



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

FIFTH SECTION

CASE OF YAKYMENKO v. UKRAINE

(Application no. 19142/03)

JUDGMENT

STRASBOURG

29 May 2008

FINAL

29/08/2008

This judgment may be subject to editorial revision.

In the case of Yakymenko v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Volodymyr Butkevych,

Mark Villiger,

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. 19142/03) 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 Petro Kalenikovych Yakymenko (“the applicant”), on 26 May 2003.

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

3. On 7 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 1940 and lives in Kyiv.

5. In 1986, while being employed by the Municipal Cargo Department of the Ministry of Automobile Transport (*Київське міське управління вантажного автомобільного транспорту*), the applicant was engaged in emergency operations at the Chernobyl disaster site. Subsequently the applicant was employed by “A.T.E.”, an automobile transportation company.

A. Civil proceedings concerning compensation for health damage

6. On 30 March 1994 the applicant instituted civil proceedings in the Radyansky District Court of Kyiv (*Радянський районний суд м. Києва*)¹ against the Municipal Department of Automobile Transport (*Київське міське територіальне виробниче об'єднання автомобільного транспорту*) claiming compensation for health damage sustained in Chernobyl. On 10 January 1995 the court decided to leave the applicant's claims without consideration for having been lodged against an improper defendant. On 15 March 1995 the Kyiv City Court (*Київський міський суд*)² quashed this ruling and remitted the case for an examination to the first-instance court.

7. On 14 July 1995 the first-instance court found in part for the applicant. On 27 September 1995 the Kyiv City Court quashed this judgment and remitted the case for a fresh consideration.

8. On 28 February 1997 the first-instance court found against the applicant. On 9 April 1997 the Kyiv City Court quashed this judgment and remitted the case for a fresh consideration.

9. On 19 September 1997 the first-instance court found in part for the applicant. This judgment became final.

10. On an unspecified date the Kyiv Department of Justice (*Управління юстиції в м. Києві*) initiated an investigation into the absence of the verbatim record of the hearing of 19 September 1997 from the case-file. In January 1998 they informed the applicant that contrary to the requirements of applicable law the verbatim record had never been finalised.

11. On numerous occasions the applicant sought the issuance of the writ of execution in respect of the judgment of 19 September 1997. However, he was informed by the Department of Justice that the writ could not be issued due to the investigation.

12. On 6 April 1998 the Kyiv City Court quashed the judgment of 19 September 1997 upon the *supervisory protest* of its President lodged under the extraordinary review procedure and remitted the case for a fresh consideration.

13. On 2 October 1998 the court replaced the defendant in the case by the "A.T.E.".

14. On 23 October 1998 the first-instance court found against the applicant.

15. On 18 November 1998 the Kyiv City Court quashed this judgment following the applicant's appeal in cassation and remitted the case for a fresh consideration.

1. Following an administrative reform of 2001 the Svyatoshinsky District Court of Kyiv (*Святошинський районний суд м. Києва*).

2. Since July 2001 the Kyiv City Court of Appeal (*Апеляційний суд м. Києва*).

16. On 3 February 1999 the Radyansky Court decided to transfer the case to the Starokyivsky District Court of Kyiv (*Старокиївський районний суд м. Києва*). On 14 April 1999 the Kyiv City Court, upon the protest of its Vice-President, quashed this ruling under the extraordinary review procedure and remitted the case back to the Radyansky Court.

17. On 8 June 1999 the Radyansky Court replaced the defendant in the case by the Kyiv City Department of the Social Security Fund.

18. On 15 July 1999 the Radyansky Court ordered the Kyiv City Bureau of Court Experts (*Київський науково-дослідний інститут судових експертиз*) to carry out an assessment of the damage allegedly sustained by the applicant.

19. On 25 May 2000 the Bureau delivered its assessment to the court.

20. On 8 June 2000 the Radyansky Court found in part for the applicant. The applicant appealed in cassation.

21. On 26 July 2000 the Kyiv City Court quashed this judgment in part concerning the payment of court fees and remitted this part of the case for a fresh consideration.

