



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

FIFTH SECTION

CASE OF YUSHCHENKO AND OTHERS v. UKRAINE

(Applications nos. 73990/01, 7364/02, 15185/02 and 11117/05)

JUDGMENT

STRASBOURG

15 July 2010

FINAL

22/11/2010

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

In the case of Yushchenko and Others 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,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in four applications (nos. 73990/01, 7364/02, 15185/02 and 11117/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Ukrainian nationals, Mr Vladimir Mikhaylovich Yushchenko (“the first applicant”), Mr Vladimir Vladimirovich Yushchenko (“the second applicant”) and Mr Pavel Vladimirovich Yushchenko (“the third applicant”) and a private transport enterprise, YUVM-Avtoservis (*ІІІІ «ІОВМ-Автомобілі»*) (“the applicant company”). Application no. 73990/01 was lodged on 28 September 2000 by all applicants. Application no. 7364/02 was lodged on 10 May 2001 by the third applicant. Application no. 15185/02 was lodged on 4 April 2002 by the first applicant and application no. 11117/05 was lodged on 13 March 2005 by the second applicant.

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

3. On 27 March 2007 the Court declared the applications partly inadmissible and decided to communicate to the Government the complaints of the first applicant under Article 6 § 1 of the Convention, that the civil claim against him had been allowed although there was already a final decision on this claim; that the length of proceedings in the fraud and libel criminal cases against him had been excessive; his claim for compensation for damage caused by the search of his apartment in May 1998 in his civil case; and under Article 1 of Protocol No. 1 that his property rights had been violated during the enforcement of the judgment of 18 February 1999 against him; and the complaints of the third applicant under Article 6 §§ 1 and 2 of the Convention that the presumption of innocence had been

violated and that the proceedings in a criminal case against him had been excessively long. It also decided to join the applications (Rule 42 § 1 of the Rules of Court) and to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The individual applicants were born in 1934, 1967 and 1976 respectively and live in Yevpatoriya, Ukraine.

A. Civil proceedings on the return of a photocopier

5. In August 1998 L. instituted proceedings against the first applicant in the Yevpatoriya Town Court requesting the return of a photocopier, forty packets of paper and twelve toner cartridges. He alleged that in May 1998 the first applicant, together with the third applicant, had come to the office of L. and asked Z., the secretary of L., to lend him a photocopier. At the material time L. was in pre-trial detention in the course of criminal proceedings against him. Z., knowing that there were friendly relations between L. and the first applicant, had allowed him to take the photocopier and other materials. Later L. also claimed compensation for non-pecuniary damage.

6. On 6 November 1998 the court found for L. and ordered the first applicant to return the photocopier and related materials to L. or to pay him 6,446.92 Ukrainian hryvnias (UAH) in pecuniary damages. In the text of the judgment the court also mentioned that the first applicant was to pay UAH 6,000 in compensation for non-pecuniary damage, but made no reference to this sum in the operative part of the judgment. On the same date the court also adopted an interim decision by which it froze the accounts of the applicant company and banned any transactions with the first applicant's property and apartment over UAH 12,446.92.

7. On 4 January 1999 the Supreme Court of the Autonomous Republic of Crimea ("the ARC") quashed the judgment of 6 November 1998 and remitted the case for fresh consideration. The court however upheld the decision of 6 November 1998 concerning the interim measures.

8. On 18 February 1999 the Yevpatoriya Town Court found for L. and ordered the first applicant to return the photocopier to L. or to pay him its value of UAH 5,480. The court also ordered the first applicant to pay UAH 274 in court fees. The remainder of L.'s claims were rejected as

unsubstantiated. The court found in particular, that there was no evidence that the first applicant had taken paper and toner. The first applicant appealed against this judgment, but his appeal was not accepted for failure to comply with procedural formalities. L. did not appeal against the judgment in question.

9. The first applicant further tried to have the judgment of 18 February 1999 reviewed under the new cassation procedure, in the light of new circumstances and under the extraordinary review procedure, but to no avail.

10. In August 1999 L. instituted another set of proceedings in the Yevpatoriya Town Court against the first applicant, claiming additional payments, since the amount awarded to L. by the court decision of 18 February 1999 did not correspond to the current price of a photocopier, which, according to L., was UAH 8,177.40. On 17 January 2000 the court found against L. It held that in the judgment of 18 February 1999 the court had found that the photocopier cost UAH 5,480. On 20 March 2000 the Supreme Court of the ARC upheld the judgment of 17 January 2000.

