

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

FIFTH SECTION

CASE OF KRYZHANIVSKYY v. UKRAINE

(Application no. 36619/05)

JUDGMENT

STRASBOURG

12 January 2012

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



In the case of Kryzhanivskyy v. Ukraine,

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

Boštjan M. Zupančič, *President,*
Ann Power-Forde,
Angelika Nußberger, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 36619/05) 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 Vasylyovych Kryzhanivskyy ("the applicant"), on 6 June 2005.

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

3. On 17 May 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 1953 and lives in Kyiv.

5. The circumstances of the case and court proceedings relate to a labour dispute between the applicant and his former employer, the State Patent Agency ("the Agency", *Держпатент*).

6. On 1 September 1998 the applicant was dismissed from the Agency.

A. First set of proceedings

7. On 23 September 1998 the applicant instituted proceedings in the Shevchenkivsky District Court of Kyiv ("Shevchenkivsky Court") against the Agency seeking reinstatement and claiming salary arrears and related payments.

8. On 21 October 1998 the court allowed his claims. Consequently, the applicant was reinstated.

9. The Agency appealed. On 24 February 1999 the judgment of 21 October 1998 was quashed by the Kyiv City Court and the case was remitted for fresh consideration. The judgment resulted in cancellation of the first instance court's finding that the applicant was dismissed illegally.

10. On 4 March 1999 the applicant was dismissed again. On 10 March 1999 the applicant challenged his second dismissal before the Shevchenkivsky Court. He also claimed payment of salary arrears and various allowances.

11. On 17 March 1999 the proceedings concerning the first and second dismissals were joined.

12. On 14 January 2000 the Shevchenkivsky Court found against the applicant.

13. On 29 March 2000 the Kyiv City Court quashed the judgment in the part concerning the applicant's second dismissal and related pecuniary claims, having confirmed the first instance court's findings concerning the applicant's first dismissal.

14. Following two reconsiderations of the case, on 11 October 2004 the Shevchenkivsky Court rejected the applicant's claims concerning his second dismissal.

15. On 14 February 2005 the Kyiv City Court of Appeal quashed the judgment in the part concerning the lawfulness of the second dismissal. The Court of Appeal invalidated the Agency's dismissal order of 4 March 1999 though found that it was not a ground for reinstatement because of the legality of the first dismissal as confirmed by the Shevchenkivsky Court's judgment of 14 January 2000. The remaining part of the first instance court's judgment (concerning pecuniary claims) was upheld.

16. Having received the official text of the judgment, the applicant appealed in cassation on 9 March 2005.

17. On 7 December 2006 the Higher Administrative Court dismissed the applicant's appeal in cassation.

18. In the course of the proceeding the applicant amended and clarified his claims on a number of occasions. He also made procedural requests with a view to obtaining information pertinent to the case. Out of forty-two scheduled hearings, six were adjourned at the applicant's request or due to his failure to appear, five because of both parties' failure to appear, three because of the non-appearance of defendants or representatives thereof. Five hearings were adjourned as the judge was busy with another case or absent for health, business trip or professional mandate reasons. On several occasions the courts had to renew, at the parties' request, the term for lodging an appeal, finding no fault on their part, which resulted in delays of about one and half months.

B. Other proceedings

19. In 1998-1999 two sets of administrative proceedings linked to the applicant's labour dispute were instituted against him. By the final decisions of 12 October 1998 and 22 February 1999, respectively, they were terminated.

20. In 1998-1999 the applicant instituted two sets of civil proceedings against the Agency. In particular, he claimed that his record of service had not been correctly calculated by the Agency and that he had not been given leave entitlement according to the law. In 1999 the proceedings concerning the leave entitlement claim were discontinued. On 10 April 2001 the Shevchenkivsky Court delivered a judgment allowing the applicant's record of service claim.

THE LAW

I. THE COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

21. The applicant complained that the length of the first set 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..."

22. The Government contested that argument stating that there had been no delays in the course of the proceedings that could be attributed to the State. According to them, the case was complex and the applicant contributed to the length of the proceeding by introducing additional claims and by failing to attend the hearings, while the opposite party was also responsible for some delays. The Government referred to two instances of missed terms for appeal which were later renewed. The Government also submitted that the courts had had to wait for the outcome of the administrative proceedings against that applicant which had been decisive in the labour dispute case.

23. The period to be taken into consideration began on 23 September 1998 and ended on 7 December 2006. It thus lasted about 8 years and 2 months for three levels of jurisdiction.

A. Admissibility

24. 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

25. 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).

26. Turning to the facts of the present case, the Court notes that the proceedings concerned a labour dispute which was not of any particular complexity.

27. The Court acknowledges that the parties and in particular the applicant somewhat contributed to the length of the proceedings. It however considers that the parties' behaviour alone cannot justify the overall length of the proceedings.

28. The Court observes that the major delays were caused by the repeated remittals of the case for fresh consideration because of the appeal court's disagreement with the first instance court's findings (see paragraphs 14-16 above). The Court reiterates that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

29. The Court also takes note of the lengthy examination, for which no acceptable justification was given, of the applicant's appeal in cassation (see paragraphs 17 and 18 above).

30. In the light of the foregoing, the Court concludes that the State authorities bear the primary responsibility for the excessive length of the proceedings in the present case.

31. 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).

32. 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 COMPLAINTS

33. Relying on Articles 6, 34, 35 and 37 of the Convention and Article 7 of Protocol No. 7, the applicant complained about the outcome and unfairness of the proceedings. In particular, he disagreed with the courts' ascertainment of facts and application of law. He also complained that in the course of the first set of proceedings the courts had failed to summon witnesses on his behalf.

34. 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.

35. 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

36. 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."

37. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

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;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 12 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Boštjan M. Zupančič
Deputy Registrar	President