CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF KOZLOV v. UKRAINE

(Application no. 11084/03)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

12/10/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Kozlov v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 19 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 11084/03) 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 Sergey Gennadyevich Kozlov ("the applicant"), on 3 March 2003.

2. The Ukrainian Government ("the Government") were represented by Mr Y. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

3. On 11 May 2006 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Sevastopil.

5. At the material time the applicant worked as the supervisor of the technical division (*начальник технического отдела*) at the Navy Communication Devices Repair Plant ("the Company," "*771 Ремонтный*

завод средств связи Черноморского флота" военной части №31060)[1] belonging to the Government of the Russian Federation and located in Sevastopil, Ukraine.

A. First set of proceedings

6. On 16 January 1992 the applicant was dismissed for his failure to meet the requirements of his post.

7. On 24 January 1992 he instituted civil proceedings in the Nakhimovskyy District Court of Sevastopil ("the District Court"; *Нахімовський районний суд м. Севастополя*), seeking his reinstatement and compensation for the loss of income ("the reinstatement proceedings").

8. On 27 April 1992 the applicant instituted additional civil proceedings in the same court, alleging that the Company had been miscalculating his monthly salary between October 1991 and January 1992 ("the salary proceedings").

9. On 29 July 1992 the Crimean Regional Court (*Кримський обласний суд*) gave the final judgment in the reinstatement proceedings ordering the applicant's reinstatement and awarding him 3,134.20 karbovantsi[2] in compensation.

10. On 7 April 1993, the Crimean Regional Court gave the final judgment in the salary proceedings finding for the applicant and recalculating the salary due to him for the months of October 1991 – January 1992.

11. In view of the salary recalculation, the reinstatement proceedings were subsequently re-opened. On 10 June 1993 the compensation due to the applicant was increased to 10,960.52 karbovantsi[3]. On 21 July 1993 the Crimean Regional Court upheld this judgment and it became final.

12. On 28 April 1999 the Supreme Court quashed the decisions of 10 June and 21 July 1993 and remitted the case for a fresh consideration, following a protest, instituted by the Deputy President of the Supreme Court upon the request of the applicant, who sought higher compensation for the loss of income.

13. On 20 April 2001 the District Court rejected the applicant's claims for higher compensation.

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1. Subsequently reorganized into the "771 Repair plant of the Black Sea Navy Communication Devices" of the Russian Federation Ministry's of Defence (*Федеральное государственное унитарное предприятие «771 ремонтный завод средств связи Черноморского флота» Министерства обороны РФ*).

2. Approximately ECU 11.73 in the transitional currency of Ukraine which existed before 1996.

3. Approximately ECU 2.08; this figure is smaller than the one above in view of high inflation rates in Ukraine in the period in question.

14. On 5 June 2001 the Sevastopil City Court ("the City Court"; *Севастопольський міський суд*) quashed this judgment on appeal in cassation and remitted the case for a fresh consideration.

15. On 21 January 2002 the District Court found that the proper amount of compensation due to the applicant was 4,922.40 karbovantsi[1], but ordered not to pay this sum to the applicant as the Company had already paid the award fixed by the quashed judgment of 10 June 1993.

16. On 16 April 2002 the City Court quashed this judgment on appeal and remitted the case for a fresh consideration. The applicant appealed in cassation against this ruling, contending that the City Court should have decided the merits instead of remitting the case for a fresh consideration.

17. On 4 September 2002 the Supreme Court rejected the applicant's request for leave to appeal in cassation against the ruling of 16 April 2002.

18. On 13 March 2003 the applicant complained to the President of the District Court about lack of action in his case.

19. On 15 April 2003 the District Court notified the applicant that his case had been mistakenly transferred to the finished cases archive.

20. On 28 May 2004 the District Court ruled against the applicant.

21. On 11 November 2004 the City Court quashed this judgment and awarded the applicant 8.21 Ukrainian hryvnyas (UAH)[2].

22. On 26 June 2006 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

B. Second set of proceedings

23. In October-December 1995 the Company ordered its employees to work part-time in view of the Company's financial hardships.

