



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KOZIY v. UKRAINE

(Application no. 10426/02)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Koziy v. Ukraine,

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

Peer Lorenzen, *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 26 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 10426/02) 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 Bogdan Volodymyrovych Koziy (“the applicant”), on 23 February 2002.

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

3. The applicant complained, *inter alia*, that the length of the proceedings concerning his compensation claim was excessive and thus in violation of Article 6 § 1 of the Convention.

4. By a partial decision of 22 May 2006, the Court decided to adjourn the examination of the above complaint and declared the remainder of the application inadmissible. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the adjourned part of the application at the same time as its admissibility.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1949 and lives in Rokytno. Until August 1996 he worked as a secondary school teacher.

A. The criminal proceedings

6. On 25 July 1995 K. hit the applicant and damaged his teeth.

7. By two medical reports of 26 July 1995 and 2 February 1996 the applicant was found to have sustained minor injuries.

8. On an unspecified date the criminal case was opened against K. and subsequently referred to the Yavoriv Town Court (“the Yavoriv court”). In the course of the trial the applicant introduced a claim for compensation for pecuniary and non-pecuniary damages on account of his injuries.

9. On 7 March 1997 the applicant received from a private dentist an estimate of the medical treatment which he had to undergo as a result of his injuries, and submitted it to the court.

10. On 16 December 1997 the court found K. guilty of intentional infliction of minor bodily injuries and sentenced him to one year’s community service. It relied on the medical reports of 26 July 1995 and 2 February 1996.

11. The court further rejected the applicant’s claim for compensation on the ground that it had not been lodged in accordance with the procedural formalities, and informed him that he could institute civil proceedings against K.

12. The above judgment was not appealed against and became final.

B. The civil proceedings

13. On 30 March 1998 the applicant lodged with the Galytskyy District Court of Lviv (“the Galytskyy court”) a civil law claim against K.

14. The court ordered two medical examinations and stayed the proceedings pending their outcome for the periods of 15 February to 4 March 1999, 27 December 1999 to 21 November 2000, and 26 December 2000 to 21 April 2003. It also made several unsuccessful inquiries to the local police and hospital about the applicant’s medical documents of 1995.

15. From December 1999 to March 2003 the Lviv Regional Dental Hospital kept the case file for the purpose of the aforementioned examinations. Due to the loss of the relevant medical documents and the considerable lapse of time following the injuries, it found it impossible to estimate the actual costs of the treatment the applicant had had to undergo.

16. According to the letter of the Galytskyy court to the applicant dated 13 March 2003, the latter had twice failed to appear for medical examinations and had failed to notify the court of a change of his address.

17. In April 2003 the court adjourned the hearing for about a month due to the defendant’s absence.

18. On 26 May 2003 the court found in part for the applicant and ordered K. to pay him 2,273 Ukrainian hryvnias (UAH)¹ in compensation for medical expenses as confirmed by the certificate issued to the applicant by a private dentist on 7 March 1997, and UAH 1,500² in compensation for non-pecuniary damage. The court based its judgment on the factual findings of the Yavoriv court in the criminal case against K.

19. The judgment was not appealed against and became final.

THE LAW

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

20. The applicant complained that the length of the proceedings concerning his compensation claim had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads, in so far as relevant, 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

21. The Court considers that the applicant’s complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

22. The applicant maintained that the period in question began in 1995, when he instituted criminal proceedings against K.

23. The Government disagreed noting that the Convention had entered into force in respect of Ukraine on 11 September 1997. They further contended that the period to be taken into consideration was confined to the civil proceedings instituted by the applicant on 30 March 1998 and completed by the final judgment of 26 May 2003. According to the Government, the criminal and civil limbs in the instant case concerned

1. Around 371 euros (EUR).

2. Around EUR 245.

different facts and differed by their legal nature and aims pursued. Furthermore, the Government submitted that the intervals between 15 February and 4 March 1999, 27 December 1999 and 21 November 2000, and 26 December 2000 and 21 April 2003 should be excluded from the overall length of the civil proceedings, as those had been stayed pending the outcome of the expert examinations.

24. The Court reiterates that the right to institute criminal proceedings and to secure the conviction of a third party is not a right which is included among the rights and freedoms guaranteed by the Convention (see, for example, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). Article 6 § 1 may nevertheless apply to those proceedings where the civil limb remains so closely linked to the criminal limb that the outcome of the criminal proceedings may be decisive for the civil claims (see, for example, *Calvelli and Ciglio v. Italy*, no. 32967/96, § 62, 17 January 2002).

