

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

FIFTH SECTION

CASE OF KARAVANSKYY v. UKRAINE

(Application no. 13375/06)

JUDGMENT

STRASBOURG

14 April 2011

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



In the case of Karavanskyy v. Ukraine,

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

Mark Villiger, *President,*
Karel Jungwiert,
Isabelle Berro-Lefèvre, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 22 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 13375/06) 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 Borysovych Karavanskyy ("the applicant"), on 22 March 2006.

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

3. On 11 February 2010 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 1954 and lives in Kropyvna, the Cherkassy Region.

5. On 8 April 2002 the prosecutors instituted criminal proceedings against the applicant, then the founder and director of the agricultural company K. and the director of the company Z., on suspicion of tax evasion.

6. On 7 May 2002 the applicant's property was seized.

7. On 10 May 2002 the applicant gave an undertaking not to abscond.

8. On 17 May 2002 the prosecutors instituted another criminal case against the applicant on suspicion of tax evasion.

9. On 26 June 2002 the prosecutors instituted criminal proceedings against the applicant on suspicion of forgery. The criminal cases against the applicant were subsequently joined.

10. On 13 July 2002 the applicant was arrested by the police.

11. On 15 July 2002 he was released under an undertaking not to abscond.

12. On 30 July 2002 the investigations were completed and the case was sent to the Zolotonosha Court for trial.

13. Between May 2004 and March 2006, the case was remitted twice for additional investigations.

14. Meanwhile, by the decisions of the Cherkassy Regional Commercial Court of 19 July 2005 and 16 March 2006, the company K. was declared insolvent and liquidated.

15. On 4 July 2006 the additional investigations were completed and on 5 July 2006 the case was sent to the Zolotonosha Court for trial.

16. On 10 September 2007 the Zolotonosha Court found the applicant guilty of tax evasion and forgery and sentenced him to a fine of 6,800 Ukrainian hryvnias (UAH)[1], two-year liberty restriction with a prohibition of engaging in any business activity for the same period. The applicant was exempted from the punishment for the expiry of statute of limitations.

17. On 22 January 2008 the Cherkassy Regional Court of Appeal quashed the judgment of 10 September 2007 and sent the case for fresh examination to the first-instance court. It found that the latter had breached the procedural requirements of the criminal law.

18. On 18 March 2009 the Zolotonosha Court found the applicant guilty of tax evasion and forgery and sentenced him to a fine of UAH 6,800[2], one-year liberty restriction with a prohibition of engaging in any business activity for the same period. The applicant was exempted from the punishment for the expiry of statute of limitations.

19. On 2 June 2009 the Cherkassy Regional Court of Appeal quashed the judgment of 18 March 2009 and remitted the case for additional investigations.

20. On 10 August 2009 the prosecutors dropped part of the charges against the applicant for the absence of *corpus delicti* in his actions.

21. The case is currently pending before the first-instance court.

22. In the course of the proceedings a number of expert examinations were ordered which delayed the proceedings for about three months. There were thirty-three witnesses questioned. The hearings were adjourned thirty-seven times mainly because of the failure of the applicant or his representative to appear which in total caused a delay of two years. The witnesses failed to attend the hearings on fourteen occasions which delayed the proceedings for about six months. The applicant and witnesses were compelled by the authorities to attend the hearings in view of their repeated

1. Approximately 910 euros (EUR).
2. Approximately EUR 640.

failure to appear before the court. The applicant also lodged a number of requests for withdrawal of the judge from the case and for studying the case-file, some of which were allowed.

THE LAW

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

23. The applicant complained that the length of the proceedings was incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

24. The Government contested that argument. They submitted that the delays in the proceedings were caused by the complexity of the case and by the behaviour of the applicant and other participants in the proceedings.

25. The period to be taken into consideration began on 8 April 2002 and has not yet ended. It has thus lasted for about eight years and ten months for two levels of jurisdiction.

A. Admissibility

26. 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

27. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). It further reiterates that an accused in criminal proceedings should be entitled to have his case conducted with special diligence (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

28. Turning to the facts of the present case, the Court observes that the major delays in the proceedings were caused during the pre-trial investigations in the case and during its examination by the first-instance

court which lasted for about six years and nine months. During that period the case was remitted for additional investigations three times and once for a retrial because of procedural breaches by the trial court (see paragraphs 13, 17 and 19). In such circumstances the Court finds that the primary responsibility for the excessive length of the proceedings rests with the domestic authorities. The applicant's behaviour and the alleged complexity of the case alone cannot justify the overall length of the proceedings. Moreover, the Court notes that the proceedings have not been completed so far.

29. 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 *Pélissier and Sassi*, cited above; *Polishchuk v. Ukraine*, no. 21231/04, §§ 31-32, 15 October 2009).

30. 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 of the Convention.

II. OTHER COMPLAINTS

31. The applicant complained of a violation of Article 3 on account of the criminal proceedings instituted against him and confiscation of the property of his company. He further complained under Article 6 §§ 1, 2, 3 (c) and (d) of the Convention and Article 2 of Protocol No. 7 about the unfairness of the criminal proceedings. The applicant finally alleged a violation of Article 1 of Protocol No. 1 in that the company K. was liquidated and that his property was seized by the tax authorities.

Without referring to any specific provision of the Convention, the applicant complains about the undertaking not to abscond imposed on him in view of the criminal proceedings.

32. 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.

33. 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

34. 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

35. The applicant claimed 1,021,457 euros (EUR) in respect of pecuniary and EUR 100,000 in respect of non-pecuniary damage.

36. The Government contested these claims.

37. 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, it awards the applicant EUR 2,200 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed EUR 65 for the costs and expenses incurred before the Court.

39. The Government left the matter to the Court's discretion.

40. The Court notes that the applicant provided relevant supporting documents for the amount of EUR 31 he had paid for corresponding with the Court. It therefore awards the applicant this amount.

C. Default interest

41. 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 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;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,200 (two thousand two hundred euros) in respect of non-pecuniary damage and EUR 31 (thirty-one euros) for 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 14 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Mark Villiger President