



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

FIFTH SECTION

CASE OF KHALAK v. UKRAINE

(Application no. 39028/04)

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 Khalak v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Rait Maruste,

Isabelle Berro-Lefèvre,

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. 39028/04) 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, Ms Yaroslava Stepanivna Khalak (“the applicant”), on 22 October 2004.

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

3. On 14 January 2008 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 is a Ukrainian national who was born in 1970 and lives in the Ivano-Frankivsk Region.

5. In October 1994 the applicant was injured by a private individual, V. Shortly afterwards, criminal proceedings were instituted against that person in the course of which the applicant claimed compensation for damage.

6. On 8 December 1995 the Bogorodchany Court found V. guilty of inflicting bodily injuries on the applicant and ordered him to pay the applicant 8,000,000 karbovantsi (former Ukrainian currency) in compensation.

7. On 10 January 1996 the Ivano-Frankivsk Regional Court quashed the part of that judgment which concerned the applicant’s compensation claim

and remitted that part of the case for fresh consideration. In May 1996 the applicant modified her claims.

8. Between 10 January 1996 and 10 September 1997 the case was twice reconsidered by the courts of first and appeal instances. On the latter date the applicant requested the first-instance court to suspend the proceedings until January-February 1998 for health reasons.

9. On 29 September 1997 the court granted her request.

10. In October 1998 the proceedings were resumed.

11. On 19 November 1998 the Tysmennytsa Court, to which the case had earlier been transferred, ordered, of its own motion, a forensic examination to assess the gravity of the applicant's bodily injuries. The examination was completed on 2 February 1999.

12. On 22 July 1999 the court ordered an additional forensic examination at the applicant's request. That examination was completed on 27 December 2000.

13. On 8 February 2002 the court allowed the applicant's claim in part and awarded her 22,316 Ukrainian hryvnias (UAH)¹ in compensation for her medical treatment, loss of earnings, non-pecuniary damage and legal fees.

14. On 28 May 2002 the Ivano-Frankivsk Regional Court of Appeal changed that decision and decreased the award to UAH 9,315².

15. In June 2002 the applicant and V. appealed in cassation.

16. Following several reconsiderations of the admissibility of V.'s appeal, on 24 April 2003 the case was referred to the Supreme Court.

17. On 4 June 2004 the Supreme Court dismissed the appeals lodged by the applicant and V. as unsubstantiated.

18. According to the Government, the judgment of 8 February 2002 (as amended by the judgment of 28 May 2002) was enforced in full by the end of 2004.

19. In the course of the court proceedings, nine hearings were adjourned either at the applicant's request or due to her failure to appear, four were adjourned due to both parties' failure to appear, and one was adjourned due to the absence of the judge.

1. About 5,011.09 euros (EUR).

2. About EUR 1,972.17.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

20. Relying on Articles 6 § 1 and 13 of the Convention, the applicant complained that the length of the proceedings had been excessive. The Court, which is master of the characterisation to be given in law to the facts of the case, considers that this complaint falls to be examined solely 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

21. The Court notes that this part of the application 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

22. The Government maintained that the period to be taken into consideration had begun on 11 September 1997 when the Convention entered into force in respect of Ukraine. In their view, the applicant had contributed to the length of the proceedings by requesting adjournment of hearings, by failing to appear before the courts on several occasions and by introducing procedural requests and appeals, and that there had been no significant periods of inactivity attributable to the domestic authorities. The Government argued that the proceedings, including the enforcement stage, had been completed within a reasonable time.

23. The applicant disagreed.

24. The Court observes that the overall duration of the proceedings, including the enforcement stage, was more than ten years. The period to be taken into consideration *ratione temporis* began on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect, and ended in December 2004, when the final judgment in the case was enforced, and thus lasted for about six years and two months, excluding the period from 29 September 1997 to October 1998, during which the proceedings were suspended. In assessing the reasonableness of the time

that elapsed after 11 September 1997, the Court will take into account the state of proceedings on that day.

25. 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).

26. At the outset, the Court notes that the applicant contributed to the delay in the proceedings by failing to attend some of the hearings, by requesting adjournments, and by lodging appeals and procedural requests. However, the Court does not share the Government's view that the primary responsibility for the delays in the proceedings rests with the applicant.

27. In particular, the Court observes that the case concerned compensation for damage which the applicant had sustained on account of her ill-treatment by a private individual. The facts surrounding the applicant's ill-treatment were finally established by the courts dealing with the criminal case against the offender on 10 January 1996. The civil proceedings were limited to the determination of the amount of compensation and lasted for about five years and eight months.

28. Although the case was somewhat complicated by the fact that the domestic courts had to order two forensic examinations, the Court considers that the period of time which it took the civil courts at three instances to finally determine the amount of compensation was unjustifiably lengthy, given the fact that, before 11 September 1997, the matter had already been pending before the courts for about three years. The Court is also of the view that during the cassation phase, which lasted from June 2002 to June 2004, the proceedings were not conducted with the requisite diligence (see paragraphs 15-17 above).

29. Having examined all the materials submitted to it in view of the above considerations, the Court finds that the length of the judicial proceedings was excessive and failed to meet the "reasonable time" requirement. At the same time, the Court discerns no reason to hold the authorities responsible for any delay in the enforcement of the judgment of 28 May 2002, which had been given against a private individual.

30. Accordingly, the Court finds that there has been a breach of the reasonable-time requirement of Article 6 § 1 of the Convention on account of the length of the judicial proceedings in the present case.

II. OTHER COMPLAINTS

31. The applicant complained, under Articles 6 § 1 and 13 of the Convention, about the outcome of the proceedings and that the judgment of 8 February 2002 had not been enforced.

32. 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.

33. 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

34. 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

35. The applicant claimed UAH 250,000¹ in respect of non-pecuniary damage.

36. The Government contested that claim.

37. The Court making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 600 for non-pecuniary damage.

B. Costs and expenses

38. The applicant did not put forward any claims under this head therefore the Court makes no award.

C. Default interest

39. 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.

1. About EUR 34,295.

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 600 (six 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 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President