



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

FIFTH SECTION

CASE OF MAKARENKO v. UKRAINE

(Application no. 43482/02)

JUDGMENT

STRASBOURG

1 February 2007

FINAL

01/05/2007

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 Makarenko 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 J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 8 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 43482/02) 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, Mr Vasiliy Nikolayevich Makarenko and Mrs Svetlana Viktorovna Makarenko (“the applicants”), on 25 September 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev. The applicants were represented by Mr A. Stakheyev, a lawyer practicing in the city of Kirovograd, Ukraine.

3. On 13 December 2005 the Court decided to communicate the complaints concerning the length of proceedings in the applicants' case on eviction and the non-enforcement of the judgment in the applicants' favour 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 applicants were born in 1966 and 1968, respectively, and live in the village of Krasnovershka, Kirovograd region, Ukraine.

5. In January 1995 the applicants bought a house from the collective agricultural enterprise “Svitanok”. They lived in it with their two minor children until August 1996.

6. In August 1996 after returning from vacation the applicants found that their house was occupied by a police officer, Mr S. The latter informed them that the house purchase agreement had been invalidated by a notary. All of the applicants' possessions had been moved to the "Svitanok" enterprise storehouse.

7. In March 1997 the applicants instituted proceedings against the notary in the Kompaniyvskyy District Court. On 17 November 1997 the court cancelled the act by which the notary had invalidated the purchase agreement.

8. On 18 February 1998 the applicants instituted other proceedings in the same court against Mr S., the "Svitanok" enterprise and the notary asking that Mr S. be evicted from their house and claiming 10,000 Ukrainian hryvnias ("UAH") in compensation for non-pecuniary damage. On an unidentified date the applicants introduced additional claims against the "Svitanok" enterprise for UAH 8,063 in pecuniary damage and UAH 40,000 in non-pecuniary damage.

9. In April 1998 the collective agricultural enterprise "Svitanok" initiated proceedings in the Kompaniyvskyy District Court challenging the validity of the house purchase agreement.

10. On 14 April 1998 the court stayed the proceedings in the applicants' case on eviction until the question of validity of the purchase agreement had been decided.

11. In June 1998 a wedding photo, a coat, a lamp, a wash-basin and some other small items which had been held at the "Svitanok" storehouse were returned to the applicants.

12. On 15 December 1998 the court found the purchase agreement invalid. The applicants appealed against this judgment and requested the transfer of their case to another court. On 1 April 1999 the Kirovograd Regional Court quashed the decision of 15 December 1998 and remitted the case for a fresh consideration to the Kirovogradskyy District Court.

13. On 13 December 1999 the applicants requested the Head of the Kirovograd Regional Court to transfer their case on eviction to another court. Their request was satisfied.

14. On 2 March 2000 the Kirovogradskyy District Court decided to consider together the case on eviction and the case on validity of the purchase agreement.

15. On 24 October 2001 the court disjoined the cases and declined to consider the case on the validity of the purchase agreement because the representative of the "Svitanok" enterprise had failed twice to appear at a court hearing.

16. In June 2002 the house, which was partly derelict, was returned to the applicants.

17. In July 2002 and March 2004 the applicants introduced additional claims, requesting reimbursement of the costs of renovation of the house

and payment of UAH 20,544.00 and UAH 60,000 in compensation for pecuniary and non-pecuniary damage respectively.

18. On 16 July 2002 the court ordered a technical expert's report on the applicants' house. The expert stated that the court decision was received by him on 7 October 2003.

19. On 17 December 2003 the expert carried out his survey. He concluded that it was not possible to live in the house and that it needed major renovation. The cost of such renovation was also determined.

20. On 8 June 2004 the Kirovogradskyy District Court found in part for the applicants and awarded each of the applicants UAH 7,500.50¹ in compensation for pecuniary damage, UAH 20,000² in compensation for non-pecuniary damage and UAH 670³ in court expenses. The applicants did not appeal against this judgment.

21. The applicants received some money and goods in enforcement of the judgment in their favour, but for the major part the judgment remains unenforced.

THE LAW

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

22. The applicants complained under Article 6 § 1 of the Convention of an unfair hearing and the length of proceedings in their civil case. The applicants also complained under the same Article about the non-enforcement of the judgment of 8 June 2004 in their favour.

The above Article, insofar as relevant, reads as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

1. At the pecuniary time around 1,176.56 euros (“EUR”).

2. At the pecuniary time around EUR 3,137.28.

3. At the pecuniary time around EUR 105.

A. Admissibility

1. *Fair hearing*

23. The applicants complained in a very general manner about the unfairness and the outcome of the proceedings. The Court notes that the applicants failed to appeal against the judgment of 8 June 2004 of the Kirovogradskyy District Court and, therefore, have not exhausted, as required by Article 35 § 1 of the Convention, the remedies available to them under Ukrainian law. This part of the application must be rejected in accordance with Article 35 §§ 1 and 4.

