



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

FIFTH SECTION

CASE OF PALAMARCHUK v. UKRAINE

(Application no. 28585/04)

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 Palamarchuk 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,
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. 28585/04) 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 Oleksandr Terentiyovych Palamarchuk (“the applicant”), on 2 June 2004. The applicant was represented before the Court by his brother, Mr Mykola Terentiyovych Palamarchuk.

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

3. On 16 February 2009 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 1961 and lives in Vinnitsa.

5. In 1983, while undergoing training at the SU-26 company, the applicant had an accident. As a result of this accident he was classed as a disabled person.

6. Starting in 2000 the applicant instituted four sets of proceedings against the Vinnitsa specialised collective company no. 26 (“the company”),

the successor of the company responsible for the accident, in the Zamostyansky District Court of Vinnitsa (“District Court”).

1. First set of proceedings

7. On 21 September 2000 the applicant instituted proceedings against the company, seeking a ruling to oblige the company to provide him with a wheelchair for home use and a wheelchair for outside use. The applicant also claimed compensation for non-pecuniary damage.

8. By its judgment of 19 June 2001 the District Court ordered the company to provide the applicant with two wheelchairs. It also partly allowed the applicant's claim for compensation. By an additional judgment of 3 July 2001 the District Court amended its previous judgment and ruled that the company should provide the applicant with all components for wheelchairs.

9. On 23 October 2001 the Vinnitsa Regional Court of Appeal quashed the above judgments and remitted the case for a new consideration to the District Court. The applicant appealed in cassation. In the period from November 2001 to December 2002 the District Court mainly examined the admissibility of the applicant's appeal in cassation against the ruling of 23 October 2001.

10. In December 2002 the applicant's appeal in cassation was sent to the Supreme Court. On 22 December 2003 the latter dismissed it.

11. Between 30 June 2004 and 11 April 2005 no hearings were scheduled.

12. Between 12 April 2005 and 27 March 2006 the District Court scheduled some ten hearings, two of them were adjourned on account of absence of the company's representative, two other on account of the judge's absence. Three hearings were adjourned since the applicant's representative failed to appear.

13. Between 21 April 2006 and 04 August 2006 no hearings were held.

14. In the period from 6 November 2006 to 12 December 2007 the District Court scheduled some twelve hearings. Three of them were adjourned because the judge was involved in other proceedings and one on account of his illness. Three hearings were adjourned because the Fund's representative failed to appear, four due to the absence of the company's representative.

15. On 12 December 2007 the case was transferred to another judge.

16. Between 13 December 2007 and 14 May 2009 the District Court scheduled some thirteen hearings, six of them were adjourned since the judge was ill and one because he was involved in other hearings.

17. On 15 May 2009 the District Court left the applicant's claim without consideration. The applicant in his submissions alleged that he learned about that decision from the Government's observations sent to him in July 2009.

2. Second set of proceedings

18. On 18 February 2002 the applicant instituted proceedings against the company. The applicant claimed nursery allowance and compensation for non-pecuniary damage caused to him by the company.

19. The first hearing was held on 16 December 2003. On unspecified dates the prosecutor and the Vinnitsa Regional Department of the State Social Security Fund ("Fund") joined the proceedings.

20. According to the records provided by the Government, of around sixty-five listed hearings three were adjourned since the Fund's representative failed to appear. On three occasions the hearings were adjourned as the prosecutor failed to appear. Six hearings were adjourned since the judge was involved in other proceedings and seven on account of the judge's illness. Nine hearings were adjourned since the applicant or his representative failed to appear or at their request. Seventeen hearings were adjourned because of the absence of the company's representative or at his request.

21. On 3 June 2009 the District Court left the applicant's claim without consideration. The applicant in his submissions alleged that he learned about that decision from the Government's observations which were sent to him in July 2009.

3. Third set of proceedings

22. On 21 March 2001 the applicant lodged a complaint with the District Court challenging the actions of the head of the company. He alleged that the latter had unlawfully refused to send him for a medical examination in order to establish that he needed anti-bedsore treatment.

23. On 23 July 2001 the applicant challenged the judge sitting in his case. On 26 July 2001 the District Court dismissed his request. The applicant appealed. On 3 September 2001 the Vinnitsa Regional Court of Appeal dismissed the applicant's appeal.

24. Between 14 September 2001 and 20 December 2003 the District Court scheduled three hearings, two of them were adjourned at the company's request. The applicant challenged a judge sitting in his case on several occasions. On 19 December 2001, 21 August 2002 and 16 May 2003 his requests were granted and the case was transferred to another judge.

25. On 21 December 2003 the prosecutor joined the proceeding. On an unspecified date the Fund joined the proceedings as a third party.

