



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

FIFTH SECTION

CASE OF POPILIN v. UKRAINE

(Application no. 12470/04)

This version was rectified on 1st December 2009
under Rule 81 of the Rules of the Court

JUDGMENT

STRASBOURG

16 April 2009

FINAL

16/07/2009

This judgment may be subject to editorial revision.

In the case of Popilin v. Ukraine,

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

Rait Maruste, *President*,

Karel Jungwiert,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 12470/04) 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 Oleg Nikolayevich Popilin, on 15 March 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 1937 and lives in Toronto, Canada.

5. On 8 August 2000 Mr A. instituted civil proceedings in the Dzerzhinsky District Court of Kharkiv (“the court”) against the applicant and Mr D. alleging that he had been humiliated by them. He claimed compensation for non-pecuniary damage.

6. On an unspecified date Mr A. requested the court to secure his claim by prohibiting the Migration Office of the Kharkiv Department of the Ministry of Interior (“the Migration Office”) from issuing the applicant with

an authorisation to leave Ukraine to live permanently abroad. On 18 July 2002 the court granted Mr A.'s request.

7. On 23 and 30 September 2002 the court quashed the ruling of 18 July 2002 and attached the applicant's flat.

8. On 31 October 2002 the applicant went to live permanently in Canada. On 13 December 2002 he came back to Ukraine.

9. On 25 March 2003 the Kharkiv Regional Court of Appeal ("the Court of Appeal"), following Mr A.'s appeal, quashed the rulings of 23 and 30 September 2002 and remitted the case for a new consideration to the court.

10. On 21 April 2003 the applicant lodged a counterclaim against Mr A. claiming compensation for non-pecuniary damage.

11. In May 2003 the applicant waived his permanent residence in Canada in order to restore his right to receive a pension in Ukraine.

12. In a letter of 2 October 2003 the court explained to the Head of the Migration Office that as on 25 March 2003 the rulings of 23 and 30 September 2002 had been quashed, the Migration Office should abide by the ruling of 18 July 2002.

13. On 21 July 2004 the applicant again left Ukraine for Canada, where he lives now.

14. Since July 2004 he has been represented by his representative before the domestic courts.

15. On 22 April 2005 the court rejected Mr. A.'s claim and partly allowed the applicant's counterclaim.

16. On 16 December 2005 the Court of Appeal amended the judgment of 22 April 2005 and dismissed the applicant's counterclaim.

17. On 23 February 2006 Mr A. appealed in cassation before the Supreme Court. The cassation proceedings are still pending.

18. According to the documents provided by the Government, in the course of the proceedings some forty-nine hearings were listed by the domestic courts. Nine hearings were adjourned because the judge was involved in other proceedings, one because he was on holiday and one because the judge was ill. Some twenty-four hearings were adjourned because one or more parties to the proceedings or their representatives failed to appear or at their request. From the documents in the case file it cannot be seen that the domestic courts took any steps to ensure the parties' presence in the court. No hearings were adjourned solely due to the applicant's failure to appear.

THE LAW

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

19. 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...”

A. Admissibility

20. 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

21. 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. The Government contended that the parties to the proceedings had contributed to the length of proceedings and that the State could not be held liable for their behaviour. In particular, they submitted that the parties had failed to appear in court on numerous occasions. They further averred that by demanding that witnesses be summoned and additional documents provided, by lodging various requests and appealing against the judgment to the higher courts, the parties had also caused certain delays to the proceedings.

22. The applicant disagreed.

23. 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).

24. The Court notes that the proceedings in question were instituted in August 2000 and are still pending before the court of cassation. The proceedings thus have lasted eight years and five months at three levels of jurisdiction.

25. Given that the court prohibited the Migration Office from issuing the applicant with an authorisation to leave Ukraine to live permanently abroad before the case had been considered on its merits, the outcome of the proceedings was of a certain importance for the applicant.

26. Concerning the question of the complexity of the present case, the Court observes that it concerned a simple dispute between private persons.

27. The Court notes that the applicant has 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.

28. The Court considers that a number of delays (in particular, lengthy consideration of the case by the first-instance court, adjournments of hearings on account of the judge's involvement in other proceedings, and lengthy consideration of the appeal in cassation) are attributable to the Government (see *Golovko v. Ukraine*, no. 39161/02, §§ 61-65, 1 February 2007).

29. 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, § 39, 29 May 2008; *Pavlyulynets v. Ukraine*, no. 70767/01, § 53, 6 September 2005; and *Golovko*, cited above, § 65).

30. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. In his application form the applicant complained under Article 2 of Protocol No. 4 that he had been unlawfully prevented from leaving Ukraine. In his further submissions he alleged, without relying on any Article of the Convention or Protocols thereto, that the courts which had considered his case were corrupt.

33. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 5,586 euros (EUR) in respect of pecuniary damage. This amount included the costs of plane tickets for him and his wife and other transport expenses. The applicant further alleged that he had sustained non-pecuniary damage; he left this matter to the Court’s discretion.

37. The Government contested the applicant’s claims.

38. 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, ruling on an equitable basis, it awards the applicant EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant made no separate claim as to costs and expenses. Therefore, the Court makes no award under that head.

C. Default interest

40. 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*

(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 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;¹

(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 16 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President

1. Rectified on 1st December 2009: “to be converted into the national currency of the respondent State at the rate applicable at the date of settlement” has been deleted.