



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

FIFTH SECTION

CASE OF PAVLIV v. UKRAINE

(Application no. 35176/08)

JUDGMENT

STRASBOURG

20 January 2011

This judgment is final but it may be subject to editorial revision.

In the case of Pavliv v. Ukraine,

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

Rait Maruste, *President*,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 35176/08) 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 Volodymyr Volodymyrovych Pavliv (“the applicant”), on 27 June 2008.

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

3. On 24 November 2009 the President of the Fifth Section decided to give notice of the application to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee of three Judges.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1952 and lives in Piddubne, the Lviv Region.

5. On 20 October 1999 the applicant lodged a claim with the Chervonohrad Court against his former employer for re-calculation of monthly allowance for a work-related disease.

6. On 27 March 2001 the court scheduled its first hearing for 2 April 2001 which was subsequently adjourned because of the applicant’s failure to appear.

7. On 5 June 2001 the Chervonohrad Court left the applicant’s claim without examination for his repeated failure to appear before the court.

8. On 28 January 2003 the applicant appealed against the decision of 5 June 2001. He submitted that he had not been summoned to appear before the court and that he had become aware of that decision in January 2003.

9. On 28 July 2003 the Lviv Regional Court of Appeal found that there was no evidence in the case that the applicant had been duly informed of the time and date of the court hearings scheduled for 2 April and 5 June 2001. It quashed the decision of 5 June 2001 and remitted the case for a consideration by the first-instance court.

10. On 1 December 2003 the Chervonohrad Court allowed the respondent's request for transferring the case to a court of different territorial jurisdiction, the Sokal Court.

11. On 9 January 2004 the Sokal Court received the case. On 25 February 2005 it scheduled its first hearing for 10 March 2005.

12. On 30 December 2005 the Sokal Court rejected the applicant's claims as unsubstantiated. On 24 January 2006 the applicant appealed against the judgment.

13. On 21 August 2006 the Lviv Regional Court of Appeal upheld the judgment of 30 December 2005.

14. On 18 October 2006 the applicant lodged his appeal in cassation.

15. On 27 December 2007 the Khmelnytsk Regional Court of Appeal, sitting as a court of cassation, dismissed the applicant's appeal in cassation and upheld the decisions of the lower courts.

16. In the course of the proceedings the hearings were adjourned five times because of either the applicant's or his representative's failure to appear or his requests for documents or adjournment of the case.

THE LAW

I. THE COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

17. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

A. Admissibility

18. 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

19. The applicant complained that the length of the proceedings had been excessive.

20. The Government submitted that the applicant had contributed to the protracted length of the proceedings by lodging appeals and requests for adjournment and by failing to appear before the first-instance court.

21. The Court notes that the period to be taken into consideration began on 20 October 1999 and ended on 27 December 2007. It thus lasted eight years and two months at three levels of jurisdiction.

22. 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).

23. Turning to the facts of the case, the Court notes that the first decision on the merits of the case was given six years and two months after the applicant had lodged his claims with the first-instance court. Such a substantial delay was caused, to a decisive extent if not exclusively, by the courts' unjustified protraction of the proceedings, despite the obvious importance of their outcome for the applicant.

24. 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; *Pysatyuk v. Ukraine*, no. 21979/04, §§ 24, 30-34, 16 April 2009; and *Popilin v. Ukraine*, no. 12470/04, §§ 24-31, 16 April 2009).

25. 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. OTHER COMPLAINTS

26. The applicant complained of a violation of Articles 1, 6, 13 and 18 of the Convention on account of the outcome of the proceedings.

27. In the light of the materials in its possession, the Court finds that the applicant's complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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."

30. The applicant did not submit a claim for just satisfaction when requested by the Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention of excessive length 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.

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Rait Maruste
President