25. Turning to the facts of the present case, the Court notes at the outset that the applicant lodged his civil claim against K. in the course of the criminal trial of the latter and sought compensation for his injuries being the subject of that trial. He later introduced the same claim separately with the civil court (the Galytskyi court). Although the criminal court (the Yavoriv court) held that the compensation claim had been lodged not in accordance with Ukrainian law and the applicant did not appeal in cassation against that decision, the Court is satisfied that the criminal proceedings were decisive for the applicant's civil right for compensation and they, accordingly, fall within the ambit of Article 6 of the Convention. Thus, the findings of the criminal court as to the fact that K. had intentionally inflicted bodily injuries on the applicant were a precondition for the outcome of the proceedings before the civil court, which did not consider that aspect of the case afresh. Therefore, both sets of proceedings were closely linked, if not strictly interdependent, and the Court considers that it would be inappropriate to separate these proceedings and to assess their length in isolation (see the *Perez* case cited above, §§ 70-72, and, *a contrario*, *Serdyuk v. Ukraine*, no. 15002/02, §§ 25-28, 20 September 2007).

26. The Court considers that the period to be taken into consideration began on 11 September 1997, when the Convention entered into force in respect of Ukraine. However, in assessing the reasonableness of the time which had elapsed after that date, it will take into account the state of proceedings at the time.

27. The Court does not share the Government's opinion that the intervals during which the proceedings were suspended pending the experts' reports should be excluded from the overall period to be considered. It reiterates that an expert examination ordered by a court is one of the means of establishing or evaluating the factual circumstances of a case, and therefore constitutes an inherent part of the court procedure. Moreover, it is within the competence of the court to decide whether to seek outside advice and to set

a time-limit for receiving it. Consequently, the mere fact that the proceedings were formally suspended does not exclude the intervals at issue from the overall duration of the proceedings, the reasonableness of which the Court will consider (see *Dulskiy v. Ukraine*, no. 61679/00, § 71, 1 June 2006).

28. In view of the foregoing, the Court will take into consideration the period from 11 September 1997 to 26 May 2003, when the Galytskyy court finally determined the applicant's civil claim, excluding the interval between 16 December 1997 and 30 March 1998, when no proceedings were pending. Accordingly, the period to be taken into consideration is five years and five months.

2. Reasonableness of the length of the proceedings

29. The Government indicated two major factors explaining the overall length of the proceedings, which it considered not unreasonable: the behaviour of the applicant, who had allegedly twice failed to appear for his medical examination and had failed to notify the court about a change of his address; and repeated requests by the court to the hospital and the town police for certain documents and results of expert reports.

30. The applicant disagreed.

31. 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).

32. The Court observes that the proceedings were of some importance for the applicant. Nonetheless, it does not find any ground for the domestic courts to deal with his case with urgency *vis-à-vis* other cases pending before them. On the other hand, it sees no reason to consider the case complex. Its factual side had already been established within the criminal proceedings, and the task of the civil court was limited to determining the pecuniary and non-pecuniary damage sustained by the applicant.

33. The Court notes that of five years and two months, when the case was before the first-instance civil court, it remained without any progress for over three years pending the outcome of the medical examinations and search for the applicant's medical documents, which all turned out wholly futile. Even if the applicant did indeed fail twice to appear for his medical examination and to inform the court about a change of his domicile, the Court does not consider that to explain the overall length of the proceedings.

34. In sum, having regard to the circumstances of the instant case, the Court concludes that there was an unreasonable delay in disposing of the applicant's case, for which the Government did not provide any acceptable justification.

35. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 5,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. He further claimed EUR 360,000 in compensation for lost profit, alleging that he could not continue to work as a teacher as a result of the injuries inflicted on him by K.

38. The Government contested these claims.

39. The Court does not discern any causal link between the alleged violation and the pecuniary damage claimed; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and, making its assessment on an equitable basis, awards him EUR 2,000 in this respect, as required by Article 41 of the Convention.

B. Costs and expenses

40. The applicant claimed EUR 100 in legal fees, as well as postal and travel expenses, without submitting any documents in respect of that claim. He also claimed EUR 9,900 in compensation for the self-study he had had to do to prepare his case.

41. The Government considered the above claims exorbitant and unsubstantiated.

42. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court finds that these requirements have not been met in the present case. It therefore rejects the claim for costs and expenses.

C. Default interest

43. 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;
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 2,000 (two thousand 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 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President