



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

FIFTH SECTION

CASE OF LYUTOV v. UKRAINE

(Application no. 32038/04)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Lyutov 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,

Renate Jaeger,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 32038/04) 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 Sergey Ivanovich Lyutov (“the applicant”), on 16 August 2004.

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

3. On 9 November 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant, Mr Sergey Ivanovich Lyutov, was born in 1956 and lives in the town of Horlovka, Ukraine.

5. On 22 November 1993 the applicant had a work-related accident in which he sustained multiple burns. On 24 November 1993 the applicant’s employer, the State company “Artemshaktobud” (“the company”), issued an accident report which stated that the applicant had been partly responsible for the accident.

6. In 1994 the applicant received the status of a partially disabled person with a medium degree of disability. The company paid the applicant a single-payment accident allowance and awarded him compensation for loss of earnings, to be paid monthly.

7. In May 1995 the applicant instituted proceedings against the Company in the Nikitovsky District Court of Horlovka, asking the court to establish that he was not responsible for the accident, to recalculate the amounts of the above payments and compensate him for the losses sustained due to the erroneous calculation. The applicant also claimed compensation for non-pecuniary damage caused to him as a result of the accident. On 4 December 1995 the court allowed the applicant's claims in part.

8. On 28 March 1996 the Deputy Prosecutor of the Donetsk Region lodged a *protest* against the above judgment with the Presidium of the Donetsk Regional Court. On 10 April 1996 the latter allowed the *protest*, quashed the above decision and remitted the case for reconsideration to the first-instance court.

9. On 22 July 1996 the Nikitovsky District Court of Horlovka allowed the applicant's claims in part. The Deputy President of the Donetsk Regional Court lodged a *protest* against that decision with the Presidium of the Donetsk Regional Court. On 11 November 1998 the decision was quashed and the case was remitted to the first-instance court for reconsideration on the ground that, *inter alia*, the first-instance court had erred in the calculation of the payments due to the applicant.

10. On 11 November 1999 the Nikitovsky District Court of Donetsk allowed the applicant's claims in part. The company appealed against that decision. On 24 January 2000 it was quashed by the Donetsk Regional Court on the ground that the first-instance court had erred in its calculation of the payments due to the applicant. Therefore the case was remitted to the first-instance court for a fresh consideration.

11. On 7 June 2000 the Nikitovsky District Court of Horlovka allowed the applicant's claims in part. The company appealed against this decision. On 13 November 2000 the Donetsk Regional Court quashed the judgment of 7 June 2000 on the ground that the first-instance court had erred in the calculation of the payments due to the applicant. By the same ruling the court of appeal remitted the case to the first-instance court.

12. In April 2001 the applicant lodged an additional claim, requesting the court to amend the report of 24 November 1993.

13. On 17 January 2001 the applicant lodged a request with the Donetsk Regional Court of Appeal for his case to be remitted to another court for consideration.

14. On 6 March 2002 the Donetsk Regional Court of Appeal, acting as a first-instance court, considered the applicant's case and allowed his claims in part.

15. Dissatisfied that the court of appeal had not allowed all of his claims, the applicant lodged an appeal in cassation against the decision on 27 May 2002. According to the law in force at the material time, the cassation appeal was filed with the first-instance court, which was to verify its compliance with procedural rules.

16. According to the records provided by the Government, on 23 October 2003 the Supreme Court refused to consider the applicant's appeal in cassation on the ground that he had failed to comply with procedural formalities prescribed by Ukrainian law.

17. On 3 December 2002 the court of appeal renewed the time-limit for lodging an appeal in cassation and the applicant's appeal in cassation was transferred to the Supreme Court.

18. On 14 April 2004 the Supreme Court upheld the judgment given by the court of appeal.

19. The amount awarded was paid on 8 July 2004.

20. According to the records provided by the Government, out of around forty-three hearings scheduled between November 1998 and April 2004, nine were adjourned due to the absence, or at the request, of the defendant's representative. One was adjourned because of the absence of both parties. Four were adjourned because of the absence of the applicant's lawyer; two were adjourned due to the applicant's absence or at his request. One hearing was adjourned due to the judge's illness. In the course of the proceedings falling within the Court's competence, the applicant sought the transfer of his case to another court on three occasions.

THE LAW

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

21. The applicant complained that the length of the proceedings was 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..."

