



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

FIFTH SECTION

CASE OF ARTEMENKO v. UKRAINE

(Application no. 33983/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

07/09/2007

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 Artemenko 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 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 33983/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Ukrainian national, Ms Natalya Ivanovna Artemenko (“the applicant”), on 17 August 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 11 April 2006 the Court decided to communicate the complaint concerning the length of the civil proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1940 and lives in Kirovograd.

5. In March 1996 Mr. D. instituted proceedings against the applicant seeking compensation for expenses of the funeral of his brother, the applicant's husband. On 24 July 1996 the Leninsky District Court of Kirovograd (hereinafter “the Leninsky Court”) allowed this claim in part. On 12 September 1996 the Kirovograd Regional Court upheld this decision.

6. On 1 October 1997 the Presidium of the Kirovograd Regional Court, following the *protest* of the Deputy President of the Supreme Court,

quashed all previous decisions in the case and remitted it for a fresh consideration.

7. On 22 November 1997 the applicant lodged a counterclaim against D., claiming that she was entitled to property and compensation in connection with the administration of her late husband's estate.

8. On 11 December 1997 the Leninsky Court declined to consider the counterclaim because the applicant had failed to pay the court fee.

9. On 18 December 1997 the applicant re-lodged her counterclaim.

10. On 29 September 1998, on the applicant's request, the case was transferred to the Kirovograd District Court.

11. On 20 May 1999 the proceedings were resumed.

12. On 10 October 2000, following Mr D.'s modification of his claim, the hearings were postponed until 14 November 2000.

13. On 14 November 2000, following the applicant's modification of her claim, the hearings were postponed until 11 December 2000.

14. On 21 June 2001 the Kirovograd District Court allowed in part both the original claim and the counterclaim.

15. On 17 October 2001 the Kirovograd Regional Court of Appeal (hereinafter "the Regional Court") modified the judgment as to D.'s claim. It also quashed the judgment in the part concerning the applicant's counterclaim and remitted the case for a fresh consideration.

16. On 27 December 2001 the Regional Court assigned the case to the Kirovsky District Court of Kirovograd (hereinafter "the Kirovsky Court").

17. On 22 March 2002 the Supreme Court rejected the applicant's cassation appeal and upheld the ruling of 17 October 2001.

18. The proceedings were resumed in the Kirovsky Court in June 2002.

19. On 23 March 2003 the proceedings were suspended until examination by the Leninsky Court of the criminal case instituted upon the applicant's request against Mr D. as to the alleged forgery of his brother's (the applicant's husband's) will.

20. In April 2003 the applicant lodged with the Kirovsky Court a request to review the judgment of 21 June 2001 in the light of newly disclosed circumstances.

21. On 22 December 2003 this request was rejected.

22. In April 2004 the applicant lodged a request with the Supreme Court seeking to review the decision of 21 June 2001 in the light of newly disclosed circumstances.

23. On 24 March 2004 the Leninsky Court terminated the criminal proceedings against Mr D. as prosecution had become time-barred. On 1 June and 7 December 2004 the Regional Court and the Supreme Court, respectively, upheld this ruling.

24. On 15 April 2004 the Kirovsky Court requested the Leninsky Court about the outcome of criminal proceedings against Mr D.

25. On 25 May 2004 the civil proceedings were resumed.

26. On 10 December 2004 the case-file was transferred to the Supreme Court for examination of the applicant's request to review the judgment of 21 June 2001 in the light of newly disclosed circumstances.

27. On 31 October 2005 the Supreme Court rejected this request.

28. Since January 2006 the proceedings are pending before the Kirovsky Court.

THE LAW

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

29. The applicant 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

30. 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

1. Period to be taken into consideration

31. The Court notes that the proceedings at issue began in March 1996 and are pending to date. The Court recalls that the Convention entered into force in respect of Ukraine on 11 September 1997. The proceedings in the case were resumed on 1 October 1997, when the Presidium of the Kirovograd Regional Court quashed all previous decisions in the case and was remitted it for a fresh consideration (see *Yemanakova v. Russia*, no. 60408/00, § 41, 23 September 2004, and *Efimenko v. Ukraine*, no. 55870/00, § 51, 18 July 2006). Thus, the period falling within the Court's competence *ratione temporis* is nine years and eight months.

2. Reasonableness of the length of the proceedings

32. The Government contested the applicant's complaint, stating that there were no significant periods of inactivity attributable to the State. According to the Government, the applicant was responsible for some periods of delay in the proceedings, as she lodged numerous requests, including for review of the case in the light of newly disclosed circumstances, modified her claims, as well as requested to suspend the proceedings until examination of the criminal case against Mr D. (see paragraphs 10, 20, 30, 31 and 34 above). The Government further submitted that thirteen hearings were postponed upon the applicant's request or due to her failure to appear. The Government maintained that the case was complicated on amount of the above circumstances.

33. The applicant disagreed.

34. 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).

35. As to the question of the complexity of the present dispute, the Court observes that it concerned a dispute which arose in the context of the administration of the estate of the applicant's late husband. The courts based their decisions largely on the written evidence submitted by the parties. The claim and the counter-claim concerned the same subject matter. The Court concludes that the subject matter of the litigation at issue could not be considered particularly complex.

36. As regards the Government's contentions that the applicant was responsible for some delays in the impugned proceedings, the Court observes that even assuming that some periods of delay could be attributed to the applicant, the length of the proceedings falling within the Court's competence to date has exceeded 9 years. In particular, the case was pending before the first instance court from October 1997 until June 2001, and again from December 2001 to date.

37. 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).

38. 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

39. The applicant complained under Article 6 § 1 of the Convention about an unfair hearing in her civil case and about the partiality of the courts towards her. She also complained under the same provision of the Convention that the criminal proceedings against Mr D. were terminated unlawfully.

40. However, in the light of all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

41. It follows that these parts of the applications must be declared inadmissible as being manifestly ill-founded, 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 applicant claimed pecuniary and non-pecuniary damage without specifying the exact amount.

44. The Government did not submit their observation under this head.

45. The Court observes that when invited to submit her just satisfaction claims following the receipt of the Government's observations, the applicant confirmed the claims which she had made at the time when she had lodged the present application with the Court.

46. The Court further considers that the applicant must have sustained non-pecuniary damage as a result of the violations found (see *Kryachkov v. Ukraine*, no. 7497/02, § 30, 1 June 2006). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,400 in this respect.

B. Costs and expenses

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

C. Default interest

48. 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 applicant's complaint under Article 6 § 1 of the Convention about the length of proceedings in her civil case 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 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) in respect of non-pecuniary damage, 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.

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President