



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF YAKUBOVYCH v. UKRAINE

(Application no. 29025/05)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Yakubovych v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *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. 29025/05) 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, Mr Oleksiy Volodymyrovych Yakubovych (“the applicant”), on 27 July 2005.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Messrs Yuriy Zaytsev and Nazar Kulchitskyy.

3. On 14 January 2008 the Court decided to give notice of the application 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in the Rivne Region.

1. First set of proceedings against the Vysotskyy (Zlagoda) company

5. On 13 March 1996 the applicant instituted proceedings in the Sarny Court against a private company, Vysotskyy, for non-fulfilment of its contractual obligations, under which it should have provided the applicant with agricultural products.

6. On 1 July 1997 the Sarny Court left the applicant's complaint without consideration, holding that it fell within the jurisdiction of the commercial courts.

7. On 28 July 1997 the Rivne Regional Court quashed that ruling and remitted the case for a fresh consideration.

8. On 22 December 1997 the Sarny Court rejected the applicant's claims as unsubstantiated.

9. On 26 January 1998 the Rivne Court quashed that decision and remitted the case for a fresh consideration.

10. On 19 May 1998 the Sarny Court found in part for the applicant.

11. On 13 July 1998 the Rivne Court upheld that decision.

12. On 23 December 1998 the Presidium of the Rivne Court, following an objection (*npomecm*) lodged by its President, quashed the decisions of the lower courts and remitted the case to the Sarny Court for a fresh consideration.

13. On an unspecified date the Vysotskyy company lodged a counterclaim with that court seeking the annulment of the contract.

After December 1998 the case was reconsidered by the courts at three levels of jurisdiction on four occasions because the courts of first instance and appeal had committed factual and legal errors in their decisions.

14. On 3 March 2003 the Dubrovytsya Town Court allowed the applicant's claim in part and ordered the successor of the Vysotskyy company, Zlagoda, to transfer thirty-three tons of potatoes, worth 15,196 Ukrainian hryvnas (UAH)¹, and eight tons of wheat, worth UAH 2,598², to the applicant. It also ordered the applicant to return 3,855 kg of meat, worth UAH 11,133³, to Zlagoda.

15. On 27 June 2003 the Rivne Regional Court of Appeal upheld that judgment. On 4 February 2005 the Supreme Court rejected the applicant's appeal in cassation.

16. In the course of the proceedings twenty-seven hearings were adjourned, two of which were adjourned due to the applicant's failure to attend and the remaining twenty-five due to the need to call witnesses or due to their or their respondent's failure to attend.

2. Enforcement of the judgment of 2 March 2003

17. On an unspecified date the Bailiffs started enforcement proceedings in respect of the judgment of 3 March 2003.

18. On 11 January 2007 the Rivne Court modified the procedure of enforcement, ordering the Zlagoda company to pay the applicant

1. About 2,725 euros (EUR).

2. About EUR 466.

3. About EUR 1,997.

UAH 17,794¹ for the products due to him under the judgment of 3 March 2003.

19. On 7 February 2007 the Dubrovysya Court, following a request by the Zlagoda company to modify the procedure of enforcement of the judgment of 3 March 2003, ordered cross-cancellation of the debts under that judgment in the amount of UAH 11,133² and ruled that Zlagoda was to pay the applicant UAH 6,661³. The ruling of 7 February 2007 was not appealed against and became final.

20. On 21 February 2007 the judgment of 3 March 2003 was enforced in full.

3. Second set of proceedings against the Zlagoda company

21. In March 2007 the applicant instituted proceedings against the Zlagoda company, seeking compensation for the difference between the award paid and the in market prices of the products due to him under the judgment of 3 March 2003.

22. On 5 June 2007 the Dubrovysya Court rejected the applicant's claims as unsubstantiated.

23. On 18 July 2007 the Rivne Court quashed that decision and discontinued the proceedings in the case, holding that the issue had been settled by the final judgment of 3 March 2003.

24. On 27 August 2008 the Supreme Court quashed the decision of 18 July 2007 and remitted the case for a fresh consideration to the Rivne Court, before which it is still pending.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF THE FIRST SET OF PROCEEDINGS

25. The applicant alleged that the length of the first set of proceedings 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:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

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1. About EUR 2,834.
 2. About EUR1,773.
 3. About EUR 1,064.

A. Admissibility

26. The Court considers 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*

27. The Government submitted that a part of the proceedings was outside the Court's competence *ratione temporis*.

28. The Court observes that the overall duration of the proceedings, including the enforcement stage and excluding the interval between 13 July 1998 and 23 December 1998, when no proceedings were pending, was more than ten years (see *Yemanakova v. Russia*, no. 60408/00, § 41, 23 September 2004, and *Efimenko v. Ukraine*, no. 55870/00, § 51, 18 July 2006). The period to be taken into consideration *ratione temporis* began on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect, and ended on 21 February 2007, and thus lasted for about nine years and two months. In assessing the reasonableness of the time that elapsed after 11 September 1997, the Court will take into account the state of proceedings before that day.

2. *Reasonableness of the length of the proceedings*

29. The Government submitted that the length of the proceedings could be explained by the complexity of the subject matter of the case and the conduct of the applicant, who had challenged the court decisions on a number of occasions

30. 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).

31. The Court notes that the dispute at hand concerned an issue of fulfilment of obligations under an ordinary sales contract. It involved two parties and was not complicated from either a factual or a legal point of view.

32. However, it took the courts of three levels of jurisdiction about seven years and four months to finally determine that dispute. Although some of the delays in the proceedings could be attributed to the applicant, their excessive duration was largely caused by the repetitive reconsiderations of

the case. Such reconsiderations were ordered by the higher courts because of errors committed by the lower courts. In this context, the Court reiterates its position that repetitive remittals of a case within one set of proceedings on account of factual or legal errors discloses a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

33. 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, among many other authorities, *Mikhaylenko v. Ukraine*, no. 18389/03, §§ 28-32, 15 May 2008, and *Lyutov v. Ukraine*, no. 32038/04, §§ 34-36, 11 December 2008).

34. Having examined all the materials submitted to it in view of the above considerations, 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.

35. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the excessive length of the court proceedings.

36. The Court does not find it necessary in the circumstances to assess the reasonableness of the length of the same proceedings including the enforcement stage.

II. OTHER COMPLAINTS

37. The applicant also complained under Article 6 § 1 of the Convention that the first set of proceedings were unfair and about their outcome. He also complained under Article 13 of the Convention that the amount fixed to be paid to him pursuant to the ruling of 7 February 2007 was unreasonably low. The applicant complained of a violation of Article 1 of Protocol No.1 on account of the length of the second set of proceedings.

38. In the light of the materials in its possession, the Court finds that the applicant's complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed EUR 20,000 in respect of pecuniary and non-pecuniary damage.

42. The Government contested the claim.

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects that claim. On the other hand, ruling on an equitable basis, it awards the applicant EUR 2,400 for non-pecuniary damage.

B. Costs and expenses

44. The applicant did not submit any claims for costs and expenses; therefore, the Court makes no award.

C. Default interest

45. 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 under Article 6 § 1 of the Convention about the length of the first set of 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 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency 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;

4. *Dismisses* the remainder of the 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