B. Enforcement proceedings and related issues

11. As the first applicant did not honour the judgment of 18 February 1999, on an unidentified date the Bailiffs' Service instituted enforcement proceedings.

12. On 15 May 1999 the State Auto-Transport Inspection informed the President of the Yevpatoriya Town Court, following his request, that certain petrol tankers (a MAZ-5334, registration number 7561 KPT and a MAZ 5334, registration number 1403 KPT) belonged to the first applicant.

13. On 5 August 1999 the Yevpatoriya Town Court ordered the seizure of one of the petrol tankers (7561 KPT). The court also entitled the K. trade enterprise to sell it. The first applicant stated that his appeal against the decision of 5 August 1999 had been returned to him by a court letter of 27 August 1999. The letter stated, without mentioning any dates, that "the court returned your appeal because there was no such decision as the one against which you appealed".

14. On 10 August 1999 the State Bailiffs' Service allegedly gave the petrol tanker to L., who sold it to the joint-stock enterprise B. for UAH 19,250. UAH 9,161 were transferred to the Bailiffs' Service's account and L. allegedly took the rest of the amount.

15. On 6 September 1999 the Yevpatoriya Town Court lifted the seizure of the first applicant's property and apartment and of the accounts of the applicant company. The first applicant states that the seizure of his apartment was only lifted in June 2001.

16. The first applicant's wife, Y., a co-owner of the petrol tanker which had been sold, instituted court proceedings seeking to have it excluded from

the inventory of the seized property. On 13 September 1999 the Yevpatoriya Town Court found that Y. owned half of the petrol tanker and ordered the State Bailiffs' Service to pay her half of the sum received after the sale of the tanker. By an additional decision of 10 January 2000 the court stated that that amount was equivalent to UAH 4,351.84. On 10 April 2000 the Supreme Court of the ARC quashed these decisions and remitted the case for fresh consideration. On 13 November 2000 the Yevpatoriya Town Court decided to exclude the petrol tanker 7561 KPT from the list of seized property.

17. The first applicant instituted several sets of proceedings in the Yevpatoriya Town Court against the Bailiffs' Service, alleging improper enforcement of the judgment of 18 February 1999. On 17 March and 22 May 2000 the court found that when enforcing this judgment the State Bailiffs' Service had not acted in compliance with the procedure prescribed by law. On 30 August 2000 the Supreme Court of the ARC upheld the judgment of 22 May 2000. On 6 June 2000 the court found that the first applicant had not been present when the value of the petrol tankers was being assessed and had not had an opportunity to make a complaint. On 30 August 2000 the Supreme Court of the ARC upheld this judgment.

18. On 7 September 2000 the prosecutor instituted criminal proceedings against L. for unlawful sale of the petrol tanker. There is no further information about these proceedings.

19. On an unidentified date the first applicant instituted proceedings in the Tsentralnyy District Court of Simferopol against the Yevpatoriya Bailiffs' Service and the B. and K. trading companies seeking to have invalidated the sales agreement of the petrol tanker (7561 KPT). On 1 November 2001 the Tsentralnyy District Court of Simferopol found the sales agreement invalid. On 27 March 2002 the Court of Appeal of the ARC (former Supreme Court of the ARC) quashed this judgment and found the sales agreement valid. On 10 December 2007 the Zaporizhzhya Regional Court of Appeal quashed the decision of 27 March 2002 and remitted the case for fresh consideration by the court of appeal. On 5 March 2008 the Court of Appeal of the ARC upheld the decision of 1 November 2001.

20. On an unidentified date the first applicant instituted proceedings in the Kyivskyy District Court of Simferopol against the traffic police, complaining about the cancellation of the State registration of the petrol tanker (7561 KPT). On 11 December 2000 the court found that the police officers had acted in compliance with the court decision of 5 August 1999. On 14 March 2001 the Supreme Court of the ARC upheld this judgment. On 10 October 2001 the Supreme Court of Ukraine returned the first applicant's appeal under the new cassation procedure for failure to pay a court fee. Between 2004 and 2006 the courts rejected the first applicant's requests for the proceedings to be reopened in the light of new circumstances.

21. On 31 May 2001, following the first applicant's complaint, the Tsentralnyy District Court of Simferopol found that the K. enterprise had had no right to sell the petrol tanker.

22. On 18 March 2003 the prosecutor's office, while stating that there was enough evidence of crime, refused to institute criminal proceedings for negligence against the employees of the State Bailiffs' Service "because of an act of amnesty".

