



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF GONCHAROV v. UKRAINE

(Application no. 7867/06)

JUDGMENT

STRASBOURG

10 December 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 Goncharov 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,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 7867/06) 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 Pavel Vasilyevich Goncharov (“the applicant”), on 4 February 2006.

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

3. On 12 September 2006 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

4. The applicant was born in 1953 and lives in Artemivsk.

5. On 16 April 1998 the applicant instituted proceedings in the Artemivsk Town Court against the company A., his former employer, and the State Pension Fund, seeking recalculation of his salary and pension and recovery of salary and pension arrears.

6. On 5 May 1999, further to the applicant's request, the court ordered an expert examination as regards the accuracy of the calculation of the applicant's salary and pension and suspended the proceedings awaiting the results of the examination.

7. On 18 November 1999 the court, further to the applicant's request, cancelled the examination and resumed the proceedings.

8. During the period from 18 November 1999 to 8 April 2002 no court hearings were held in the case.

9. On 7 February 2003 the court rejected the applicant's claims as not based on the relevant law.

10. On 6 March 2003 the applicant appealed.

11. On 13 March 2003 the first-instance court allowed the applicant until 25 March 2003 to rectify shortcomings in his appeal.

12. On 21 March 2003 the applicant submitted his rectified appeal.

13. On 12 June 2003 the Donetsk Regional Court of Appeal upheld the judgment of 7 February 2003.

14. On 27 August 2003 the applicant appealed in cassation.

15. By a ruling of 2 September 2003 the first-instance court returned the appeal in cassation to the applicant as lodged out of time.

16. On 11 September 2003 the applicant appealed against that ruling.

17. Further to the court's instructions he rectified shortcomings in that appeal and resubmitted it on 18 September 2003.

18. On 30 October 2003 the Donetsk Regional Court of Appeal quashed the ruling of 2 September 2003.

19. On 13 November 2003 the first-instance court granted the applicant extension of the time-limit for lodging his appeal in cassation.

20. On 9 September 2005 the Supreme Court rejected the applicant's appeal in cassation as unsubstantiated.

21. Of twenty court hearings six were adjourned at the respondent's request or due to its representative's failure to appear, eight following the applicant's requests and due to the introduction of additional claims.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

22. Relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 the applicant complained about the length of the proceedings. The Court, which is master of the characterisation to be given in law to the facts of the case, considers that the applicant's complaint falls to be examined under 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...”

A. Admissibility

23. 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

24. The Government submitted that the case was complex and there were no substantial delays attributable to the domestic authorities, while the applicant contributed to the protracted length of the proceedings by requesting adjournments of the hearings and lodging his appeals out of time.

25. The applicant disagreed.

26. 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).

27. Turning to the circumstances of the present case, the Court notes that the period to be taken into consideration began on 16 April 1998 and ended on 9 September 2005. It thus lasted for about seven years and five months before the courts at three levels of jurisdiction.

28. The Court notes that the applicant's case was of no particular factual or legal complexity and the Government did not put forward any explanation for the delays of two years and seven months and two years during the periods from 18 November 1999 to 8 April 2002 and from 13 November 2003 to 3 September 2005.

29. Although the applicant might have caused some protraction of the proceedings, the Court is of the view that the primary responsibility for the delays in the proceedings rests with the courts. The Court considers that the length of the proceedings was excessive and there has accordingly been a breach of the "reasonable time" requirement of Article 6 § 1.

II. OTHER COMPLAINTS

30. The applicant complained under Articles 6 § 1 and 13 of the Convention about the outcome of the proceedings and that they were unfair. He also complained of a violation of Article 1 of Protocol No. 1 on account of the outcome of the proceedings. He also complained that he had been discriminated against on account of the outcome of the proceedings.

31. 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.

32. 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

33. 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

34. The applicant claimed 304,862.46 Ukrainian hryvnias (UAH)¹ in respect of pecuniary damage and UAH 50,000² for non-pecuniary damage.

35. The Government contested these claims.

36. 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, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,200 for non-pecuniary damage.

B. Costs and expenses

37. The applicant also claimed UAH 1,000³ for costs and expenses without any further specification.

38. The Government contested the claim.

39. 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 rejects the claim for costs and expenses.

1. About 41,687.2 euros (EUR).

2. About EUR 6,837.05.

3. About EUR 136.

C. Default interest

40. 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 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;
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 1,200 (one thousand and two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into 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 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President