



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

FIFTH SECTION

CASE OF SOLAZ v. UKRAINE

(Application no. 35184/02)

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 Solaz v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Volodymyr Butkevych,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *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. 35184/02) 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 Russian limited liability company Solaz (“the applicant”), on 13 June 2002.

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

3. On 29 May 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.

4. In accordance with Article 36 § 1 of the Convention, the Russian Government were invited to exercise their right to intervene in the proceedings, but they declined to do so.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant is a limited liability company registered in Moscow.

6. On 2 September 1992 the applicant company purchased an aircraft from the Kharkiv State Aviation Industrial Enterprise (*Харківське державне авіаційне підприємство*, hereafter “the Enterprise”) for 5 million United States dollars (USD). By February 1993 this amount had been paid in full to the Enterprise. On 19 April 1993 the applicant company

and the Enterprise signed an aircraft acceptance certificate, entailing, according to the applicant company, the transfer of ownership. On 20 April 1993 a Ukrainian crew – including the chief pilot Mr I. – flew the aircraft to Russia.

7. Until April 1994 the aircraft underwent test flights at the Ramenskoye airfield, located in the Moscow region. On 5 April 1994 and for unspecified reasons, the aircraft was flown back to Ukraine where it landed at the Enterprise's airfield.

8. In the meantime, namely on 30 March 1994, a Ukrainian Customs officer had drawn up a report that customs rules had been violated. According to this report, when the aircraft had crossed the Ukrainian-Russian border in April 1993, it had been declared by officials of the Enterprise as temporarily exported for test flights whereas it had in fact been exported by way of sale to the applicant company.

9. On 27 May 1994 the Ukrainian Customs authorities instituted criminal proceedings for the attempted smuggling of the aircraft to Russia. On an unspecified date the case was transmitted to the Kharkiv Regional Department of the Security Service (*Управління Служби Безпеки України по Харківській області*, hereafter "the USBU").

10. By rulings of 3 December 1994 and 13 November 1995, the USBU investigator decided to classify the aircraft as material evidence (*визнав речовим доказом*) and attached it to the case file pending the outcome of the criminal proceedings.

11. On 14 December 1995 the Deputy Head of the Investigative Unit of the USBU decided to put the aircraft up for sale by issuing a formal order to this effect (*ухвала про долю речового доказу*).

12. By letter of 17 January 1995 the Acting Head of the Investigative Unit of the USBU informed the applicant company that the aircraft had been acquired by the Ministry of the Interior (hereafter "the Ministry") for amount of USD 25,000.

13. On an unspecified date the USBU investigator charged Mr I. with smuggling. In August 1996, the same charge was brought against the Enterprise's Deputy Director General Mr N. and – in July 1997 – also against the Enterprise's Director General. The charge against the latter was subsequently dropped for lack of any *corpus delicti*.

14. By letter of 6 September 1997, the Deputy Prime Minister of the Russian Federation requested the Prime Minister of Ukraine to expedite the criminal proceedings relating to the aircraft at issue.

15. On 16 August 1997 the case was sent to the Kyivsky District Court of Kharkiv (hereafter "the Kyivsky Court") for trial proceedings. On 16 October 1997 the Kyivsky Court allowed the applicant company to join the criminal proceedings as a civil claimant. On an unspecified subsequent date the Ministry joined the proceedings as a civil respondent.

16. At a preparatory hearing on 1 December 1997 the Kyivsky Court held that further investigations were required and remitted the case to the Kharkiv Regional Prosecutor's Office (hereafter "the Prosecutor's Office"), which filed an appeal against this decision.

17. On 20 January 1998 the Kharkiv Regional Court dismissed the prosecution's appeal, holding *inter alia*:

"The AN-72 aircraft, which constitutes material evidence, was unlawfully sold at the pre-trial stage of the proceedings, thereby prejudging any subsequent court decision.

In view of the fact that [the applicant company's] ownership of the AN-72 aircraft is not disputed by anyone and that this company has been admitted as a civil claimant in the proceedings, the investigating authorities should take measures, as provided by law, in order to fulfil the claim in kind or to secure an equivalent amount of money."

