



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

FIFTH SECTION

CASE OF SHAPOSHNIKOV v. UKRAINE

(Application no. 30853/04)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

04/10/2010

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

In the case of Shaposhnikov 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,

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. 30853/04) 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 Aleksandr Rudolfovich Shaposhnikov (“the applicant”), on 23 August 2004.

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

3. On 13 December 2007 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 1946 and lives in the city of Odessa.

1. Criminal proceedings against the applicant

5. On 5 October 1995 the Leninsky District Department of the Ministry of Interior in Odessa (“the Department”) instituted criminal proceedings against the applicant, being a director of a private company, G., on account

of tax evasion. The applicant gave a written undertaking not to abscond. On 30 October 1998 the department terminated the criminal proceedings. The applicant alleged that despite the above ruling the criminal proceedings against him were still pending.

2. First set of civil proceedings

6. On 16 April 1998 the applicant instituted proceedings against the Department, the Leninsky District Tax Inspectorate of Odessa (“the Inspectorate”) and the Leninsky District Prosecutor's Service of Odessa in the Suvorovsky District Court of Odessa (“the Suvorovsky Court”) seeking compensation for pecuniary and non-pecuniary damage caused by the criminal proceedings.

7. On 22 June 2000 the Suvorovsky Court allowed the applicant's claim in part and awarded him 80,000 Ukrainian hryvnias (UAH) in compensation for non-pecuniary damage, to be paid by the Inspectorate. The judgment became final. It remained unenforced.

8. On 21 June 2001 the amendments to the Code of Civil Procedure entered into force. They provided a right to lodge a cassation appeal within a three-month period with the Supreme Court of Ukraine against court decisions adopted before 21 June 2001 and which had entered into force before that date. The applicant and the Inspectorate appealed in cassation against the judgment of 22 June 2000.

9. In the period prior to 3 January 2003 courts at three levels considered the admissibility of the applicant's and the Inspectorate's appeals in cassation. On 16 July 2002 the first-instance court left the applicant's appeal in cassation unexamined.

10. On 3 January 2003 a panel of three judges of the Supreme Court of Ukraine transferred the Inspectorate's appeal in cassation to a chamber of the Supreme Court of Ukraine for consideration.

11. On 18 February 2004 the Supreme Court partly allowed the appeal in cassation by the Inspectorate, quashed the judgment of 22 June 2000 and remitted the case for fresh consideration to the first-instance court.

12. On 16 May 2005 the Suvorovsky Court appointed the State Treasury co-defendant in the case.

13. On 14 April 2009 the Suvorovsky Court partly allowed the applicant's claim. The court awarded the applicant UAH 120,000 (about 11,413 euros) to be paid by the State Treasury.

14. On 25 November 2009 the Odessa Regional Court of Appeal upheld the judgment of 14 April 2009.

15. On 26 November 2009 the applicant lodged an appeal in cassation with the Supreme Court; the proceedings before the latter are still pending.

3. *Second set of civil proceedings*

16. In May 1998 the applicant instituted proceedings against the company, Reklama, seeking salary arrears.

17. On 8 April 1999 the Leninsky Court partly allowed the applicant's claim.

18. On 25 May 1999 the Odessa Regional Court (“the Regional Court”) quashed that decision and remitted the case for fresh consideration.

19. On 7 June 2000 the Leninsky Court allowed the applicant's claim.

20. On 18 April 2001 the Presidium of the Regional Court, following an objection (*protest*) by its President, quashed that judgment and remitted the case for fresh consideration.

21. On 20 September 2002 the Malinovsky District Court of Odessa left the applicant's claim unexamined because he had failed to appear before the court.

22. On 5 February 2003 the same court left the applicant's appeal against that ruling unexamined because it had been lodged out of time.

23. Further appeals by the applicant were left unexamined or dismissed owing to their procedural shortcomings.

4. *Other proceedings*

24. In 2005-2006 the applicant unsuccessfully attempted to institute civil proceedings against the judges who had considered his civil and criminal cases, claiming compensation for pecuniary and non-pecuniary damage allegedly caused to him because of actions taken by them in their official capacity. All of his complaints and subsequent appeals were rejected.

25. Between 1997 and 1999 the company, G., challenged the actions of the Inspectorate before the domestic courts.

THE LAW

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

26. The applicant complained that the length of the first set of civil 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...”

A. Admissibility

27. 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

1. The parties' submissions

28. The Government contested the applicant's submissions, stating that there were no significant periods of inactivity attributable to the State. They maintained that the case was complex and that the judicial authorities had acted with due diligence. According to the Government, the parties had been responsible for several delays. The Government, therefore, maintained that the length of proceedings in the applicant's case was not unreasonable.

29. The applicant disagreed.

2. Period to be taken into consideration

30. The applicant instituted proceedings on 16 April 1998.

31. The Court reiterates that it can take into account only those periods when the case was actually pending before the courts, thus excluding from calculation those periods between the adoption of the final and binding judgments and their revocation in the course of the extraordinary proceedings (see *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004, and *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 41-42, 6 September 2005). The Court notes that the judgment of 22 June 2000 was *res judicata*, and it was only by virtue of the introduction of the new transitional remedy on 21 June 2001 that the applicant was able to challenge that decision. In such circumstances, the recourse to the Supreme Court to challenge proceedings which had been brought to an end by a final decision must be seen as akin to a request to reopen those proceedings by means of the extraordinary transitional remedy provided for by the Law of 21 June 2001 (see *Prystavska v. Ukraine* (dec.), no. 21287/02, ECHR 2002-X). Therefore, the period from 22 June 2000 to 18 February 2004 cannot be taken into account.

32. The proceedings in the applicant's case are still pending before the Supreme Court. They have thus lasted about eight years for three levels of jurisdiction.

3. *Reasonableness of the length of the proceedings before the domestic courts*

33. The Court reiterates that the reasonableness of the length of the 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).

34. 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).

35. 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 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 breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. The applicant alleged that Articles 2, 3, 7 and 13 had been violated in the course of the criminal proceedings. He further complained, invoking Article 5 of the Convention, Article 2 of Protocol No. 4 and Article 4 of Protocol No. 7, that the criminal proceedings against him had not been terminated despite the ruling of 30 October 1998. He also invoked Article 3 of Protocol No. 7 referring to the facts of the case.

37. The applicant further complained under Article 6 of the Convention about the length of other proceedings. Relying on Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention, the applicant complained about the outcome of the first set of the proceedings and the proceedings instituted by the company, G., against the Inspectorate, and that both sets of proceedings were unfair. He complained under Article 1 of Protocol No. 1 that pecuniary damage had been caused to him and his company.

38. 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.

39. 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

40. 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

41. The applicant claimed 20,387,201 euros (EUR) in respect of pecuniary damage and EUR 2,137,093 for non-pecuniary damage.

42. The Government contested these claims.

43. 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 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant made no separate claim as to costs and expenses. Therefore, the court makes no award under this head.

C. Default interest

45. 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 excessive length of the first set of civil 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 1,600 (one thousand 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