

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

FIFTH SECTION

CASE OF KOVALENKO v. UKRAINE

(Application no. 61404/08)

JUDGMENT

STRASBOURG

8 December 2011

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



In the case of Kovalenko 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 15 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 61404/08) 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 Vladimir Grigoryevich Kovalenko ("the applicant"), on 3 December 2008.

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

3. On 12 July 2010 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1939 and lives in Zaporizhzhya.

5. On 20 September 2000 the local prosecutors instituted criminal proceedings against him on suspicion of bribery. Throughout the major part of the proceedings the applicant remained on a written undertaking not to abscond.

6. Following two remittals of the case for additional investigations, on 31 July 2006 the case was referred to the Ordzhonikidzevskyy District Court of Zaporizhzhya ("the District Court"), which on 11 September 2006 repeatedly remitted the case for additional investigations. On 6 November 2006 the Zaporizhzhya Regional Court of Appeal ("the Court of Appeal") quashed the above ruling and sent the case to the District Court for trial.

7. On 12 April 2007 the latter court found the applicant guilty of bribery, sentenced him to a pecuniary fine and a one-year prohibition to hold

executive positions and released him from the sentence due to the expiry of the period of limitation.

8. On 18 June 2007 and 6 May 2008, respectively, the Court of Appeal and the Supreme Court upheld the above judgment.

9. According to the Government, in the course of the proceedings thirteen hearings were adjourned due to the applicant's failure to appear and four hearings due to his lawyer's failure to appear. The applicant disagreed stating that he had not attended only two hearings due to illness and that he had not been informed of other hearings which he had allegedly failed to attend. The above delays on the applicant's part protracted the proceedings by five months approximately. Twenty-four further hearings were adjourned due to the witnesses' or prosecutor's failure to appear or the absence of the judges. One expert examination was ordered and lasted for about one week. According to the Government, the applicant lodged the appeal in cassation against the decision of 18 June 2007 only on 14 November 2007. According to the applicant, he was served with a copy of that decision with delay.

THE LAW

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

10. The applicant complained under Articles 6 § 1 and 14 of the Convention about the unreasonable length of the criminal proceedings against him. The complaint falls to be examined solely under Article 6 § 1, which reads in so far as relevant as follows:

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

11. The Government contested that argument stating that the case had been complex and that the applicant had contributed to the overall length of the proceedings.

12. The period to be taken into consideration began on 20 September 2000 and ended on 6 May 2008. It thus lasted seven years seven months and seventeen days for three levels of jurisdiction.

A. Admissibility

13. The Court notes that the 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

14. 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 also recalls that an accused in criminal proceedings should be entitled to have his case conducted with special diligence, having a particular regard to any restrictions on liberty imposed pending the conclusion of the proceedings (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006; and *Ivanov v. Ukraine*, no. 15007/02, § 71, 7 December 2006).

15. Turning to circumstances of the case, the Court considers that neither the complexity of the case nor the conduct of the applicant, who contributed somewhat to the length of the proceedings (see paragraph 9 above), can explain their overall duration. On the other hand, the Court considers that the major delays were caused by the remittals of the case for additional investigations (see paragraphs 5 and 6 above) and by twenty-four adjournments of the hearings (see paragraph 9 above). It thus concludes that the main responsibility for the protracted length of the proceedings rested with the domestic courts.

16. 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).

17. 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 ALLEGED VIOLATIONS OF THE CONVENTION

18. The applicant also complained under Article 6 § 1 of the Convention about the unfavourable outcome of the proceedings and under Article 14 of the Convention that he had been discriminated against as the Supreme Court's ruling had been in Ukrainian, which he had allegedly not understood.

19. Having carefully examined the applicant's submissions 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 those articles of the Convention.

20. 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

21. 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

22. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government contested the claim.

24. The Court considers that the applicant must have sustained non-pecuniary damage on account of the unreasonable length of the criminal proceedings against him. Ruling on an equitable basis, it awards him EUR 1,100 under that head.

B. Costs and expenses

25. The applicant did not make any claim for costs and expenses. Accordingly, there is no call for an award under this head.

C. Default interest

26. 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 about the unreasonable length of the criminal proceedings against the applicant 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 1,100 (one thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnia 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 8 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President