23. On an unidentified date the first applicant instituted proceedings in the Saki Town Court, claiming compensation for pecuniary and non-pecuniary damage caused by improper enforcement of the judgment of 18 February 1999, to be paid from the State budget of Ukraine. On 4 February 2003 the court dismissed the first applicant's claim as unsubstantiated.

24. In March 2003 the first applicant instituted proceedings in the Tsentralnyy District Court of Simferopol against the K. enterprise, the Ministry of Trade of the ARC and the State Treasury of Ukraine, claiming compensation for pecuniary and non-pecuniary damage as a result of the sale of the petrol tanker. On 13 August 2003 the court found against the first applicant, since there was no evidence that the alleged damage had been inflicted by K.'s actions. On 23 July 2008 the Court of Appeal of the ARC upheld this decision.

25. On an unidentified date the first applicant instituted proceedings in the Yevpatoriya Town Court against the State Treasury of Ukraine, the Bailiffs' Service and the Yevpatoriya Department of Justice, claiming compensation for pecuniary and non-pecuniary damage inflicted on him by improper enforcement of the judgment of 18 February 1999. On 23 March 2004 the court awarded the first applicant UAH 150,000 from the State budget of Ukraine in compensation for pecuniary and non-pecuniary damage. On 20 September 2004 the Court of Appeal of the ARC quashed this judgment and remitted the case for renewed examination. The first applicant appealed against it in cassation. While the cassation appeal was still pending, on 14 December 2004 the Yevpatoriya Town Court found against the first applicant. There is no evidence that the applicant has appealed against this judgment. On 15 October 2007 the Zaporizhzhya Regional Court of Appeal, sitting as a cassation instance, upheld the judgment of 20 September 2004.

26. In 2009 criminal proceedings for abuse of power were instituted against the bailiff N. The first applicant lodged a civil claim for damages within these proceedings, which are currently pending.

C. Criminal proceedings for fraud against the first and third applicants

27. In April 1999 L. requested the Yevpatoriya Town Police Office to institute criminal proceedings against the first applicant for fraud and blackmail, as the first applicant, with the third applicant, had allegedly removed a photocopier from L.'s office and not returned it. Between April and June 1999 the police several times refused to institute such proceedings on the ground that the issue in question had been already considered by the court under the civil procedure (see paragraphs 5-9). These decisions were subsequently quashed by the prosecutor, who remitted the material for additional investigation.

28. On 3 March 2000 the police eventually instituted a criminal case against the first applicant for fraud. Subsequently L. lodged a civil claim for UAH 10,310 in compensation for pecuniary damage and UAH 50,000 in compensation for non-pecuniary damage.

29. In May 2000 the investigation officer of the Yevpatoriya Town Police Department requested that the third applicant, who had previously been questioned as a witness, be summoned, since there was enough evidence to charge him with fraud and he had failed to appear at the police station. On 24 May 2000 the police officers visited the third applicant's apartment but he was allegedly absent and his neighbour told them that the third applicant would be away for a couple of weeks.

30. On 6 June 2000 the first and third applicants were charged with fraud. On the same day the proceedings against the third applicant were separated and stayed, as his whereabouts were allegedly unknown and he had been put on a wanted list.

31. In September 2000 the investigation officer requested the Yevpatoriya Town Police Office to search for the third applicant. There is no evidence as to whether any searches were carried out between 2000 and 2004.

32. On 7 October 2000 the investigating officer terminated the criminal proceedings against the first applicant for lack of proof of a crime. On 27 October 2000 the prosecutor quashed this decision and reopened the criminal proceedings. On 26 October 2001 the Yevpatoriya Town Court rejected the first applicant's complaint against the decision of 27 October 2000.

33. On 5 April 2002 the criminal case was transferred to the court. On 29 October 2002 the court returned the case for an additional investigation. On 11 February 2003 the Court of Appeal of the ARC quashed this decision and remitted the case for renewed examination.

34. During the consideration of the case in the first-instance court from 5 April 2002 until 12 January 2004, thirty-two court hearings were scheduled. Six of these were postponed because L., witnesses or the

prosecutor failed to appear. On four more occasions both the prosecution and the defence had failed to appear and on three occasions the first applicant had failed to appear. The first applicant lodged twenty-five requests for the withdrawal of the presiding judge and some judges of higher courts from his case. All of his requests were rejected as unsubstantiated. One hearing was postponed at the first applicant's request and on one occasion he refused to participate in the hearing. On 1 August 2002 the parties started fighting and the hearing was postponed. Twice the first applicant was reprimanded for contempt of court and from 5 December 2003 he was not allowed to participate in the court hearings until the beginning of final pleadings between the parties. However, the first applicant apparently took place in the next hearing which was the last one.

