



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

FIFTH SECTION

CASE OF MKRTCHYAN v. UKRAINE

(Application no. 21939/05)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

20/08/2010

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

In the case of Mkrtychyan v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 21939/05) 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, Mr Yegor Misakovich Mkrtychyan (“the applicant”), on 27 May 2005.

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

3. On 10 November 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 1949 and lives in the town of Poltava, Ukraine.

1. Background to the case

5. By judgment of 1 February 1999 the Kyivsky District Court of Poltava (hereafter “the District Court”) ordered U., a private company, to reinstate the applicant at work and pay him salary arrears in the amount of

1,916.20 Ukrainian hryvnias (UAH, about 425.95 euros). This judgment remained unenforced.

6. On an unspecified date the debtor company had undergone a reorganisation, changing, *inter alia*, its name from U. to K.

2. Court proceedings against K. company

7. In view of that fact, on 28 May 2001 the applicant lodged a claim with the same court, seeking a declaration that K. had succeeded U. In this regard he also claimed salary arrears in the sum of UAH 1,916.20 (which corresponded to the amount already awarded to him by judgment of 1 February 1999) and other payments allegedly owed to him by K. company.

8. The first hearing was scheduled on 20 September 2001. It was adjourned since the case was transferred to another judge.

9. Between 21 September 2001 and 20 December 2002 the District Court scheduled six hearings, two of them were adjourned since the company's representative failed to appear. On two other occasions the hearings were adjourned since the both parties failed to appear. One hearing was adjourned at the applicant's request, and one since the judge was involved in other proceedings.

10. In the period from 21 December 2002 and 19 May 2003 there was no procedural activity.

11. Between 20 May 2003 and 17 February 2004 the District Court scheduled three hearings, two of them were adjourned since the company's representative failed to appear and one because the judge was ill.

12. The hearings scheduled for 18 February and 8 April 2004 were not held as neither of the parties appeared before the District Court. For this reason, on the latter date the District left the applicant's claim without consideration. On 24 February 2005 the Poltava Regional Court of Appeal, ruling on the applicant's appeal, found that the applicant had not been properly summoned and, accordingly, quashed the decision of 8 April 2004 and remitted the case for further examination on the merits.

13. On 26 August 2004 the Poltava Commercial Court liquidated K. company and the latter was subsequently removed from the relevant companies' register.

14. Between March 2005 and July 2005 the District Court scheduled two hearings. The both were adjourned since the company's representative failed to appear.

15. On 30 May 2005 the District Court asked the Poltava Tax Inspectorate to provide it with information about the company. On 15 June 2005 the latter informed the District Court that the company had been liquidated.

16. In July 2005, after the applicant had learned that K. company had ceased to exist, he requested the District Court to terminate the proceedings.

Accordingly, on 27 July 2005 the District Court discontinued the proceedings.

THE LAW

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

17. 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...”

18. The Government contested that argument.

19. The period to be taken into consideration began on 28 May 2001 and ended on 27 July 2005. It thus lasted four years and two months for two levels of jurisdiction.

A. Admissibility

20. 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

21. 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 (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

22. 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).

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

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

25. The Government contested that argument.

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

27. Having regard to its finding under Article 6 § 1 (see paragraph 23 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 *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant further complained under Article 6 § 1 and Article 1 of Protocol No. 1 about the non-enforcement of the judgment of 1 February 1999.

29. The Court reiterates that in the enforcement proceedings against private persons the responsibility of the State is limited to the organisation and proper conduct of such enforcement proceedings (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002). The Ukrainian legislation provides for a possibility to challenge before the courts the lawfulness of actions and omissions of the State Bailiffs' Service in enforcement proceedings and to claim damages from that Service for delays in payment of the awarded amount (see, for instance, *Dzizin v. Ukraine* (dec.), no. 1086/02, 24 June 2003; *Kukta v. Ukraine* (dec.), no. 19443/03, 22 November 2005). In the present case, the applicant did not apply to any domestic court against the Bailiffs to challenge their alleged omissions or inactivity.

30. It follows that this part of the application must be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed UAH 1,916.20 in respect of pecuniary damage. He further alleged that he had suffered non-pecuniary damage. He left the matter to the Court's discretion.

33. The Government contested the claims.

34. 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 1,300 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

36. 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 complaints under Article 6 § 1 and Article 1 of Protocol No. 1 concerning the excessive length of the proceedings admissible and his complaint about the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
3. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention about the excessive length of the proceedings;

4. *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 1,300 (one thousand three 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 at 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President