



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

FIFTH SECTION

CASE OF MIKHAYLENKO v. UKRAINE

(Application no. 18389/03)

JUDGMENT

STRASBOURG

15 May 2008

FINAL

15/08/2008

This judgment may be subject to editorial revision.

In the case of Mikhaylenko v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 April 2008,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 18389/03) 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 Vladimir Antonovich Mikhaylenko (“the applicant”), on 25 March 2003.

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

3. On 9 May 2006 the Court declared the application partly inadmissible and 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****A. Background**

4. The applicant was born in 1927 and lives in Simferopol.

5. On 22 May 1992 the applicant was employed by a private company (“the Company”). No written documents concerning conditions of the employment were produced at the material time.

6. On 1 July 1992 a contract was signed between the applicant, Mr I., the sole owner of the Company, and Mr G., referred to in the contract as the Company director. Pursuant this contract the applicant was entitled to 30% of the Company’s profits, which could be invested into the Company. The contract referred to the applicant as a co-founder of the Company. Subsequently the Company was re-organized, three individuals - the aforementioned Mr G. and Mr I., and a certain Mrs G. having been registered as its co-founders.

7. In January 1997 the applicant resigned. According to a contract, signed on 1 August 1997 by him and Mr G., the Company was to pay the applicant the equivalent of 7,930 dollars (USD) in monthly instalments over a four-year period as the share of profit owed pursuant to the contract of July 1992.

B. Civil proceedings

8. In 1998 the applicant instituted civil proceedings in the Kyivskiy District Court of Simferopol (the “District Court;” *Київський районний суд м. Сімферополя*) complaining that in December 1997 the Company had discontinued the monthly payments under the contract of August 1997. According to the applicant, the proceedings at issue were instituted on 14 March 1998. According to the Government, they were instituted on 28 April 1998. According to the text of the District Court judgment of 18 May 2000, which is the only case-file document referring to the date of the institution of the proceedings, they were instituted on 21 April 1998.

9. Between August 1998 and September 1999 the court scheduled ten hearings, two of them being adjourned on account of the absence of the applicant’s representative, one on account of the parties’ absence, and one on account of court business.

10. On 16 September 1999 the District Court dismissed the applicant’s claims, having found that the contracts of July 1992 and August 1997 were null and void. In particular, the court observed that labour legislation at the material time distinguished between ordinary open-ended employment agreements (*трудоий договір*), which could be concluded orally, and special written employment contracts (*контракт*), which, to be valid, had to comply with a number of formalities prescribed by law. The court held that the applicant had been hired on the basis of an oral employment agreement, since the contract of July 1992 lacked a number of essential clauses and had not been executed in accordance with necessary formalities. Furthermore, the contract falsely referred to the applicant as the Company co-founder and to Mr G. as the Company director. The court further found

that the annulment of the contract of July 1992 entailed the annulment of the contract of August 1997, which referred to it, and that, furthermore, Mr G. needed the consent of the other co-founders to execute it.

11. On 6 December 1999 the Supreme Court of the Crimea (the “Court of the Crimea;” *Верховний суд Автономної Республіки Крим*)¹ quashed the judgment of 16 September 1999 on the applicant’s appeal in cassation and referred the case to another District Court judge. In its reasoning, the court stated that the District Court had failed to carry out a comprehensive investigation into the facts and to ensure their proper assessment. In particular, it had failed to clarify the nature of the relationship between the parties and to determine which law was applicable.

12. In March 2000 the applicant amended his claims, seeking default interest and other additional payments under the contracts of July 1992 and August 1997. He also claimed non-pecuniary damage on account of the delay in payment, as, being an indigent pensioner of an advanced age, he suffered from hearing loss and a number of other ailments and lacked funds for purchasing a hearing aid and other medical necessities.

13. Between April and May 2000 the District Court scheduled three hearings.

14. On 18 May 2000 the District Court dismissed the applicant’s claims, referring to essentially the same grounds, as in its earlier judgment. In particular, it found that the applicant’s employment had been pursuant an oral agreement, the contract of July 1992 lacked essential clauses and falsely referred to the applicant as a co-founder of the Company. Moreover, Mr G. had signed the contract *ultra vires*. The court further found that the annulment of the contract of July 1992 entailed the annulment of the contract of August 1997.