35. On 12 January 2004 the court sentenced the first applicant conditionally to two years' imprisonment for a fraud committed previously in concert with another person(s). Judge K., who considered the case, found that the first applicant together with "another person" had abused the trust of L.'s secretary and removed a photocopier worth UAH 8,350 and related materials (paper and toner) worth UAH 1,960, the overall value thus being UAH 10,310. In finding so the court stated that:

"On 6 May 1998 in the afternoon, [the first applicant], by a prior arrangement with another person [...] misappropriated a photocopier which belonged to L."

...

"The court has doubts as to the statements by the accused, V.M. Yushchenko, and a witness, P.V. Yushchenko [the third applicant], who deny the fraud..., since their statements are contradicted by the following evidence..."

36. The court has further referred to the statements of L. and the witnesses in the case, Z., B. and K., who maintained that the first applicant had been assisted by his son. They also recognised the third applicant at the face-to-face identification. The court further stated that:

"The court has doubts as to the statement of [the third applicant] who maintains that on 6 May 1998 he was not in the office of L. and did not steal the property of the latter. This statement is contested by the statements of the witnesses Z., K. and B. who have recognised him as the person who together with [the first applicant] was in the office and loaded the property, which belonged to the victim, into a Moskvich car".

37. Concerning the civil claim introduced by L., the court mentioned that by the judgment of 18 February 1999 the first applicant had already been ordered to pay L. UAH 5,480 as the value of the photocopier. The court, however, ordered the first applicant to pay L. the remaining UAH 4,830 in compensation for pecuniary damage and UAH 5,000 in compensation for non-pecuniary damage. On 16 March 2004 and 1 July 2004 the Court of Appeal of the ARC and the Supreme Court of Ukraine, respectively, upheld the sentence.

38. On 1 June 2004 criminal proceedings were resumed in respect of the third applicant and on 10 June 2004 the third applicant was again charged with fraud. On 21 December 2005 Judge K., who had heard the criminal case against the first applicant, sentenced the third applicant to one year and six months' imprisonment for fraud, without actual enforcement of the sentence as it had become time-barred. On 21 March 2006 the Court of Appeal of the ARC upheld this judgment. On 12 August 2006 the Supreme Court of Ukraine rejected an appeal in cassation by the third applicant.

D. Libel case

39. On 21 April 1999 the Yevpatoriya Town Court instituted criminal proceedings against the first applicant as he, as a witness in a civil case brought by K. against a hospital, had allegedly said in a court hearing that "all this had been organised by the criminal group of L. and K.". On 12 November 1999 the criminal case against the first applicant was closed. On 6 January 2000 the Yevpatoriya Town Court upheld this decision.

40. On 16 June 2000 the Presidium of the Supreme Court of the ARC, upon the *protest* of its President, quashed this decision under the extraordinary review procedure and remitted the case for renewed examination.

41. On 19 October 2000 the Yevpatoriya Town Court quashed the decision of 12 November 1999 and remitted the case for additional investigation. On 10 December 2000 the Yevpatoriya Town Police Office closed the criminal case for libel for lack of evidence of a crime.

42. On 1 September 2001 the new Criminal Code came into force and the offence of libel was decriminalised.

43. On 26 November 2001, following L.'s complaint, the Yevpatoriya Town Court quashed the decision of 10 December 2000 since the investigation had failed to comply with the decision of 19 October 2000. The case was then supposed to be transferred to the court to be closed in accordance with the transitional provisions of the new Criminal Code.

44. On 17 December 2001 the Police Office closed the criminal case because the new Criminal Code did not envisage criminal responsibility for libel. On 10 October 2002, following L.'s complaint, the court quashed this decision and remitted the case to the prosecutor. In doing so the court referred to its decision of 26 November 2001.

45. On 12 August 2003 the Court of Appeal of the ARC closed the criminal case against the first applicant. It held that the offence of libel was decriminalised and the relevant law was applied retrospectively.

46. On 3 October 2003 the Supreme Court of Ukraine allegedly reopened the proceedings upon an appeal in cassation by the first applicant. In his letter of 24 April 2006 the first applicant stated that the Supreme Court had returned his appeal because the first-instance court had allegedly

not provided it with a copy of an appealed decision. There is no further information about these proceedings.

