

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

FIFTH SECTION

DECISION

Application no. 20950/06
by Sergiy Oleksandrovych DENSHCHUK
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 3 November 2011 as a Committee composed of:

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

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 May 2006,

Having regard to the comments submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Sergiy Oleksandrovych Denshchuk, is a Ukrainian national who was born in 1948 and lives in Crimea. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeria Lutkovska and Mr Nazar Kulchytskyy, of the Ministry of Justice.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 16 October 2001 the applicant lodged a claim with the Nikopol Court against the N. company, seeking reinstatement in his position, recovery of salary arrears and compensation for non-pecuniary damage.

On 27 September 2002 the court rejected the claim as unsubstantiated. On 6 February 2003 the Dnipropetrovsk Regional Court of Appeal ("the Court of Appeal") quashed the above judgment and remitted the case for retrial. On 13 May 2003 the Supreme Court rejected, as unsubstantiated, the applicant's appeal in cassation against the latter ruling.

On 24 November 2003 the Nikopol Court rejected the applicant's request to join his additional claim to the proceedings, as it was not related to the proceedings. The applicant appealed against that ruling, and then against the rulings rejecting his appeal for procedural grounds. By the final ruling of 11 May 2005, the Court of Appeal returned the applicant's appeals unexamined for his failure to rectify them as requested by the courts.

On 22 September 2005 the Nikopol Court allowed the applicant's claim in part, reinstated him in his position and awarded him certain amounts in salary arrears.

On 12 December 2005 the Court of Appeal changed the above judgment, having increased the amounts due to the applicant and having awarded him certain amounts in non-pecuniary damage.

On 7 May 2008 the Crimea Regional Court of Appeal, acting as a court of cassation rejected, as unsubstantiated, the applicant's appeal in cassation against the judgment of 12 December 2005.

According to the Government, in the course of the proceedings ten hearings were adjourned due to the applicant's, his representative's or third party's failure to appear or following the applicant's requests. This delayed the proceedings by five months approximately. Besides, the applicant specified his claim on several occasions and submitted various procedural petitions. He lodged some of his appeals in the end of the procedural time-limits or in breach of the procedural requirements and the courts extended the time-limits for him to lodge the rectified appeals. Four hearings were adjourned due to the sickness of the judge, lack of available court premises or upon the respondent's request. One expert examination was ordered and lasted for about two and a half months.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the length and the unfavourable outcome of the proceedings in his case.

THE LAW

1. The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings. The above provision reads, in so far as relevant, as follows:

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

The Government disagreed stating that the applicant had contributed to the overall length. They acknowledged that there had been some delay in the examination of the applicant's appeal in cassation against the judgment of 12 December 2005, a problem which had eventually been resolved by the introduction of the legislative measures in February 2007.

The proceedings began on 16 October 2001 and ended on 7 May 2008. They therefore lasted for six years six months and twenty-two days before three judicial instances.

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 its complexity, 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).

Turning to the circumstances of the case, the Court considers that the case was not complex. It also considers that the proceedings were important for the applicant as they concerned reinstatement in his position and recovery of salary arrears and, therefore, called for an expeditious decision. As to the conduct of the domestic authorities, the Court notes certain delays which could be attributable to them (in particular, the period of examination of the applicant's appeal in cassation against the judgment of 12 December 2005) and which could perhaps have been avoided. However, those delays were not such as to warrant a finding of the violation of the Convention, especially given the fact that the applicant himself significantly contributed to the overall length of the proceedings. In particular, the Court notes ten adjournments of the hearings which were attributable to the applicant and which entailed a five-month delay. It further notes that on several occasions the applicant specified his claim and submitted various procedural petitions. He lodged some of his appeals in breach of the procedural requirements and the courts extended the time-limits for him to lodge the rectified appeals. Besides, he lodged some of the appeals in the end of the procedural time-limits (see, for instance, *Azim Denizcilik Ticaret Ve Sanayi Limited Sirketi v. Ukraine* (dec.), no. 1018/04, 22 June 2010). Lastly, the Court notes a significant protraction of the proceedings caused by the applicant's challenging of the ruling of 24 November 2003, his appeals having been eventually dismissed for procedural grounds. In this connection, the Court

recalls that although a party to civil proceedings cannot be blamed for using the avenues available to him under domestic law in order to protect his interests, he must accept that such actions necessarily prolong the proceedings (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001). It thus concludes that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. The Court has also examined the applicant's remaining complaint. Having regard to all the material in its possession, it finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stephen Phillips
Deputy Registrar

Boštjan M. Zupančič
President