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

FIFTH SECTION

CASE OF SILINY v. UKRAINE

(Application no. 23926/02)

JUDGMENT

STRASBOURG

13 July 2006

FINAL

13/10/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Siliny v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
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 2006,

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

PROCEDURE

1. The case originated in an application (no. 23926/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ukrainian nationals, Messrs Sergey Mikhailovich and Konstantin Mikhailovich Siliny ("the applicants"), on 14 June 2002.

2. The applicants were represented by their mother, Mrs T. Silina. The Ukrainian Government ("the Government") were represented by their Agent, Mrs V. Lutkovska.

3. On 23 June 2005 the Court decided to communicate the complaint about the length of the proceedings to the respondent Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

5. The applicants, Mr Sergey Mikhailovich Silin and Mr Konstantin Mikhailovich Silin, are brothers. They were born in 1982 and 1985, respectively, and currently reside in the town of Zaporizhzhya, Ukraine.

6. In September 1997 the title to reside in the State-owned flat, where the applicants' father had resided before his death on 29 December 1996, was transferred to Mr S.

I. CIVIL COURT PROCEEDINGS

7. On 2 December 1997 the applicants instituted civil proceedings in the Leninskyy District Court of Zaporizhzhya (“the Leninskyy Court”) against the Zaporizhstal Joint Stock Company, the Zaporizhzhya Town State Administration, and Mr S. The applicants claimed their right to reside in the impugned flat. They maintained that they had been residing in that flat before 1997 and that in October 1997 their possessions had been unlawfully taken out of the flat. On 27 December 1997 the Zaporizhstal Company submitted its objections concerning the applicants’ claims.

8. According to the Government, the court scheduled the first hearing for 6 May 1998, following the completion of its preparatory work on the case, which included meetings with the parties and obtaining the documents relevant to the case.

9. Out of twenty hearings held between December 1997 and October 2000 fourteen were adjourned due to the absence or at the request of Mr S. or the representative of the Zaporizhstal Company. The hearing of 11 December 1998 was adjourned until 29 January 1999 at the applicants’ request.

10. There were no hearings held during the periods of 2 December 1997 – 6 May 1998, 24 July – 27 October 1998, 29 March – 18 June 2000, and 18 July – 5 October 2000. According to the Government, there is no information about the progress of the case between 3 June and 26 October 1999, as the minutes of the court hearings were destroyed due to an external damage caused to the court building. According to the applicants, no hearings took place in that period of time.

11. On 29 March 2000 the court, following the motion of the Zaporizhstal Company, allowed the participation of the Housing Department of the Zaporizhzhya Town State Administration as a co-defendant in the proceedings on the ground that the latter was the owner of the flat.

12. On 5 October 2000 the court found for the applicants.

13. On 21 November 2000 the Zaporizhzhya Regional Court, upon the appeal in cassation of the Zaporizhstal Company, quashed the decision of the first instance court and remitted the case for a fresh consideration.

14. On 28 March 2001 the applicants requested the Leninskyy Court to order the Zaporizhzhya Town Prosecutor’s Office to provide the court with the copies of the documents concerning their criminal law complaints examined by the prosecutors in September 2000 (see paragraph 18 below). On the same day the court allowed the request and adjourned the proceedings pending the prosecutors’ reply.

15. On an unspecified date the prosecutors submitted the documents requested to the court.

16. On 6 February 2002 the court, sitting as a panel of three judges, found against the applicants. It held that the applicants had neither resided in the flat nor acquired a right to reside there. The court further held that there had been no personal possessions found in that flat which could have belonged to the applicants. The court also noted that the applicants enjoyed the right to reside in another, originally State-owned flat. The applicants' mother acquired the latter flat by privatisation.

17. On 18 April 2002 and 21 February 2003, respectively, the Zaporizhzhya Regional Court of Appeal and the panel of three judges of the Supreme Court of Ukraine rejected the applicants' appeals and upheld the judgment of 6 February 2002.

II. APPLICANTS' CRIMINAL COMPLAINTS

18. On unspecified dates the applicants lodged with the local police and prosecutors several criminal law complaints concerning their eviction from the flat. In September 2000 the applicants' complaints were examined and rejected as unsubstantiated. The police and prosecutors refused to commence criminal investigation into the matter. The applicants did not challenge these decisions before the national courts.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

19. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided 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..."

A. Admissibility

20. 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

21. The Court observes that the impugned proceedings began in December 1997 and were completed in February 2003. Their overall duration was around five years and three months.

22. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Complexity of the case

23. The Government contended that the case was complicated due to the fact that on 27 December 1997 the Zaporizhstal Company had lodged with the domestic courts a counter-claim.

24. The applicants disputed the Government's contention. They maintained that there had been no counter-claim lodged in the course of the proceedings.

25. The Court notes that the dispute primarily concerned a title to reside in a State-owned flat. The domestic courts had to establish whether the applicants had acquired a right to reside in that flat, whether they had actually resided there and whether there had been their possessions in the flat. The courts based their decisions on the written evidence submitted by the parties and the statements of four witnesses heard by the courts. As it appears from the material in its possession, the Court observes that, contrary to the Government's submissions, there was no counter-claim lodged in the proceedings. Therefore, the Court concludes that the subject matter of the litigation at issue could not be considered particularly complex.

2. Conduct of the applicants

26. The Government maintained that the applicants were responsible for a delay of more than twelve months, as the proceedings had been adjourned on 11 December 1998 and 28 March 2001 upon their motions (see paragraphs 9 and 14 above). According to the Government, a delay of eleven months was caused due to the fact that applicants had challenged the decisions of 6 February and 18 April 2002.

