



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

FIFTH SECTION

CASE OF N.B. v. UKRAINE

(Application no. 17945/02)

JUDGMENT

STRASBOURG

3 April 2008

FINAL

03/07/2008

This judgment may be subject to editorial revision.

In the case of N.B. v. Ukraine,

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

Peer Lorenzen, *President*,

Snejana Botoucharova,

Karel Jungwiert,

Volodymyr Butkevych,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 17945/02) 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, Ms N.B. (“the applicant”), on 15 March 2002. The President of the Chamber acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

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

3. On 22 March 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 1984 and lives in Kherson.

5. On 24 May 1999 the applicant was attacked by Ms P., Ms F., Ms M. and Ms B, who were all minors. She sustained various injuries.

6. In November 1999, in the course of criminal proceedings pending before the Komsomolskyy District Court of Kherson (hereafter “the Komsomolskyy Court”), the applicant lodged against the four defendants a claim for compensation in respect of pecuniary and non-pecuniary damage.

1. Criminal proceedings against Ms P., Ms B. and Ms F.

7. On 15 March 2000 the Komsomolskyy Court found Ms P., Ms B., and Ms F. guilty of aggravated hooliganism and sentenced them to three, one and one years' imprisonment, respectively. By the same decision the applicant's compensation claim was allowed in part and the statutory representatives of the convicted were ordered to pay the applicant UAH 16,578¹.

8. On 16 May 2000 the Kherson Regional Court quashed the decision of the first instance court on the ground that the sentence was too lenient.

9. On 3 August 2000 the Komsomolskyy Court again found the defendants guilty and sentenced them to four, three and three years' imprisonment, respectively. By the same decision the court amnestied Ms B. and Ms F. It also awarded the applicant UAH 13,578² in compensation.

10. On 3 October 2000 the Kherson Regional Court rejected the applicant's appeal against the grant of amnesty, but quashed the decision of 3 August 2000 concerning the compensation award and remitted that part for a fresh consideration by a civil court.

11. On 5 April 2001 the Presidium of the Kherson Regional Court, following *the protest* of its President initiated by the applicant, quashed the decisions of 3 August and 3 October 2000 to the extent that they concerned the conviction of Ms B. and Ms F. as the amnesty had been applied wrongly. The Presidium remitted that part of the case for a fresh consideration.

12. On 26 July 2001 the Komsomolskyy Court released Ms B. from detention. On an unspecified date the proceedings against Ms B. were disjoined on the grounds that she had absconded.

13. On 17 August 2001 the Komsomolskyy Court found Ms F. guilty of aggravated hooliganism and sentenced her to two years and two months' imprisonment. The court applied an amnesty to her. It also ordered Ms P. and the statutory representative of Ms F. to pay the applicant UAH 1,580 in compensation for pecuniary and UAH 10,000 for non-pecuniary damage (UAH 11,580³ in total).

14. On 16 October 2001 the Kherson Regional Court of Appeal quashed the decision of 17 August 2001 concerning the award in respect of pecuniary damage and remitted that part for a fresh consideration to a civil court.

15. On 28 November 2001 the applicant's representative lodged a cassation appeal against the judgments of 17 August and 16 October 2001

1. EUR 3,115

2. EUR 2,733

3. EUR 2,405

requesting the court, in particular, to examine the compensation claim in the criminal proceedings and to increase the amount awarded.

16. On 23 May 2002 the panel of three judges of the Supreme Court allowed in part the cassation appeal and quashed the decision of 17 August 2001 concerning the award in respect of non-pecuniary damage. That part of the case was also remitted for a fresh consideration to a civil court.

2. Criminal proceedings against Ms M.

17. On 4 October 2002 the Komsomolskyy Court found Ms M. guilty of aggravated hooliganism and sentenced her to three years' imprisonment. It refused to deal with the applicant's compensation claim because her representative had failed to appear before the court.

3. Civil proceedings

18. Following the decision of the Kherson Regional Court of 3 October 2000 (see paragraph 10), the applicant's compensation claim was remitted to the Komsomolskyy Court.

