



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SMIRNOV v. UKRAINE

(Application no. 1409/03)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Smirnov 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,

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. 1409/03) 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 Yevgeniy Anatoliyovych Smirnov (“the applicant”), on 24 October 2002. The applicant was represented by Mr Belik Valeriy Grigoryevich, a lawyer practising in Mykolaiv.

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

3. On 10 July 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the civil proceedings against the Kerch Tax Inspectorate 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 applicant was born in 1958 and lives in the town of Kerch, Ukraine.

5. In February 1999 the Kerch Tax Inspectorate instituted criminal proceedings against the applicant, who ran a small business, on a charge of tax evasion and attached his property. Later, the criminal proceedings against him were terminated on the ground that his actions did not constitute a criminal offence under the new criminal law.

6. On 17 November 2000 the applicant instituted civil proceedings against the Kerch Tax Inspectorate claiming compensation for the pecuniary and non-pecuniary damage caused to him.

7. On 10 August 2001 the Kerch City Court allowed the applicant's claim in part.

8. In September 2001 the defendant in the case lodged an appeal against that judgment.

9. On 11 August 2003 the Court of Appeal quashed the judgment of 10 August 2001 and remitted the case for a fresh consideration.

10. On 12 December 2003 the Supreme Court rejected the applicant's appeal in cassation.

11. By a judgment of 16 June 2004 the Kerch City Court dismissed the applicant's claim in respect of non-pecuniary damage. By a ruling adopted the same date the court terminated proceedings in respect of pecuniary damage.

12. On 27 September 2004 the Court of Appeal quashed the judgment and ruling and remitted the case to the first-instance court for a fresh consideration.

13. On 6 October 2004 the applicant lodged a cassation appeal against the ruling of 27 September 2004. On 30 August 2007 the Zaporizhzhya Regional Court of Appeal, acting as a court of cassation, dismissed it.

14. In accordance with the ruling of 27 September 2004 the case was remitted to the first-instance court and the proceedings are still pending before it.

THE LAW

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

15. The applicant 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

16. The Government contested that argument.

17. The period to be taken into consideration began on 17 November 2000 and has not yet ended. It has thus lasted eight years and six months for three levels of jurisdiction.

A. Admissibility

18. 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

19. 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).

20. Concerning the question of the complexity of the present case, the Court observes that the domestic court mainly had to establish whether the applicant sustained any pecuniary or non-pecuniary damage and, if so, the amount of the compensation to be paid. Although the domestic courts were required to examine a certain amount of documentary evidence, the nature of the issue before them did not necessitate prolonged consideration of the applicant's case. Therefore, the Court concludes that the subject matter of the litigation at issue cannot be considered particularly complex.

21. The Court notes that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings at issue in the present case. The Court considers that a number of delays are attributable to the Government. In particular it notes the remittals of the case for a fresh consideration (see paragraphs 9 and 12 above) and the lengthy period of procedural inactivity in considering the applicant's appeal in cassation (see paragraph 13 above).

22. 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; *Yakymenko v. Ukraine*, no. 19142/03, § 39, 29 May 2008; and *Pavlyulynets v. Ukraine*, no. 70767/01, § 53, 6 September 2005).

23. 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 in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 3,809.43 United States dollars (about EUR 2,834) and 316,000 Ukrainian hryvnas (UAH, about EUR 29,685) in respect of pecuniary damage and non-pecuniary damage respectively.

27. The Government contested these claims.

28. 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 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed a total amount of UAH 67,401.99 (about EUR 6,332) in respect of his expenses for representation, postal expenses and other expenses allegedly incurred in both the domestic and Convention proceedings.

30. The Government contested this claim.

31. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 250 under this head.

C. Default interest

32. 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*
 - (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 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage plus EUR 250 (two hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable, 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 amounts 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