



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF TELEGINA v. UKRAINE

(Application no. 2035/03)

JUDGMENT

STRASBOURG

19 November 2009

FINAL

10/05/2010

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 Telegina v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 20 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 2035/03) 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, Mrs Taisiya Alekseyevna Telegina (“the applicant”), on 11 November 2002.

2. 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 1952 and lives in the town of Zaporizhzhya, Ukraine.

5. The applicant, being the Head of the Zaporizhzhya Airport Customs Office, gave an instruction to the customs officers that the deputies of the local councils should be exempted from customs inspections when crossing the Ukrainian border.

6. In the period from 9 March 1998 to 22 May 1998 criminal proceedings were instituted against Mr Ch., Mr S., Mr B., Mr M., Mrs N. and Mrs K. in connection with smuggling goods to Ukraine. The criminal proceedings against Mr B., Mr M. and Mrs N. were later discontinued.

7. On 22 May 1998 criminal proceedings were instituted against the applicant. She was charged with exceeding her powers.

8. On 11 August 1998 the proceedings against the applicant, Mr Ch. and Mrs K. were joined.

9. On 5 June 1998 the applicant gave a written undertaking not to abscond.

10. On 17 June 1998 the applicant was charged with taking a bribe.

11. On 18 June 1998 the applicant was arrested. She was remanded in custody.

12. On 7 September 1998 the preliminary investigation was terminated and the case was transferred to the court.

13. On 12 May 1999 the Zaporizhzhya Regional Court¹ convicted the applicant of criminal negligence and sentenced her to 10 months and 24 days' imprisonment. Since the applicant had already served her sentence she was released on the same date. By the same judgment the court required the applicant to give an undertaking not to abscond.

14. On 16 September 1999 the Supreme Court quashed that judgment and remitted the case for fresh consideration to the Zaporizhzhya Regional Court on the ground that the latter had failed to examine all the circumstances of the case.

15. On 16 March 2000 the Zaporizhzhya Regional Court convicted the applicant of criminal negligence and sentenced her to 10 months and 24 days' imprisonment. Since the applicant had already served her sentence she was exempted from serving it. By the same judgment the court placed the applicant under an obligation not to abscond.

16. On 1 June 2000 the Supreme Court quashed the judgment of 16 March 2000 and remitted the case for fresh consideration to the Leninsky District Court of Zaporizhzhya on the ground that the Zaporizhzhya Regional Court had failed to examine all the circumstances of the case.

17. On 3 August 2000 the Leninsky District Court of Zaporizhzhya remitted the case to the prosecution service for additional investigation.

18. On 25 December 2000 the additional investigation was terminated and the case was transferred to the court.

19. On 15 October 2001 the Leninsky District Court of Zaporizhzhya convicted the applicant of criminal negligence and sentenced her to one year's imprisonment. The applicant was exempted from serving her sentence since the charges against her had become subject to a time limitation. By the same judgment the court removed the undertaking not to abscond.

20. On 10 December 2001 the Zaporizhzhya Regional Court of Appeal upheld this judgment.

21. On 8 October 2002 the Supreme Court quashed the ruling of 10 December 2001 and remitted the case for fresh consideration to the Court

¹ Since July 2001 – the Zaporizhzhya Regional Court of Appeal

of Appeal on the ground that the latter had failed to examine in due manner the appeals lodged by the applicant, Mr Ch. and Mrs K.

22. On 18 December 2002 the Zaporizhzhya Regional Court of Appeal quashed the judgment of 15 October 2001 and remitted the case for additional investigation to the prosecutor's office.

23. On 24 September 2003 the Leninsky District Court of Zaporizhzhya terminated the criminal proceedings against the applicant since the charges against her had become subject to a time limitation.

THE LAW

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

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

25. The period to be taken into consideration began on 22 May 1998 and ended on 24 September 2003. It thus lasted five years and four months for preliminary investigation and trial at three levels of jurisdiction.

A. Admissibility

26. 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

27. 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 and other accused had been responsible for several delays. In particular they stated that the applicant had contributed to the length of the proceedings by lodging motions and appeals. They further submitted that other accused in the case had also contributed to the length of the proceedings.

28. The applicant disagreed.

29. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). What is at stake for the applicant has also to be taken into consideration. In this respect the Court recalls that an accused in criminal proceedings should be entitled to have his or her case conducted with special diligence and Article 6 is, in criminal matters, designed to ensure that a person who has been charged does not remain for too long in a state of uncertainty about his or her fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

30. The Court finds that much was at stake for the applicant as she suffered a feeling of uncertainty in respect of her future, bearing in mind that she spent more than ten months in prison and later had to give an undertaking not to abscond.

31. The Court notes that the proceedings in issue concerned several similar straightforward episodes and required the questioning of several witnesses and the examination of a certain amount of material evidence. There were three persons accused in the case transferred to the court. Therefore, the proceedings do not appear to have been particularly complex.

32. Regarding the applicant's motions and appeals, the Court reiterates that the applicant cannot be blamed for using the avenues available to her under domestic law in order to protect her interests (see *Siliny v. Ukraine*, no. 23926/02, § 29, 13 July 2006).

33. 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. It finds that a major delay was caused by the repetitive remittals of the case for fresh consideration and additional investigation. It reiterates that a repetitive re-examination of the case within one set of proceedings can disclose a serious deficiency in the domestic judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

34. 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 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

35. The applicant complained under Article 5 of the Convention that her detention pending trial had been unjustified. She further alleged without invoking any Article of the Convention or Protocols thereto that she had been unlawfully dismissed from the Zaporizhzhya Customs Office in March 2002. Lastly, without referring to any Article of the Convention or Protocols thereto, the applicant alleged that she had been subjected to physical and moral pressure while in custody.

36. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as 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 payment of salary arrears for the period from 1 July 1998 to 27 October 2003 and reimbursement of her expenses for dental treatment in respect of pecuniary damage. She further claimed EUR 100,000 in respect of non-pecuniary damage.

39. The Government contested these claims.

40. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court further considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

B. Costs and expenses

41. The applicant lodged no claim in respect of costs and expenses. The Court, therefore, makes no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 about 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;
3. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President