



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

FIFTH SECTION

CASE OF KOLOMOYETS v. UKRAINE

(Application no. 11208/03)

JUDGMENT

STRASBOURG

15 July 2010

FINAL

15/10/2010

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

In the case of Kolomojets 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 an application (no. 11208/03) 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 Vladislav Vasilyevich Kolomojets (“the applicant”), on 29 April 2001.

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

3. On 6 September 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

4. The applicant was born in 1961 and lives in the town of Zaporizhia, Ukraine.

1. First set of proceedings

5. In June 2002 the applicant had a work-related accident in which he was injured. Later he received the status of a partially disabled person.

6. On 14 August 2002 the applicant instituted proceedings against his employer, the OJSC “Zaporizhshaskloflyus, seeking a declaration that his disability had been caused by the injury. He also claimed payment of UAH

33,000 (about 6,724 euros, EUR) in compensation for non-pecuniary damage resulting from his disability.

7. On an unspecified date the State Insurance Fund for Work-Related Accidents and Diseases (“the Fund”) joined the proceedings.

8. On 11 August 2003 the Zavodsky District Court of Zaporizhia (“the District Court”) found against the applicant. On 1 December 2003 the Zaporizhia Regional Court of Appeal (“the Court of Appeal”) quashed that judgment and awarded the applicant UAH 500 (about EUR 76) in compensation for non-pecuniary damage, to be paid by the Fund.

9. On 24 December 2003 the applicant and the Fund lodged their appeals in cassation with the Supreme Court.

10. On 17 March 2004 the Fund enforced the judgment.

11. In January 2005 the applicant sent a request to the Supreme Court seeking information about the state of the proceedings. By letter of 22 February 2005 the Supreme Court informed him that his appeal had not yet been considered and that he would be informed in due course of any decision taken by the Supreme Court.

12. On 22 November 2005 the Supreme Court, in the applicant's and the Fund's absence, dismissed their appeals in cassation.

13. In October 2007 the applicant sent a new request to the Supreme Court seeking information about the outcome of his cassation appeal.

14. By letter of 2 November 2007 the Supreme Court informed the applicant that, due to a clerical error, a copy of the ruling of 22 November 2005 had been sent to a wrong address in December 2005.

15. The applicant received the letter of 2 November 2007 and the copy of the ruling of 22 November 2005 on an unspecified date in November 2007.

2. Second set of proceedings

16. On 10 October 2002 the applicant was dismissed from his job at the OJSC “Zaporizhshaskloflyus”.

17. On 4 November 2002 he challenged his dismissal before the District Court. On 28 January 2003 the latter found against the applicant. On 6 February 2003 the applicant appealed. In accordance with the requirements of the applicable law, the applicant filed his appeal with the District Court. The latter then transmitted it to the Court of Appeal for consideration.

18. On 26 February 2003 the Court of Appeal ordered the rectification of some shortcomings of the applicant's appeal and remitted the case to the District Court. On 14 March 2003 the District Court declined the applicant's appeal against the judgment of 28 January 2003 since the applicant failed to rectify the shortcomings within a time-limit allotted by the District Court. The applicant appealed against the ruling of 14 March 2003. On 15 April 2003 the District Court declined his appeal since the applicant

failed to comply with procedural formalities. The ruling of 15 April 2005 was not appealed against.

19. In April 2003 the applicant lodged a new appeal against the judgment of 28 January 2003, having filed it with the District Court. On 9 April 2003 the District Court declined this appeal since it had been lodged outside the statutory time-limit. On 8 May 2003 the District Court declined the applicant's appeal against the ruling of 9 April 2003 since the applicant missed a time-limit. The applicant appealed. On 1 July 2003 the Court of Appeal quashed the ruling of 8 May 2003 and remitted the case to the District Court.

20. On 6 August 2003 the District Court renewed a time-limit for appealing against the ruling of 9 April 2003 and transmitted the applicant's appeal to the Court of Appeal.

21. On 22 September 2003 the Court of Appeal upheld the decision of 9 April 2003. The applicant lodged an appeal in cassation against the decision of 22 September 2003. On 14 November 2003 the Supreme Court remitted the applicant's appeal in cassation to the District Court since the applicant had failed to comply with procedural formalities.

22. On 3 February 2004 the applicant lodged with the District Court an amended cassation appeal against the decision of 22 September 2003. On 23 February 2004 the District Court declined it due to its procedural shortcomings. On 29 April 2004 the Court of Appeal upheld the decision of 23 February 2004.

23. In May 2004 the applicant appealed in cassation against the decisions of 23 February 2004 and 29 April 2004. On 14 June 2004 the District Court declined the applicant's cassation appeal due to its procedural shortcomings. On 4 August 2004 the Court of Appeal quashed the decision of 14 June 2004 and remitted the case to the District Court.

24. In August 2004 the applicant lodged an amended appeal in cassation against the decisions of 23 February 2004 and 29 April 2004, following the District Court's instructions to rectify the procedural shortcomings of his original appeal. In September 2004 the District Court transmitted his cassation appeal to the Supreme Court for consideration.

25. On 21 March 2007 the Supreme Court quashed the decisions of 23 February 2004 and 29 April 2004. The Supreme Court further remitted the case to the Odessa Regional Court of Appeal for examination of the applicant's appeal in cassation against the decision of 22 September 2003. On 20 June 2007 the Odessa Regional Court of Appeal, acting in its cassation jurisdiction, dismissed the applicant's appeal in cassation and upheld the decision of 22 September 2003.