18. The Deputy Prosecutor of the Kharkiv Region filed a *protest* (extraordinary appeal) against the Kyivsky Court's decisions of 16 October 1997 and 1 December 1997. On 24 June 1998 the Presidium of the Kharkiv Regional Court dismissed this *protest*. As regards the decision of 16 October 1997, it found no reason to deny the applicant company the status of civil claimant in this criminal case.

19. On 1 July 1999, the Prosecutor's Office submitted the case to the Kyivsky Court, which committed Mr I and Mr N for trial.

20. On 17 November 2000 the applicant company requested the Kyivsky Court to quash the investigator's order of 14 December 1995 to put the aircraft up for sale or, alternatively, to impound the aircraft pending trial. On the same day, the Kyivsky Court dismissed the first request and – accepting the applicant company's argument that operating the airplane would entail wear and tear and depreciate its value – accepted the request to impound the aircraft for the duration of the criminal proceedings.

21. On 20 February 2001 the Zaliznychny District Bailiffs' Service of Kyiv arrested the aircraft which, at that time, was parked at Kyiv airport. However, according to a letter dated 30 March 2001 by the Head of this Bailiffs' Service, the arrest could not be maintained as the aircraft had disappeared from its parking place at this airport.

22. On 2 April 2001 the Kyivsky Court ordered the Ministry of the Interior to inform the court of the whereabouts of the aircraft and to implement its seizure order of 17 November 2000.

23. On 3 April 2001 the Ministry of International Affairs of the Russian Federation filed a note with the Ministry of International Affairs of Ukraine, stating that it "would be grateful for the return as soon as practically possible of the AN-72 aircraft to [the applicant company]".

24. On 22 May 2001 the Ministry of the Interior appealed against the seizure order of 17 November 2000 to the President of the Kharkiv Regional Court and requested its suspension pending the determination of the appeal.

On 28 May 2001 the Kyivsky Court granted this request and suspended the enforcement of the seizure order. No further information about these appeal proceedings has been submitted by the applicant company. Apparently, the seizure order has never been implemented.

25. On 22 June 2001 the Kyivsky Court decided to disjoin the applicant company's civil claim from the criminal case, considering that it would be more appropriate to determine it in civil proceedings. The applicant company appealed.

26. On 6 July 2001 the Kyivsky Court found that the pre-trial investigations were insufficient and remitted the case to the Prosecutor's Office. The accused Mr N. appealed.

27. On 22 January 2002 the Kharkiv Regional Court examined both appeals. It upheld the Kyivsky Court's decision to remit the case for additional investigations, but quashed the impugned decision of 22 June 2001 and reinstated the applicant company's status as civil claimant in the criminal proceedings.

28. On 30 July 2002 the Kharkiv Regional Prosecutor forwarded the case to the Chervonozavodsky District Court of Kharkiv (hereafter "the Chervonozavodsky Court") for trial proceedings.

29. On 13 March 2003 the Chervonozavodsky Court accepted a request filed by the applicant company to seize the aircraft pending the trial proceedings.

30. In the course of a hearing held on 17 July 2003, the Ministry challenged the above seizure order on the ground that the law did not entitle a court to order a general seizure of State property, but only to order the owner to refrain from specified actions. The Chervonozavodsky Court held that there was no proof that the Ministry owned the impugned aircraft. In particular the sales contract was said to be lost and the license to operate the plane, issued by the Ministry of Defence, authorised a certain Ministry's unit to use it, without any reference being made as to who was its owner. However, the court decided to quash its ruling of 13 March 2003 and prohibited the Ministry from disposing of the aircraft in any form whatsoever and from moving it outside the Zhuliany airport, where it was stationed at the material time.