2. *Length of the proceedings*

24. The Government did not submit any observations on the admissibility of the applicants' complaint.

25. 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.

3. *Non-enforcement of the judgment of 8 June 2004*

26. The Government contended that the applicants' right to have the judgment in their favour enforced had never been questioned. The Government insisted that the Bailiffs' Service had performed all necessary actions as a result of which the judgment in the applicants' favour had been partially enforced.

27. The applicants disagreed.

28. The Court notes that the State cannot be considered responsible for the lack of funds of a private company and its responsibility extends no further than the involvement of State bodies in the enforcement proceedings (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

29. The Court recalls that, as it has already held in similar cases, the Ukrainian legislation provides for a possibility to challenge before the courts the lawfulness of actions and omissions of the State Bailiffs' Service in enforcement proceedings and to claim damages from that Service for the delays in payment of the awarded amount (see, for instance, *Kukta v. Ukraine* (dec.), no. 19443/03, 22 November 2005). In the present case, the applicants neither challenged before the domestic courts the inactivity of the Bailiffs' Service, nor claimed compensation for the alleged omissions of the bailiffs. The applicants, accordingly, cannot be regarded as having exhausted the domestic remedies available to them under Ukrainian law.

It follows that this part of the application must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

B. Merits

30. The Government did not submit any observations on the merits of the applicants' complaint about the length of proceedings.

31. The Court recalls that the “reasonable” length of proceedings must be assessed in accordance with the circumstances of the case and the following criteria: the complexity of the case, the behaviour of the applicant and that of the competent 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).

1. Period to be taken into consideration

32. The Court notes that the proceedings in question lasted from 18 February 1998 until 8 June 2004, when the final decision in the applicants' case was adopted. The overall length of the proceedings is, therefore, six years, three months and twenty days.

2. Complexity of the case

33. In the present case the national court had to establish whether Mr S. occupied the applicants' house on a legal basis and if not, what how much compensation, if any, should be awarded to the applicants. It is true that the two sets of proceedings began separately, and that the nature of the claims changed with the developing circumstances. The subject matter of the case remained, however, the relatively straightforward question of responsibility for, and consequences of, the allegedly unlawful occupation of the house. The Court concludes that the subject matter of the litigation can not be considered particularly complex.

3. What was at stake for the applicants

34. The applicants sought to evict Mr S. from their house. During the court's consideration of their case, the applicants and their two minor children did not have anywhere to live and had to rent a flat. Even after the house had been returned to them, the applicants were still not able to live in it since it was partly derelict and the question of compensation of pecuniary damage had not yet been decided.

35. The Court therefore considers that the proceedings were of undeniable importance for the applicants, and what was at stake for them called for an expeditious decision on their claims.

4. Conduct of the applicants

36. The Court concludes that the applicants did not contribute in a significant way to the length of the proceedings. It is true that they amended

their claims several time, but this was made necessary by changes in the applicants' situation while the courts were considering the applicants' case.

5. Conduct of the national authorities

37. The Court recalls that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (*Dulskiy v. Ukraine*, no. 61679/00, § 86, 1 June 2006). However, in the Court's opinion the national courts did not act with due diligence, having regard to the applicants' situation.

38. In sum, having regard to the circumstances of the instant case, the overall duration of the proceedings in the first instance court, which was six years, three months and twenty days, the Court considers that the length of proceedings was excessive and failed to meet the “reasonable time” requirement.

39. There has accordingly been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

40. The applicants complained under Article 1 of Protocol No. 1 about a violation of their property rights caused by a seizure of their house and possessions and by the non-enforcement of the judgment of 8 June 2004. This Article provides, insofar as relevant, as follows:

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest”

41. Having regard to its findings under Article 6 § 1 of the Convention in respect of non-enforcement of the judgment in the applicants' favour (see paragraphs 28-29), and assuming that the State was responsible for any interference with the applicants' possessions, the Court concludes that this part of the application must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicants claimed UAH 5,553¹ in respect of pecuniary damage and EUR 40,000² each in respect of non-pecuniary damage.

44. The Government contended that the applicants had not submitted any documents in support of their claim for pecuniary damage and that their claim for non-pecuniary damage was exorbitant and unsubstantiated.

45. 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 applicants must have sustained non-pecuniary damage as regards the excessive length of the civil proceedings. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicants the sum of EUR 2,400 each in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicants did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

47. 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 applicants' complaint under Article 6 § 1 of the Convention about the length of proceedings in their civil case admissible and the remainder of the application inadmissible;

1. Around EUR 916.

2. Around EUR 6,600.

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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) each in respect of non-pecuniary damage 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President