



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

FIFTH SECTION

CASE OF UDOVIK v. UKRAINE

(Application no. 39855/04)

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 Udovik 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 the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39855/04) 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, Mrs Vera Yefremovna Udovik (“the applicant”), on 26 October 2004.

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

3. On 28 January 2009 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 1944 and lives in Vinnytsya.

5. On 1 June 2000 the applicant’s son was beaten to death. On 8 June 2000 the prosecutors instituted criminal proceedings against M., D., Z. and C. (“the defendants”) on suspicion of having murdered the applicant’s son. On 29 December 2000 the prosecutors issued a bill of indictment and referred the criminal case to courts.

6. According to the applicant, on 11 December 2000, in the framework of the criminal proceedings, she introduced a civil claim against the defendants for compensation and on 21 February 2003 she amended her claim by increasing the claimed compensation. Despite the Court’s request, the applicant has failed to provide a copy of her claim. In their observations,

the Government submitted a copy of the applicant's civil claim dated 21 February 2003.

7. Following the Supreme Court's two remittals of the case for fresh consideration, on 19 June 2009 the Staromiskyy District Court of Vinnytsya found M. guilty of intentional infliction of grievous bodily injuries on the applicant's son that led to the latter's death and sentenced him to ten years' imprisonment. It further found C., Z. and D. guilty of hooliganism, sentenced them to various terms of restriction of liberty and discharged them because the limitation period had expired. The court also allowed the applicant's civil claim and ordered M. and C. to pay her certain amounts in compensation for pecuniary and non-pecuniary damage.

8. On 20 August 2009 the Vinnytsya Regional Court of Appeal upheld the above judgment. There is no information in the case file whether the case was further considered on cassation.

9. In the course of the proceedings, two forensic expert examinations were carried out, the hearings were 25 times adjourned due to the defendants' lawyers' and once due to the witnesses' failure to attend them. The hearings were also four times adjourned due to the applicant's and the defendants' lawyers' failure to attend them (which delayed the proceedings to two months approximately).

THE LAW

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

10. The applicant complained under Articles 6 § 1 and 13 of the Convention that the length of the proceedings was not reasonable. The Court finds that the complaint about the length of the proceedings falls to be considered solely under Article 6 § 1, 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 reasonable time by [a] ... tribunal ..."

11. The Court notes that the period to be taken into account began on the date of lodging of the applicant's civil claim for compensation in the framework of the criminal proceedings (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, § 124; *N.B. v. Ukraine*, no. 17945/02, § 36, 3 April 2008). In the light of the material available in the case file, the Court concludes that the applicant lodged her claim on 21 February 2003. The Court further notes that the proceedings ended on 20 August 2009

having therefore lasted for six and a half years before three levels of jurisdiction.

A. Admissibility

12. The Government maintained that the application was inadmissible as the applicant complained of the length of the criminal proceedings and not of the length of consideration of her civil claim lodged in the framework of those proceedings. The applicant did not comment on that argument.

13. The Court observes that the applicant's right to compensation which she sought by lodging her civil claim within the framework of criminal proceedings depended on the outcome of those proceedings (see *Tomasi v. France*, cited above, §§ 120-122). Therefore, it rejects the Government's argument.

14. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The Government submitted that there has been no violation of the Convention in the present case.

16. The applicant disagreed.

17. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

18. The Court considers that the complexity of the case and the applicant's conduct cannot explain the overall length of the proceedings. The Court finds that a number of delays (two expert examinations, the repeated adjournments of the hearings due to the absence of the defendants' lawyers or witnesses, two remittals of the case for fresh consideration) were attributable to the domestic courts. It concludes that the main responsibility for the protracted length of the proceedings rested with the State.

19. 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, for instance, *Baglay v. Ukraine*, no. 22431/02, § 33, 8 November 2005, and *N.B. v. Ukraine*, cited above, § 43).

20. 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. It finds 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 violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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, costs and expenses

22. The applicant claimed EUR 20,000 in non-pecuniary damage. The Government contested that amount.

23. The Court notes that the applicant must have sustained non-pecuniary damage on the basis of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,400 in compensation for non-pecuniary damage.

B. Default interest

24. 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 application admissible;
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 1,400 (one thousand four hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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