15. On 14 June 2000 the Court of the Crimea quashed the judgment of 18 May 2000 on the applicant’s appeal in cassation and referred the case to another District Court judge. By way of reasoning, the Court of the Crimea stated that the District Court had failed to comply with its earlier instructions and urged the new judge to follow these instructions more thoroughly.

16. On 4 August 2000 the judge, who rendered the judgment of 18 May 2000, petitioned the President of the Court of the Crimea to lodge a protest against the decision of 14 June 2000, insisting that her judgment had been properly reasoned. On 8 September 2000 her request was rejected.

17. Between November 2000 and November 2001 the District Court scheduled ten hearings, four of them being adjourned on account of court business, two on account of the defendant’s absences and one to allow for the friendly settlement negotiations.

¹ Following the judicial reform of 2001, the court became the Court of Appeal of the Autonomous Republic of the Crimea (*Апеляційний суд Автономної Республіки Крим*)

18. On 5 November 2001 the District Court dismissed the applicant's claims referring to essentially the same grounds, as in the previous judgments. In addition to the reasons for invalidating the contract of August 1997 mentioned in the judgment of 18 May 2000, the court held, similarly to what it had held in the judgment of 16 September 1999, that this contract could not be executed by a sole co-founder.

19. On 16 January 2002 the Court of the Crimea upheld the judgment of 5 November 2001 on appeal.

20. On 27 December 2002 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

THE LAW

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

A. Admissibility

21. 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..."

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 contended that the length of the proceedings had not been excessive, regard being had to the applicant's repetitive appeals, adjournments of hearings on his account and amendment of claims.

24. The applicant disagreed. He submitted that speedy resolution of the case was of significant importance to him in view of his advanced age, poor health and small pension. He further noted that he had reasonably relied on the successful outcome of the proceedings, in particular, once the Company had acknowledged the debt. He further maintained that major delays were caused by repetitive re-examination by different judges of the same issues on the same grounds.

25. The Court notes, at the outset, that due to unavailability of accurate records, it remains unclear, whether the proceedings were instituted in March or April 1998 (see paragraph 8 above). On 27 December 2002 the proceedings ended. They thus lasted four years and at least eight months for three levels of jurisdiction.

26. The Court reiterates that the reasonableness of the length of these 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).

27. In this regard the Court recalls that the proceedings at issue concerned compensation for the applicant's labour. It finds that what was at stake for the applicant called for expeditious decision on his claims (see, among other authorities, *Golovko v. Ukraine*, no. 39161/02, §§ 54-55, 1 February 2007 and *Inkovtsova v. Ukraine*, no. 39946/03, § 26, 26 July 2007), especially in view of his submissions before the domestic courts concerning his advanced age, poor health and lack of funds for medical expenses.

28. As regards the conduct of the parties, notwithstanding certain delays generated by the applicant's conduct, the Court finds that major protraction in the final disposition of the case was caused by repetitive remittals. It reiterates that the repetitive re-examination of the claims within one set of proceedings can disclose a serious deficiency in the domestic judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Moroz and Others v. Ukraine*, no. 36545/02, § 60, 21 December 2006). Although the Court has previously rejected some similar cases concerning repeated remittals, having observed that the judicial authorities had acted diligently in handling a complex matter (see e.g. *Zhurba v. Ukraine* (dec.), no. 11215/03, 19 June 2007; *Bespalov v. Ukraine* (dec.), no. 11484/05, 15 January 2008), it cannot find a similar justification for remittals in the present case.

29. The Court observes, in particular, that in its two decisions ordering a fresh consideration, the Court of the Crimea broadly referred to an unsatisfactory factual and legal analysis carried out by the trial court, rather than instructing it to re-assess a particular complex issue or to test a certain legal theory against marginal facts. It further observes that in all three judgments on the merits, the trial court relied on essentially the same factual and legal reasoning, which, in the end, was accepted by the higher courts.

30. Furthermore, as regards the diligence of the judicial authorities in handling the applicant's case, the Court takes note of the apparent lack of accuracy in the case-file records (see paragraphs 8 and 25 above) and several adjournments of the hearings on account of the court business.

31. Having regard to the information in its possession and 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed USD 7,930 in respect of non-pecuniary damage.

35. The Government contested the claim.

36. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 800 under that head.

B. Costs and expenses

37. The applicant did not submit any separate claim under this head; the Court therefore makes no award in this respect.

C. Default interest

38. 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 remainder of the application admissible;
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 800 (eight hundred Euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President