E. The search of the first and second applicants' apartments in the course of criminal proceedings against L.

47. In May 1998, in the course of criminal proceedings against L., the apartments of the first and the second applicants were searched.

48. In January 2001 (allegedly on 12 January 2001) the first and second applicant instituted two separate sets of proceedings in the Yevpatoriya Town Court against the State Treasury of Ukraine, claiming compensation for non-pecuniary damage caused by an allegedly unlawful search.

49. On 17 June 2002 the court refused to examine the second applicant's claim as according to the Law "on the procedure for compensation of damage caused to the citizen by unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts" the second applicant should first address the State institution which had allegedly caused him non-pecuniary damage with a request to pay him compensation.

50. It follows from the materials submitted by the parties that the first and second applicant's cases were mixed up and the first applicant's claim was allegedly lost. However, on 9 October 2003 the court considered the first applicant's claim and awarded him UAH 20,000. It is impossible to tell whether the court had considered the original claim or whether the first applicant had submitted a new one.

51. On 24 December 2003 the Court of Appeal of the ARC reduced the amount of the compensation to UAH 2,000. On 23 January 2004 the first applicant appealed against this decision in cassation. On 15 March 2006 the Supreme Court of Ukraine quashed the judgment of 24 December 2003 and remitted the case for renewed examination to the second-instance court. On 3 July 2006 the Court of Appeal of the ARC awarded the first applicant UAH 3,000 in compensation for non-pecuniary damage. On 15 September 2006 the Supreme Court of Ukraine dismissed the applicant's appeal in cassation.

II. RELEVANT DOMESTIC LAW

***Res judicata* under Ukrainian civil procedure law**

52. In accordance with Article 136 of the Civil Procedure Code of 1963, in force at the material time, the judge shall refuse to accept the claim if there is a final court decision between the same parties in the case on the same matter and the same grounds.

THE LAW

I. SCOPE OF THE CASE

53. The Court notes that, after the communication of the case to the respondent Government, the applicants introduced a large number of new complaints related to numerous civil proceedings instituted by and against the applicants. In the Court's view, the new complaints are not an elaboration of the applicants' original complaints to the Court. The applicants were advised to lodge a new application form, which they have failed to do. The Court considers, therefore, that it is not appropriate to consider the applicants' new complaints now (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

54. The Court further notes that the applicants reiterated some of their original complaints. In its partial decision on admissibility of 27 March 2007, the Court adjourned its examination of the complaints of the first applicant under Article 6 § 1 of the Convention about the civil claim against him being allowed when there had already been a final decision on this claim; about the length of proceedings in the fraud and libel criminal cases against him and in his civil case for compensation for the damage inflicted by the search of his apartment in May 1998; and under Article 1 of Protocol No. 1 of a violation of his property rights during the enforcement of the judgment of 18 February 1999 against him; and the complaints of the third applicant under Article 6 §§ 1 and 2 of the Convention of a violation of the presumption of innocence and about the length of proceedings in a criminal case against him. The remainder of the complaints were declared inadmissible. To the extent that the applicants now repeat those complaints which have already been declared inadmissible, the complaints are “substantially the same” as those already declared inadmissible, and they must now be rejected pursuant to Article 35 §§ 2 (b) and 4 of the Convention.

55. The scope of the case now before the Court is limited to those complaints which were adjourned on 27 March 2007.

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT TO THE FIRST APPLICANT

56. The first applicant complained under Article 6 § 1 of the Convention that the court had allowed a civil claim within the criminal proceedings against him for fraud when there had already been a final decision on this claim. The applicant further complained about the length of proceedings in the fraud and libel criminal cases against him and in his civil case for

compensation for the damage inflicted by the search of his apartment in May 1998. The invoked Article, in so far as relevant, provides as follows:

Article 6 § 1

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

A. Admissibility

57. 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

1. Allowance of the civil claim against the applicant

58. The first applicant reiterated his previous submissions.

59. The Government pointed out that by the judgment of 18 February 1999 L.'s claims had been allowed only in part. The court rejected as unsubstantiated his claims for the return of the paper and toner, and for compensation for non-pecuniary damage. However, during investigation of the criminal case against the first applicant there was established an exact amount of materials taken. Moreover, in its judgment of 12 January 2004 the court took into consideration the previous decision on the matter. Therefore, in the Government's view, the two court decisions had been taken in different circumstances (before and after the criminal investigation during which the value of the photocopier and related materials was established).

