



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

FIFTH SECTION

CASE OF CHUBAKOVA v. UKRAINE

(Application no. 17674/05)

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 Chubakova 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,

Mirjana Lazarova Trajkovska, *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. 17674/05) 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 Nina Georgiyevna Chubakova (“the applicant”), born in 1937 and living in Mykolayiv, on 5 May 2005.

2. The applicant was represented by Mr V. Stulnikov, a lawyer practising in Mykolayiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 10 November 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

I. THE CIRCUMSTANCES OF THE CASE

4. In January 1999 the applicant brought an action with the Korabelnyy District Court of Mykolayiv against several companies (the successors of her former employer) seeking compensation for damage to her health inflicted at work.

5. On 11 April 2005 the court dismissed the applicant’s action against the respondents and ordered the Social Insurance Fund to make certain monthly insurance payments to the applicant with their further recalculation.

6. On 20 October 2005 the Mykolayiv Regional Court of Appeal partly changed the above judgment by increasing the amounts of monthly payments and ordering the Social Insurance Fund to pay the applicant certain amounts in arrears.

7. On 4 January 2006 the applicant appealed in cassation to the Supreme Court. After she had rectified her appeal on 27 February 2006 and the District Court had sent the case file to the Supreme Court on 21 April 2006, the latter took the case for examination. On 4 October 2007 the Supreme Court forwarded the appeal in cassation to the Kherson Regional Court of Appeal, which on 26 November 2007, acting as a court of cassation, rejected it as unsubstantiated.

8. In the course of the proceedings, the applicant modified her claim on four occasions, lodged about ten procedural requests and lodged several appeals which were not in accordance with procedural requirements or requested the courts to extend the time-limits for lodging them. Of fifty-seven hearings, one hearing was adjourned due to the applicant's failure to attend it, two hearings following her requests that they be adjourned, and one due to both parties' failure to attend it. The above delays on the applicant's part protracted the proceedings to approximately seven months. Furthermore, ten hearings were adjourned due to the sickness or absence of a judge and twenty-six due to the respondents' or experts' failure to attend them or the respondents' requests to adjourn them, or for other reasons (public holidays, end of working day, and so on). The case was twice remitted for fresh consideration and four expert examinations were ordered by the domestic courts.

THE LAW

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

9. Relying on Article 6 § 1 of the Convention, the applicant complained that the length of the proceedings in her case was not reasonable. The above provision reads, in so far as relevant, as follows:

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

10. The Government contested that argument.

11. The Court observes that the period to be taken into consideration began in January 1999 and ended on 26 November 2007. The proceedings therefore lasted eight years and ten months at three levels of jurisdiction.

A. Admissibility

12. 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

13. 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).

14. The Court considers that the complexity of the case and the conduct of the applicant, who somewhat contributed to the length of the proceedings (see § 8 above), cannot explain their overall length. It finds that a number of delays (four expert examinations, the repeated adjournments of the hearings due to the absence of the judge, experts or respondents, two remittals of the case for fresh consideration and the fact that the applicant's appeal in cassation remained unexamined before the Supreme Court for approximately one and a half year) were attributable to the domestic courts. The Court concludes that the main responsibility for the protracted length of the proceedings rested with the State.

15. 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, *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 49-50, 6 September 2005; *Moroz and Others v. Ukraine*, no. 36545/02, § 60, 21 December 2006; and *Golovko v. Ukraine*, no. 39161/02, § 50, 1 February 2007).

16. 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. REMAINDER OF THE COMPLAINTS

17. The applicant also complained under Article 6 § 1 of the Convention about the unfavourable outcome of the proceedings in her case. She further invoked Articles 1, 2, 8, 13 and 14 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 in respect of the same complaint.

18. 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.

19. 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

20. 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

21. The applicant claimed 6,840,368.72¹ Ukrainian hryvnias (UAH) for pecuniary damage including compensation for damage to her health. In addition, she asked the Court to indicate in its judgment that UAH 16,452.42² be paid to her on a monthly basis by the Social Insurance Fund (allegedly owed to her and not recognised by the domestic courts), to determine 85% of her disability and to set additional allowances. She further claimed UAH 1,898,437.50³ for non-pecuniary damage.

22. The Government disagreed.

23. As regards the claim for pecuniary damage and additional claims, the Court does not discern any causal link between the violation found and the pecuniary damage alleged and, therefore, rejects these claims. On the other hand, the Court notes that the applicant must have sustained some non-pecuniary damage and awards her EUR 2,100 under this head.

B. Costs and expenses

24. The applicant claimed UAH 535.34⁴ in costs for the proceedings before the courts, without any further specification or supporting documents.

25. The Government contested this claim.

¹ About 653,391 euros (EUR).

² About EUR 1,571.53.

³ About EUR 181,338.

⁴ About EUR 51.14.

26. In the present case, regard being had to the information in its possession, the Court makes no award under this head.

C. Default interest

27. 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 of the Convention about unreasonable length of the proceedings admissible and the remainder of the complaints 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 2,100 (two thousand one hundred euros) in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias 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