



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

FIFTH SECTION

CASE OF ALEKSEY BUGAYEV v. UKRAINE

(Application no. 7516/03)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

08/07/2010

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

In the case of Aleksey Bugayev 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 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 7516/03) 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 Aleksey Yuryevich Bugayev (“the applicant”), on 18 February 2003.

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

3. On 22 October 2008 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 1975 and is currently serving his sentence in Makeyevka.

5. On 16 September 1997 the applicant confessed to the murder of Mrs R. On 17 September 1997 he was arrested. On the same day he was questioned. The applicant was remanded in custody.

6. On 18 September 1997 he was charged with the murder.

7. On 10 December 1997 the pre-trial investigation was terminated and the case was assigned to the Novoazovsky Court for consideration.

8. On 22 July 1998 the Novoazovsky Court convicted the applicant of murder and sentenced him to thirteen years' imprisonment.

9. On 25 August 1998 that judgment was quashed by the Donetsk Regional Court¹, which remitted the case for additional pre-trial examination.

10. On 21 November 1998 the pre-trial investigation was completed and the case was sent to the court.

11. On 31 December 1999 the Novoazovsky Court convicted the applicant of murder and sentenced him to thirteen years' imprisonment.

12. On 13 June 2000 that judgment was quashed by the Donetsk Regional Court. The case was remitted for additional pre-trial investigation.

13. On 18 August 2000 the pre-trial investigation was completed.

14. On 15 May 2001 the Novoazovsky Court convicted the applicant of murder and sentenced him to thirteen years' imprisonment.

15. On 20 November 2001 the Donetsk Regional Court of Appeal (“the court of appeal”) quashed the judgment and ordered additional pre-trial investigation. By the same ruling the court of appeal lifted the preventive measure of detention pending trial. The applicant gave an undertaking not to abscond and was released.

16. On 4 July 2002 the Supreme Court quashed the ruling of 20 November 2001 and remitted the case to the court of appeal for fresh consideration.

17. On 19 November 2002 the court of appeal dismissed the applicant's appeal and upheld the judgment of 15 May 2001. The applicant was then arrested.

18. On 20 November 2003 the Supreme Court upheld the ruling of 19 November 2002 and the judgment of 15 May 2001.

THE LAW

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

19. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement. The Court will examine his complaint under Article 6 § 1 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...”

20. The Government contested that argument.

¹ Since June 2001 –the Donetsk Regional Court of Appeal

21. The period to be taken into consideration in the present case began on 16 September 1997 and ended on 20 November 2003 when the Supreme Court gave the final decision in the case. The proceedings thus lasted six years and two months for pre-trial investigation and 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 Government submitted that the applicant's criminal case had been complex. According to the Government, the applicant had been responsible for several delays, in particular by making demands for expert evidence and by lodging various petitions and appealing against the judgment to the higher courts. The Government submitted finally that the witnesses had also contributed to the length of proceedings since they had failed to appear on several occasions.

24. The applicant made no observations within the time-limit allocated by the Court.

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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). What is at stake for the applicant must also be taken into consideration. In this respect the Court observes that the applicant was kept in custody until 20 November 2001 – a fact which required particular diligence on the part of the authorities and courts dealing with the case as regards the prompt administering of justice (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A).

26. As regards the complexity of the case, the Court notes that the proceedings at issue concerned one count of murder and required that several witnesses be questioned, forensic examinations be carried out and a reconstruction of events be conducted. There was one accused in this case. Therefore it cannot be said that the proceedings were so complex as to justify their length.

27. The Court notes that the complexity of the case and the applicant's conduct cannot explain the overall length of the proceedings at issue. It

finds that a number of delays (in particular, the remittals of the case) are attributable to the respondent State.

28. 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).

29. 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

30. The applicant complained under Article 3 that he had been beaten and forced to plead guilty. He further complained, under Article 5 of the Convention, of the unlawfulness and excessive length of his detention during the judicial proceedings. Relying on Article 5 of the Convention he alleged that he had been put into prison without being told of the charge against him.

31. The applicant further alleged a violation of Article 6 of the Convention, complaining that he had had inadequate time and facilities for preparing his defence; that he had not been provided with a lawyer; and that the domestic courts had failed to summon some defence witnesses.

32. Referring to Article 13 of the Convention, he complained that the trial had been unfair, that he had not been provided with a lawyer when first questioned, and that he had been tortured and then refused a medical examination. He also invoked Articles 7 and 17 of the Convention and Article 2 of Protocol No. 7, referring to the facts of the case.

33. In his submissions lodged in June 2009 the applicant complained about the conditions of his detention while in custody. He did not invoke any Article of the Convention or Protocols thereto.

34. 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.

35. 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

36. 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

37. The applicant claimed 10,500 euros (EUR) in respect of pecuniary damage. He further claimed EUR 445,000 in respect of non-pecuniary damage. In addition, he claimed EUR 350,000 without specifying under which head this claim was lodged.

38. The Government contested these claims.

39. 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 600 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant made no claim for costs and expenses. Therefore, the Court makes no award under this head.

C. Default interest

41. 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 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 of 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 the national currency of the respondent State at the rate applicable on 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 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President