



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

FIFTH SECTION

CASE OF RYSHKEVICH v. UKRAINE

(Application no. 35312/02)

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 Ryshkevich 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. 35312/02) 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 Aleksandr Yanovich Ryshkevich (“the applicant”), on 2 August 2002.

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

3. On 13 December 2005 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**

4. The applicant was born in 1956 and lives in Listvennoye, the Autonomous Republic of Crimea (“the ARC”).

5. On 16 August 1995 criminal proceedings were instituted in which the applicant was accused of having negligently caused a traffic accident resulting in a human death.

6. On 13 November 1995 the applicant was placed under an undertaking not to abscond.

7. On 22 November 1995 the applicant was committed for trial.
8. On 14 May 1996 the Sovetsky District Court of the ARC (*Советський районний суд Автономної республіки Крим*) found that during the pre-trial proceedings the rights of the defence had not been respected and ordered an additional investigation.
9. On 12 May 1997 the applicant was committed for trial.
10. On 22 August 1997 the judge remanded the applicant in custody.
11. On 2 October 1997 the applicant was arrested and placed in custody. The applicant requested release, removal of the trial judge and the transfer of his case to another court.
12. On 25 November 1997, following the applicant's request, the case was remitted to the Nyzhniegirsky District Court of the ARC (*Нижньегірський районний суд Автономної республіки Крим*).
13. On 20 January 1998 the Nyzhniegirsky District Court remitted the case for an additional investigation and ordered the applicant's release under an undertaking not to abscond.
14. On 11 February 1998 the Supreme Court of the ARC (*Верховний суд Автономної республіки Крим*) allowed an appeal by the prosecution against the above decision and remitted the case to the Nyzhniegirsky District Court for a fresh consideration.
15. On 18 May 1999 the Nyzhnyegirsky District Court acquitted the applicant of the charges. The court found that the expert opinions produced by the prosecution were insufficient to prove the applicant's guilt. On the same day the court issued a separate ruling to the effect that the police accident report of 13 August 1995 produced to the court had been forged.
16. On 22 June 1999 the Supreme Court of the ARC quashed the judgment and the separate ruling of 18 May 1999 and remitted the case to the first-instance court for a fresh consideration.
17. In July 1999 the applicant requested suspension of the proceedings on the ground that he had lodged requests with the competent authorities to challenge the ruling of 22 June 1999 by way of a supervisory protest. The proceedings were suspended. By September 1999 the applicant's requests for a supervisory protest were rejected.
18. In July 2000 the hearings resumed.
19. On 3 November 2000 the Nyzhniegirsky District Court remitted the case for an additional investigation.
20. On 15 February 2001 the Supreme Court of the ARC quashed this decision and remitted the case to the Kirovsky District Court (*Кіровський районний суд Автономної республіки Крим*) for examination on the merits.
21. On 26 March 2001 the Kirovsky District Court found the applicant guilty as charged. The applicant was sentenced to six years' imprisonment. However, in accordance with the Amnesty Act of 1998, he was released

from punishment. The court also lifted the applicant's undertaking not to abscond.

22. On 12 July 2001 the Supreme Court of the ARC dismissed an appeal by the applicant.

23. On 21 February 2002 the Supreme Court of Ukraine rejected a request by the applicant for leave to appeal in cassation.

THE LAW

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

24. 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..."

25. The Government contested that argument.

26. The Court observes that the criminal proceedings at issue were instituted in August 1995. At the same time, 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.

27. The period in question ended on 21 February 2002. It had thus lasted four years and five months for three levels of jurisdiction.

A. Admissibility

28. 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

29. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67,

ECHR 1999-II). It further recalls that an accused in criminal proceedings should be entitled to have his case conducted with special diligence (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

30. Turning to the facts of the present case, the Court considers that the applicant was significantly affected by the proceedings. The Court recalls, in particular, that the applicant was facing a long prison sentence if convicted, remained under an obligation not to abscond for over four years and was held in custody for several months. As regards the applicant's conduct, the Court finds that he did not contribute significantly to the procedural delays.

31. Regard being had to the nature of the criminal charges, the case before the domestic authorities bore no signs of special complexity. The delay in resolution of the case largely resulted from its numerous transfers between various trial courts and its remittals for additional investigations and retrials. In addition, the Court notes a twelve-month interval in scheduling hearings between July 1999 and July 2000, for which the Government has not presented any plausible explanation.

32. 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 *Antonenkov and Others v. Ukraine*, no. 14183/02, § 45, 22 November 2005; *Yurtayev v. Ukraine*, no. 11336/02, § 37, 31 January 2006 and *Benyaminson v. Ukraine*, no. 31585/02, § 106, 26 July 2007).

33. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. Initially the applicant claimed a global sum of 80,000 euros (EUR) by way of just satisfaction. Subsequently he modified this claim, requesting the Court to determine the amount of damage on an equitable basis and

having regard to the fact that the institution of criminal proceedings had impeded the applicant's capacity to earn a living. The applicant submitted no documents justifying the latter allegation.

37. The Government submitted that the applicant's claim was wholly unsubstantiated.

38. The Court does not discern any causal link between the violation found and any pecuniary damage alleged; it therefore gives no award of pecuniary damage. On the other hand, 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

39. The applicant also claimed EUR 3,000 for costs and expenses. He presented no documents justifying these claims.

40. The Government contested the claim.

41. 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 gives no award under this head.

C. Default interest

42. 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 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 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 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President