22. On 24 April 2001 the Kyiv City Court upon the protest of its Vice-President quashed the rulings of 8 June and 26 July 2000 under the extraordinary review procedure and remitted the case to the first-instance court for a fresh consideration.

23. In November 2001 the defendant in the case was replaced by the “A.T.E.” and the Municipal Chernobyl Affairs Department (*Управління у справах захисту населення від наслідків аварії на Чорнобильській АЕС Київської міської державної адміністрації*).

24. On 18 April 2002 the court found in part for the applicant and awarded him a lump sum in compensation from the Chernobyl Affairs Department. Both parties appealed.

25. On 18 June 2002 the Kyiv City Court upheld this judgment. The applicant appealed in cassation. According to the law in force at the material time, the cassation appeal was filed with the first-instance court, which was to verify its compliance with procedural rules.

26. On 26 November 2002, after the applicant rectified procedural shortcomings of his cassation appeal, the first-instance court transferred it to the Supreme Court.

27. On 5 March 2004 the Supreme Court of Ukraine rejected the applicant’s request for leave to appeal in cassation.

B. Other proceedings

28. The applicant also submitted a large number of other court decisions adopted in different cases against his former employers and various State bodies in 1994-2001.

THE LAW

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

29. The applicant complained that the length of the proceedings in his case concerning compensation for health damage 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...”

30. The Government contested that argument.

A. Admissibility

31. 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

32. The Court notes that the proceedings at issue started in March 1994. However, 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. 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 further finds that the period between the taking of the final judgment on 19 September 1997 and its quashing on 6 April 1998 should not be excluded from calculation, as during this period the authorities were refusing to issue the applicant with the writ of enforcement referring to some official investigation into the case by the Department of Justice (see, *mutatis mutandis*, *Vyrovy v. Ukraine*, no. 28746/03, § 36, 12 July 2007).

34. The period in question ended on 5 March 2004. It thus lasted six and a half years. During this period the applicant’s claims were examined by three levels of jurisdiction.

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 finds that the proceedings concerning compensation for health damage were of considerable importance for the applicant. It further finds that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings at issue. It considers that a number of delays (in particular, repetitive remittals of the case for a fresh consideration including after a judgment in it became final and prolonged periods of procedural inactivity in connection with pending expert assessment, the issuance of the writ of enforcement and handling by the Supreme Court of the applicant's cassation appeal (see paragraphs 11, 18-19 and 26-27 above) should be attributed to the domestic authorities.

37. 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, §§ 49-50, 6 September 2005; *Moroz and Others v. Ukraine*, no. 36545/02, § 60, 21 December 2006; and *Golovko v. Ukraine*, no. 39161/02, § 50, 1 February 2007).

38. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

40. The applicant further complained about the non-enforcement and the eventual quashing of the final judgment of 19 September 1997 and the unfairness of the proceedings in his cases, in particular, about the ultimate refusal of the judicial authorities to recognise the entirety of his claims. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

41. 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.

42. 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

43. 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

44. The applicant claimed 1,960,200 hryvnias (UAH) in various compensatory payments allegedly due to him under domestic law in respect of pecuniary damage. In addition, he claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

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

46. 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 finds that the applicant must have suffered non-pecuniary damage on account of the length of proceedings in his case concerning compensation for health damage. Ruling on an equitable basis, the Court awards the applicant EUR 1,400 under that head.

B. Costs and expenses

47. The applicant also claimed UAH 1,755 in postal, printing, translation and similar expenses. He presented relevant receipts.

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

49. According to the Court’s case-law, an applicant is entitled to the reimbursement of 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 260 under this head.

C. Default interest

50. 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 1,400 (one thousand four hundred euros) in respect of non-pecuniary damage and EUR 260 (two hundred sixty 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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