



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

FIFTH SECTION

CASE OF KHURAVA v. UKRAINE

(Application no. 8503/05)

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 Khurava v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,

Renate Jaeger,

Rait Maruste,

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. 8503/05) 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, Ms Galina Andreyevna Khurava (“the applicant”), on 16 February 2005.

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

3. On 4 November 2008 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings, the interference with the applicant's property right as a result of the lengthy consideration of her claims and the lack of an effective remedy 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in the city of Odessa, Ukraine.

5. On 22 May 1992 the applicant was dismissed.

6. On 20 August 1992 the applicant instituted proceedings in the Suvorovsky District Court of Odessa (“the District Court”) against her former employer, seeking recovery of salary arrears and other payments owed to her, and compensation for failure to observe the correct procedure for her dismissal.

7. On 28 October 1992 the proceedings in the case were suspended pending the outcome of another set of proceedings concerning the applicant's reinstatement.

8. The next hearing was scheduled for 10 June 2002.

9. On 27 June 2002 the District Court found against the applicant.

10. On 30 July 2002 the same court declared her appeal inadmissible owing to its procedural shortcomings.

11. On 7 November 2002 the Odessa Regional Court of Appeal ("the Court of Appeal") quashed that ruling and declared the appeal admissible.

12. On 2 June 2003 the Court of Appeal quashed the judgment of 27 June 2002 and referred the case back for fresh consideration. On the same date the court adopted a separate ruling, drawing the attention of the President of the District Court to the length of the proceedings in question.

13. On 6 July 2004 the District Court again found against the applicant.

14. On 7 December 2004 the Court of Appeal quashed that judgment and rendered a new one, finding in part for the applicant. It awarded the applicant 29,483,71 Ukrainian hryvnias (UAH, about 4,082 euros) in salary arrears and other payments and UAH 2,000 (about 277 euros) in compensation for non-pecuniary damage. On the same date the court adopted another separate ruling, drawing the attention of the President of the District Court to the length of the proceedings in question.

15. The applicant appealed in cassation against the judgment of 7 December 2004. On 13 July 2007 the Kharkiv Regional Court of Appeal, sitting as a cassation court, upheld that judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

16. 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. She further complained under Article 13 of the lack of an effective remedy for the length-of-proceedings complaint. The provisions at issue read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

17. The Government contested the applicant's complaints.

18. The period to be taken into consideration began only on 11 September 1997 when the recognition by Ukraine of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 13 July 2007. It thus lasted more than nine years and ten months for three levels of jurisdiction.

A. Admissibility

19. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

20. 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). The Court reiterates that special diligence is necessary in employment disputes (See *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17)

21. The Court has frequently found violations of Articles 6 § 1 and 13 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above, § 46 and *Vashchenko v. Ukraine*, no. 26864/03, §§ 55 and 59, 26 June 2008).

22. 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 Articles 6 § 1 and 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

23. The applicant further complained that the length of the proceedings complained of had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

24. The Government contested that argument.

25. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

26. Having regard to its finding under Article 6 § 1 (see paragraph 22 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 68,642 euros (EUR) in respect of pecuniary damage and EUR 8,000 in respect of non-pecuniary damage.

29. The Government contested these claims.

30. 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, it awards the applicant, on an equitable basis, EUR 3,100 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed UAH 301,25 (about EUR 30) for her postal expenses.

32. The Government left the matter to the Court's discretion.

33. 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 considers it reasonable to award the sum of EUR 30 under this head.

C. Default interest

34. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention;
5. *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 3,100 (three thousand one hundred euros) in respect of non-pecuniary damage and EUR 30 (thirty euros) for costs and expenses, plus any tax that may be chargeable to the applicant, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *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