



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

FIFTH SECTION

CASE OF GURYNENKO v. UKRAINE

(Application no. 37246/04)

JUDGMENT

STRASBOURG

18 February 2010

FINAL

18/05/2010

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

In the case of Gurynenko 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 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. 37246/04) 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 Mykola Oksentiyovych Gurynenko (“the applicant”), on 8 October 2004.

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

3. On 2 March 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 1947 and lives in the town of Cherkassy, Ukraine.

1. The applicant’s claim for compensation

5. In 1987 the applicant had an accident. Later he was registered disabled.

6. On 24 April 1997 the applicant instituted proceedings against the Cherkassy Regional Department of the State Social Insurance Fund, the Cherkassy Commerce, Catering and Services Trade Union and the Cherkassy Cooperative Association in the Sosnivsky District Court of Cherkassy claiming compensation for the damage caused to him as a result of the accident. The applicants also sought the rectification of his work records.

7. On 8 July 1997 the case was transmitted to the Pridneprovsky District Court of Cherkassy (“the first-instance court”).

8. On 11 December 2002 the first-instance court partly allowed the applicant’s claims. On 27 January 2003 it gave an additional judgment by which the remainder of his claims were left without consideration.

9. On 18 April 2003 the Cherkassy Regional Court of Appeal quashed the judgment of 11 December 2002 and the additional judgment of 27 January 2003 and remitted the case to the first-instance court for fresh consideration.

10. On 16 April 2004 the first-instance court found against the applicant.

11. On 8 July 2004 the Cherkassy Regional Court of Appeal upheld that judgment.

12. The applicant lodged an appeal in cassation with the Supreme Court against the judgment of 16 April 2004 and the ruling of 8 July 2004. According to the applicant’s submissions, he also challenged a number of the procedural decisions taken by the lower courts before the Supreme Court.

13. On 22 December 2005 the Supreme Court dismissed the applicant’s appeal in cassation.

14. In respect of the applicant’s appeals in cassation against the procedural decisions, the Supreme Court informed him that they were not subject to appeal according to the provisions of the Civil Procedure Code. However, the applicant tried to institute administrative proceedings against the Supreme Court, claiming that the latter had taken no action to consider his appeals in cassation. His efforts were to no avail.

15. The applicant’s subsequent requests to have the judgment of 16 April 2004 and the rulings of 8 July 2004 and 22 December 2005 reviewed under the extraordinary review procedure were rejected by the domestic courts as unsubstantiated.

B. Other proceedings

(a) Proceedings against the Cherkassy Regional Federation of Trade Unions

16. In October 2001 the applicant lodged a complaint against the Cherkassy Regional Federation of Trade Unions for refusing to employ him. On 3 July 2003 the Sosnivsky District Court of Cherkassy found against the

applicant. On 28 October 2003 the Cherkassy Regional Court of Appeal upheld that judgment. On 6 April 2004 the Supreme Court upheld the decisions of the lower courts. Later, the applicant tried to institute criminal proceedings against the judge of the Sosnivsky District Court of Cherkassy who had considered his case, alleging that he had forged the court records and destroyed important documents. His efforts were to no avail.

(c) Proceedings against Mr D.

17. In February 2006 the applicant instituted proceedings against the Head of the Cherkassy Regional Department of the State Social Insurance Fund, Mr D., in the Sosnivsky District Court of Cherkassy, challenging his actions. On 10 April 2007 the court partly allowed his claims. On 24 November 2008 the Kyiv Administrative Court of Appeal upheld that judgment.

(d) Proceedings against the judges

18. In 2008 and 2009 the applicant instituted a number of administrative proceedings in the first-instance court complaining about actions of the judges at the first-instance court and the Supreme Court taken in their official capacity while considering his claims. These claims were rejected by the first-instance court. The applicant failed to provide detailed information about any appeals lodged with the higher courts against the rulings to reject his claims.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE COMPENSATION PROCEEDINGS

19. The applicant complained that the length of the compensation 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 his civil rights and obligations ..., 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 only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of

proceedings at the time. The period in question ended on 22 December 2005 when the court gave a final judgment in the case. It thus lasted about eight years and three months at 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 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).

24. 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).

25. 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

26. The applicant complained under Articles 6 § 1 and 13 of the Convention about the outcome of the proceedings in his cases, that they had been unfair and that also other than the above-mentioned compensation proceedings have lasted unreasonably long. In particular, he alleged that the judges sitting in his cases had lacked impartiality and had not been independent. He further complained that the Supreme Court had refused to consider his cassation appeals against the procedural decisions given by the lower courts. He complained under Article 1 of Protocol No. 1 about the outcome of the proceedings concerning compensation. He further complained under Article 6 § 1 of the Convention that his efforts to institute criminal proceedings against the judge had been to no avail. Lastly, he invoked Article 1 of the Convention.

27. 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.

28. 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

29. 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

30. The applicant claimed a total amount of 80,753.86 euros (EUR) in respect of pecuniary and non-pecuniary damage. This amount included the applicant's medical and transport expenses and various allowances he was allegedly entitled to as a disabled person and EUR 69,525 in respect of non-pecuniary damage.

31. The Government contested these claims.

32. 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, it awards the applicant EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant submitted that he incurred certain expenses for legal assistance in the domestic proceedings. He left that matter to the Court's discretion. The applicant did not provide any documents in support of his claim.

34. The applicant further claimed 291,87 Ukrainian hryvnias (UAH, about EUR 28) for copying documents and mailing his letters and documents to the Court. He also claimed UAH 22.21 (about EUR 2) for mailing his letters and documents to the domestic courts.

35. The Government agreed that the applicant had incurred some expenses for copying and mailing his letters to the Court and left this matter to the Court's discretion. They contested the remainder of his claims.

36. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 30 under this head.

C. Default interest

37. 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 compensation 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 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage and EUR 30 (thirty euros) for costs and expenses, plus any tax that may be chargeable, 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 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President