24. In January 1996 the applicant instituted civil proceedings challenging the legitimacy of this order and seeking compensation for his "involuntary absence" from work.

25. On 20 February 1997 the Nakhimovskyy District Court rejected the applicant's claims.

26. On 18 March 1997 the Sevastopil City Court upheld this judgment on appeal in cassation and it became final.

27. On 17 July 1998 Presidium of the City Court quashed the decisions of 20 February and 18 March 1997 and remitted the case for a fresh consideration, following a protest of the Deputy President of the Supreme Court.

28. On 2 April 1999 the District Court allowed the applicant's claims and awarded him UAH 297[3].

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1. No equivalent in Euro is available, as the currency had been replaced by "hryvnya" before the date of the judgment.
2. EUR 1.23.
3. EUR 65.95.

29. On 11 May 1999 the City Court upheld this decision on appeal in cassation and it became final.

30. On 19 January 2000 the Supreme Court quashed the decisions of 2 April and 11 May 1999 and remitted the case for a fresh consideration, following a protest, instituted by its Deputy President.

31. On 2 March 2004 the District Court partly allowed the applicant's claims and awarded him UAH 194.62[1]. The Company appealed.

32. On 20 June 2004 the City Court returned the case-file to the District Court, having instructed it to finalize the trial record and to order an immediate payment of a certain amount of the award.

33. On 20 July 2004 the District Court ordered the immediate payment of UAH 68.63[2]. Both parties appealed.

34. On 16 December 2004 the City Court quashed the judgments of 2 March 2004 and 20 July 2004 and rejected the applicant's claims as unsubstantiated. The applicant appealed in cassation.

35. On 28 December 2005 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

THE LAW

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

36. 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..."

37. The Government argued that the first set of proceedings did not exceed a reasonable time. They submitted no observations as regards the second set.

38. The two sets of proceedings started in 1992 and 1996 respectively. However, the period to be taken into consideration began only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at that time. The periods in question ended on 26 June 2006 in respect of the first set of proceedings and on 28 December 2005 in respect of the second set.

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1. EUR 30.14.
2. EUR 10.70.

39. The Court further finds that the period between 11 September 1997 and 28 April 1999 in respect of the first set of proceedings and the periods between 11 September 1997 and 17 July 1998 and between 11 May 1999 and 19 January 2000 in respect of the second set cannot be taken into account, as during these periods there existed final judgments in the applicant's cases and no court or enforcement proceedings were pending (see e.g. *Rokhlina v. Russia*, no. 54071/00, § 82, 7 April 2005).

40. The proceedings thus lasted seven years and two months and six years and nine months respectively for three levels of jurisdiction.

A. Admissibility

41. 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

42. 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).

43. 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 e.g., *Frydlender*, cited above; *Svetlana Naumenko v. Ukraine*, no. 41984/98, 9 November 2004 and *Golovko v. Ukraine*, no. 39161/02, 1 February 2007).

44. 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 two sets of proceedings was excessive and failed to meet the “reasonable time” requirement.

45. There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. Additionally, the applicant complained that the two sets of proceedings were generally unfair, particularly as the Supreme Court held no public hearing and provided no reasons for its decisions and as the domestic courts erred in assessment of facts and application of the law. In his submissions he relied on Article 6 § 1 of the Convention.

47. Having carefully examined the applicant's submissions in the light of all the material in its possession and insofar 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 the Convention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed UAH 306.596.82 (EUR 49,485) in respect of pecuniary and EUR 10,000 in respect of non-pecuniary damage.

51. The Government contested these claims.

52. 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 finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,800 under that head.

B. Costs and expenses

53. The applicant also claimed UAH 250 (EUR 40) for the costs and expenses incurred before the Court.

54. The Government did not express an opinion on the matter.

55. Regard being had to the information in its possession and the circumstances of the case, the Court considers that the sum claimed should be awarded in full.

C. Default interest

56. 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 concerning the 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,840 (one thousand eight hundred forty euros) in respect of non-pecuniary damage and costs and expenses, 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;
   (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 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President