60. As the Court has stated in previous cases, the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of rule of law and legal certainty, encompasses the requirement that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumarescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

61. The Court notes that on 18 February 1999 in the course of civil proceedings the court found that the first applicant had taken the photocopying machine but held that there was no evidence in support of L.'s claim that the first applicant had taken paper and toner. In particular, the witness B. had failed to specify how many packets of paper and toner had been taken by the first applicant and the witness K. had not seen it at all.

Therefore, the court, providing a forum for deciding a dispute between two individuals, rejected L.'s claims for paper and toner as unsubstantiated.

62. In its decision of 12 January 2004, taken within the criminal proceedings, while deciding on the applicant's guilt as to fraudulent misappropriation of L.'s property, the court referred to numerous face-to-face confrontations between the first applicant, L. and the witnesses and found that the applicant had taken the photocopying machine, paper and toner. Under the civil head of the criminal proceedings, the court further awarded L. the value of the misappropriated items.

63. The Court notes that the national court in the first proceedings rejected L.'s claims against the first applicant related to the return of the paper and toner, though it later found that these items had been taken by the first applicant and his son. The Court accepts that the criminal proceedings against the applicant determined issues of criminal law which were separate from those already decided in the civil proceedings. Although it may appear that in both proceedings the courts examined the same factual situation and came to different conclusions, the Court notes that the civil court did not conclusively establish that the first applicant did not take the paper and toner.

64. However, the civil aspect of the criminal case covered precisely the same ground as that in the earlier civil proceedings – namely, civil liability for the removal of the photocopier and the related materials, and their value. In the absence of any indication that the civil proceedings were flawed, the Court finds that the re-determination of the same matters set at nought the proceedings which had already ended, and was not compatible with the principle of legal certainty.

65. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Length of proceedings

66. In respect of the examinations of the complaints mentioned below about the length of proceedings, 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).

a) Fraud

67. The first applicant reiterated his previous submissions. He insisted that the criminal case against him was unlawful, that the State authorities had breached his right to a fair trial and that the proceedings in his case had lasted too long.

68. The Government pointed out that the criminal case against the first applicant was quite complicated and therefore required time for proper consideration. In particular, two forensic examinations were held and five witnesses questioned. The first applicant was suspected of committing two crimes and he frequently changed his statements, which required additional investigation. Moreover, the first applicant lodged more than fifty complaints seeking different information and additional documents, requesting that hearings be postponed, proceedings terminated, criminal proceedings initiated against witnesses and judges, and so on.

69. The Government drew the Court's attention to the behaviour of the first applicant during the proceedings in his case. In particular, on 1 August 2002 the parties started fighting in court and the hearing had to be postponed. On one occasion the first applicant refused to participate in the hearing and persistently used offensive language to the judge, the witnesses and the opposite party. Consequently, on 5 December 2003 the court forbade the first applicant to be present in some court hearings. The applicant also twice damaged the documents in his case file.

70. The Government believed that in the above circumstances the length of proceedings in the criminal case for fraud against the first applicant could not be considered unreasonable.

71. The Court notes that the proceedings in question lasted for four years, three months and twenty-nine days (from 3 March 2000 until 1 July 2004) and included an investigation stage and three court instances. The Court does not accept the Government's submissions that the first applicant's case was complicated, but given the applicant's behaviour and the lack of significant periods of inactivity caused by the State authorities, the Court finds that there is no breach of Article 6 § 1 of the Convention in respect of the length of fraud proceedings against the first applicant.

b) Libel

72. The first applicant reiterated his previous submissions and stated that the proceedings in his case had lasted too long.

73. The Government considered that the proceedings in the present case had been protracted by the lodging of numerous complaints and requests by the first applicant. They noted that the first instance court has had to deal with more than twenty interrelated cases between the first applicant and L. since 1998 more than twenty cases between the first applicant and L. have been considered by the first-instance court, and this history also complicated the consideration of the libel case.

