



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

FIFTH SECTION

CASE OF SLANKO v. UKRAINE

(Application no. 6508/05)

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 Slanko 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,

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. 6508/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Elvira Ivanovna Slanko (“the applicant”), on 9 February 2005.

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

3. On 12 December 2007 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1937 and lives in Feodosiya.

A. Proceedings against the Krymenergo company instituted by the applicant in 1997

5. On 10 June 1997 the applicant instituted civil proceedings in the Feodosiya Court against the State-owned company Krymenergo seeking compensation for pecuniary and non-pecuniary damage caused by allegedly unlawful electricity cuts and inaccurate calculation of her electricity charges.

6. Between January 1998 and March 1999 the applicant modified her claims on six occasions.

7. On 12 March 1998 the Feodosiya Prosecutor's Office lodged a counter-claim on behalf of Krymenergo seeking recovery of electricity charges not paid by the applicant.

8. On 5 January 1999 the applicant lodged with the same court a defamation claim against Krymenergo.

9. On 12 March 1999 the court joined that claim to the original proceedings.

10. On 17 March 1999 the court dismissed the applicant's claims as unsubstantiated and allowed the counter-claim, ordering the applicant to pay 269 Ukrainian hryvnias (UAH)¹ to Krymenergo.

11. On 2 June 1999 the Crimea Supreme Court quashed that judgment and remitted the case to the first-instance court for fresh consideration.

12. According to the Government, on 28 September 1999, the applicant requested the court to suspend the proceedings. On the same day the request was granted. The applicant denied that she had made such a request.

13. On 5 December 2000 the proceedings were resumed.

14. By a procedural decision of 5 December 2000 the court ordered the parties to check the payments already made for electricity and to inform the court accordingly. According to the Government, the applicant failed to comply with that decision. The applicant denied that contention. On 28 February 2001 the court reiterated its order and, by April 2001, the parties had submitted the information concerning the payments.

15. On 20 August 2001 the Feodosiya Court rejected the applicant's claims and ordered her to pay UAH 180.85² in debts.

16. On 17 September 2001 the applicant appealed.

17. On 18 January 2002 the applicant's appeal was rejected for failure to comply with procedural requirements. The applicant disagreed and challenged the ruling of 18 January 2001 on appeal. Between January 2002 and June 2005 her appeals were dealt with by the court of first instance and on appeal. Ultimately, the appeals were allowed and on 30 August 2005 the Court of Appeal quashed the judgment of 20 August 2001 and remitted the case to the first-instance court for fresh consideration.

18. Meanwhile, on 14 March 2003 the Council of Judges examined the applicant's complaint that the judge of the first-instance court dealing with her case had taken too long to examine her appeals. The Council of Judges allowed the applicant's complaint and issued an official reprimand against the judge.

1. About 62 euros (EUR).

2. About EUR 37.

19. Following reconsideration of the case, on 4 July 2006 the Feodosiya Court found against the applicant and ordered her to pay UAH 259.73¹ in debts.

20. On 12 September 2006 the Court of Appeal rejected the applicant's appeal as lodged out of time.

21. On 26 April 2007 the Supreme Court upheld the ruling of 12 September 2006.

22. Out of thirty-six court hearings held in the course of the proceedings, one was adjourned due to the applicant's failure to appear, two were adjourned due to the prosecutor's failure to appear, four were adjourned due to both parties' failure to appear, seven were adjourned due to Krymenergo's representative's failure to appear, and three were adjourned due to the judge's absence. According to the Government, the parties submitted about fifty procedural requests, asking the courts, in particular, to call witnesses and to secure evidence. Some of the requests were allowed, resulting in the postponement of the hearings.

B. Proceedings against the Krymenergo company and the Feodosiya Electrical Transmission Network Company

23. On 8 May 2002 the applicant instituted proceedings in the Feodosiya Court against the Feodosiya Electrical Transmission Network Company seeking compensation for damage to her reputation allegedly caused by the latter.

24. On 25 February 2003 the court joined Krymenergo as a respondent to the proceedings.

25. On 27 February 2003 the applicant lodged a similar claim against Krymenergo with the same court. This was joined to the proceedings concerning her initial claim for compensation.

