



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF BENDRYT v. UKRAINE

(Application no. 1661/04)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

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 Bendryt 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,

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. 1661/04) 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 Oleksiy Vasylyovych Bendryt (“the applicant”), on 2 December 2003. The applicant was represented by his father, Mr V.S. Bendryt.

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

3. On 19 January 2009 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

I. PROCEEDINGS CONCERNING THE APPLICANT'S CIVIL CLAIM

4. The applicant was born in 1977 and lives in the village of Turbiv, Ukraine.

5. On an unspecified date criminal proceedings were instituted against Mr L. for inflicting bodily harm on the applicant.

6. On 11 February 1999 the applicant lodged a civil claim against Mr L. with the Lipovetsky Court (“the court”) claiming compensation for pecuniary and non-pecuniary damage.

7. On 18 August 1999 the court convicted Mr L. of inflicting bodily harm on the applicant and sentenced him to two years' imprisonment. Under the same judgment Mr L. was exempted from serving his sentence under the Amnesty Act. The court also partly allowed the applicant's civil claim.

8. On 6 October 1999 the Vinnitsa Regional Court¹ quashed the judgment of 18 August 1999 and remitted the case for fresh consideration.

9. On 18 December 2000 the court convicted Mr L. of inflicting bodily injury on the applicant and sentenced him to one year's correctional labour. He was exempted from serving his sentence under the Amnesty Act. By the same judgment the court partly allowed the applicant's civil claim.

10. On 31 January 2001 the Vinnitsa Regional Court quashed the part of the judgment of 18 December 2000 concerning the applicant's civil claim and remitted it for fresh consideration. By the same ruling the regional court upheld the rest of the judgment.

11. On 8 August 2001 the Supreme Court dismissed a request by the applicant for leave to appeal in cassation against the decisions of the lower courts.

12. On 26 March 2003 the court partly allowed the applicant's civil claim and awarded him 1,731.11 Ukrainian hryvnias (UAH) in compensation for pecuniary damage and UAH 3,000 in compensation for non-pecuniary damage.

13. On 23 June 2003 the Vinnitsa Regional Court of Appeal quashed the judgment of 26 March 2003 and remitted the case for fresh consideration.

14. On 2 December 2003 the applicant lodged an appeal in cassation with the Supreme Court.

15. On 27 February 2006 the Supreme Court gave a final decision on the case, by which it upheld the judgment of 26 March 2003.

16. The applicant lodged an extraordinary appeal against the final judgment of the Supreme Court. On 26 February 2007 the Supreme Court refused to grant the applicant's request to reopen proceedings in his case.

II. ENFORCEMENT OF THE JUDGMENT OF 26 MARCH 2003

17. On 17 May 2007 the Lipovetsky Bailiffs' Service instituted enforcement proceedings in respect of the judgment of 26 March 2003.

18. On an unspecified date the applicant instituted proceedings in the Vinnitsa Circuit Administrative Court challenging the bailiffs for inactivity in enforcing the judgment of 26 March 2003. On 24 December 2007 the court refused to consider the applicants' complaint since it had no jurisdiction to consider it. The court indicated in its ruling that the applicant had the right to challenge the bailiffs' inactivity before the Lipovetsky Court. The applicant appealed against the ruling of 24 December 2007. On

¹ From June 2001 the Vinnitsa Regional Court of Appeal

7 April 2009 the Kyiv Administrative Court of Appeal declined to consider his appeal. The applicant appealed in cassation. The proceedings before the Higher Administrative Court of Appeal are still pending.

19. The judgment of 26 March 2003 remains unenforced due to Mr L.'s lack of funds.

THE LAW

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

20. The applicant complained that the length of the proceedings concerning his compensation claim had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

21. The Government submitted that Article 6 § 1 was applicable only in respect to the proceedings which lasted in the period after 31 January 2001, when the sentence imposed on Mr L. was upheld by the Vinnitsa Regional Court.

22. The applicant disagreed.

23. The Court notes that the applicant lodged his civil claim against Mr L. in the course of the criminal trial of the latter and sought compensation for his injuries, which were the subject of that trial. The Court finds that the proceedings at issue fall within the ambit of Article 6 of the Convention (see *Baglay v. Ukraine*, no. 22431/02, § 25, 8 November 2005). Therefore, it rejects the Government's objection.

24. The Court notes that the 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

25. The Government contested the applicant's complaint. They submitted that some periods of delay in the proceedings had been

attributable to the applicant and Mr L. and that there had been no periods of inactivity attributable to the State authorities.

26. The applicant disagreed.

27. The Court notes that the period to be taken into consideration began on 11 February 1999 and ended on 27 February 2006 when the Supreme Court gave a final decision. Therefore, the proceedings in question lasted more than seven years. The case was considered by the courts at three levels of jurisdiction.

28. 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).

29. In the instant case it does not appear that the issue under consideration was particularly complex or that any long periods of delay could be attributed to the applicant. The Court observes that the proceedings were of some importance for him.

30. The Court finds that a number of delays (in particular, the remittals of the case for fresh consideration and lengthy consideration of the applicant's appeal in cassation by the Supreme Court) are attributable to the respondent State.

31. 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, § 46, and *Baglay*, cited above, § 33).

32. 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

33. The applicant complained under Articles 6 and 13 of the Convention that the sentence imposed on Mr L. was too lenient and the compensation awarded to him was insufficient. In his submissions, the applicant also complained, without relying on any Article of the Convention or Protocols, about the non-enforcement of the judgment given in his favour against Mr L. He finally relied on Article 2 referring to the same facts.

34. Having carefully examined the remainder of 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.

35. 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

36. 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

37. The applicant claimed 4,731.11 Ukrainian hryvnias (UAH) in respect of pecuniary damage and 20,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government contested the applicant's claims.

39. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis, as required by Article 41 of the Convention it awards him EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant claimed UAH 2,121.11 (about EUR 185) for costs and expenses. In support of his claims, he produced, *inter alia*, a receipt evidencing payment of UAH 1,150 (about EUR 100) made to a lawyer for assistance in preparing his observations to the Court and a postal receipt of UAH 21.11 (about EUR 2) for mailing his letter to the Court.

41. The Government had no objections to paying the applicant his postal expenses of UAH 21.11. They contested the remainder of the claims under this head.

42. 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 110 under this head.

C. Default interest

43. 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 two hundred euros) in respect of non-pecuniary damage and EUR 110 (one hundred and ten) for the costs and expenses, plus any tax that may be chargeable to the applicant, 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 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President