

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

FIFTH SECTION

CASE OF DEMENOVA v. UKRAINE

(Application no. 21922/07)

JUDGMENT

STRASBOURG

15 March 2012

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



In the case of Demenova v. Ukraine,

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

Mark Villiger, *President,*
Ganna Yudkivska,
André Potocki, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 21 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 21922/07) 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 Lyubov Vladimirovna Demenova ("the applicant"), on 17 May 2007.

2. The Ukrainian Government ("the Government") were represented by their Agent, Ms V. Lutkovska, of the Ministry of Justice.

3. On 30 August 2010 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

4. The applicant was born in 1957 and lives in Melitopol.

5. On 29 July 1999 the applicant instituted proceedings in the Melitopol Court against the Simferopol State University, her former employer, seeking recovery of salary arrears and compensation for unused leave.

6. On 19 July 2001 the court rejected the applicant's claims as unsubstantiated.

7. On 21 February 2002 the Zaporizhzhya Regional Court of Appeal quashed that judgment and remitted the case to the first-instance court for fresh consideration.

8. On 22 March 2005 the first-instance court left the applicant's claims without consideration, holding that she had repeatedly failed to appear at court hearings.

9. On 21 June 2005 the court of appeal quashed that decision, finding that there was no proof that the applicant had been duly informed about the date and place of the first instance court's hearing, and remitted the case to the first instance court for consideration on the merits.

10. On 12 December 2006 the court ordered modification of the record concerning the applicant's dismissal and ordered the respondent to pay her certain sum, having rejected the remainder of her claims. On 22 March 2007 the Court of Appeal upheld that judgment.

11. On 18 September 2007 the Supreme Court rejected the applicant's appeal in cassation.

12. Out of sixty hearings scheduled in the applicant's case ten were adjourned due to the applicant's absence or upon her request, eleven hearings were adjourned due to the absence of the respondent or his representative or upon their requests, seven were adjourned due to both parties' failure to appear. Nine hearings were adjourned due to the judge's illness, two were adjourned due to the judge's absence, and one was adjourned due to the liquidation of the court dealing with the applicant's case.

THE LAW

I. LENGTH OF PROCEEDINGS COMPLAINT

13. 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 as follows:

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

14. The Government submitted that there had been no delays attributable to the domestic authorities and the delays in the proceedings had been due to the conduct of the parties who had failed to appear, lodged appeals and procedural requests. In the Government's view, the applicant was not interested in an expeditious examination of her case.

15. The Court notes that the period to be taken into consideration began in July 1999 and ended on 18 September 2007. It thus lasted for about eight years and two months.

A. Admissibility

16. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

17. 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). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

18. The Court observes that the subject matter of the dispute was of no particular legal or factual complexity. The Court also observes that the applicant worked as a university professor and her salary was her source of subsistence. Consequently, it finds that what was at stake for the applicant called for expeditious decision on her claims (*Golovko v. Ukraine*, no. 39161/02, §§ 54-55, 1 February 2007). As regards the applicant's conduct, the Court notes that she contributed to the length of the proceedings by failing to attend some of the hearings, requesting adjournments and lodging appeals and procedural requests. However, the Court is of the opinion that primarily responsibility for protraction of the proceedings rests with the domestic courts. In particular, it observes that the proceedings were prolonged by two remittals for which the applicant cannot be held responsible. The Court also notes that the courts were responsible for the adjournment of a number of hearings (see paragraph 12 above).

19. The Court concludes that, given the importance of the proceedings for the applicant, the domestic authorities did not act with a due expedition while examining her claims and the overall duration of the proceedings exceeded what may be considered "reasonable". Accordingly, there has been a breach of Article 6 § 1.

II. OTHER COMPLAINTS

20. The applicant complained under Article 4 of the Convention that her former employer had violated her labour rights. She also complained under Article 6 § 1 of the Convention about the outcome and unfairness of the proceedings. The applicant complained under Article 1 of Protocol No. 1 that her former employer had failed to pay the sums due to her.

21. Having carefully examined the remainder of the applicant's complaints in the light of all the material in its possession, and in so far as the matters complained of is 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.

22. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 90,000 Ukrainian hryvnias[1] in respect of pecuniary damage and 2,200 euros (EUR) in respect of non-pecuniary damage.

25. The Government contested these claims.

26. 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 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant did not submit any claims for costs and expenses; therefore the Court makes no award.

C. Default interest

28. 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 applicant's complaint under Article 6 § 1 of the Convention concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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1. About 7,757 euros

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, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President