



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

FIFTH SECTION

CASE OF SOLOMATINA v. UKRAINE

(Application no. 311/03)

JUDGMENT

STRASBOURG

29 May 2008

FINAL

29/08/2008

This judgment may be subject to editorial revision.

In the case of Solomatina v. Ukraine,

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

Peer Lorenzen, *President*,
Rait Maruste,
Volodymyr Butkevych,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 311/03) 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, Ms Aleksandra Yegorovna Solomatina (“the applicant”), on 24 October 2002.

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

3. On 18 January 2007 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 1937 and lives in Dnipropetrovsk.

5. On 26 February 1988 the applicant sustained grievous bodily injuries as a result of a traffic accident. On 3 March 1989 the Pavlograd Court (*Павлоградський районний суд Дніпропетровської області*) found Mr K. responsible for the accident and sentenced him to three years’ imprisonment. The sentence was conditionally suspended. By the same judgment, the court left the applicant’s claim for compensation without

consideration on the ground that the defendant had paid her the claimed amount of his own accord.

6. On 9 March 1992 the applicant instituted civil proceedings in the Pershotravensk Court (*Першотравенський районний суд Дніпропетровської області*) against Mr K., seeking compensation for the damage caused to her health as a result of the accident. Subsequently the applicant modified the amount of her claim for compensation on several occasions. In the course of the proceedings five expert assessments were ordered by the courts to assess the damage sustained by the applicant.

7. The Pershotravensk Court considered the case on three occasions and delivered judgments on 8 September 1992, 11 July 1994 and 26 February 1999, which were overturned by the decisions of the Dnipropetrovsk Regional Court (*Дніпропетровський обласний суд*)¹ of 19 May 1993, 26 September 1994 and 17 May 1999, respectively.

8. In its decision of 17 May 1999 the Regional Court decided to transfer the case to the Pavlograd Court for a fresh examination.

9. On 4 February 2000 the Pavlograd Court found in part for the applicant and awarded her a lump sum of 4,129.50 Ukrainian hryvnias (UAH) and a monthly allowance of UAH 55.06 for an unlimited period of time in compensation for loss of earnings. The court also awarded her UAH 24 in compensation for travel expenses and rejected the applicant's claim for compensation for medical expenses.

10. On 17 April 2000 the latter judgment was quashed by the decision of the Regional Court. It held that the first-instance court had made wrong calculations and had failed to establish whether the applicant's injuries could have resulted in any recognised degree of disability. It decided to remit the case to the Industrialny District Court of Dnipropetrovsk (*Індустріальний районний суд м. Дніпропетровська*) for a fresh examination.

11. On 21 December 2000 the latter court found in part for the applicant and ordered Mr K. to pay her a lump sum of UAH 2,946.83 and a monthly allowance of UAH 61.32 for an unlimited period of time in compensation for loss of earnings. The court also awarded the applicant UAH 744 in compensation for medical and travel expenses.

12. On 5 February 2001 the Regional Court, following the defendant's appeal in cassation, quashed the judgment of 21 December 2000 and remitted the case for a fresh consideration to the same court. The regional court held that the first-instance court had failed to take into account the conclusions contained in its decision of 17 April 2000.

13. On 28 December 2004 the Industrialny Court awarded the applicant a lump sum of UAH 7,502.32 and a monthly allowance of UAH 161.60 in

¹ Following the judicial reform of June 2001 the Dnipropetrovsk Regional Court of Appeal (*Апеляційний суд Дніпропетровської області*).

compensation for the damage to her health and loss of earnings; UAH 5,000 for non-pecuniary damage; and UAH 1,653.64 in compensation for medical, travel, and legal costs and expenses.

14. On 28 January 2005 Mr K. appealed against the judgment of 28 December 2004.

15. By separate decisions of 30 March and 13 July 2005, the same court awarded the applicant additionally UAH 306.

16. On 8 June 2006 the Regional Court quashed the decisions of 28 December 2004, 30 March and 13 July 2005 and adopted a new judgment on the merits of the case. The court awarded the applicant a lump sum of UAH 14,398.35 and a monthly allowance of UAH 178.12. The court further rejected the applicant's claims for non-pecuniary damage and costs and expenses.

17. The parties did not appeal in cassation.

THE LAW

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

18. 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..."

19. The Government contested that argument.

20. The period to be taken into consideration began only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

21. The period in question ended on 8 June 2006. It thus lasted eight years and nine months for two 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 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).

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 e.g. *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 49-52, 6 September 2005 and *Moroz and Others v. Ukraine*, no. 36545/02, § 58-62, 21 December 2006).

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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. The applicant further complained that she had no effective remedies for her complaint concerning the excessive length of the proceedings. She relied on Article 13 of the Convention.

28. The Government considered that Article 13 was not applicable to the circumstances of the case as the applicant had not made out an arguable claim under Article 6 § 1.

29. The Court refers to its findings in paragraphs 22 and 26 above and notes that this complaint is linked to the applicant’s complaint under Article 6 § 1 and must therefore likewise be declared admissible.

30. 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). The Government did not name any such remedy available to the applicant.

31. The Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention (see *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government contested the claim.

35. The Court considers that the applicant must have sustained non-pecuniary damage on account of the violation of her right to a hearing within a reasonable time. It awards the full sum claimed.

B. Costs and expenses

36. The applicant also claimed EUR 30 for the postal expenses incurred in connection with her correspondence with the Court. She presented relevant receipts.

37. The Government did not express an opinion on the matter.

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

C. Default interest

39. 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 application admissible;
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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 30 (thirty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on the above amounts, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 29 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President