26. On 3 July 2003 the court rejected the applicant's claims as unsubstantiated.

27. On 24 November 2003 the Crimea Court of Appeal upheld that judgment.

28. On 13 May 2006 the Supreme Court rejected the applicant's appeal in cassation as unsubstantiated.

C. Proceedings against the judge dealing with the applicant's case

29. In February and April 2003 the applicant lodged two separate complaints with the Feodosiya Court against the judge dealing with her dispute with Krymenergo, alleging inactivity on the part of the judge with regard to her appeal against the Feodosiya Court's judgment of 20 August 2001.

1. About EUR 43.

The applicant's complaints were rejected as falling outside the jurisdiction of the courts. In particular, Ukrainian law granted judges and courts immunity from civil and administrative proceedings against them for actions and decisions taken in their official capacity.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS INSTITUTED IN JUNE 1997

30. The applicant complained about the length of the proceedings which she had instituted against Krymenergo in 1997. She relied on Articles 6, 13 and 17 of the Convention.

31. The Court considers that the applicant's complaint falls to be examined under Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

32. The Court finds that the 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

1. Period to be taken into consideration

33. The Government submitted that a part of the proceedings was outside the Court's competence *ratione temporis*.

34. The Court observes that the impugned proceedings started in June 1997 and ended in April 2007. The Convention entered into force in respect of Ukraine on 11 September 1997. Thus, the period falling within the Court's competence *ratione temporis* lasted about nine years and seven months.

2. Reasonableness of the length of the proceedings

35. The Government submitted that there had been no substantial delays attributable to the domestic authorities. In their opinion, the proceedings had been lengthy due to the complexity of the case and the conduct of the parties, who had submitted about fifty procedural requests. They further argued that the applicant had contributed to the length of the proceedings by lodging her appeals out of time and refusing to compare her calculation of the debts with that of the respondent.

36. The applicant disagreed.

37. The Court considers that, although the applicant contributed to the length of the proceedings by lodging requests and appeals, the principal responsibility for the protracted length of the proceedings rests with the domestic authorities. In particular, the Court notes that the proceedings were blocked for more than three years during which time the courts were dealing with the applicant's appeal against the judgment of 20 August 2001 (see paragraphs 16 and 17 above). Although a party to civil proceedings who uses the avenues available to him or her under domestic law in order to protect his or her interests must bear the consequences when it leads to delays, the Court does not share the Government's view that the applicant was responsible for the delay in this case. Her appeal of 17 September 2001 was ultimately admitted and examined on the merits and this fact demonstrates that the applicant had complied with the relevant procedural requirements. Furthermore, the responsibility of the courts for the delay was confirmed by the decision of the Council of Judges of 14 March 2003 (see paragraph 18 above).

38. The Court also notes that the Government submitted no plausible argument to demonstrate that the applicant's case was factually or legally complex. Thus, having regard to the substantial delay in the proceedings between September 2001 and June 2005 and to the overall duration of the proceedings of more than nine years, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER COMPLAINTS

40. The applicant complained about the outcome of the proceedings against Krymenergo and against the judge and that they had been unfair, alleging that the courts had misinterpreted the law and had wrongly established the facts. She also complained about the length of the latter set of proceedings. The applicant invoked Articles 6, 13 and 17 of the Convention.

41. 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 or its Protocols.

42. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed EUR 9,000 in respect of non-pecuniary damage.

45. The Government contested that claim.

46. The Court, making its assessment on an equitable basis, as required by Article 41, awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant also claimed UAH 227.02¹ for costs incurred in correspondence with the Court and UAH 284.39² for expenses incurred in the domestic proceedings.

48. The Government contested the claims concerning the expenses incurred in the domestic proceedings and left the claim concerning the expenses incurred before this Court to the Court's discretion.

49. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 35 for the cost of correspondence with the Court.

1. About EUR 35.

2. About EUR 43.

C. Default interest

50. 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 length of the proceedings instituted by the applicant in June 1997 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 2,435 (two thousand four hundred and thirty-five euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage and costs and expenses, to be converted into the national currency 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;
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