



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

FIFTH SECTION

CASE OF VASHCHENKO v. UKRAINE

(Application no. 26864/03)

JUDGMENT

STRASBOURG

26 June 2008

FINAL

26/09/2008

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 Vashchenko 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 3 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 26864/03) 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 Viktor Alekseyevich Vashchenko (“the applicant”), on 11 June 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev and the Deputy Minister of Justice, Mrs V. Lutkovska.

3. On 10 January 2007 the Court decided to communicate the complaints concerning the length of the civil and criminal proceedings and the lack of remedies in respect of the length of civil 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 1953 and lives in Melitopil.

A. Civil proceedings

5. In September 1994 the applicant, as a retired military officer, was granted the social tenancy of two family apartments in a newly erected building, the construction of which had been partly sponsored by the municipal authorities and his former military detachment.

6. On 17 October 1995 the applicant lodged a claim with the Melitopol City Court (*Мелітопольський міський суд Запорізької області*) alleging that the apartments in question had been provided to him in an uninhabitable condition; he had renovated them at his own expense and was therefore entitled to receive pecuniary and non-pecuniary damages. In the course of the proceedings the applicant adjusted the amount of his claim on some twenty occasions. Military Detachment A-0325 (*Військова частина А-0325*), the Executive Committee of the Melitopol City Council (*Виконавчий комітет Мелітопольської міської ради*), the Construction Company “Melitopilbud” (*Акціонерне товариство «Мелітопільбуд»*) and the Melitopol Housing Service (*Виробничо-житлове ремонтно-експлуатаційне об'єднання*) were summoned into the proceedings as defendants. Subsequently the military detachment was substituted by the Ministry of Defence of Ukraine (*Міністерство Оборони України*).

7. On 28 May 1997 the Melitopol City Court ordered an expert assessment of the state of the apartments. No hearings were scheduled between May 1997 and May 1998 on account of the pending expert assessment.

8. On 16 March 1999 the court rejected the applicant's claim. In particular, the court found that the applicant had not shown that the apartments in question had defects which were such as to make them uninhabitable. Moreover, having being aware of the state of the apartments before moving in, the applicant had not taken the opportunity to request alternative housing. Furthermore, he had never properly documented the defects he had repaired and the expenses he had borne.

9. On 29 April 1999 the Zaporizhzhya Regional Court (*Запорізький обласний суд*)¹ quashed this judgment and remitted the case for a fresh consideration, having found that the trial court had insufficiently explored the circumstances of the case.

10. On 27 March 2002, following the applicant's allegations about deterioration of his family members' health on account of the state of the apartments, the Melitopol City Court ordered a medical expert assessment.

11. On 17 February 2003 the Melitopol City Court rejected the applicant's claim on similar grounds as in the judgment of 16 March 1999.

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

Moreover, the court found that the claim had been lodged outside the statute of limitation.

12. Between October 1995 and February 2003 the Melitopil City Court scheduled a total of fifty hearings, forty of which were set up after September 1997, the date, when the Convention entered into force in respect of Ukraine. Some fifteen of them were adjourned on account of the failure of one or more of the defendants to appear or following a defendant's request for adjournment. Some five hearings were adjourned to allow the court and the defendants to familiarise themselves with adjustments of the applicant's claims. Three hearings were adjourned on account of the applicant's requests for adjournments. Seven adjournments were initiated by the court for various reasons. Most hearings were scheduled at intervals from several days to two months. On four occasions the intervals between hearings were between four and six months.

13. On 22 May 2003 the Regional Court upheld the judgment of 17 February 2003. In June 2003 the applicant appealed in cassation.

14. On 1 September 2004 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

B. Criminal proceedings

15. On 24 July 2001 the Melitopil District Police (*Мелітопільський районний відділ УМВС України в Запорізькій області*) filed with the Melitopil City Court an administrative charge against the applicant. In particular, they established that on 18 June 2001 around noon the applicant and Mr V. S. had visited Mr E. Sh., the president of the Melitopil District Court (*Мелітопільський районний суд Запорізької області*) to discuss Mr V. S.'s civil case. The applicant started arguing with Mr E. Sh. and refused to leave his office when requested to do so. Mr E. Sh. having stepped out into the corridor, the applicant followed and continued to say that the judicial officers were unprofessional and lacked integrity. Several other judges and personnel heard the noise and came to the area seeking to calm the applicant down. The police were called, but the applicant had left the court building before they arrived. The incident lasted for some half an hour.