A. Admissibility

22. The Court notes that the applicant's 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

1. Period to be taken into consideration

23. The applicant instituted proceedings in May 1995, however, the Court's jurisdiction *ratione temporis* covers only the period after the entry into force of the Convention with respect to Ukraine, on 11 September 1997. Nevertheless, in assessing the reasonableness of the time that elapsed after 11 September 1997, account must be taken of the state of proceedings on that date (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 21, 20 April 2006).

24. The Court reiterates that it can take into account only those periods when the case was actually pending before the courts, thus excluding from the calculation those periods between the adoption of the final and binding judgments and their revocation in the course of extraordinary proceedings (see *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004, and *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 41-42, 6 September 2005). Therefore the period from 11 September 1997 to 11 November 1998 cannot be taken into account.

25. The judicial proceedings ended in April 2004, when the Supreme Court gave a final judgment in the applicant's case. The enforcement proceedings in his civil case were terminated within three months after the judgment of 6 March 2002 became final.

26. The Court recalls that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197, ECHR 2006-...). Therefore, the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see *Estima Jorge v. Portugal*, 21 April 1998, § 35, *Reports of Judgments and Decisions* 1998-II, and *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

27. The Court considers that the proceedings in the applicant's case ended with the full enforcement of the judgment in the applicant's favour. The Court notes that the length of the enforcement proceedings in the applicant's case was three months, during which there was no discernible period of inactivity which can be attributed to the domestic authorities. The length of the judicial proceedings falling within the Court's competence was five years and five months.

2. Reasonableness of the length of the judicial proceedings before the domestic courts

28. The Government contested the applicant's complaint, stating that there were no significant periods of inactivity attributable to the State. They maintained that the case had been complex and that the judicial authorities had acted with due diligence. According to the Government, the parties were responsible for several delays, in particular, by making numerous demands to provide additional documents and hold examinations and by failing to appear before the domestic courts. They further maintained that the applicant, while lodging his appeals with the higher courts, had failed to comply with the procedural formalities prescribed by law. They further submitted that by lodging his request for the transfer of the case to another court, the applicant had delayed the proceedings. The Government finally maintained that the length of proceedings in the applicant's case was not unreasonable.

29. The applicant disagreed.

30. 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).

31. The Court considers that the litigation was not particularly complex, but had a certain degree of factual complexity regarding the calculation of the payments due to the applicant.

32. As for the issues that were at stake for the applicant, the Court notes that following the work-related accident the applicant was seriously injured and was classed as disabled. The payments due to him were of undeniable importance to him (see *Litvinyuk v. Ukraine*, no. 9724/03, § 47, 1 February 2007).

33. As regards the conduct of the parties, the Court finds that the applicant's conduct alone cannot explain the overall length of the proceedings before the domestic courts.

34. The Court notes that a major delay was caused by the repetitive remittals of the case for fresh consideration as a result of insufficient analysis by the trial court (see paragraphs 9-13 above). It reiterates that a repetitive re-examination of claims within one set of proceedings can disclose a serious deficiency in the domestic judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). Although the Court has previously rejected some cases concerning repeated remittals, having observed that the judicial authorities had acted diligently in handling a complex matter (see *Zhurba v. Ukraine* (dec.), no. 11215/03, 19 June 2007, and *Bespalov v. Ukraine* (dec.), no. 11484/05, 15 January 2008), it cannot find a similar justification for remittals in the present case.

Furthermore, the Court considers that a number of other delays (adjournments of hearings on account of the defendant's absence and handling by the Supreme Court of the applicant's cassation appeal) should be attributed to the domestic authorities.

35. 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, *Yakymenko v. Ukraine*, no. 19142/03, §§ 32-39, 29 May 2008; *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 49-50, 6 September 2005, and *Golovko v. Ukraine*, no. 39161/02, § 50, 1 February 2007).

36. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicant further complained under Article 6 §1 of the Convention about the outcome of the proceedings in his case. He also complained under Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment of 6 March 2002 given in his favour.

38. In his submissions lodged in May 2008 the applicant complained that by quashing the final and binding court decisions of 4 December 1995 and 22 July 1996 the domestic courts had violated his rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

39. Having carefully examined the applicant's submissions in the light of all the material in its possession, and insofar 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.

40. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government found this claim unsubstantiated and exorbitant.

44. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 800 under that head.

B. Costs and expenses

45. The applicant did not submit any claim for costs and expenses; the Court therefore makes no award under this head.

C. Default interest

46. 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 under Article 6 §1 of the Convention 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*
 - (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) 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, plus any tax that may be chargeable;
 - (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 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President