19. On 17 April 2001 the court found in part for the applicant and ordered Ms P. and the statutory representatives of Ms B. and Ms F. to pay the applicant UAH 46,578¹ in compensation for pecuniary and non-pecuniary damage.

20. On 30 May 2001 the Kherson Regional Court, allowing the applicant's appeal, quashed the decision of 17 April 2001 and remitted the case for fresh consideration. It held that the first instance court had failed to consider all the arguments of the parties.

21. As a result of the decision of the Kherson Regional Court of Appeal of 16 October 2001 in the criminal proceedings (see paragraph 14 above), the question of compensation by Ms P. and Ms F. for pecuniary damage was again pending before the Komsomolskyy Court.

22. On 31 October and 4 December 2001 the court refused to consider the applicant's claims on the ground that she, a minor at the time, did not have full legal capacity.

23. As a result of the ruling of the Supreme Court of 23 May 2002 (see paragraph 16 above), the question of compensation by Ms P. and Ms F. for non-pecuniary damage was also pending before the Komsomolskyy Court.

24. On 8 September 2002 the hearings were resumed.

25. On 14 November 2002 the applicant lodged a civil claim against Ms M.

26. On 17 September 2003 the court found in part for the applicant and ordered Ms P., Ms F. and Ms M. to pay the applicant UAH 21,664² compensation.

1. EUR 9,698

27. On 18 February 2004 the Kherson Regional Court of Appeal upheld the judgment of 17 September 2003.

28. On 16 May 2006 the Supreme Court rejected the applicant's cassation appeal, thereby terminating the proceedings.

4. Enforcement proceedings

29. On 14 January 2002 the applicant lodged with the Komsomolskyy District Bailiffs' Service (hereafter "the Bailiffs") a writ of execution for the judgment of 17 August 2001.

30. On 21 August 2002 the Bailiffs returned the writ to the applicant due to the debtors' lack of funds.

31. On 3 March 2004 the Bailiffs instituted enforcement proceedings in respect of the judgment of 17 September 2003.

32. On 28 July 2004 the proceedings were discontinued due to the debtors' lack of funds.

33. In September 2004 the Komsomolskyy Court refused to deal with the applicant's complaint against the Bailiffs as it had been lodged out of time.

THE LAW

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

34. 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..."

35. The Government contested that argument.

36. The period to be taken into account began in November 1999, when the applicant lodged her claim for compensation in the criminal proceedings, and ended on 16 May 2006 (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, § 124). It thus lasted six years and seven months for three levels of jurisdiction

A. Admissibility

37. 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

38. The Government submitted that the domestic courts considered the case within a reasonable time and without substantial delays attributable to the State. It outlined that the protracted length of the proceedings was due to the complexity of the case and the parties' repetitive appeals.

39. The applicant disagreed.

40. 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, *Tomasi*, cited above, § 125, and *Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333-A, § 53).

41. 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 v. France* [GC], no. 30979/96, ECHR 2000-VII, and *Baglay v. Ukraine*, no. 22431/02, 8 November 2005).

42. 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. In particular, the Court notes that five of the applicant's six appeals or cassation appears were successful. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. The applicant complained under Articles 3 and 6 § 1 of the Convention about the outcome and unfairness of the proceedings. In particular, she disagreed with the criminal qualification of the acts of the defendants and objected to the act of amnesty applied in the case. She also challenged the amounts of compensation awarded by the courts. The applicant finally complained under Article 6 § 1 of the Convention about

the failure of the State authorities to enforce the judgment of 17 September 2003.

45. However, in the light of all the materials in its possession, 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.

46. 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

47. 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

48. The applicant claimed UAH 59,688 (EUR 8,333) in respect of pecuniary and EUR 100,000 in respect of non-pecuniary damage.

49. The Government contested these claims.

50. 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 600 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed UAH 426 (EUR 60) for the costs and expenses incurred before the Court.

52. The Government did not object to granting the applicant this amount.

53. The Court considers that the sum claimed should be awarded in full.

C. Default interest

54. 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, the following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 600 (six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 60 (sixty euros) for costs and expenses;
 - (iii) plus any tax that may be chargeable to the applicant on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 3 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President