



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

FIFTH SECTION

CASE OF CHESNYAK v. UKRAINE

(Application no. 1809/03)

JUDGMENT

STRASBOURG

18 February 2010

FINAL

28/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Chesnyak 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,

Mark Villiger,

Isabelle Berro-Lefèvre, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 1809/03) 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 Fedir Fedorovych Chesnyak (“the applicant”), on 11 November 2002.

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

3. On 7 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1953 and lives in the town of Zaporizhzhya, Ukraine.

5. On 9 March 1998 criminal proceedings were instituted against the applicant in connection with several straightforward episodes of smuggling goods to Ukraine.

6. In the period from 9 March 1998 to 22 May 1998 criminal proceedings were instituted against Mrs T., Mrs K. and four other persons in connection with the same episodes.

7. On 8 May 1998 the applicant gave a written undertaking not to abscond.

8. On 30 July 1998, while undergoing a course of treatment in a hospital, the applicant was arrested and remained under arrest in the hospital. On 28 August 1998 the applicant finished his treatment. On the same date he was placed in custody.

9. On 11 August 1998 the proceedings against the applicant, Mrs T. and Mrs K. were joined.

10. On 7 September 1998 the case was transferred to the Zaporizhzhya Regional Court¹ for examination. On 12 May 1999 it sentenced the applicant to five years and six months' imprisonment.

11. 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. On 16 March 2000 the Zaporizhzhya Regional Court sentenced the applicant to one year, seven months and sixteen days' imprisonment. Since the applicant had already spent an equivalent time in prison he was considered to have served his sentence. By the same judgment the court placed the applicant under an obligation not to abscond. On the same date the applicant was released.

12. On 1 June 2000 the Supreme Court quashed the judgment of 16 March 2000 and remitted the case to the prosecutor's office for further investigation.

13. On 25 December 2000 the further investigation was completed and the case was transferred to the Leninsky District Court of Zaporizhzhya.

14. On 15 October 2001 the Leninsky District Court of Zaporizhzhya sentenced him to two years' imprisonment. The applicant was exempted from serving his sentence under the Amnesty Act. By the same judgment the court released the applicant from the undertaking not to abscond.

15. On 10 December 2001 the Zaporizhzhya Regional Court of Appeal, acting as a court of appeal, upheld that judgment.

16. On 8 October 2002 the Supreme Court quashed the ruling of 10 December 2001 and remitted the case for fresh consideration to the court of appeal since the latter had failed to consider the applicant's appeal in a due manner.

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

18. On 17 September 2003 the case was transferred to the Leninsky District Court of Zaporizhzhya.

¹ Since July 2001 – Zaporizhzhya Regional Court of Appeal

19. On 24 September 2003 the Leninsky District Court of Zaporizhzhya terminated the criminal proceedings against the applicant since the charges against him had become time-barred. On 16 February 2004 and 17 May 2005 the Zaporizhzhya Regional Court of Appeal and the Supreme Court, respectively, upheld that ruling.

THE LAW

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

20. 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 9 March 1998 and ended on 17 May 2005 when the Supreme Court gave a final decision in the case. Thus the pre-trial investigation and trial at three levels of jurisdiction had lasted seven years and two months.

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 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)

25. 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).

26. 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

27. The applicant complained under Article 3 of the Convention that he had been held in custody despite the fact that he was suffering from a number of ailments. He further alleged that he had been deprived of adequate medical treatment while held in custody and that the conditions of detention had been unsatisfactory. He complained under Article 5 of the Convention that his arrest and his detention had been unlawful. He also alleged under the same Article that his detention had been excessive in length.

28. The applicant further alleged a violation of Article 6 of the Convention, complaining about the outcome of the criminal proceedings against him. Finally, he complained that the judges sitting in the domestic courts had lacked independence and impartiality.

29. 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.

30. 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

31. 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.”

32. 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 on account of the excessive length of the proceedings.

Done in English, and notified in writing on 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President