



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF NICHITAYLOV v. UKRAINE

(Application no. 36024/03)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Nichitaylov 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*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 36024/03) 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 Gennadiy Ivanovich Nichitaylov (“the applicant”), on 27 September 2003.

2. The applicant was represented by Mrs V.I. Nichitaylova, his wife. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicant alleged, in particular, that the criminal proceedings against him were unreasonably long.

4. On 22 September 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Sukhodolsk.

6. The applicant worked as a foreman in the Barkov Mine in the Lugansk region.

7. On 11 March 2000 an explosion in the mine caused the death of eighty miners. Another seven individuals, including the applicant, sustained

injuries. As a result of those injuries the applicant's sight and hearing were impaired, and the condition gradually developed to the stage of complete blindness and deafness.

1. Criminal proceedings against the applicant

8. On 17 August 2000 the applicant and four other officials of the mine, who were responsible for the observance of work safety regulations, were charged with negligence.

9. On 6 July 2001 the Krasnodon City Court found the applicant guilty of negligence and sentenced him to four years' imprisonment.

10. On 18 September 2001 the Lugansk Regional Court of Appeal upheld the judgment of the first-instance court with minor amendments.

11. On 1 August 2002 the Supreme Court of Ukraine quashed the decisions of the lower courts, considering the punishment too lenient, and remitted the case for fresh consideration.

12. In November 2002 the new hearing started in the first-instance court.

13. During this new examination of the case the applicant's lawyer and representative submitted a request for the severance of the criminal proceedings against the applicant due to a violation of his right to a defence at the initial stage of the investigation, when he was not legally represented although such representation was obligatory due to his disabilities. On 13 May 2003 the court allowed this request and remitted the criminal case against the applicant for a new pre-trial investigation.

14. On 14 August 2003 the applicant was once again charged with negligence.

15. In November 2003 the Krasnodon City Court ordered two forensic examinations to assess the applicant's sanity, his ability to understand the ongoing events and to participate in the pre-trial investigation and the trial itself.

16. The forensic examinations conducted in February and June 2004 established the partial insanity of the applicant and his inability to understand the ongoing events and to participate in the proceedings.

17. On 22 June 2004 the Krasnodon City Court discharged the applicant from criminal liability due to changed circumstances, brought about by his state of health, and to the fact that he was not a danger to society.

18. The applicant's representative appealed against this decision, considering that the criminal case should be terminated on exonerative grounds.

19. On 26 October 2004 the Lugansk Regional Court of Appeal quashed the judgment of 22 June 2004 and remitted the case for fresh consideration.

20. On 15 March 2005 the Krasnodon Court referred the case for additional investigation.

21. On 30 August 2005 the Lugansk Regional Court of Appeal upheld the decision of the first-instance court.

22. On 3 November 2005 the pre-trial investigation in the case against the applicant was suspended due to the serious illness of the accused in accordance with Article 206 of the Code of Criminal Procedure.

23. On 8 February 2008 the proceedings were resumed.

24. On 13 February 2008 the investigator questioned an expert and on 15 February 2008 the proceedings were suspended again.

25. On 12 January 2009 the investigator reopened the proceedings and ordered an additional forensic medical examination of the applicant. The examination, conducted between 16 and 21 January 2009, confirmed the complete blindness and deafness of the applicant and concluded that he would not recover.

26. On 21 February 2009 the proceedings were suspended again.

2. Civil proceedings for compensation

27. On 15 October 2001 the applicant instituted proceedings in the Krasnodon City Court against the Barkov mine, seeking compensation for damage as a result of the accident and subsistence payments.

28. On 22 January 2002 the court rejected the applicant's claim. This decision was not appealed against and became final.

29. On 20 February 2003 the applicant requested the same court to review this civil case in the light of newly discovered circumstances.

30. On 10 April 2003, upon the defendant's request, the court suspended the review proceedings due to the pending criminal proceedings.

31. On 24 November 2006 the Krasnodon City Court refused to reopen the proceedings in the light of newly discovered circumstances, having found that there were no such circumstances in the case.

II. RELEVANT DOMESTIC LAW

Code of Criminal Procedure

32. Article 206 of the Code provides, insofar as relevant, as follows:

Grounds and procedure for suspension of proceedings

“Pre-trial investigation in a criminal case shall be suspended:

...

2) when a psychiatric or other serious illness of the accused prevents completion of the proceedings in the case;...”

THE LAW

I. LENGTH OF PROCEEDINGS

33. The applicant complained under Article 3 of the Convention about the length of the criminal proceedings against him. The Court considers that Article 6 § 1 of the Convention is the relevant provision for this complaint. This provides, in so far as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

34. The Government contested that argument.

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 period to be taken into consideration began on 17 August 2000 and lasted until 3 November 2005, when the proceedings were suspended due to the serious illness of the accused. By the time of the suspension the proceedings had thus lasted five years, two months and eighteen days at three levels of jurisdiction. The Court notes that the proceedings in the applicant's case have never been formally terminated but have been suspended for what seems to be an indefinite period of time, given that the reason for their suspension was the applicant's lack of fitness to stand trial due to his complete and permanent blindness and deafness. Although the hypothetical possibility of resuming the proceedings exists, there seems to be no intention at present to continue them (see and compare *Antoine v. the United Kingdom* (dec.), no. 62960/00, ECHR 2003-VII). On two occasions, in February 2008 and January 2009, the proceedings were reopened for a total period of sixteen days, but on both occasions the reopening was aimed at confirming the grounds for suspension, namely, the unfitness of the applicant to participate in any further proceedings. Therefore, for the purposes of the Convention, the criminal proceedings against the applicant lasted about five years and three months.

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. 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).

39. 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. In particular, the Court notes the remittals of the case for reconsideration due to procedural shortcomings, whereas in its opinion, in view of the quickly deteriorating health of the applicant the authorities should have proceeded with particular diligence, given the foreseeable risk of losing any prospects for completing the proceedings were the applicant to become permanently unfit to stand trial. This was exactly what happened in the instant case (see paragraphs 11 and 22 above). Having regard to the circumstances of the case and 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

40. The applicant complained about a violation of Article 6 § 3 (a) and (c), because he was not aware of the charges against him for a long time and did not have defence counsel at the initial stage of the proceedings, even though his health conditions warranted such representation. He further complained, without giving any further details, that the criminal and civil proceedings in his case had been unfair.

In so far as the applicant complained of a violation of his right to a defence and that there had been a failure to ensure he understood the charges against him, it should be noted that the domestic courts acknowledged these procedural violations and referred the case for an additional investigation for this very reason. Therefore, the applicant could no longer claim to be a victim with respect to this complaint. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention (see, *mutatis mutandis*, *Ponomaryov v. Ukraine*, no. 3236/03, § 55, 3 April 2008, not yet final).

The Court has examined the remainder of these complaints of the applicant as submitted by him. However, in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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.”

42. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President