



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF BEVZ v. UKRAINE

(Application no. 7307/05)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

18/09/2009

This judgment may be subject to editorial revision.

In the case of Bevz v. Ukraine,

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

Peer Lorenzen, *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 26 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 7307/05) 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, Ms Lyudmyla Volodymyrivna Bevz (“the applicant”), on 8 February 2005.

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

3. On 29 May 2008 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 1950 and lives in Monastyrshche, Cherkassy region, Ukraine.

5. On 31 May 2002, following complaints by several persons about the applicant, the local police launched an investigation into alleged fraud. The relevant decision begins as follows: “From 2000 to 2001 [the applicant], as the head of [a private company, N.], received money from [the listed persons] under the pretence [that she would provide them with] employment abroad, swindling and abusing their confidence, [...]”.

6. Officially the applicant was not charged and participated in the proceedings as a witness. However, according to her, by January 2003 she had participated in a number of confrontations with victims. Furthermore, on 7 June 2002 her house had been searched by the authorities.

7. From 4 July to 26 December 2002 the investigation was stayed eight times due to the applicant's illness. Apparently no other investigative steps were taken during this period. Subsequently, it was held by the District Court that the reasons relied on by the investigator in his relevant decisions to stay the proceedings during this period could be applied to an accused only.

8. On 9 January 2003 the police instituted two sets of criminal proceedings against the applicant on suspicion that she had committed abuse of authority and forgery. Subsequently other sets of proceedings which had been instituted against the applicant on the related charges were joined to the main proceedings; the latter eventually incorporated nine sets with a total of sixteen counts.

9. The applicant continued to be interrogated as a witness up to 29 January 2003 when she was formally charged and gave a written undertaking not to abscond.

10. By 23 June 2003 the investigation was completed and the case was transferred to the Monastyrshche District Court ("the District Court").

11. On 7 July 2003 the preliminary court hearing was held.

12. On 23 September 2003 the applicant was arrested.

13. On 25 September 2003 the investigator issued an attachment order over the applicant's car and other items of property.

14. The next day the District Court ordered the applicant's detention on remand. Subsequently, on 16 October 2003 the Cherkassy Regional Court of Appeal quashed this order and the applicant was released.

15. On 1 October 2003 the District Court remitted the case for additional investigation.

16. On 10 October 2003 the investigator ordered a forensic technical examination of a document in the case. The expert report was completed by 29 October 2003.

17. From 30 October 2003 to 18 July 2005 the investigation was stayed because of the applicant's illness. Nevertheless, within this period the domestic authorities carried out additional forensic technical examinations and applied to the Russian authorities for legal assistance. The expert report was completed within a month and the international letter rogatory was executed within two months.

18. By 5 September 2005 the additional investigation was completed and the case was transferred to the District Court.

19. On 6 October 2005 the preliminary court hearing was held.

20. On 23 October 2006 the prosecutor dropped the charges against the applicant on two counts as her guilt had not been proven.

21. On 4 December 2006 the District Court remitted the case for an additional investigation.

22. On 27 February 2007 the Cherkassy Regional Court of Appeal quashed this decision and remitted the case to the first-instance court for fresh consideration.

23. From 23 August to 26 November 2007 the proceedings were stayed because of the applicant's illness. The relevant court decisions stated that the proceedings had been stayed and eventually resumed upon the applicant's requests. These decisions were not subject to appeal.

24. On 8 July 2008 the prosecutor dropped the charges against the applicant on four further counts as the investigation had been conducted in breach of the rules of criminal procedure.

25. The proceedings are still pending before the District Court. In addition to thirty-two hearings held between 6 October 2005 and 18 August 2008, five were cancelled due to the prosecutor's and judge's illness or prior engagements, seven due to the victims' and witnesses' failure to appear before the court, and seven due to the applicant's counsel's failure to appear before the court. Once, on 22 November 2005, none of the participants mentioned attended the court hearing. In view of the parties' (victims and witnesses especially) systematic failure to appear before it, on nine occasions the District Court ordered their attendance at the court hearings to be secured by the police.

26. During the proceedings against her, the applicant complained to different State authorities about the length thereof, but to no avail.

27. According to a letter of 10 November 2008 from the Monastyrshche Central District Hospital, from 2002 to 2008 the applicant underwent in-patient medical treatment, namely, from 6 to 15 April 2002, from 11 to 26 February and from 8 to 13 October 2003, and from 1 to 16 November 2004.

