



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

FIFTH SECTION

CASE OF KOSTYCHEV v. UKRAINE

(Application no. 27820/04)

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 Kostychev 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 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 27820/04) 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 Yuriy Grigoryevich Kostychev (“the applicant”), on 19 July 2004.

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

3. On 20 June 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 1940 and lives in the city of Kharkiv.

5. On 2 October 2000 the applicant instituted proceedings in the Kyivsky District Court of Kharkiv (“the District Court”) against his former employer seeking various payments owed to him upon his retirement, including compensation for belated salary payments.

6. On 10 October 2000 the case was transferred to another court for consideration but on 14 August 2001 it was sent back to the District Court.

7. On 16 October 2002 the District Court found in part for the applicant. Both parties appealed against that judgment.

8. In the period from February 2003 to March 2004 the Kharkiv Regional Court of Appeal, having taken over the case, remitted it back to the District Court on several occasions in view of the procedural flaws.

9. On 30 March 2004, the Kharkiv Regional Court of Appeal amended the judgment of 16 October 2002, increasing the amount awarded to the applicant. On the same date the court adopted a separate ruling, drawing the attention of the President of the District Court to the numerous shortcomings in the way the judge of the first instance court had examined the case. According to the Court of Appeal, these shortcomings had caused delays in the proceedings.

10. In April 2004 the applicant and the defendant lodged their cassation appeals before the Supreme Court. On 24 May 2006 it upheld the decisions taken by the lower courts.

THE LAW

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

11. The applicant complained that the length of the 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...”

12. The Government contested that argument.

13. The period to be taken into consideration began on 2 October 2000 and ended on 24 May 2006. It thus lasted five years and almost eight months for three levels of jurisdiction.

A. Admissibility

14. 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

15. 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).

16. The Court notes that the complexity of the case and the applicant's conduct cannot explain the overall length of the proceedings at issue in the present case. It finds that a number of delays (in particular, the remittals of the case) are attributable to the respondent State.

17. 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).

18. 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

19. Relying on Article 6 § 1 of the Convention, the applicant complained of the courts' assessment of evidence and interpretation of the law and challenged the outcome of the proceedings.

20. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

21. 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

22. 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

23. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contested the claim.

25. The Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

B. Costs and expenses

26. The applicant also claimed EUR 1,000 in respect of expenses for legal assistance and EUR 1,000 for the costs and other expenses.

27. The Government contested the claims.

28. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the applicant's claim for costs and expenses.

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* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered;
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