



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

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1959 · 50 · 2009

FIFTH SECTION

**CASE OF YEFANOV AND OTHERS v. UKRAINE**

*(Application no. 13404/02)*

JUDGMENT

STRASBOURG

30 July 2009

**FINAL**

***30/10/2009***

*This judgment may be subject to editorial revision.*



**In the case of Yefanov and Others v. Ukraine,**

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 7 July 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 13404/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Ukrainian nationals, Mr Oleksandr Petrovich Yefanov (“the first applicant”), Mrs Irina Ivanovna Yefanova (“the second applicant”), Mr Yuriy Ivanovich Boyev (“the third applicant”), and Mrs Svitlana Petrivna Boyeva (“the fourth applicant”), on 30 March 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev. The second, third and fourth applicants were represented by the first applicant.

3. On 28 August 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the criminal proceedings to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

**THE FACTS**

4. The applicants were born in 1951, 1959, 1952 and 1953 respectively. All four are Ukrainian nationals and reside in the town of Smila, in the Cherkassy region, Ukraine.

5. On 8 February 1999 the third and fourth applicants were arrested. They were remanded in custody and charged with smuggling.

6. On 30 March 1999 criminal proceedings were instituted against the first applicant for tax evasion. On 8 May 1999 new charges of smuggling

were brought against him. On 10 May 1999 he was arrested and remanded in custody.

7. On 14 July 1999 criminal proceedings were instituted against the second applicant for forging documents and tax evasion. The second applicant gave an undertaking not to abscond.

8. Later, given the common factual and legal background of the above criminal cases, they were joined.

9. The first, third and fourth applicants remained in pre-trial detention until 14 July 2000, 7 June 1999 and 5 July 2000 respectively.

10. On 30 September pre-trial investigation was terminated and the criminal case was sent to the Smila Court.

11. On 12 October 1999 the court started considering the case.

12. On 21 April 2000 it remitted the case for additional investigation.

13. On 16 May 2000 the Cherkassy Regional Court quashed that decision and remitted the case to the first-instance court.

14. On 11 September 2000 the Smila Court acquitted the applicants.

15. On 17 October 2000 the Cherkassy Regional Court, following an appeal by a local prosecutor's office, quashed that judgment and remitted the case for fresh consideration by the Cherkassy District Court. The applicants were ordered not to leave their place of permanent residence.

16. Between 14 December 2000 and 22 February 2001 the Cherkassy District Court held six hearings. No hearings were scheduled between 22 February and 2 August 2001.

17. On 2 August 2001 the Cherkassy District Court suspended the proceedings as the fourth applicant had absconded. It ordered the prosecutor's office to put the fourth applicant on the list of wanted persons.

18. During this period, the first and second applicants submitted repeated requests to the Cherkassy District Court and the Cherkassy Regional Court of Appeal for their case to be examined separately from that of the fourth applicant.

19. In a letter of 3 March 2003, the Cherkassy District Court indicated, in particular, that the authorities had failed to take necessary measures to find the fourth applicant. It ordered the Prosecutor of Smila, the Prosecutor of the Cherkassy Region and the officials of the Cherkassy Department of the Interior to issue a separate indictment concerning the first and the second applicants and to take measures to find the fourth applicant.

20. On 23 April 2003, in the course of the court hearing, the prosecutor's office submitted an amended indictment in respect of the first applicant and discontinued the tax evasion proceedings against him.

21. On 14 May 2003 the fourth applicant appeared before the court.

22. On 11 November 2003 the Cherkassy District Court acquitted the second applicant. It convicted the other applicants and gave them a three-year suspended prison sentence. The applicants were ordered not to leave their place of permanent residence.

23. The judgment was appealed against by the third and fourth applicants and by the prosecutor.

24. On 28 November 2003 the same court declared an appeal by the third and fourth applicants inadmissible as it had been lodged out of time.

25. On 13 April 2004 the Cherkassy Regional Court of Appeal allowed in part the appeal by the prosecutor and rejected the objections of the first and second applicants. It slightly amended the judgment of 11 November 2003.

