



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

FIFTH SECTION

CASE OF LUGOVOY v. UKRAINE

(Application no. 25821/02)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

12/09/2008

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 Lugovoy 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 20 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 25821/02) 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, Mr Eduard Valeryevich Lugovoy (“the applicant”), on 25 May 2002.

2. The applicant was represented by Mr A. V. Lesovoy, a lawyer practising in Simferopol. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev and the Deputy Minister of Justice, Mrs V. Lutkovska.

3. On 22 March 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 1977 and lives in Chernivtsi.

5. On 24 August 1998 the applicant had a quarrel with Mr B. and three other persons, which led to a fight in the course of which the applicant wounded Mr B. in the face with a gas pistol.

6. On 11 September 1998 criminal proceedings were instituted against the applicant for inflicting grievous bodily harm.

7. On 19 March 1999 the investigative authorities decided that the applicant had acted within the permissible limits of self-defence and terminated the proceedings.

8. On 15 May 1999 the Prosecutor of Razdolnensky District of the Autonomous Republic of Crimea ("the ARC"), quashed the decision of 19 March 1999 and reopened the proceedings.

9. On 8 August 1999 the applicant was charged with having exceeded the limits of self-defence. On the same day he was placed on the wanted list. According to the applicant, he never left his place of residence in Chernivtsi (about 1,000 km from the ARC), and the authorities had been well aware of his permanent address. However, they failed to contact him concerning the criminal investigation.

10. On 13 March 2000 the charges against the applicant were amended: he was accused of intentional infliction of grievous bodily harm.

11. On 20 October 2000, when the applicant was visiting the ARC, he was placed under an undertaking not to abscond.

12. On 1 November 2000 the investigation was completed and the case was referred to the Razdolnensky District Court of the ARC (*Раздольненський районний суд Автономної республіки Крим*).

13. On 8 February 2001 the court questioned the accused, the victim and witnesses, ordered an additional forensic medical examination and adjourned the hearing.

14. The next hearing was scheduled for 10 April 2002. This hearing was adjourned at the request of the applicant's advocate. The following hearings were scheduled for 25 April and 17 June 2002 respectively. After the adjournment of the hearing of 17 June 2002 at the applicant's request, the next hearing was scheduled for 4 November 2002.

15. On 4 November 2002 the court transferred the case file to the investigative authorities and ordered them to carry out a reconstruction of the crime.

16. On 4 April 2003 the reconstruction of the crime was carried out and the case was transferred back to the court for consideration.

17. Between September and December 2002 the court scheduled four hearings, none of which took place. Two hearings were adjourned on account of the absence of the applicant's advocate, one on account of the absence of the prosecutor and one on account of the absence of two witnesses. The next hearing was scheduled for 4 February 2004.

18. On 4 February 2004 the court ordered an additional medical forensic examination.

19. On 24 March 2005 the results of the examination were produced to the court. The next hearing was scheduled for 26 September 2005. This hearing was adjourned at the prosecutor's request.

20. On 27 September 2005 the court ordered an additional medical and ballistic assessment. On 11 November 2005 the designated expert institution

refused to make the assessment, referring to the unavailability of qualified experts.

21. On 7 December 2005 the court ordered the assessment at a different facility. On 10 March 2006 the case file was sent to the expert facility. The next hearing took place in May 2006.

22. On 13 June 2006 the court terminated the criminal proceedings as the charges against the applicant had become time-barred. On 20 June 2006 the applicant appealed, seeking acquittal.

23. On 26 August 2006 the Court of Appeal of the ARC (*Апеляційний суд Автономної республіки Крим*) quashed the ruling of 13 June 2006 and remitted the case for fresh consideration.

24. Between December 2006 and March 2007 the trial court scheduled three hearings, one of which was adjourned on account of a witness's failure to appear.

25. On 21 March 2007 the trial court found the applicant guilty, sentenced him to one year's restriction of freedom and released him from punishment as the charges had become time-barred. The court also lifted the applicant's undertaking not to abscond. On 4 April 2007 the applicant appealed, seeking to be acquitted.

26. On 29 May 2007 the Court of Appeal of the ARC excluded the mention of a punishment from the judgment and otherwise upheld it.

27. On 26 November 2007 the applicant appealed in cassation before the Supreme Court of Ukraine.

28. On 7 February 2008 the Supreme Court took a final decision in the applicant's case.

THE LAW

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

29. 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

30. The Government submitted comments concerning the facts of the case; however, they expressed no opinion concerning the admissibility or the merits of the applicant's complaints.

A. Admissibility

31. The Court notes that the application 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 period to be taken into consideration began on 11 September 1998 and ended on 7 February 2008. It thus lasted nine years and three months, excluding the two-month period between the termination and the resumption of the proceedings in March to May 1999. During this period the merits of the case were examined by three levels of jurisdiction.

33. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

34. The Court notes that the applicant somewhat contributed to the delay in determination of the charges against him, in particular by requesting adjournments of hearings and taking nearly six months to lodge a cassation appeal.

35. On the other hand, the Court considers that the applicant's conduct cannot explain the overall length of the proceedings at issue in the present case. The Court notes that the applicant was accused of one count of inflicting bodily injuries and finds no reason to consider the proceedings especially complex. It finds that a number of delays (in particular, repetitive remittals of the case for additional investigative activities, expert assessments and a retrial, as well as considerable intervals between various procedural activities) are attributable to the domestic authorities.

36. 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. *Antonenkova and Others v. Ukraine* (no. 14183/02, judgment of 22 November 2005 and *Yurtayev v. Ukraine* (no. 11336/02, judgment of 31 January 2006).

37. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

39. The applicant complained that his complaints about the course of investigation and the delays therein have been to no avail. He relied on Article 13 of the Convention, which provides:

“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.”

40. 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 Court further refers to its finding in the *Merit* case about the lack of an effective and accessible remedy under domestic law for complaints in respect of the length of criminal proceedings (see *Merit v. Ukraine*, no. 66561/01, §§ 78-79, 30 March 2004).

41. The Court does not find any reasons to depart from this case-law in the present case.

42. There has, therefore, been a violation of Article 13 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 30,000 Ukrainian hryvnias (UAH) in respect of non-pecuniary damage.

45. The Government contested the claim.

46. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,400 under that head.

B. Costs and expenses

47. The applicant also claimed UAH 92 in respect of his postal expenses and UAH 1,400 in legal fees in connection with his application to the Court. He presented copies of receipts for the above amounts.

48. The Government contested these claims.

49. The Court considers it reasonable to award the applicant the total of EUR 220 in respect of the costs and expenses.

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 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 2,400 (two thousand four hundred euros) in respect of the non-pecuniary damage and EUR 220 (two hundred and twenty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant in respect of the above amounts, to be converted into the national currency of Ukraine 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President