27. The applicants disagreed.

28. The Court observes that the applicants contributed to the length of the proceedings by requesting their adjournment on 11 December 1998 (until 29 January 1999). The Court further observes that the applicants' motion of 28 March 2001 was aimed at obtaining the documents concerning their criminal complaints (see paragraph 18 above). However, this motion cannot explain the whole period of the court's inactivity until February

2002. The Court considers that the submission of these documents by another public authority should not have taken long.

29. The Court notes that the applicants challenged the decisions of 6 February and 18 April 2002 before the higher courts. However, they cannot be blamed for using the avenues available to them under domestic law in order to protect their interests and they did not contribute considerably to the overall length of the proceedings.

30. Given the above considerations, the Court concludes that, while there are some periods of delay which could be attributed to the applicants, there is no evidence before the Court to suggest that the applicants contributed significantly to the overall length of the proceedings.

3. What was at stake for the applicants

31. The Court observes that the proceedings were of some importance for the applicants. Nonetheless, the Court does not find any ground for the domestic courts to deal with this case with some urgency *vis-à-vis* other cases pending before them.

4. Conduct of the national authorities

32. The Government stated that there were no significant periods of inactivity attributable to the State. In particular, the Government mentioned that between December 1997 and October 2000 the defendants had either been repeatedly absent from the hearings or requested their adjournment.

33. The applicants objected to this view.

34. The Court recalls that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see, as a recent authority, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-...). In particular, the domestic courts were in a position to judge whether there were valid grounds for the adjournment of the proceedings at the request of any of the parties and, if so, to establish the period of such adjournment. Moreover, the courts enjoyed full competence under Ukrainian law to apply administrative and criminal law sanctions against the parties whose behaviour caused unjustified delays in the proceedings.

35. Therefore, the Court considers that the State authorities were responsible for the protraction of the proceedings before the first instance court for a total of around fifteen months, which took place between December 1997 and October 2000 (see paragraphs 8 and 10 above) and for which the Government have not put forward any plausible justification.

36. The Court notes that the proceedings before the courts of appeal and cassation were completed within one year. Nonetheless, having regard to the delays before the first instance court and to the circumstances of the instant case as a whole, the Court considers that in the instant case the length of the

proceedings was excessive and failed to meet the "reasonable time" requirement.

37. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER COMPLAITNS

38. The applicants further complained under Articles 6 § 1 and 13 of the Convention about the outcome and unfairness of the proceedings.

39. The Court finds that there is nothing to show observes that the proceedings were arbitrary or that the court decisions reached were manifestly unreasonable. The applicants enjoyed the right to adversarial proceedings with the participation of interested parties and were able to introduce all necessary arguments in defence of their interests, and the judicial authorities gave them due consideration. Accordingly, this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

40. The applicants finally complained that their eviction from the flat and the failure of the police to prevent third parties from entering the flat amounted to a violation of their right to respect for their home. They invoked Article 8 § 1 of the Convention.

41. The Court observes that the applicants raised these complaints before the domestic courts. The latter established that the applicants had neither resided in the impugned flat nor acquired a right to reside there. Accordingly, they were not evicted from the flat. In view of its findings under Articles 6 § 1 and 13 of the Convention (at paragraph 39), the Court does not find any ground to depart from the conclusions of the domestic courts.

42. The Court considers that the facts of the present case do not disclose any appearance of a violation of Article 8 of the Convention and that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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."

44. The applicants claimed UAH 8,210[1] in respect of pecuniary damage. They also claimed EUR 5,000 each in respect of non-pecuniary damage.

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1. Around 1,308 euros – "EUR".

45. The Government maintained that the applicant's claims were unsubstantiated and submitted that the finding of a violation would constitute sufficient just satisfaction.

46. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage as regards the excessive length of the proceedings in their case. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, considers that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage.

B. Costs and expenses

47. The applicants did not submit any claim under this head. The Court therefore makes no award.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the 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* by four votes to three that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

4. *Dismisses* unanimously the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK Peer LORENZEN
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Mr Lorenzen, Mr Maruste and Mrs Jaeger is annexed to this judgment.

P.L.
C.W.

JOINT DISSENTING OPINION OF JUDGES LORENZEN, MARUSTE AND JAEGER

The majority has found that there has been a breach of Article 6 § 1 of the Convention because the length of the proceedings was excessive in the present case. We are not able to agree with this finding for the following reasons.

The proceedings involved court instances at three levels and lasted in total a little less than 5 years and 3 months. Furthermore the case had to be heard twice in the first instance due to the quashing of the judgment of 5 October 2000 by the Regional Court. It is true as stated by the majority that there was a period of around fifteen months in total before the first instance court for which the Government have not put forward any plausible explanation. However, the proceedings before the Court of Appeal and the Supreme Court were terminated within a year and the global period for determining the case cannot be considered unreasonable. Thus in cases where several instances are involved it is in our opinion important not to consider the length of the proceedings separately because an exhaustive examination of the factual and legal issues by a first instance court may often reduce the time needed by higher courts. Furthermore it must be taken into account – as rightly stated by the majority – that the applicant to some extent contributed to the length of the proceedings and that it was a civil case of a non urgent nature.

Having regard to the circumstances of the case the period in question cannot be regarded as unacceptable if viewed in the context of the total duration of the proceedings, as it must be, cf. for example G.L. v. Italy judgment of 3 October 2002, no. 54283/00, and Hadjikostova v. Bulgaria, judgment of 4 December 2003, no. 36843/97 with further references. Accordingly there has in our opinion been no violation of Article 6 § 1 of the Convention.