



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

FIFTH SECTION

CASE OF KUSHNARENKO v. UKRAINE

(Application no. 18010/04)

JUDGMENT

STRASBOURG

13 November 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Kushnarenko v. Ukraine,

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

Rait Maruste, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 18010/04) 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 Yevgeniy Ivanovich Kushnarenko (“the applicant”), on 6 May 2004.

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

3. On 6 September 2007 the Court 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 1950 and lives in the village of Rozdolne, the Crimea.

5. On 4 July 2000 the applicant lodged complaint with the Rozdolne District Court against two private agricultural companies “Chernyshevsky” (C.) and “Prymorsky” (P.), seeking to recover salary arrears.

6. The first hearing was fixed for 12 October 2000.

7. Between October 2000 and October 2003 eight out of fifteen hearings were postponed due to the respondents' representatives' failure to appear before the court.

8. In May 2001 the proceedings were suspended as the term of office of the presiding judge had expired.

9. The proceedings were resumed in March 2003.

10. On 7 October 2003 the applicant's claims were allowed in full.

11. The judgment was not appealed against and became final on 7 November 2003.

12. The applicant was provided with a written copy of the judgment on 18 November 2003.

13. In the course of 2004 the amount awarded to the applicant against C. was paid in full.

14. The enforcement proceedings against P. were suspended on an unspecified date as the company was insolvent and this part of the judgment of 7 October 2003 remains unenforced.

THE LAW

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

15. 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..."

16. The Government contested that argument.

17. The period to be taken into consideration began on 4 July 2000. The judicial stage of the proceedings ended, at the earliest, on 7 October 2003, when the applicant's claim was successful, and the applicant received the written copy of the judgment a little over a month later. The judicial proceedings thus lasted over three years and three months for one level of jurisdiction. The judgment debt against C. was paid in 2004; the enforcement proceedings against P. have been suspended as the company is insolvent.

A. Admissibility

18. 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

19. 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). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

20. The Court notes that the dispute in question concerned recovery of the applicant's salary arrears. What was at stake for the applicant was of undeniable importance for him and called for an expeditious decision on his claims (see *Golovko v. Ukraine*, no. 39161/02, § 54, 1 February 2007). However, in the Court's opinion the national authorities did not act with the requisite diligence as, for a period of almost two years – from May 2001 to March 2003 – the proceedings were suspended for one year and ten months after the presiding judge's term of office had expired. The Court further notes that the hearings were on numerous occasions postponed due to the respondents' representatives' failure to appear before the court. However, the domestic court failed to take any steps to assure the presence of those persons in order to proceed with the case.

21. 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, *Smirnova v. Ukraine*, no. 36655/02, 8 November 2005 and *Ogurtsova v. Ukraine*, no. 12803/02, 1 February 2007).

22. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicant also complained that the unreasonable length of the proceedings was in violation of Article 13 of the Convention.

25. Having regard to its findings under Article 6 § 1 (see paragraphs 22-23 above), the Court concludes that this complaint is admissible, but

considers that it is not necessary to rule whether, in this case, there has been a violation of Article 13 of the Convention (see, *Kukharchuk v. Ukraine*, no. 10437/02, §§ 39-40, 10 August 2006).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The applicant also complained under Article 2 of the Convention about the non-enforcement of the judgment in his favour.

27. However, in the light of all the materials in its possession, the Court finds that these submissions do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

28. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 5,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

31. The Government did not express an opinion on the matter.

32. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,400 under that head.

B. Costs and expenses

33. In the present case the applicant failed to submit any claims; the Court therefore makes no award.

C. Default interest

34. 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 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;
3. *Holds* that there is no need to examine separately the applicant's complaint under Article 13 of the Convention;
4. *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 1,400 (one thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President