



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

FIFTH SECTION

CASE OF BYKOV v. UKRAINE

(Application no. 26675/07)

JUDGMENT

STRASBOURG

16 April 2009

FINAL

16/07/2009

This judgment may be subject to editorial revision.

In the case of Bykov v. Ukraine,

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

Rait Maruste, *President*,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *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. 26675/07) 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 Mykola Oleksiyovych Bykov (“the applicant”), on 12 June 2007.

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

3. On 22 April 2008 the Court declared the application partly inadmissible and decided to communicate the complaints under Articles 6 § 1 and 13 of the Convention concerning the length of the proceedings and the lack of remedies in that respect to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3). The case was given priority under Rule 41 of the Rules of the Court.

THE FACTS**THE CIRCUMSTANCES OF THE CASE****A. Background information**

4. The applicant was born in 1955 and lives in Syrotyne, Ukraine.

5. The applicant worked at “Obyednannya Azot” (*Сєверодонецьке державне виробниче підприємство «Об’єднання Азот»*), a State chemical company, from 1978. According to the applicant, in December 2000 – January 2001 he was diagnosed as having chronic lymphocytic leukaemia (*хронічний лімфолейкоз*), a blood cancer. On 26 June 2001 the diagnosis was reaffirmed by a medical expert and he was recognised as having a work-related illness.

6. In June 2001 the applicant was dismissed because of his absence from work. The applicant alleged that the real reason for his dismissal was his attempts to establish a casual link between his illness and work.

7. In July 2001 an internal investigation relating to the applicant’s illness was held. A report of 16 July 2001 revealed a number of shortcomings on the part of the employer, including a disregard for minimum work safety conditions, which had led to the applicant’s illness.

8. The applicant is now in the final stages of the disease.

B. Civil proceedings

9. In January 2002 the applicant instituted civil proceedings in the Severodonetsk Town Court against “Obyednannya Azot” challenging the reason for his dismissal and seeking compensation for his work-related illness.

10. Shortly after that, on 31 January 2002, the local department of the State Social Security Fund (*Сєверодонецьке відділення виконавчої дирекції Фонду соціального страхування від нещасних випадків на виробництві і професійних захворювань*) was joined to the applicant’s case as a co-defendant.

11. On 2 April 2002 the court split the dismissal claim against “Obyednannya Azot” and the compensation claim against “Obyednannya Azot” and the State Social Security Fund (the “Fund”) into two separate sets of proceedings.

12. On 29 May 2002 the court stayed the compensation proceedings pending the determination of the dismissal proceedings.

13. On 23 December 2004 the Severodonetsk Town Court discontinued the dismissal proceedings as “Obyednannya Azot” and the applicant had reached a settlement.

14. On 28 March 2005 the court went on to examine the compensation claim.

15. On 20 July 2005 and 15 August 2006 the court ordered forensic medical and psychiatric examinations.

16. According to the applicant, on 19 January 2007, in order to expedite examination of his case, he was required to relodge his claim against the Fund for compensation for his work-related illness in administrative proceedings (see paragraph 23 et seq.). He also requested the court to

discontinue examination of his claim against the Fund in civil proceedings. At the same time, he made a fresh claim against “Obyednannya Azot”, seeking compensation for unlawful dismissal, and requested the court to continue the civil proceedings in his claim against “Obyednannya Azot” seeking compensation for his work-related illness. These requests were granted on the same day.

17. On 20 April 2007 the Severodonetsk Town Court rejected the applicant’s claims against “Obyednannya Azot”.

18. On 4 December 2007 the Donetsk Regional Court of Appeal quashed this judgment and gave a new one. In particular, it found in part for the applicant and awarded him 1,500 Ukrainian hryvnias (UAH)¹ in compensation for unlawful dismissal; the claim for compensation for the applicant’s work-related illness was dismissed as unsubstantiated.

19. On 15 February 2008 the Supreme Court of Ukraine rejected the applicant’s request for leave to appeal in cassation.

20. On 12 June 2008 the State Bailiffs’ Service refused to institute enforcement proceedings as the writ of enforcement lacked the necessary information about the debtor.

21. On 24 October 2008 it was concluded, following an internal investigation held by the superior officials of the State Bailiffs’ Service, that the above refusal was lawful.

22. The judgment of 4 December 2007 is still, apparently, not enforced.

C. Administrative proceedings

23. On 19 January 2007 the applicant instituted administrative proceedings in the Severodonetsk Town Court against the local department of the Fund seeking an amount in respect of insurance and compensation for non-pecuniary damage as a result of his work-related illness.

24. On 19 June 2007 the court rejected the applicant’s claim.

25. On 14 September 2007 the Donetsk Regional Court of Appeal upheld the decision of 19 June 2007.

26. The applicant appealed in cassation and the proceedings are still pending before the Higher Administrative Court.

¹ About 206.06 euro (EUR) at the material time.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

27. The applicant complained that the length of the proceedings, including the enforcement stage, 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...”

He also complained that there was no effective remedy for his complaint that the length of the civil proceedings in his case had been excessive. He relied in that respect on Article 13 of the Convention which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

28. The Government submitted that the lawfulness-of-dismissal limb of the proceedings had been terminated on 23 December 2004 when the parties reached the settlement. In their view the applicant’s complaint relating to that aspect of the case should be rejected as being lodged out of time.

29. The Court observes that in the course of the proceedings before the domestic court the applicant lodged three different civil claims which were examined in the following periods:

- i. claim against “Obyednannya Azot” challenging the reason for dismissal – from January 2002 to 23 December 2004;
- ii. claim against “Obyednannya Azot” for compensation for work-related illness – from January 2002 to 15 February 2008;
- iii. claim against “Obyednannya Azot” for compensation for unlawful dismissal – from 19 January 2007 to 15 February 2008.

