



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

FIFTH SECTION

**CASE OF AYBABIN v. UKRAINE**

*(Application no. 23194/02)*

JUDGMENT

STRASBOURG

18 December 2008

**FINAL**

***18/03/2009***

*This judgment may be subject to editorial revision.*



**In the case of Aybabin v. Ukraine,**

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

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

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 23194/02) 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 Aleksandrovich Aybabin (“the applicant”), on 3 May 2002.

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

3. On 18 September 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. It also decided to examine the merits of the remainder of the application at the same time as its admissibility (Article 29 § 3).

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1970 and is currently detained in the prison of Zhovti Vody, Ukraine.

5. On 8 June 1997 the applicant killed Mr R. and Mr Sh. and inflicted grievous bodily harm on Mr S. and Mr Sch. after a quarrel in a pub with a number of youths. The applicant received minor injuries. The applicant alleged that he had confronted the above persons with a knife after the quarrel in a pub since he and his friend, Mrs M., had been attacked.

6. On 8 June 1997 the applicant was arrested on suspicion of aggravated murder. He was suspected of having killed Mr R. and Mr Sh. and inflicted grievous bodily harm on Mr S. and Mr Sch.

7. On 11 June 1997 the applicant was formally charged with two counts of aggravated intentional murder. On the same day the prosecutor authorised his detention on remand.

8. On 1 August 1997 the prosecutor extended the applicant's detention on remand and the term of pre-trial investigation up to three months.

9. On 1 September 1997 the charges against the applicant were amended: he was accused of exceeding the limits of necessary defence which resulted in killing two persons and in inflicting grievous bodily harm on two others.

10. On 3 October 1997 the investigation was completed and the case was referred to the Kyivskiy District Court of Kharkiv.

11. On 3 November 1997 the case was referred from the Kyivskiy District Court of Kharkiv to the Kominternovskiy District Court of Kharkiv for examination on the merits.

12. On 11 June 1999 a judge of the Kominternovskiy District Court of Kharkiv remitted the case to the Kyivskiy District Prosecutor's Office of Kharkiv for additional investigation. The court ordered the investigative authorities to find all witnesses in the case and question them, hold a confrontation between them, find the persons who participated in the quarrel and inflicted minor bodily injuries on the applicant and Mrs M. The court also requested a reconstruction of the events and additional forensic examination if the latter appeared to be necessary. The court also requested to check whether the charges against the applicant should be re-qualified under Article 93 of the Criminal Code.

13. On 30 August 1999 the investigation in the case was reopened.

14. On 28 September 1999 the applicant was charged with exceeding the limits of necessary defence which resulted in killing two persons and in inflicting grievous bodily harm on two others.

15. On 1 November 1999 the case was referred to the Kominternovskiy District Court of Kharkiv.

16. On 26 November 1999 a judge of the Kominternovskiy District Court of Kharkiv remitted the case to the Kyivskiy District Prosecutor's Office of Kharkiv for additional investigation. The court ordered that a reconstruction of events be held and then a forensic examination be conducted if it appeared to be necessary.

17. On 7 April 2000 the investigation in the case was reopened.

18. On 6 May 2000 the applicant was again charged with exceeding the limits of necessary defence which resulted in killing two persons and in inflicting grievous bodily harm on two others.

19. On 6 May 2000 the case was referred to the Kominternovskiy District Court of Kharkiv.

20. On 18 May 2000 a judge of the Kominternovskiy District Court of Kharkiv remitted the case for additional investigation on the ground that the investigative authorities had failed to comply with the requirements contained in the ruling of 26 November 1999.

21. On 30 May 2000 the investigation in the case was officially renewed.

22. On the same day the Kharkiv City Prosecutor set a term for additional investigation until 30 June 2000 and extended the applicant's detention on remand until the same date.

23. On 7 June 2000 the investigator of the Kharkiv City Prosecutor's Office instituted criminal proceedings against the applicant charging him with two counts of murder and two counts of attempted murder.

24. On 20 June 2000 the same investigator re-qualified the charges against the applicant and instituted criminal proceedings against him on two counts of murder connected to the victims' performance of their public duty to prevent a crime; and two counts of an attempted murder connected to the victims' performance of their public duty to prevent a crime.

25. On 20 June 2000 the same investigator instituted criminal proceedings against the applicant for extremely malicious hooliganism.

26. On the same day the above criminal proceedings against the applicant were joined.

27. On 29 June 2000 the applicant was officially charged with the above offences.

28. On the same day the pre-trial investigation was completed.

29. On 3 August 2000 the applicant consulted the case-file.

30. On 4 August 2000 the bill of indictment was completed and the case was referred to the Kharkiv Regional Court.

31. On 17 May 2001 the Kharkiv Regional Court found that the applicant had intentionally killed Mr R. and Mr Sh. and attempted to kill Mr S. and Mr Sch. following a quarrel in the pub. Therefore, the court convicted the applicant of two counts of murder and two counts of attempted murder and sentenced him to fifteen years' imprisonment.

32. On 18 December 2001 the Supreme Court upheld the judgment.

## THE LAW

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

33. 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...”

34. The Government contested that argument.

35. The applicant was arrested on 8 June 1997. 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 reasonability of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

36. The period in question ended on 18 December 2001. It thus lasted four years and three months for the investigation and two levels of jurisdiction.

### **A. Admissibility**

37. 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**

38. The Government submitted that the applicant's criminal case had been complex. In particular, they stated that the domestic court had to consider thoroughly the applicant's allegations that he had been acting in self-defence. According to the Government, the applicant had been responsible for several delays, in particular, by making demands for expert evidence and by lodging petitions. The Government finally submitted that the witnesses and the victims had also contributed to the length of proceedings.

39. The applicant disagreed.

40. 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). What is at stake for the applicant has also to be taken into consideration. In this respect the Court recalls that throughout the period under consideration the applicant was kept in custody – a fact which required particular diligence on the part of the authorities and courts dealing with the case to administer justice expeditiously (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A).

41. As regards the complexity of the case, the Court notes that the proceedings at issue concerned one episode which included two counts of murder and two counts of attempted murder, and required the questioning of

fifteen witnesses, conducting several simple forensic examinations and a reconstruction of events. The applicant was the only accused in this case. Therefore it could not be said that the proceedings were so complex as to justify their length.

42. As regards the conduct of the parties, the Court finds that a major delay was caused by the remittal of the case from the Kyivskiy District Court of Kharkiv to the Kominternovskiy District Court of Kharkiv for examination on the merits, and by the repetitive remittals of the case for additional investigation (see paragraphs 11, 12, 16, 20 above). It reiterates that a repetitive re-examination of the case 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, for example, *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.

43. Having regard to the information in its possession and 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.

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

## II APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed UAH 11,365 Ukrainian hryvnas (UAH, approximately EUR 1,557) and sought a new apartment in respect of pecuniary damage. He also claimed 700,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government contested these claims.

48. 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 800 EUR under that head.

### **B. Costs and expenses**

49. The applicant also claimed UAH 274.10 (approximately 40 EUR) for the costs and expenses.

50. The Government agreed to pay the applicant UAH 209.86.

51. 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.

52. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 40 for costs and expenses.

### **C. Default interest**

53. 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) in respect of non-pecuniary damage and EUR 40 (forty euros) in respect of costs and expenses, to be converted into the national currency of Ukraine 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 amounts 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 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Rait Maruste  
President