



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

FIFTH SECTION

CASE OF DOLGIKH v. UKRAINE

(Application no. 9755/03)

JUDGMENT

STRASBOURG

28 June 2007

FINAL

28/09/2007

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 Dolgikh 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 5 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 9755/03) 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 Aleksandr Viktorovich Dolgikh (“the applicant”), on 28 February 2003.

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

3. On 1 December 2005 the Court decided to communicate the applicant's complaint under Article 6 § 1 concerning the length of civil proceedings 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 applicant was born in 1952 and lives in Mykolayiv.

A. The first set of proceedings

5. In 1990 the applicant's mother instituted civil proceedings in the Central District Court of Mykolayiv (the “District Court,” *Центральний*

районний суд м. Миколаєва) against Mr S. (a private person), the co-owner of her house, seeking to divide adjacent land. In the course of the proceedings, the courts found that the disputed land consisted of two plots. One plot ("Plot A") had been allotted for the joint use of the house owners by the Mykolayiv City Council (the "Council"). The other plot ("Plot B") was used by the house owners without any authorisation.

6. In 1993 the applicant, having acquired the title to his mother's part of the house, succeeded her as the plaintiff in the proceedings.

7. In March 1995 the District Court informed the Council that the house owners used Plot B without authorisation and requested it to resolve the issue. On 4 April 1995 the Council gave the house owners joint title to Plot B.

8. In November 1996 the proceedings were suspended in connection with a second set of proceedings instituted in July 1996 (see the detailed description of these proceedings in section B below). In 2001 the proceedings were resumed, however, in October 2001 suspended again on account of Mr S.'s death. On 3 September 2002 the proceedings were resumed, as Mr S.'s heirs - Mr G.S. and Ms L.S. – were admitted to the proceedings as defendants.

9. On 2 October 2002 the District Court gave a decision on the merits of the dispute, having divided the land between the parties and having obliged them to abstain from installing fences or other constructions between the divided plots of the land. The court also ordered the defendants to pay the applicant 41.26 hryvnyas ("UAH")¹ in compensation of fees and expenses.

10. On 3 December 2002 the Regional Court modified this judgment, having relieved the parties from the obligation to abstain from installing constructions and having decreased the amount of compensation due to the applicant to UAH 9.08.²

11. On 23 December 2003 the Supreme Court gave a final decision in the case, having rejected the applicant's request for leave to appeal in cassation.

B. The second set of proceedings

12. In July 1996 Mr S. instituted civil proceedings against the Council and the applicant seeking annulment of the Council's decision of 4 April 1995, vesting in him and the applicant a joint title to Plot B, and claiming damages.

13. On 7 August 1997 the District Court left Mr S.'s complaint without consideration on account of Mr S.'s repetitive failures to appear at the

1. 8.14 euros ("EUR").

2. EUR 1.76.

hearings. This decision was not appealed against and became final on 18 August 1997.

14. On 12 December 1997 the Presidium of the Regional Court quashed this decision following a “protest” introduced by its President for want of evidence that Mr S. had been duly notified of the hearing dates and remitted the case to the District Court for consideration on the merits.

15. On 30 October 1998, following the applicant's complaint about the length of the proceedings, the President of the Regional Court reprimanded the President of the District Court for lack of action in facilitating prompt consideration of the case and, *inter alia*, ensuring attendance of the hearings by the parties.

16. On 17 January 2000 the District Court annulled the Council's decision of 4 April 1995 and rejected Mr S.'s claims for damages. On 16 February 2000 the Regional Court quashed this judgment and remitted the case for a fresh consideration.

17. On 12 June 2000 the District Court annulled the Council's decision of 4 April 1995 and awarded Mr S. 370 hryvnias¹ in non-pecuniary damage against the Council. On 26 July 2000 the Regional Court quashed the judgment of 12 June 2000 and remitted the case for a fresh consideration.

18. On 27 December 2000 the District Court dismissed Mr S.'s claims. The applicant requested the District Court to amend this judgment (*постановити додаткове рішення*) by ordering Mr S. to compensate the applicant for his court expenses and the time, which he had given to the proceedings.

19. On 29 January 2001 the District Court allowed the applicant's request in part and amended the judgment, ordering Mr S. to pay the applicant UAH 30.09² in expenses and dismissing the remainder of his claims.

20. On 23 January 2002 the Regional Court dismissed the applicant's appeal.

21. On 12 April 2005 the Supreme Court gave a final decision, rejecting the applicant's request for leave to appeal in cassation against the decision of 29 January 2001.

1 EUR 69.70.

2. EUR 6.00.

THE LAW

I. SCOPE OF THE CASE

22. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced a new complaint under Article 13 of the Convention complaining that he had no effective remedies for expediting the proceedings in his case.

23. In the Court's view, this new complaint is not an elaboration of the applicant's original complaint under Article 6 § 1 of the Convention, lodged with the Court approximately three years and two months earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take this matter up (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

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

24. The applicant complained that the length of the two sets of 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...”

25. The Government contested that argument.

26. The two sets of proceedings started in 1990 and 1996 respectively. However, the period to be taken into consideration began only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 23 December 2003 in respect of the first set of proceedings and on 12 April 2005 in respect of the second set. The proceedings thus lasted six years and three months and seven years and seven months respectively for three levels of jurisdiction.

A. Admissibility

27. 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

28. 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).

29. 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).

30. 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 two sets of proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

III. OTHER COMPLAINTS

31. The applicant further complained under Articles 6 § 1 and 10 of the Convention about the general unfairness of the hearings in both sets of the proceedings.

32. In the light of all the material in its possession, and insofar 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.

33. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 952 euros (EUR) in respect of pecuniary damage and EUR 40,000 in respect of non-pecuniary damage.

36. The Government contested these claims.

37. 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 1,800 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed EUR 16 for the costs and expenses incurred before the domestic courts and before the Court.

39. The Government left the matter to the Court's discretion.

40. Regard being had to the circumstances of the case and the submissions of the parties, the Court awards the applicant the full amount claimed.

C. Default interest

41. 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage and EUR 16 (sixteen euros) in respect of costs and expenses, 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 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 28 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President