3. Third set of proceedings

26. In the period prior to December 1998 the applicant was working as an Assistant of the Head of the Zaporizhia Temporary Detention Unit. As a

result of the negative appraisal given to the applicant in November 1998, he was downgraded. Following this event, he was transferred to a lower position at the suburb of Zaporizhia.

27. On 10 January 1999 the applicant was dismissed on the ground that he failed to appear at his new work place. The applicant challenged his transferral and dismissal. On 5 May 2000 the Ordzhonikidzevsky District Court of Zaporizhia found against the applicant. On 11 July 2000 the Zaporizhia Regional Court upheld this judgment and it became final. Subsequently, the applicant unsuccessfully tried to re-open the proceedings.

4. Fourth set of proceedings

28. In June 2001 the applicant instituted administrative proceedings in the Komunarsky District Court of Zaporizhia, seeking to oblige the Ukraine Savings Bank to return his indexed deposit.

29. On 6 July 2001 the court found against the applicant. On 17 January 2002 the Court of Appeal quashed this judgment and discontinued the proceedings, having found that the applicant's complaint should have been examined in civil proceedings.

30. On 7 October 2002 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE FIRST SET OF PROCEEDINGS

31. The applicant complained that the length of the first set of 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...”

32. The Government contested that argument.

33. The period to be taken into consideration began on 14 August 2002 and ended in November 2007 when the applicant was informed about the final decision given in his case (see *Widmann v. Austria*, no. 42032/98, § 29, 19 June 2003, and *Gitskaylo v. Ukraine*, no. 17026/05, § 34, 14 February 2008). It thus lasted about five years and three months for three levels of jurisdiction.

A. Admissibility

34. 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

35. 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).

36. As for the issues that were at stake for the applicant, the Court notes that following the work-related accident the applicant was classed as partially disabled. The Court notes that the compensation claimed by the applicant was of an undeniable importance to him.

37. Concerning the question of the complexity of the present case, the Court observes that the domestic courts mainly had to establish whether the applicant sustained any non-pecuniary damage and, if so, the amount of the compensation to be paid. Therefore, the Court concludes that the subject matter of the litigation at issue cannot be considered particularly complex.

38. As regards the conduct of the judicial authorities, the Court notes that the major delays in the proceedings were caused by the lengthy consideration of the cassation appeals by the Supreme Court, and as a result of the final decision not being served on the applicant in good time (see paragraphs 11-15 above). The Court reiterates that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective. However, in the Court's opinion the Supreme Court did not act with due diligence.

39. 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, and *Dogru Avsar v. Turkey*, no. 14310/05, § 8, 12 January 2010).

40. 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 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE SECOND SET OF PROCEEDINGS

41. The applicant further complained that the length of the second set of proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention.

42. The Government contested the applicant's submissions, stating that there had been no significant periods of inactivity attributable to the State. They maintained that the judicial authorities had acted with due diligence. According to the Government, the applicant had been responsible for several delays.

43. The applicant disagreed.

44. The Court notes that the proceedings began on 10 October 2002 and ended on 20 June 2007. Therefore, they lasted about four years and eight months at three levels of the jurisdiction. During this period the applicant's claims were examined on the merits by one level of jurisdiction within less than three months, and subsequently the issue of the admissibility of his appeals – by three levels.

45. The Court considers that the present case did not involve legal or factual complexity.

46. The Court recalls that the proceedings at issue concerned the applicant's employment and so special diligence was necessary (see *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

47. As regards the conduct of the applicant, the Court finds that he also contributed to the delays, particularly, by missing a time-limit for lodging his appeal against the judgment of 28 January 2003 and appealing against the relevant procedural decisions. The Court also notes that the applicant failed to comply with the procedural requirements when lodging his appeals. In this respect the Court reiterates that although a party to civil proceedings cannot be blamed for using the avenues available to him under domestic law in order to protect his interests, he must accept that such actions necessarily prolong the proceedings concerned (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001).

48. As regards the conduct of the judicial authorities, the Court notes the prolonged period of procedural inactivity from August 2004 to March 2007 in considering the applicant's appeal in cassation. The Court observes that the domestic courts hearing the case did attempt to streamline the proceedings, since the hearings in the period prior to August 2004 and after March 2007 were scheduled regularly. The Court further notes that the applicant's claim was examined on the merits within less than three months, and that after the appeal lodged in August 2004 had been allowed by the Supreme Court, the proceedings were completed within three months.

49. The Court reiterates that a delay at some stage may be acceptable if the overall duration of the proceedings cannot be deemed excessive (see, for example, *Pretto and Others v. Italy*, 8 December 1983, § 37, Series A no. 71). In the present case, although the delay attributed to the State could possibly have been avoided, it is not such as to warrant the conclusion that there has been a violation, given the total duration of the proceedings and that the applicant had also caused certain delays.

50. In view of the above, the Court concludes that the length of the proceedings did not exceed a reasonable time within the meaning of Article 6 § 1 of the Convention.

51. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant complained under Article 6 § 1 about unfairness and outcome of the second set of proceedings. He further complained under Articles 4 § 2 and 6 § 1 of the Convention about the unfair outcome of the third set of proceedings. Lastly, the applicant complained about being unable to recover his indexed deposit. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in this respect.

53. 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.

54. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

57. The Government contested the claim.

58. 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

59. The applicant lodged no claim in respect of costs and expenses. The Court, therefore, makes no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the first set of proceedings admissible and 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 first set of proceedings;
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 15 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President