of the proceedings

35. 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).

36. The Court first notes the Government's argument as to the complexity of the case. It observes that, although it is true that the trial court on one occasion commissioned an expert examination to determine the degree of the applicant's loss of ability to work, this event relates to 1997, whereas the proceedings in the applicant's case continued for over six years after that and were concentrated on the case file and the parties' submissions. No witness or further expert evidence was obtained during those proceedings. The Court, therefore, finds that the case at issue posed no particular complexity as regards law or fact.

37. The Court further notes that the applicant is accountable for a seven-month delay in the proceedings (see paragraph 13 above). The Government, however, failed to show that the applicant's challenges to the presiding judges in 1999 had caused any substantial delay. Moreover, the applicant cannot be reproached for having made use of his procedural rights. In particular, given their outcome, there is nothing to indicate that he abused appeal procedures or that his appeals were frivolous or vexatious. The Court considers, therefore, that although the applicant can be held responsible for certain delays, his conduct did not contribute substantially to the length of the proceedings.

38. The Court finds that the major factor contributing to the delay was shortcomings in the first-instance proceedings, which led to a multiplication of referrals of the case. It notes that, while the case cannot be said to involve issues of any particular complexity, it was examined five times by the first-instance court, five times by the court of appeal, once by the Presidium of the Regional Court acting as a supervisory instance and once by the Supreme Court. What is more, on three occasions, namely on 1 March and 17 December 2001 and on 8 August 2002, the appellate court quashed the first-instance judgments referring to substantially the same reasons.

39. Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Pavlyulynets*, cited above, § 51).

40. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. The applicant further complained of the fact that in Ukraine there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

43. The Government, considering that there was no violation of Article 6 § 1 in the present case, invited the Court to reject this complaint on the ground that no arguable claim for the purposes of Article 13 had been made out.

44. In the light of its finding of a violation of Article 6 § 1 (see paragraph 40 above), the Court rejects the Government's objection as to the alleged lack of an arguable claim. The Court further finds that the complaint about the lack of an effective remedy is not inadmissible on any other ground and must therefore be declared admissible.

45. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

46. The Court recalls that it has previously examined a similar issue in the case of *Efimenko v. Ukraine*. It found that the lack of a domestic remedy to raise a complaint about the length of judicial proceedings in civil cases was contrary to Article 13 of the Convention (see *Efimenko v. Ukraine*, no. 55870/00, §§ 63-64, 18 July 2006). It sees no reason to reach a different conclusion in the present case.

47. There has, accordingly, been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 61,000 euros (EUR) in respect of pecuniary and EUR 250,000 in respect of non-pecuniary damage.

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

51. 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 awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

52. The applicants did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

53. 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 complaints concerning the excessive length of the proceedings and the lack of an effective remedy in this respect 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 has been a violation of 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 1,000 (one thousand 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President