28. According to the applicant, her written undertaking not to abscond and the attachment order of 25 September 2003 are still in place.

THE LAW

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

29. The applicant complained that the length of the proceedings pending against her 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..."

A. Admissibility

30. 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. *Period to be taken into consideration*

31. The applicant submitted that the period in question commenced on 31 May 2002 and has not yet ended.

32. The Government contested the *dies a quo* argument. They pleaded that initially the applicant took part in the impugned proceedings as a witness. According to them, she was “charged” on 9 January 2003 only and, therefore, the period to be taken into consideration started to run from that date.

33. The Court, having regard to the text of the decision to initiate criminal proceedings and the subsequent investigative measures taken with regard to the applicant (see paragraphs 5-7 above), takes the view that the applicant was “charged” within the meaning of Article 6 § 1 of the Convention on 31 May 2002 (see, *mutatis mutandis*, *Deweert v. Belgium*, 27 February 1980, § 46, Series A no. 35).

34. Accordingly, the period to be taken into consideration began on 31 May 2002 and has not yet ended. It has thus lasted seven years for the pre-trial investigation and the trial in first instance.

2. *Reasonableness of the length of the proceedings*

35. The Government maintained that the proceedings were complicated by the number of charges, victims and witnesses and by the need to carry out a number of forensic examinations and to have certain investigative measures carried out abroad. They also contended – referring to the periods when the proceedings had been stayed because of the applicant’s illness, and the numerous failures by the applicant, her counsel, victims and witnesses to appear before the District Court – that these delays could not be imputed to the respondent State. In sum, they came to the conclusion that the domestic authorities had acted with due diligence and there was no violation of Article 6 § 1 of the Convention.

36. The applicant disagreed. In particular, relying on the hospital’s letter of 10 November 2008, which gave totally different and considerably shorter periods of her illness as opposed to the ones asserted by the Government

(see paragraph 27 above), she contended that the proceedings had been stayed for far-fetched reasons.

37. 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 complexity of the case and 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).

38. Concerning the complexity of the case before the domestic authorities the Court notes that it was neither legally nor factually complicated enough to justify almost seven years of ongoing proceedings. It only took a few months for the relevant authorities to carry out the forensic examinations and to execute the international letter rogatory.

39. The Court agrees that the number of cases instituted against the applicant and the number of charges which they included might have complicated the proceedings, but the fact that a significant number of these charges were subsequently dropped (see paragraphs 20 and 24 above) suggests that they had been brought on unmeritorious grounds or pursued with a lack of diligence, which diminishes the Government's argument.

40. As to the applicant's illness, which allegedly led the domestic authorities to stay the proceedings for a total of two years and five months (see paragraphs 7, 17 and 23 above), the Court observes that the Government did not prove that the applicant had in fact been ill during these periods. Nor did they comment on the periods of illness referred to by the applicant. In this situation the Court takes the view that these delays cannot be attributed to the applicant but to the Government, and that the latter failed to justify them.

41. Lastly, the Court observes that on numerous occasions the hearings of the case were adjourned in order to summon victims and witnesses (see paragraph 25 above). In this respect the Court notes that the domestic court had at its disposal ample machinery to ensure the victims' and witnesses' presence in the courtroom; however it does not appear from the case file that the court availed itself of these possibilities (see, *mutatis mutandis*, *Smirnova v. Ukraine*, no. 36655/02, § 69, 8 November 2005).

42. 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 *Pélissier and Sassi*, cited above).

43. 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

44. The applicant further complained of the fact that in Ukraine there was no court to which an application could be made to complain of the excessive length of proceedings. She relied 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.”

45. Referring to their conclusion that there was no violation of Article 6 § 1 of the Convention, the Government contested that argument.

46. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

47. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It has frequently found violations of Article 13 of the Convention because the current Ukrainian legislation does not provide a remedy for complaints concerning the length of proceedings (see *Merit v. Ukraine*, no. 66561/01, §§ 78-79, 30 March 2004 and subsequent case-law). In the present case the Court finds no reason to depart from that case-law.

48. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 78,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government contested the claim.

52. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,000 under that head.

B. Costs and expenses

53. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

54. 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 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 2,000 (two thousand euros), plus any tax that may be chargeable, 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;
 - (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;
5. *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