

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

FIFTH SECTION

CASE OF PALAMARCHUK v. UKRAINE

(Application no. 17842/08)

JUDGMENT

This version was rectified on 12 January 2012
under Rule 81 of the Rules of Court

STRASBOURG

24 November 2011

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



In the case of Palamarchuk v. Ukraine,

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

Boštjan M. Zupančič, *President,*
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 3 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 17842/08) 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 Oleksandr Terentiyovych Palamarchuk ("the applicant"), on 4 February 2008.

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

3. On 2 September 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 1961 and lives in Vinnytsya.

5. On 8 May 1998 he lodged a claim with the Leninskyy District Court of Vinnytsya ("the Leninskyy Court") against the S. enterprise in a consumer dispute between them.

6. On 1 February 2000 the above court delivered a judgment. On 28 March 2000 the Vinnytsya Regional Court quashed it and remitted the case for fresh examination.

7. By a judgment of 20 November 2002, the Leninskyy Court rejected the applicant's claim as unsubstantiated.

8. On 21 April[1] and 5 May 2003, respectively, the Vinnytsya Regional Court of Appeal ("the Court of Appeal") and the Leninskyy Court requested the applicant to lodge his appeal against the above judgment in accordance with the procedural requirements. On 4 June 2003, following his failure to do so, the Leninskyy Court returned the appeal unexamined.

9. On 12 February 2004 the Court of Appeal upheld the ruling of 4 June 2003.

10. On 31 January 2007 the Supreme Court quashed the ruling of 12 February 2004 and remitted the case to the Court of Appeal for fresh examination, which on 6 April 2007 upheld the ruling of 4 June 2003.

11. On 21 June 2007 the Supreme Court requested the applicant to lodge his appeal in cassation against the ruling of 6 April 2007 in accordance with the procedural requirements, following which on 6 August 2007 it refused to grant leave to the appeal.

12. According to the Government, in the course of the proceedings fourteen hearings were adjourned due to the applicant's or both parties' failure to appear or following the applicant's requests. The applicant disagreed stating that he had been absent from eight hearings because he had not been informed of them. The above delays on the applicant's part protracted the proceedings by approximately four months. Twelve further hearings were adjourned due to the other party's, expert's or witnesses' failure to appear, absence of the judge or for unspecified reasons. Two expert examinations were ordered and lasted in total for about one year.

THE LAW

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

13. 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 ..."

14. The Government contested that argument stating that the applicant had contributed to the length of the proceedings.

15. The period to be taken into consideration began on 8 May 1998 and ended on 6 August 2007 with the final decision given by the Supreme Court, and not on 20 November 2002 as suggested by the Government (see, for instance, *Kolomoyets v. Ukraine*, no. 11208/03, § 44, 15 July 2010). The

1. Rectified on 12 January 2012; the text read "21 March".

proceedings thus lasted for about nine years and three months before three judicial instances.

A. Admissibility

16. 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

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 circumstances of the case, the Court considers that the case was not complex. Nor did the applicant's conduct, who somewhat delayed the proceedings (see paragraphs 8, 11 and 12 above) can explain their overall duration. On the other hand, the Court is of the view that the major delays in the proceedings were caused by the domestic courts. In particular, it notes two remittals of the case for fresh examination (see paragraphs 6 and 10 above), lengthy examination of the case by the Leninskyy Court and the Supreme Court (see, respectively, paragraphs 6-7 and 9-10 above) and twelve adjournments of the hearings (see paragraph 12 above).

19. 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).

20. 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 ALLEGED VIOLATIONS OF THE CONVENTION

21. The applicant also complained under Article 13 of the Convention about the unfairness of the proceedings. He also raised a complaint under Article 17 of the Convention in the same connection.

22. 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 the Convention.

23. 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

24. 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

25. The applicant claimed 2,274 and 7,000 euros (EUR), respectively, for pecuniary and non-pecuniary damage.

26. The Government contested these claims.

27. 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 1,700 in respect of non-pecuniary damage.

B. Costs and expenses

28. The applicant also claimed EUR 353 for the costs and expenses incurred before the domestic courts and the Court. He provided receipts for correspondence and translation expenses incurred before the Court to the amount of 1,069.73 Ukrainian hryvnias[1].

29. The Government contested the claims for the costs and expenses incurred before the domestic courts as well as the translation expenses and, in respect of the correspondence expenses incurred before the Court, left the matter to the Court's discretion.

30. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 94 for the proceedings before the Court.

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1. About 94 EUR

C. Default interest

31. 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, EUR 1,700 (one thousand seven hundred euros) in respect of non-pecuniary damage and EUR 94 (ninety-four euros) in respect of the costs and expenses, plus any tax that may be chargeable, to be converted into the 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 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 24 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Boštjan M. Zupančič
Deputy Registrar	President