74. The Court notes that the proceedings in question were instituted on 21 April 1999 and allegedly discontinued after 3 October 2003. They lasted for at least four years. The time between 6 January and 16 June 2000 should not be taken into consideration since the proceedings were not pending during this period. Therefore, the proceedings had already lasted for one

year and eleven months when the offence in question was decriminalised in September 2001. It is true that from that date, less must have been at stake for the applicant than previously, as he would be acquitted if the new law applied to the applicant's case, and if it did not, the legislator had given a clear sign that libel was not regarded as very serious. The proceedings, however, continued for at least two more years and one month, and it is unclear when exactly they ended or what was under consideration. Indeed, the domestic courts on two occasions remitted the case for additional investigation, which meant the applicant's further involvement in different investigatory activities, which could have brought even more uncertainty for the applicant as to whether the decriminalisation provision would apply to him. Given that the case has never been considered on the merits, 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.

c) Civil proceedings

75. The first applicant reiterated his submissions and stated that the proceedings in his case had lasted too long.

76. The Government submitted that the first applicant's claim of 12 January 2001 had been rejected on 17 June 2002 for the first applicant's failure to comply with procedural formalities. On 26 June 2002 he submitted another claim and the proceedings were terminated on 3 July 2006. The Government believed that during the consideration of the first applicant's claim there had been no periods of inactivity which could be attributable to the State.

77. The Court notes that there is no evidence that the applicant's claim was rejected on 17 June 2002. The copy of the decision of 17 June 2002, submitted by the first applicant, concerns consideration of a similar claim lodged by the second applicant. Moreover, the claim of 26 June 2002 referred to by the Government concerns the first applicant's civil case against Judge L., therefore, in the absence of any other information, the Court considers that the proceedings in question were initiated in January 2001 and ended on 15 September 2006 (see paragraphs 48-51)

78. The overall length of proceedings is, therefore, around five years and eight months at three levels of jurisdiction. Although that length could still be considered reasonable, the Court notes that there were two significant periods of inactivity. First, the applicant's claim and/or case file were lost and the court decided on the merits of the case only two years and nine months later. Secondly, the applicant's appeal in cassation was pending for two years and nearly two months in the Supreme Court of Ukraine (from 23 January 2004 to 15 March 2006, see paragraph 51). In such circumstances the Court finds that the length of proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION IN RESPECT TO THE THIRD APPLICANT

79. The third applicant complained under Article 6 § 1 of the Convention of an unfair trial and about the length of proceedings in the criminal case against him. In particular, he complained that he had not been presumed innocent according to Article 6 § 2 as during consideration of the criminal case against the first applicant, that court in its judgment had referred to the third applicant as an accomplice although the third applicant had participated in the consideration of the case as a witness.

80. The invoked Article, in so far as relevant, provides as follows:

Article 6

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. Admissibility

81. 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

1. Length of proceedings

82. The third applicant reiterated that the length of the criminal proceedings in his case had not been reasonable. He submitted that he had a permanent place of residence and was employed, therefore there had been no grounds to put him on the wanted list and to stay the proceedings.

83. The Government stated that the third applicant had protracted the pre-trial investigation and court examination of his criminal case by lodging numerous complaints and requests. In particular, he had challenged the judge in his case on sixteen occasions and, furthermore, requested that the hearings be postponed, the proceedings be terminated, criminal proceedings against the witnesses and judges be initiated, and so on. The Government

further indicated that the criminal proceedings in the third applicant's case had been stayed for three years and seven months because his whereabouts were unknown. Moreover, on fifteen occasions the court hearings in the third applicant's case were postponed because the witnesses in the case had failed to appear. In conclusion the Government stated that, given the complexity of the case and the third applicant's behaviour, the length of proceedings in the criminal case against him had been reasonable.

84. The Court notes that the criminal proceedings against the third applicant lasted for around six years and two months (from 6 June 2000 to 12 August 2006) and included a pre-trial investigation and three court instances.

85. The Court further notes that these proceedings were stayed for four years (from 6 June 2000 until 1 June 2004). There is no evidence in support of the statement that the third applicant was in hiding during all or part of that period or that any search was carried out. In particular, the third applicant took part in a court hearing in the criminal proceedings against his father as a witness (see paragraph 35).

86. In such circumstances, the Court finds that the length of proceedings in the present case does not comply with the "reasonable time" requirement and there is accordingly a violation of Article 6 § 1 of the Convention.

2. Presumption of innocence

87. The third applicant reiterated his previous submissions.

88. The Government stated that during the investigation of the criminal case against the first applicant it had been revealed that he had been assisted by another person. Since the witnesses recognised the third applicant as this person, on 6 June 2000 the third applicant was charged with fraud. However, since the third applicant was missing, the criminal proceedings against him were stayed and on 21 January 2004 the court considered only the criminal case against the first applicant. The Government insisted that the court's findings were limited only to the fact that the first applicant was assisted by his son, without determining of the latter's guilt. In the Government's view the court had referred to the witnesses' statements about the third applicant assisting his father in committing "unlawful actions", but these findings could not breach the principle of the presumption of innocence in respect to the third applicant.

