

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

FIFTH SECTION

CASE OF KHAZHEVSKIY v. UKRAINE

(Application no. 28297/08)

JUDGMENT

STRASBOURG

19 April 2012

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



In the case of Khazhevskiy 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 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 28297/08) 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 Afanasiy Danilovich Khazhevskiy ("the applicant"), on 28 May 2008.

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

3. On 18 October 2010 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Girnyy.

A. Proceedings against the applicant's former employers (first set)

5. In 1999 a medical commission established that the applicant had lost 40% of his working ability due to an occupational disease received during his work in coal mines.

6. In January 2000 the applicant instituted civil proceedings in the Leninskyy District Court of Kirovograd ("the Leninskyy Court") against his former employers, two coal mining companies, seeking recovery of the occupational disability allowance.

7. On 6 March 2009, following two remittals of the case to the first-instance court for fresh examination, the proceedings were completed by a

final ruling of the Supreme Court rejecting the applicant's request for leave to appeal in cassation. As a result, the applicant's claim was allowed in part.

8. In early April 2009 the above ruling was served on the applicant.

9. According to the Government, the proceedings were delayed for a year and three months due to financial expert examinations conducted three times at the applicant's request and for six months due to some procedural flaws in his appeals which had to be rectified.

B. Proceedings against a gardening society

10. Being an owner of a land plot, the applicant was a member of a gardening society, a non-profit organisation taking care of the area in question.

11. In October 2006 he instituted civil proceedings in the Leninskyy Court against the aforementioned society considering that it had not complied with its duties.

12. By their decisions of 19 April, 18 May and 17 December 2007, the Leninskyy Court, the Kirovograd Regional Court of Appeal and the Supreme Court, respectively, found against the applicant.

THE LAW

I. COMPLAINTS CONCERNING THE LENGTH OF THE FIRST SET OF PROCEEDINGS AND THE LACK OF EFFECTIVE DOMESTIC REMEDIES IN THAT RESPECT

13. The applicant complained that the length of the first set of proceedings had been incompatible with the "reasonable time" requirement and that he had no effective domestic remedy in that regard. He relied on Articles 6 § 1 and 13 of the Convention which read as follows:

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

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

14. The Government contested that argument stating that the examination of the case had been somewhat complicated and that the applicant had contributed to its length by his procedural requests and appeals, sometimes not in accordance with the procedure.

15. The proceedings, which began in January 2000 and ended in April 2009, lasted for over nine years in three judicial instances.

A. Admissibility

16. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

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).

18. Turning to the facts of the present case, the Court does not discern any particular complexity in the subject-matter of the litigation. At the same time, it notes that the dispute over the occupational disability allowance was important to the applicant.

19. The Court acknowledges that the applicant contributed, to a certain extent, to the length of the proceedings, in particular by filing requests and procedurally inconsistent appeals (see paragraph 9 above). It however considers that his behaviour alone cannot justify the overall length of the proceedings.

20. 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).

21. 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.

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

2. Article 13 of the Convention

23. The Court has also frequently found violations of Article 13 of the Convention, stating that the current Ukrainian legislation does not provide a remedy for complaints concerning the length of proceedings (see *Efimenko v. Ukraine*, no. 55870/00, 18 July 2006). In the present case the Court finds no reason to depart from that case-law.

24. There has accordingly been a breach of Article 13 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant complained, relying on Articles 6 § 1 and 13 of the Convention, about the alleged unfairness of both sets of proceedings. He also complained, with reference to Article 1 of Protocol No. 1, that the amount of the occupational disease allowance awarded to him had been too low.

26. Having carefully considered the applicant's submissions as to the complaints under that head in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed EUR 100,000 in respect of pecuniary and non-pecuniary damage.

30. The Government contested the claim.

31. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,400 under that head.

B. Costs and expenses

32. The applicant did not claim any costs and expenses under the procedure; the Court therefore makes no award.

C. Default interest

33. The Court considers it appropriate that the default interest rate 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 complaints under Articles 6 § 1 and 13 of the Convention concerning the length of proceedings and the lack of effective remedies in that respect 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* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,400 (three thousand four hundred euros), to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President