As to the administrative proceedings, the Court observes that the parties did not make any particular submissions in that regard and therefore it finds no reason to examine these proceedings separately.

30. The Court agrees with the Government that examination of the first-mentioned claim ended more than six months before the application was submitted to the Court. Therefore this part of the application has been submitted too late and should be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

31. It further observes that the last-mentioned claim was partly allowed by the domestic courts but the final judgment is still unenforced. The Court has pointed out in civil length-of-proceedings cases that the enforcement proceedings are the second stage of the proceedings and that the right asserted does not actually become effective until enforcement (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197, ECHR 2006-...). Accordingly, the period to be taken into consideration with regard to this claim started in January 2007 and has not yet ended. It has thus lasted two years and two months for three levels of jurisdiction. In the Court's view the length of the proceedings complained of did not exceed the "reasonable time" referred to in Article 6 § 1 of the Convention. Therefore this part of the application should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

32. As to the applicant's claim for compensation for his work-related illness against "Obyednannya Azot", the Court observes that its examination lasted six years and one month.

33. 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

1. Article 6 § 1 of the Convention

34. Referring to the case of *Dulskiy v. Ukraine* (no. 61679/00, § 81, 1 June 2006), the Government pleaded that, by using the avenues available to them under domestic law, the parties had contributed to the length of the proceedings and that the State could not be held liable for their behaviour. In particular, the Government submitted that the stay of proceedings between 29 May 2002 and 28 March 2005 (see paragraphs 12 and 14 above) should not be imputed to them as the parties had consented to that stay. They further asserted that, on two or three occasions each, the applicant and the Fund had failed to appear before the domestic courts. In their view, the applicant had also contributed to the overall length of proceedings by modifying his claims, requesting forensic examinations and appealing against the courts' decisions. In the end, they came to the conclusion that the judicial authorities had acted with due diligence and, accordingly, there was no violation of Article 6 § 1 of the Convention.

35. The applicant disagreed.

36. 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*, 27 February 1992, § 17, Series A no. 230-D) and in cases where the applicant is seriously ill (*Gheorghe v. Romania*, no. 19215/04, § 60, ECHR 2007 -... (extracts)).

37. Turning to the circumstances of the present case, the Court observes that the subject matter of the proceedings in question was not of particular complexity. On the other hand, the Court underlines, the applicant's claims were of particular importance for the applicant.

38. In the present case, the applicant's failure to appear two or three times before the domestic courts mentioned by the Government are not so aggravating as to justify more than six years of legal proceedings in the applicant's case. As to the Government's contention that the defendant had also caused certain delays to the proceedings in question, the Court points out that the defendants in the applicant's case were the State-owned company and the State body whose acts and omissions were directly attributable to the respondent State (see, *mutatis mutandis*, *Serdyuk v. Ukraine*, no. 15002/02, § 33, 20 September 2007).

39. Even assuming that the stay of compensation proceedings ordered by the Severodonetsk Town Court on 29 May 2002 was justified at that moment in the interests of justice, its continuance until 28 March 2005, that is 34 months, is not reasonable. In this regard the Court notes that the matter of whether the reason given for dismissing the applicant was lawful, being the cause of that stay, was pending before the Severodonetsk Town Court until 23 December 2004 and did not even progress as far as a first-instance judgment. Such a long determination of that claim protracted determination of the compensation claim in question.

40. Lastly, the Court observes, with regard to the Government's contention that the Severodonetsk Town Court had had to postpone the proceedings on several occasions in view of the parties' manifold requests, that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see, for example, *Scordino v. Italy* (no. 1), cited above, § 183 and *Dulskiy v. Ukraine*, cited above, § 86).

41. 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, and *Efimenko v. Ukraine*, no. 55870/00, § 58, 18 July 2006).

42. 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.

2. Article 13 of the Convention

43. Referring to their conclusion that there was no violation of Article 6 § 1 of the Convention in the present case, the Government contended that there was no violation of Article 13 of the Convention either.

44. The applicant disagreed.

45. The Court has frequently found violations of Article 13 of the Convention, stating that the current Ukrainian legislation does not provide a remedy for complaints concerning the length of proceedings (see *Efimenko v. Ukraine*, cited above, §§ 48-50 and 64 and subsequent case-law). In the present case the Court finds no reason to depart from that case-law.

There has accordingly also been a breach of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

48. The Government contested the claim.

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

B. Costs and expenses

50. The applicant also claimed EUR 1,000 for costs and expenses incurred before the domestic courts and UAH 5,829² for those incurred before the Court. The last-mentioned sum included, in particular, UAH 5,600³ for legal advice expenses, UAH 179⁴ for postal expenses and UAH 50⁵ for the fee he had paid to open the foreign currency bank account designated for the just satisfaction award. These claims he substantiated

² About EUR 511.37.

³ About EUR 491.28.

⁴ About EUR 15.70.

⁵ About EUR 4.4.

with the copies of relevant vouchers, except the postal expenses' claim which he had substantiated to the amount of UAH 138.85⁶ only.

51. The Government left the matter of legal and postal expenses to the Court's discretion and contested the remainder of claims.

52. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings. It further observes that normally the applicants are not called on to be legally represented in the cases like the present one and therefore their legal expenses are not reimbursed. Although the applicant in the instant case was not officially represented by anyone, the Court takes the view that it would be unfair to expect him to conduct his case himself and without legal advice, given the state of his health. Therefore, it considers reasonable to award the sum of EUR 500 for the proceedings before the Court.

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* that there has been a violation of 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 800 (eight hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, to be converted into national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;

⁶ About EUR 12.18.

(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;

5. *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