16. On 16 August 2001 the Melitopil City Court found that the applicant's conduct could qualify as hooliganism under the Criminal Code of 1960, in force on the date of the incident, discontinued administrative proceedings and transferred the case to the Melitopil Prosecutor (*прокурор м. Мелітополя*) for a decision on initiating criminal proceedings.

17. On 1 September 2001 the new Criminal Code entered into force.

18. On 30 October 2001 criminal proceedings were instituted against the applicant, who was charged with hooliganism under the old Criminal Code.

19. On 28 November 2001 the investigator discontinued criminal proceedings on account of absence of *corpus delicti* in the applicant's conduct.

20. On 23 December 2001 the supervising investigator annulled this decision and transferred the case to another investigator.

21. On 18 April 2002 the new investigator altered the charge, from hooliganism to insult of a judicial officer, pursuant to the provisions of the old Criminal Code. He noted in particular that the charge of hooliganism implied disruption of public order, while in the case at issue there was no evidence that the incident, which had taken place at lunchtime, had in fact disrupted the court's operation. On the same date the investigator discontinued proceedings in view of the fact that following adoption of the new Criminal Code, insulting a judicial officer was no longer a criminal offence.

22. On 21 August 2002 the prosecutor's office annulled this decision and reopened the proceedings. The case was transferred to another investigator.

23. On 25 November 2002 the new investigator discontinued proceedings on essentially the same grounds as above.

24. On 16 October 2003 the prosecutor's office annulled this decision and reopened the proceedings.

25. On 31 October 2003 the investigator altered the charge to that of hooliganism under the new Criminal Code.

26. On 5 November 2003 the applicant was placed under an obligation not to abscond. Subsequently the case was transferred to the Melitopil City Court.

27. On 19 April 2004 the Melitopil City Court remitted the case for additional investigation. In particular, the court found that the case file contained insufficient information on whether the incident had disrupted the normal operation of the Melitopil District Court.

28. On 30 June 2004 the Regional Court upheld this ruling. The case was assigned to a new investigator.

29. On 27 April 2005 the investigator, having found no evidence that the court's operation had been in fact disrupted by the applicant's conduct, altered the charge to insulting a judicial officer pursuant to the Criminal Code of 1960 and discontinued the proceedings in view of the decriminalisation of the offence in question.

30. On 20 June 2006 the supervising investigator ordered the reopening of the criminal proceedings.

31. On 20 October 2006 the investigator discontinued the proceedings on account of absence of any appearance of a criminal conduct on the part of the applicant.

32. On 7 November 2006 the prosecutor's office annulled this decision.

33. On 4 December 2006 the investigator transferred the case to the Melitopil City Court, requesting it to absolve the applicant of criminal liability in view of the decriminalisation of the offence.

34. On 18 January 2007 the Melitopil City Court dismissed this request. In particular, it found that since the formal criminal proceedings against the applicant had been instituted after the entry into force of the new Criminal Code, the applicant could not have been charged under the old Code in the first place. The court returned the case to the investigation authorities for rectification of the formulation of the charges. It further ordered that the applicant remain under an obligation not to abscond.

35. On 12 March 2007 the Regional Court upheld this ruling.

36. By September 2007 no final decision had been taken in respect of the applicant's case.

THE LAW

I. ADMISSIBILITY

A. Alleged violations of Articles 6 § 1 and 13 of the Convention on account of the length of the proceedings and lack of effective remedies

37. The applicant complained that the length of the civil and criminal proceedings in his case had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. He further complained about lack of effective remedies in respect of his complaint concerning the length of the civil proceedings. The provisions at issue read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

Article 13

"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."

38. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Other alleged violations of the Convention

39. The applicant also complained under Articles 6 § 1 and 8 of the Convention about an unfair outcome of the civil proceedings in his case.

40. Having carefully examined the applicant's submissions in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

41. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

II. MERITS

A. Alleged violation of Article 6 § 1 of the Convention in respect of the length of proceedings

42. The Government submitted that the length of both sets of the proceedings in the applicant's case was not unreasonable.

43. The applicant disagreed.

44. 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, and *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

1. Civil proceedings

45. The Court notes that the applicant instituted civil proceedings at issue in the present case in October 1995. Nevertheless, 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.

46. The period in question ended on 1 September 2004. It thus lasted nearly seven years for three levels of jurisdiction.

47. The Court notes that the proceedings were of some complexity, in particular on account of the number of defendants and repeated adjustments by the applicant of his claims. At the same time, the Court finds that substantial delays could be attributed to the domestic authorities. In particular, the Court takes note of several significant intervals in scheduling hearings, numerous adjournments of hearings generated by the conduct of the State-owned defendants or initiated by the trial court, a year-long procedural inactivity in consideration of the applicant's appeal in cassation and a remittal of the case for a fresh consideration on account of insufficient analysis by the trial court.

48. 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 *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 49-50, 6 September 2005; *Karnaushenko v. Ukraine*, no. 23853/02, § 59, 30 November 2006; *Moroz and Others v. Ukraine*, no. 36545/02, § 60, 21 December 2006; and *Ogurtsova v. Ukraine*, no. 12803/02, § 59, 1 February 2007).

49. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the civil proceedings was excessive and failed to meet the "reasonable time" requirement.

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

2. Criminal proceedings

51. 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). The Court further reiterates that the notion of a "charge", for the purposes of Article 6 § 1, may be defined as the official notification given to an individual by the competent authority of an allegation that he has committed an offence proscribed by a rule of a general character, which establishes a punitive and deterrent penalty for the conduct in question (see *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, § 52, and *Öztürk v. Germany*, judgment of 21 February 1984, Series A no. 73, § 53).

52. In the case at issue the "reasonable time" referred to in Article 6 § 1 of the Convention began to run in July 2001, when the applicant was charged with having committed an administrative offence. The period in question had not yet ended by September 2007. By that time it had already

lasted some three years, excluding the periods when the decisions to discontinue the proceedings were in force.

53. The Court notes that the proceedings were terminated and resumed several times, which discloses a serious deficiency in the prosecution system (see, *mutatis mutandis*, *Baglay v. Ukraine*, no. 22431/02, § 31, 8 November 2005, and *Stoianova and Nedelcu v. Romania*, nos. 77517/01 and 77722/01, § 20, ECHR 2005-...). Furthermore, the failure of the authorities, following years of investigation, to produce to the court a case ready for trial or to drop the charges against the applicant in compliance with applicable law, reveals little diligence on their part (see, among other authorities, *Ivanov v. Ukraine*, no. 15007/02, §§ 74-75, 7 December 2006).

54. Regard being had to the case file materials and the Court's jurisprudence, the Court finds that the length of the criminal proceedings in the present case has exceeded what may be considered "reasonable".

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

B. Alleged violation of Article 13 of the Convention

56. The Government submitted that Article 13 was not applicable to the circumstances of the present case, since the applicant had never made out an arguable claim under Article 6 § 1.

57. The applicant disagreed.

58. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The Government did not name any such remedy available to the applicant.

59. The Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention (see *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 9,305,990 euros (EUR) in respect of pecuniary and non-pecuniary damage.

62. The Government contested this claim.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim for 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 2,600 under that head.

B. Costs and expenses

64. The applicant did not submit any separate claim under this head; the Court therefore makes no award in this respect.

C. Default interest

65. 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 complaints concerning the excessive length of the civil and criminal proceedings and lack of effective remedies in respect of the length of civil proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of civil proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of criminal proceedings;
4. *Holds* that there has been a violation of Article 13 of the Convention in respect of the lack of effective remedies concerning the length of civil proceedings;
5. *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 2,600 (two thousand six 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President