26. There were no hearings scheduled between 8 November 2007 and 18 December 2008.

27. Out of around sixty-one hearings listed in the period from 21 December 2003 to 14 May 2009, five were adjourned because the Fund's representative failed to appear. Nine hearings were adjourned due to the

absence, or at the request, of the applicant or his representative. On ten occasions the judge failed to appear because he was ill, on eight occasions since he was involved in other proceedings, and on one occasion as he was on holiday. Seventeen hearings were adjourned because the company's representative failed to appear or at his request.

28. On 12 December 2008 the case was transferred to another judge.

29. On 15 May 2009 the District Court left the applicant's claim without consideration. The applicant submitted that he had learned about that decision from the Government's observations sent to him in July 2009.

4. Fourth set of proceedings

30. On 3 May 2001 the applicant instituted proceedings against the company. He challenged the company's refusal to provide him with bedclothes and claimed compensation.

31. On 13 June 2001 the District Court left his claim without consideration due to its procedural shortcomings.

32. On 6 November 2001 the Vinnitsa Regional Court of Appeal quashed the ruling of 13 June 2001 and remitted the case to the District Court.

33. On 26 December 2001 the District Court allowed the applicant's claim. The company appealed.

34. On 23 April 2002 the Vinnitsa Regional Court of Appeal quashed the judgment of 26 December 2001 and remitted the case for a fresh consideration. On 19 August 2002 the Supreme Court dismissed the applicant's appeal in cassation against the ruling of 23 April 2002.

35. On an unspecified date the Fund joined the proceedings as a third party.

36. Between 20 August 2002 and 14 May 2009 the District Court scheduled some fifty-four hearings. Three of them were adjourned due to absence of the Fund's representative. Six hearings were adjourned since the applicant or his representative failed to appear or at their request. Two hearings were adjourned as the judge was on holiday, six since he was involved in other proceedings and ten on account of the judge's illness. Sixteen hearings were adjourned since the company's representative failed to appear or at his request.

37. On 15 May 2009 the District Court left the applicant's claim without consideration. The applicant in his submissions stated that he had learned about that decision from the Government's observations sent to him in July 2009.

THE LAW

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

38. The applicant complained that the length of the first, second, third and fourth sets 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...”

39. The Government contested that argument.

40. The first set of proceedings began on 21 September 2000 and ended on 15 May 2009. The proceedings thus lasted eight years and almost eight months for three levels of jurisdiction.

41. The second set of the proceedings began on 18 February 2002 and ended on 3 June 2009. The proceedings thus lasted about seven years and four months for one level of jurisdiction.

42. The third set of the proceedings began on 21 March 2001 and ended on 15 May 2009. The proceedings thus lasted eight years and almost one month for two levels of jurisdiction.

43. The fourth set of the proceedings began on 3 May 2001 and ended on 15 May 2009. The proceedings thus lasted about eight years for three levels of jurisdiction.

A. Admissibility

44. 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

45. 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).

46. 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).

47. 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 on account of the length of the first, second, third and fourth sets of the proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicant complained under Article 6 § 1 about unfairness of the proceedings. He further complained under the same Article that the ruling of 22 December 2003 was adopted by the Supreme Court in his absence. The applicant also alleged under Article 1 of Protocol No. 1 to the Convention that he was not provided with the wheelchairs and anti-bedsore treatment. He further invoked Articles 2, 13 and 17 of the Convention referring to the facts of the case. Lastly, he alleged that the State authorities had violated Articles 2, 3, 4, 5, 6, 8, 9 and 10 of the UN Declaration on the Rights of Disabled Persons.

49. 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.

50. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 9,282 euros (EUR) and EUR 44,500 in respect of pecuniary and non-pecuniary damage, respectively, caused by the lengthy examination of his claims lodged within the first, third and fourth sets of the proceedings. He further claimed EUR 4,017 in respect of

pecuniary and non-pecuniary damage caused by the lengthy consideration of his claim lodged within the second set of the proceedings.

53. The Government contested these claims.

54. 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 4,200 in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant claimed EUR 170.80 for the legal expenses incurred before the domestic courts.

56. He further claimed EUR 39.40. This amount included UAH 225 (about EUR 21) for translation services and UAH 178.19 (about EUR 16) for sending his letters and faxes to the Court. The applicant provided a copy of the receipt evidencing payment of UAH 225 to the translation agency.

57. The Government agreed that the applicant incurred some expenses for sending his correspondence. They further contested the remainder of his claims.

58. 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 37 in respect of costs and expenses.

C. Default interest

59. 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 of the Convention concerning the excessive length of the first, second, third and fourth sets of the 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 length of the first second, third and fourth sets of the proceedings;

3. *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 4,200 (four thousand two hundred euros) in respect of non-pecuniary damage and EUR 37 (thirty-seven euros) in respect of costs and expenses, plus any tax that may be chargeable, 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 amounts 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 15 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President