26. On 22 March 2005 the Supreme Court quashed the ruling of 28 November 2003.

27. On 6 September 2005 the Cherkassy Regional Court of Appeal dismissed appeals by the third and fourth applicants and upheld the judgment of 11 November 2003.

28. On 17 November 2005 the first, third and fourth applicants withdrew their cassation appeals against the judgment of 11 November 2003, and on 24 January 2006 the Supreme Court terminated the cassation proceedings.

## THE LAW

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

29. The applicants 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

30. The Government contested that argument.

31. The period in question in respect of the first applicant began on 30 March 1999 and ended on 24 January 2006. The proceedings thus lasted six years and almost ten months for the pre-trial investigation and three levels of jurisdiction.

32. The criminal proceedings against the second applicant began on 14 July 1999 and ended on 13 April 2004. They thus lasted four years and nine months for the pre-trial investigation and two levels of jurisdiction.

33. The period to be taken into consideration in respect of the third applicant started on 8 February 1999 and ended on 24 January 2006. The proceedings thus lasted about six years and eleven months for the pre-trial investigation and three levels of jurisdiction.

34. The proceedings in respect of the fourth applicant began on 8 February 1999 and ended on 24 January 2006. The period during which the fourth applicant was on the run (2 August 2001 – 14 May 2003) must be

excluded from the overall length of the proceedings (see *Girolami v. Italy*, 19 February 1991, § 13, Series A no. 196-E, and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 81, ECHR 2003-IX). The proceedings in question thus lasted about five years and two months for the investigation and three levels of jurisdiction.

### **A. Admissibility**

35. 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**

36. The Government submitted that the domestic courts had considered the case without substantial delays, and that the protracted length of the proceedings had been due to the complexity of the case and to the applicants' behaviour. They further noted that the applicants had appealed against the decisions of the domestic courts. The Government also maintained that the proceedings had been suspended since the fourth applicant had absconded.

37. The second applicant disagreed. In particular, she submitted that the domestic authorities had been informed that the fourth applicant had gone to Israel for breast-cancer treatment. The first, third and fourth applicants did not submit any comments.

38. 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 applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). What is at stake for the applicants has also to be taken into consideration. In this respect the Court notes that the first applicant was kept in custody between 10 May 1999 and 14 July 2000. The third and fourth applicants were kept in custody in the period from 8 February 1999 till 7 June 1999 and 5 July 2000 respectively. These facts required particular diligence on the part of the authorities and courts dealing with the case to administer justice expeditiously (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A).

39. The Court considers that the case was not particularly complex, either factually or legally. Moreover, in view in particular of the fact that the Smila Court had acquitted them at first instance, it is not persuaded by the Government's argument that the applicants were to blame for appealing against unfavourable judgments. As to the argument that the proceedings

had had to be suspended as the fourth applicant had absconded, the Court notes that the Government have not put forward any reason to explain why this should have been necessary. In any event, the domestic court did not order the prosecutor's office to issue a separate indictment and to take measures to find the fourth applicant until nineteen months after the proceedings were suspended.

40. Furthermore, other significant delays in the proceedings are attributable to the domestic authorities. In particular, between February and August 2001 no hearings were held before the domestic courts, and the examination of the case at second instance was protracted due to the first-instance court's failure to reach a proper decision on the admissibility of the third and fourth applicants' appeal against the judgment of 11 November 2003.

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 *Pélissier and Sassi*, cited above, § 75; and *Aybabin v. Ukraine*, no. 23194/02, § 44, 18 December 2008).

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 finds that the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

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

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The second applicant claimed EUR 1,821,969 in respect of pecuniary and non-pecuniary damage.

46. The Government contested that claim.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to the non-pecuniary damage claimed by the second applicant, it considers that in the circumstances of the case a mere finding of a violation constitutes sufficient just satisfaction.

48. The first, third and fourth applicants did not submit any claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

**B. Costs and expenses**

49. In the present case the applicants failed to submit any claim; the Court therefore makes no award.

**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 in respect of the length of the criminal proceedings against the first, second, third and fourth applicants;
3. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the second applicant may have suffered;
4. *Dismisses* the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Deputy Registrar

Peer Lorenzen  
President