



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

FIFTH SECTION

CASE OF PANTELEEVA v. UKRAINE

(Application no. 31780/02)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

10/12/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Panteleeva v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 12 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 31780/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Anna Nikolayevna Panteleeva (“the applicant”), on 31 July 2002.

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

3. On 30 May 2006 the Court decided to communicate the applicant's complaints concerning the length of the proceedings and the lack of remedies in that respect 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.

4. In accordance with Article 36 § 1 of the Convention, the Russian Government were invited to exercise their right to intervene in the proceedings, but they declined to do so.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1938 and lives in Noginsk, the Russian Federation.

6. The applicant owns an apartment in Simpheropil (Ukraine), in which she has never resided. In 1994 the applicant rented this apartment to a certain Ms N., who let Ms T., to move into the apartment in her stead. The applicant has unsuccessfully tried to secure Ms T.'s conviction for fraud and wrongful appropriation of her property. In 2002 Ms N. was convicted of several crimes, including fraud against Ms T.

A. First set of civil proceedings

7. In December 1995 the applicant instituted civil proceedings for eviction of Ms T. These proceedings ended on 28 November 1997, when the court decided to leave the applicant's submissions without consideration. This decision was not appealed against and became final.

B. Second set of civil proceedings

8. On 2 December 1997 Ms T. instituted civil proceedings in the Zaliznychny District Court of Simpheropil ("the District Court"; *Залізничний районний суд м. Сімферополя*) against the applicant, claiming that the latter had sold her the impugned apartment through Ms N. and seeking to be declared its lawful owner.

9. On 24 February 1998 the applicant lodged a counter-claim, seeking Ms T.'s eviction and various compensations. Subsequently, the applicant amended her claims twice.

10. Between February 1998 and October 2001 the District Court scheduled sixteen hearings. Eight of them were adjourned at Ms T.'s requests or on account of her absences. Two other adjournments were attributable to the applicant (an absence and a request). No hearings were scheduled between 12 May 1999 and 12 December 2000 as the District Court had delegated the questioning of the applicant to the Noginsk City Court (the Russian Federation) and was waiting for its response.

11. On 3 October 2001 the District Court dismissed Ms T.'s claims, ordered her eviction and partly allowed the applicant's compensation claims, having awarded her 3,270.96 Ukrainian hryvnias (UAH)¹. Both parties lodged appeals.

12. On 18 February 2002 the Court of Appeal of the ARC (the "Court of Appeal"; *Апеляційний суд Автономної Республіки Крим*) quashed the judgment of 3 October 2001 and remitted the case for a fresh consideration.

13. In March 2002 – December 2005 the District Court scheduled seven hearings, none of them being adjourned on account of the applicant's conduct. Between February 2003 and November 2005 no hearings were scheduled.

1. 666.90 euros (EUR).

14. On 6 December 2005 the District Court ordered Ms T.'s eviction and partly allowed the applicant's compensation claims, having awarded her UAH 13,919.90¹. On 26 December 2005 Ms T. lodged an appeal.

15. On 1 February 2006 the Court of Appeal returned the case-file to the District Court for rectification of errors.

16. On 22 March 2006 the District Court rectified the errors and sent the case-file to the Court of Appeal.

17. On 12 July 2006 the Court of Appeal dismissed Ms T.'s appeal. There is no information on whether any party lodged an appeal in cassation.

18. The applicant claims that the judgment remains unenforced to the present date, however, she did not provide any documents in evidence that enforcement proceedings are pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF THE SECOND SET OF PROCEEDINGS

19. The applicant complained that the length of the second set 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...”

20. The Government contested that argument.

21. The period to be taken into consideration began on 2 December 1997 and lasted through 12 July 2006, for eight years and seven months, during which period the matter was considered by two levels of jurisdiction.

A. Admissibility

22. 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.

1. EUR 2,371.22.

B. Merits

23. 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).

24. The Court notes that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings and finds that a number of delays (remittals of the case for a fresh consideration and prolonged periods of inactivity) are attributable to the Government.

25. 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, among other authorities, *Frydlender*, cited above; *Smirnova v. Ukraine*, no. 36655/02, 8 November 2005 and *Ogurtsova v. Ukraine*, no. 12803/02, 1 February 2007).

26. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. The applicant further complained that she had no effective remedies for her complaint concerning excessive length of the proceedings. She relied on Article 13 of the Convention.

28. The Government considered that Article 13 was not applicable to the circumstances of the case as the applicant had not made out an arguable claim under Article 6 § 1.

29. The Court refers to its findings in paragraphs 22 and 26 above and notes that this complaint is linked to the applicant's complaint under Article 6 § 1 and must also be declared admissible.

30. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The Government did not name any such remedy available to the applicant.

31. The Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling

upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention (see *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. In addition, the applicant complained under Article 2 of the Convention about her stress and anxiety; under Article 6 § 1 about partiality of the courts and about the unreasonable length of the first set of proceedings; under Article 8 about infringement of her right to have private housing and to respect of her honour and dignity; under Article 1 of Protocol No. 1 about the unlawful occupation, inability to sell or rent out her apartment; and under Article 7 § 2 of the Convention about her inability to secure the conviction of Ms T. and Ms N. Finally, the applicant complained that her children's Convention rights were infringed on account of the same facts and invoked Articles 1 and 17 of the Convention without additional specification.

33. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, insofar as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

34. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 2,178,400 euros (EUR) in respect of pecuniary and non-pecuniary damage sustained by her and her children.

37. The Government contested the claim.

38. 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, the Court considers that the applicant must have sustained

non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,800 under that head.

B. Costs and expenses

39. The applicant did not submit any separate claim under this head; the Court therefore makes no award in this respect.

C. Default interest

40. 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 complaints concerning the excessive length of the second set of proceedings and lack of effective remedies in this respect 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* that there has been a violation of Article 13 of the Convention;
4. *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 2,800 (two thousand eight hundred euros) 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President