



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

FIFTH SECTION

CASE OF FEDKO v. UKRAINE

(Application no. 17277/03)

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 Fedko 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 20 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 17277/03) 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 Dmitriy Alekseyevich Fedko (“the applicant”), on 15 May 2003.

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 1972 and lives in Uman.

5. In summer 2000 Mr Y. Z., the applicant’s acquaintance, issued the applicant with a power of attorney to represent his interests in connection with criminal proceedings instituted against several individuals, who had stolen his shoes and cash. In this capacity the applicant participated in Mr Y. Z.’s discussions with relatives of Ms Y. V., one of the suspects, who were seeking to negotiate a settlement. Subsequently the relatives of

Ms Y. V. accused Mr Y. Z. and the applicant of extorting money from them to pay the law enforcement authorities to discontinue proceedings against Ms Y. V.

6. On 20 July 2000 criminal proceedings were instituted against Mr Y. Z. on suspicion of soliciting a bribe. These proceedings were joined with those concerning the larceny of his possessions.

7. Within the framework of these proceedings, on 1 September 2000 the applicant was charged of being an accomplice to Mr Y. Z. On an unspecified date he was placed under an undertaking not to abscond.

8. In October 2000 the investigation was completed and the applicant was committed to trial before the Uman Court (*Уманський міський суд*).

9. On 6 February 2001 the Uman Court ordered a forensic expert assessment at the applicant's request and suspended the proceedings pending its outcome. The court further remanded the applicant in custody, finding that he might interfere with the investigation.

10. On 21 June 2001 the expert assessment was produced to the court.

11. On 9 November 2001 the Uman Court convicted the applicant and Mr Y. Z. of fraud and soliciting a bribe, sentencing the applicant to four years' imprisonment and exempting him from prison under amnesty. On the same day the applicant was released from detention under an undertaking not to abscond.

12. On 15 January 2002 the Cherkasy Regional Court of Appeal (*Апеляційний суд Черкаської області*) quashed the judgment and remitted the case for fresh consideration.

13. On 13 November 2002 the Uman Court remanded the applicant in custody.

14. On 17 January 2003 the Uman Court remitted the case for additional investigation and released the applicant under an undertaking not to abscond. The prosecution appealed.

15. On 18 March 2003 the Regional Court quashed the ruling of 17 January 2003 and remitted the case to the first-instance court for consideration on the merits.

16. On 6 June 2003 the Uman Court convicted Mr Y. Z. and the applicant of fraud and soliciting a bribe, sentenced them to three years' restriction of freedom and exempted them from prison under amnesty.

17. On 23 December 2003 the Regional Court quashed the judgment and remitted the case for additional investigation, citing numerous procedural omissions in the course of investigation and trial. In particular, the court pointed out that no formal criminal proceedings had been instituted against the applicant and so the charges brought against him within the framework of proceedings against Mr Y. Z. were unlawful. It further found that the applicant had been placed in custody without sufficient grounds, that the trial court had failed to take due note of several of his requests and that the case file contained unsigned procedural documents. On the same date the

court issued a separate ruling bringing the above-mentioned omissions to the attention of the Cherkasy Regional Prosecutor and the President of the Cherkasy Regional Council of Judges. The court ordered that the applicant remain under an undertaking not to abscond.

18. On 2 March 2004 the investigative authorities suspended the investigation concerning the larceny of Mr Y. Z.'s possessions on account of inability to determine the identity of the perpetrators. By July 2007 no further procedural actions had ensued. It is unclear whether the applicant has been released from the undertaking not to abscond.

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:

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

A. Admissibility

20. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in the *Merit* case (see *Merit v. Ukraine*, no. 66561/01, §§ 54-67, 30 March 2004). The Court considers that the present objections must be rejected for the same reasons.

21. The Court notes that the above-mentioned 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

22. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is “charged” within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued (see *Rokhlina*

v. Russia, no. 54071/00, § 81, 7 April 2005, and *Antonenkov and Others v. Ukraine*, no. 14183/02, §§32-33, 22 November 2005).

23. Turning to the facts of the case, the Court notes that the applicant was charged with a criminal offence on 1 September 2000 and that by July 2007 this charge had not been determined. The proceedings had thus lasted by that date nearly seven years for two levels of jurisdiction.

24. 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).

25. 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, for example, *Antonenkov and Others*, cited above, § 45; *Ivanov v. Ukraine*, no. 15007/02, §§ 74-75, 7 December 2006; and *Benyaminson v. Ukraine*, no. 31585/02, § 104, 26 July 2007).

26. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed, without providing any supporting materials, 19,058 euros (EUR) in respect of pecuniary damage representing the amount of earnings allegedly lost on account of the fact that he was under criminal investigation. In addition, he claimed EUR 100,000 in respect of non-pecuniary damage.

30. The Government submitted that these claims were exorbitant and unsubstantiated.

31. 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 3,200 under that head.

B. Costs and expenses

32. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the domestic courts and EUR 500 for those incurred before the Court. He presented no documents to support these claims.

33. The Government submitted that these claims were wholly unsubstantiated.

34. 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 are reasonable as to quantum. The Court finds that these requirements have not been met in the present case. It therefore rejects the claim for costs and expenses.

C. Default interest

35. 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 3,200 (three thousand two 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