89. The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair trial. The presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty (see, among other authorities, *Deweert v. Belgium*,

judgment of 27 February 1980, Series A no. 35, p. 30, § 56; *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, §§ 27, 30 and 37; *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, p. 16, §§ 35-36; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-44, ECHR 2000-X; and *Matijašević v. Serbia*, no. 23037/04, § 45, ECHR 2006-...). Whether a statement by a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras*, cited above, § 43).

90. In the present case the first and the third applicants were both charged with fraud, however, the proceedings in respect to the third applicant were separated and stayed as he was allegedly in hiding.

91. In the judgment of 12 January 2004 in the criminal case against the first applicant the court stated that “on 6 May 1998 in the afternoon, [the first applicant], by a prior arrangement with *another person* [...] misappropriated a photocopier which belonged to L.”. Referring to the witnesses' statements, the court found that the first applicant had come with his son (the third applicant) to L.'s office and the third applicant had helped his father to put the photocopier into the car. Although these findings could create an impression that the third applicant was considered an accomplice, the Court notes that the national court's findings were limited to establishing the circumstances of the crime committed by the first applicant, namely whether the third applicant was physically present in L.'s office, without examining whether the third applicant had any fraudulent intent to take L.'s photocopier or was just helping his father. The court judgment of 12 January 2004 did not contain any express or even indirect statements about the third applicant's guilt in respect of fraud or any other offence.

92. In such circumstances, the Court finds that there is no violation of Article 6 § 2 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

93. The first applicant complained under Article 1 of Protocol No. 1 that during the enforcement of the judgment of 18 February 1999 his property rights had been violated. In particular, he complained that the value of the petrol tanker seized in enforcement of the court judgment of 18 February 1999 exceeded the amount awarded to L. by the court. The invoked Article provides as follows:

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.”

Admissibility

94. The Government indicated that the first applicant could have returned the photocopier or paid the amount awarded voluntarily but he had failed to do so, therefore, L. had been forced to initiate enforcement proceedings. The Government further contended that the national courts had recognised breaches in the enforcement proceedings and the seizure orders for the first applicant's and his company's property had been removed. Furthermore, the first applicant has failed to appeal in cassation against the decision of 20 September 2004 and against the decision of 14 December 2004, therefore his complaint should be rejected for failure to exhaust effective domestic remedies.

95. The first applicant disagreed and indicated that he had appealed against the decision of 20 September 2004 in cassation.

96. The Court notes that the applicant's complaint concerns irregularities which occurred in the course of enforcement proceedings. Where complaint is made about the organisation and conduct of enforcement proceedings, Ukrainian legislation provides for the possibility of a challenge before the courts as regards the lawfulness of actions and omissions on the part of the State Bailiffs' Service in enforcement proceedings and also for a claim for damages from that Service (see, *mutatis mutandis*, *Dzizin v. Ukraine* (dec.), no. 1086/02, 24 June 2003, and *Kukta v. Ukraine* (dec.), no. 19443/03, 22 November 2005).

97. In the present case the first applicant and other persons whose rights were allegedly infringed during the enforcement of the judgment of 18 February 1999 instituted numerous proceedings against the State Bailiffs' Service and other defendants, challenging different actions and claiming damages. While the courts have recognised that on some occasions the actions of the Bailiffs' Service during the enforcement of the judgment of 18 February 1999 were unlawful, the first applicant's claims for damages were unsuccessful.

98. The Court notes however that while the applicant has indeed appealed against the judgment of 20 September 2004, there is no evidence that he has appealed against the judgment of 14 December 2004 (see paragraph 25). Accordingly, he cannot be regarded as having exhausted the domestic remedies available to him under Ukrainian law.

99. It follows that this complaint must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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.”

101. The applicants did not submit a claim for just satisfaction within the relevant time-limits. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 1 of Protocol No. 1 inadmissible and the remainder of the applications admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect to the allowance of the civil claim within the criminal proceedings against the first applicant;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect to the length of fraud criminal proceedings against the first applicant;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect to the remaining complaints about the length of proceedings;
5. *Holds* that there has been no violation of Article 6 § 2 of the Convention.

Done in English, and notified in writing on 15 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President