



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

FIFTH SECTION

CASE OF ARTSYBASHEV v. UKRAINE

(Application no. 1282/03)

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 Artsybashev 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. 1282/03) 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 Sergey Nikolayevich Artsybashev (“the applicant”), on 26 October 2002.

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

3. On 4 December 2006 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 1971 and lives in Makiyivka.

5. On 25 August 1997 criminal proceedings were instituted against the applicant and two other individuals on suspicion of murder. On the same date the applicant was arrested and remanded in custody.

6. In December 1997 the applicant was committed for trial.

7. On 19 March 1998 the Chervonogvardiysky District Court of Makiyivka (*Червоногвардійський районний суд м. Макіївка*) remitted the case to the investigative authorities for additional investigation.

8. On 31 August 1998 the additional investigation was terminated and the case was referred back to the District Court.

9. On 21 May 1999 the District Court convicted the applicant of aggravated murder and sentenced him to eleven years' imprisonment.

10. On 20 July 1999 the Donetsk Regional Court (*Донецький обласний суд*)¹ quashed the judgment and remitted the case for additional pre-trial investigation.

11. On 15 December 1999 the additional investigation was terminated and the case was referred to the District Court.

12. On 2 June 2000 the District Court remitted the case for additional investigation.

13. In September 2000, after the additional investigation was terminated, the case was referred back to the District Court.

14. On 27 October 2000 the District Court again remitted the case for additional investigation.

15. In February 2001 the case was referred to the Regional Court to act as a first-instance court.

16. On 24 July 2001 the Regional Court convicted the applicant of aggravated murder and sentenced him to fourteen years' imprisonment.

17. On 11 July 2002 the Supreme Court upheld the judgment.

18. Throughout the course of the proceedings some thirty-two hearings were scheduled by the trial court. Some twelve of them were adjourned on account of one or more of the five witnesses' failures to appear. Two hearings were adjourned in view of the authorities' failure to bring the applicant, who was kept in custody, before the court. On seven occasions the hearings were postponed on account of the judge's ill health.

THE LAW

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

19. 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:

¹ Since July 2001 the Donetsk Regional Court of Appeal (*Апеляційний суд Донецької області*).

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

20. The Government contested that argument.

21. The applicant was arrested on 25 August 1997. 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. 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.

22. The period in question ended on 11 July 2002. It thus lasted four years and ten months for three levels of jurisdiction.

A. Admissibility

23. 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

24. 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).

25. It further recalls that an accused in criminal proceedings should be entitled to have his case conducted with special diligence, particularly, where he is, as in the present case, kept in custody (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006, and *Yurtayev v. Ukraine*, no. 11336/02, § 37, 31 January 2006).

26. The Court finds that the overall length of the proceedings can be explained neither by the complexity of the criminal case, nor by the applicant's conduct. It considers that a number of delays (in particular, repeated remittals of the case for additional investigation and numerous adjournments of hearings on account of the judge's ill health and the authorities' failure to secure the appearance of the applicant or the witnesses) are attributable to the Government.

27. 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 *Yurtayev*, cited above, §§ 37-38; *Antonenkov and Others v. Ukraine*, no. 14183/02, § 45, 22 November 2005; and *Mazurenko v. Ukraine*, no. 14809/03, § 47, 11 January 2007).

28. Having regard to the material submitted to it and 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 12,100 Ukrainian hryvnyas (UAH) in respect of pecuniary damage and UAH 25,000 in respect of non-pecuniary damage.

32. The Government contested these claims.

33. 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, 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

34. The applicant also claimed UAH 2,000 for the costs and expenses. He presented no documents in support of this claim.

35. The Government submitted that this claim should be rejected as unsubstantiated.

36. 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 makes no award.

C. Default interest

37. 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