



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF POLISHCHUK v. UKRAINE

(Application no. 21231/04)

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 Polishchuk 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. 21231/04) 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 Viktor Georgiyevich Polishchuk (“the applicant”), on 26 May 2004.

2. The applicant was represented by Ms Anna Petrivna Sazhko, a lawyer practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 3 September 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

4. The applicant was born in 1959 and lives in the city of Kharkiv.

A. Criminal proceedings instituted in 1997

5. On 24 December 1997 criminal proceedings were instituted against the applicant. He was charged with extortion of money from Mr Sh. and Mrs Shi.

6. On an unspecified date Mr Sh. and Mrs Shi. lodged their civil claims. They claimed payment of compensation for pecuniary and non-pecuniary damage caused by the applicant.

7. On 16 February 1998 the applicant gave a written undertaking not to abscond.

8. On 2 September 1998 the applicant was also charged with causing damage to official documents while studying his case file.

9. On 5 November 1998 the pre-trial investigation was completed and the case was transferred to the Kyivsky District Court of Kharkiv.

10. On 28 May 2001 the court convicted the applicant of extortion and damaging official documents and sentenced him to a suspended term of five years' imprisonment. By the same judgment the court partly allowed the civil claims.

11. On 21 January 2002 the Kharkiv Regional Court of Appeal quashed the part of the judgment concerning the applicant's conviction for damaging official documents and ruled that the proceedings in that respect should be terminated since there was insufficient evidence against the applicant.

12. By the same ruling the Court of Appeal quashed the remainder of the judgment and remitted it for fresh consideration to the first-instance court on the ground that the latter had failed to examine all the circumstances of the case.

13. On 4 February 2003 the Kyivsky District Court of Kharkiv convicted the applicant of extortion and sentenced him to four years' imprisonment, suspended. By the same judgment the court partly allowed the civil claims lodged by Mr Sh. and Mrs Shi.

14. On 22 May 2003 the Kharkiv Regional Court of Appeal upheld that judgment.

15. On 2 December 2003 the Supreme Court dismissed an appeal in cassation by the applicant.

16. The hearings in the case were scheduled at intervals ranging between several days and two months. In the course of the proceedings two expert reports were obtained. This took about six months. On one occasion the applicant challenged a judge who was considering his case.

B. Other proceedings

17. On 18 April 1997 the Krasnokutsky Court awarded the applicant 23,943 Ukrainian hryvnas (UAH) in compensation for pecuniary and non-pecuniary damage caused to the applicant due to Mr Sh.'s failure to repay a debt he owed to the applicant. On an unspecified date the judgment was quashed by a higher court.

18. In 2008 new criminal proceedings were instituted against the applicant. On 1 October 2008 he was arrested. He was remanded in custody.

THE LAW

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

19. The applicant complained that the length of the criminal proceedings instituted in 1997 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...”

20. The Government contested that argument.

21. The period to be taken into consideration began on 24 December 1997 and ended on 2 December 2003. It thus lasted almost six years, encompassing a pre-trial investigation and three levels of jurisdiction.

A. Admissibility

22. 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

23. The Government contested the applicant's complaint, stating that there had been no significant periods of inactivity attributable to the State. They maintained that the case had been complex and that the judicial authorities had acted with due diligence. According to the Government, the applicant had been responsible for several delays. In particular, they submitted that by damaging documents from his case file he had caused delays to the proceedings. They further stated that the applicant had contributed to the length of proceeding by lodging motions and appeals and challenging a judge.

24. The applicant disagreed.

25. 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 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). It further reiterates that an accused in criminal proceedings should be entitled to have his case conducted with special diligence (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

26. The Court considers that a great deal was at stake for the applicant as he was in a state of uncertainty as to his future and was under an obligation not to leave his place of residence.

27. As regards the complexity of the case, the Court notes that the applicant was the only accused in the case. There is nothing in the case file to suggest that the applicant could be held responsible for any substantial period of delay. The proceedings at issue concerned a simple episode of extortion of money and required the questioning of several witnesses and two victims, and examination of a certain amount of documentary evidence.

28. As concerns the applicant's motions and appeals, the Court recalls that the applicant cannot be blamed for using the avenues available to him under domestic law in order to protect his interests (see *Siliny v. Ukraine*, no. 23926/02, § 29, 13 July 2006). With regard to the Government's submissions concerning damage to the documents, the Court notes that the proceedings in that respect were terminated by the Court of Appeal on the ground that there was no evidence against the applicant.

29. The Court observes that a major delay was caused by the lengthy consideration of the case by the first-instance court and the subsequent remittal of the case for fresh consideration owing to insufficient analysis (see paragraphs 9-13 above). It reiterates that the repetitive re-examination of claims within one set of proceedings may disclose a serious deficiency in the domestic judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

30. 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).

31. 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, it considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant complained that the police officer who investigated his criminal case instituted in 1997 had beaten him and threatened to kill him. He relied on Article 5 of the Convention. The applicant further complained under Article 6 of the Convention that the outcome of the proceedings in the criminal case had been unfavourable and that therefore the proceedings as a whole had been unfair, including alleged errors of fact and law committed by the domestic courts. He complained without invoking any Article of the Convention that he had no effective remedies in respect of this

complaint. He also complained about the non-enforcement of the judgment of 18 April 1997. He relied on Article 6 of the Convention.

34. Lastly, the applicant complained that his arrest in 2008 had been unlawful and that the domestic authorities had unlawfully seized the premises of his company. He also alleged that the criminal proceedings instituted in 2008 were unfair. He did not invoke any Article of the Convention or Protocols thereto.

35. Having carefully examined the applicant's submissions in the light of all the material in its possession, and in so far as the matters complained of are 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government contested the claim.

40. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 600 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 1,000 in legal expenses incurred before the Court. He did not provide any documents in support of that claim.

42. The Government contested the claim.

43. 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 were reasonable

as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the applicant's claim.

C. Default interest

44. 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 concerning the excessive length of the criminal proceedings instituted in 1997 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 600 (six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that the latter amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the latter 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 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President