



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

FIFTH SECTION

CASE OF VOISHCHEV v. UKRAINE

(Application no. 21263/04)

JUDGMENT

STRASBOURG

19 February 2009

FINAL

19/05/2009

This judgment may be subject to editorial revision.

In the case of Voishchev v. Ukraine,

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

Peer Lorenzen, *President*,
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Mirjana Lazarova Trajkovska, *judges*,
Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 January 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 21263/04) 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 Vladimir Ivanovich Voishchev (“the applicant”), on 2 June 2004.

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

3. On 17 September 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 was born in 1957 and lives in the town of Kirovograd.

5. He is a former employee of a company “Drukmath” (“the company”) and joint inventor of two products. The company used the patent rights for these inventions under contracts it entered into with the applicant.

6. On 23 October 1995 the applicant instituted proceedings against the company in the Kirovsky District Court of Kirovograd (“the District Court”). He alleged that the company had not paid him instalments due

under the contract for the use of the first invention and sought an order requiring the company to comply with its terms. He also claimed compensation for pecuniary and non-pecuniary damage.

7. On 1 March 1996 the company lodged a counterclaim seeking a declaration that the contract for the use of the first invention was null and void.

8. Later, in the course of the proceedings, the applicant requested the court to annul the company's right to use the patents for the inventions. He also claimed compensation for pecuniary and non-pecuniary damage caused by the company's failure to comply with its contractual obligations.

9. The first hearing in the case was held on 5 August 1998.

10. On 29 June 1999 the District Court allowed the applicant's claim in part. The company lodged an appeal in cassation.

11. On 29 July 1999 the District Court refused to hear the company's appeal in cassation as it had failed to pay the court fees.

12. On 20 October 1999 the Presidium of the Kirovograd Regional Court¹ rejected a *protest* by the Kirovograd Regional Prosecutor against that judgment.

13. On 23 February 2000, following a *protest* by the Deputy Prosecutor General, the Supreme Court quashed the judgment of 29 June 1999 and remitted the case to the District Court for fresh consideration.

14. On 18 December 2000 the District Court found against the applicant.

15. On 15 February 2001 the Kirovograd Regional Court quashed that decision and remitted the case to the District Court for fresh consideration on the ground that the first-instance court had failed to examine all the circumstances of the case.

16. On 7 June 2001 the District Court found against the applicant. The applicant appealed in cassation.

17. On 13 November 2001 the Kirovograd Regional Court of Appeal quashed that decision and remitted the case to the District Court for fresh consideration on the ground that the first-instance court had failed to examine all the circumstances of the case.

18. On 1 March 2002 the Head of the Kirovograd Regional Court of Appeal ordered that the applicant's case be transferred to another court since the District Court had failed to consider it within a reasonable time.

19. On 11 March 2002 the applicant's case was transferred to the Leninsky District Court of Kirovograd for consideration.

20. On 20 November 2002 the Leninsky District Court of Kirovograd found against the applicant. On 5 February 2003 the Kirovograd Regional Court of Appeal upheld that decision.

¹ Since June 2001 – the Kirovograd Regional Court of Appeal

21. On 17 February 2003 the applicant appealed in cassation. On 23 March 2004 the Supreme Court rejected that appeal in a decision which was served on the applicant on 16 April 2004.

22. In the course of the proceedings falling within the Court's competence *ratione temporis* two expert reports were obtained. This took about seven months. According to documents provided by the Government, out of some forty-three hearings scheduled during the relevant period, four hearings were adjourned at the applicant's request, seven because the defendant's representative failed to appear and one at the request of the latter. No appropriate steps were taken by the domestic authorities to ensure the defendant's representative presence in court. Three hearings were adjourned because the judge was involved in other proceedings and another because the judge was ill. Two hearings were adjourned because of the absence of both parties.

THE LAW

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

23. The applicant complained that the length of 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

24. 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. *The Parties' submissions*

25. The Government contested the applicant's submissions, stating that there were no significant periods of inactivity attributable to the State. They maintained that the case was complex and that the judicial authorities had acted with due diligence. According to the Government, the parties had

been responsible for several delays, in particular, by making numerous demands for additional documents and expert evidence, by lodging new claims, by failing to attend hearings, and by appealing against the courts' judgements. The Government, therefore, maintained that the length of proceedings in the applicant's case was not unreasonable.

26. The applicant disagreed.

2. Period to be taken into consideration

27. The applicant instituted proceedings on 23 October 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).

28. The Court also 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 29 July 1999 to 23 February 2000 cannot be taken into account.

29. The period to be taken into consideration ended in April 2004 when the applicant was informed of the Supreme Court's decision on his cassation appeal (see *Widmann v. Austria*, no. 42032/98, § 29, 19 June 2003). It thus lasted six years for three levels of jurisdiction.

3. Reasonableness of the length of the proceedings before the domestic courts

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. Concerning the question of the complexity of the present case, the Court observes that it concerned a number of issues related to the use of the patents by the company. Although the domestic courts were required to examine quite an extensive amount of documentary evidence, the issues before them were not of such a nature as to necessitate prolonged consideration of the applicant's case. Therefore, the Court concludes that

the subject matter of the litigation at issue cannot be considered particularly complex.

32. The Court further notes that, although a party to civil proceedings cannot be blamed for using the avenues available to him under domestic law in order to protect his interests, he must accept that such actions necessarily prolong the proceedings concerned (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001). It agrees with the Government that the applicant contributed, to a certain extent, to the length of the proceedings. Nevertheless, he cannot be held primarily responsible for the overall length of the proceedings in the instant case.

33. A major delay was caused by the repeated remittals of the case for fresh consideration as a result of insufficient analysis by the trial court (see paragraphs 13, 15, 17, 18 above). Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it observes that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (*Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

34. Furthermore, it considers that a number of other delays (absence of hearings in the period from 11 September 1997 until 5 August 1998, adjournments of hearings on account of absence of the defendant's representative, adjournment of hearings because of the judge's involvement in other proceedings and a year-long procedural inactivity in consideration of the applicant's appeal in cassation by the Supreme Court) are attributable to the domestic authorities.

35. In sum, having regard to the circumstances of the instant case as a whole, the Court concludes that there was unreasonable delay in disposing of the applicant's case.

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

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 alleged that the judges sitting in the domestic courts were biased and lacked independence. In his submissions lodged in 2007, the applicant also complained of a violation of his rights guaranteed by Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention on the basis of the same facts.

38. 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.

39. 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

40. 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

41. The applicant claimed 1,710,194 euros (EUR) in respect of pecuniary damage. He further claimed EUR 130,000 in respect of non-pecuniary damage.

42. The Government found this claim unsubstantiated and exorbitant.

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the applicant's claim for pecuniary damage. On the other hand, ruling on an equitable basis, the Court finds it reasonable to award the applicant EUR 600 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant claimed UAH 105 (around EUR 15) for costs and expenses.

45. The Government left the matter to the Court's discretion.

46. The Court considers it reasonable to award the applicant the sum of EUR 15 under this head.

C. Default interest

47. 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 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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 600 (six hundred euros);
 - (ii) EUR 15 (fifteen euros) for costs and expenses;
 - (iii) plus any tax that may be chargeable to the applicant on the above amounts;
 - (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 19 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President