31. In the meantime Mr I. died and the charge against him was dropped.

32. On 13 October 2004 the Chervonozavodsky Court acquitted Mr N, who by that time had become the sole defendant in the proceedings, on the ground of lack of *corpus delicti* (відсутність складу злочину). The court further held that that the investigating authorities' decision to sell the aircraft was unlawful. Moreover, there was no cogent proof of the Ministry's ownership of the aircraft. The aircraft, which thus remained the applicant's property and an item of material evidence, could be disposed of by a court in a judgment on the criminal case. Based on these findings the Chervonozavodsky Court ordered that the aircraft be handed over to the

applicant. It, however, found that it had no jurisdiction, in the criminal case, to entertain the applicant company's claims for damages against the Ministry, the Enterprise, the USBU and the Customs. The prosecutor, the applicant company, the Ministry and Mr N. (who considered that he should have been acquitted for lack of any offence – *відсутність події*) filed appeals against this judgment.

33. On 31 March 2005 the Kharkiv Regional Court of Appeal (hereafter "the Court of Appeal") decided not to entertain the prosecution's appeal on the ground that it was not signed by the prosecutor who had participated in the proceedings before the first instance court. The appeals of the Ministry, the applicant and Mr N. were rejected as unsubstantiated. The same parties made cassation appeals.

34. On 11 April 2006 the Supreme Court quashed the decision of 31 March 2005 and remitted the case for fresh appellate hearing on the ground that the Court of Appeal's refusal to entertain the prosecutor's appeal had not been reasonable.

35. On 1 August 2006 the Court of Appeal granted the appeal of the prosecutor, quashed the judgment of 13 October 2004 and remitted the case to the Prosecutor's Office for further pre-trial investigations.

36. The investigation in the case is still pending.

THE LAW

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

37. 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..."

38. The Government contested that argument.

39. The period to be taken into consideration began on 16 October 1997, when the applicant company joined the proceedings as a civil claimant. The period in question has not yet ended. It has thus lasted ten years and seven months to date, and there has not been a first instance judgment on the merits of the applicant company's claim, although a series of procedural issues have been discussed by the domestic courts at three levels of jurisdiction.

A. Admissibility

40. 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

41. 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).

42. 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*, cited above).

43. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

44. The applicant further complained under Article 1 of Protocol No. 1 about unlawful interference with its property rights.

45. The Government considered that the applicant could not claim to be a victim of the alleged violation of Article 1 of Protocol No. 1 as the proceedings are still pending. They considered this complaint being incompatible *ratione personae*. The applicant agreed with the Government that its complaint under Article 1 of Protocol No. 1 depended on the final resolution of the case at the domestic level and invited the Court to await such resolution.

46. The Court notes in this connection that the criminal proceedings underlying the applicant company’s civil claim are still pending, as mentioned above. The Court notes that the applicant company has two civil claims which have not been resolved to date: the claim concerning the aircraft itself, and the claim for damages. The claim relating to the aircraft itself is being considered in the criminal proceedings, and, as the Government contend and the applicant company agrees, it is therefore

premature to consider it while the criminal proceedings are still pending. The domestic courts declined to deal with the damages claim in the context of the criminal proceedings, but it remains open to the applicant company to bring ordinary civil proceedings in this respect either now or once the criminal proceedings have ended. Complaints in this regard are therefore also premature. The Court would point out that, after the respective final rulings are given, it will be open to the applicant to re-submit its complaints to the Court if it still considers itself a victim of an alleged violation of Article 1 of Protocol No. 1 (see *Merit v. Ukraine*, no. 66561/01, § 48, 30 March 2004). It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention.

III. OTHER COMPLAINTS

47. The applicant further complained under Article 6 §§ 1 and 3 of the Convention about unfairness of the proceedings with respect to it and the accused in the criminal case, about lack of impartiality of the domestic courts and undue consideration of its arguments.

48. The Court, in the light of all material before it, finds that in so far as the matters complained of are within its competence, they do not disclose any appearance of an unjustified interference or breach of these provisions and rejects this part of the application in accordance with Article 35 §§ 1, 3, and 4 of the Convention as being manifestly ill-founded.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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.”

50. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award it any sum on that account.

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;

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