



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

FIFTH SECTION

CASE OF PANCHENKO v. UKRAINE

(Application no. 25681/03)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

05/10/2007

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

In the case of Panchenko 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 12 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 25681/03) 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 Russian national, Mr Anton Aleksandrovich Panchenko (“the applicant”), on 19 July 2003.

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

3. On 5 April 2006 the Court decided to give notice of the application 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 1986 and lives in Kaluga, the Russian Federation.

6. On 10 July 2000 the applicant instituted civil proceedings in the Kirovsky District Court of Dnipropetrovsk, Ukraine (the “District Court”; *Кіровський районний суд м. Дніпропетровська*) against Ms M., his relative, claiming part of an intestate house she had received after the death of their relatives. Subsequently the applicant amended his claims seeking additional monetary compensation.

7. Between July 2000 and July 2001 the District Court scheduled twelve hearings, two of them being adjourned on account of the applicant's conduct (amendment of claims and failure to appear). Six hearings were adjourned on account of the defendant's failures to appear, or at her requests. Three hearings were adjourned in connection with various court matters.

8. On 24 July 2001 the court heard the case in Ms M.'s absence and allowed the applicant's claims. Ms M. appealed.

9. On 11 December 2001 the Dnipropetrovsk Regional Court of Appeal (the “Court of Appeal”; *Апеляційний суд Дніпропетровської області*), having heard both parties, upheld this judgment.

10. On 13 March 2002 Ms M. appealed in cassation.

11. On 20 February 2003 the Supreme Court quashed the judgment of 24 July 2001 and remitted the case for a fresh consideration to the District Court on the ground that Ms M. had not been duly informed of the time of the last hearing in the case.

12. In June 2003 – November 2004 the Court scheduled seventeen hearings, two of them being adjourned on account of the parties' failure to appear, and two – on account of the applicant's conduct (one absence and one request). Eight hearings were adjourned on account of Ms T.'s absences or at her requests. In August 2003 the District Court fined Ms T. for her repetitive failures to appear. On two occasions hearings were adjourned in connection with various court matters.

13. On 15 November 2004 the District Court allowed the applicant's claims as to the house and dismissed his claims for compensation.

14. On 14 December 2004 Ms M. lodged an appeal.

15. On 21 February 2005 the Court of Appeal dismissed Ms M.'s appeal.

16. On 17 March 2005 Ms M. lodged a cassation appeal.

17. On 26 June 2006 the Supreme Court dismissed Ms M.'s request for leave to appeal in cassation.

18. As of 20 February 2007 the enforcement proceedings were pending against Ms M.

19. In the course of the years, the applicant lodged numerous unsuccessful petitions with various Russian and Ukrainian authorities seeking to expedite the proceedings.

THE LAW

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

20. The applicant complained that the length of the 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 10 July 2000. The judicial stage of the proceedings, ending on 26 June 2006, was five years and eleven and a half months for three levels of jurisdiction. On 20 February 2007 the applicant last informed the Court that the enforcement proceedings, started after the pronouncement of the final judgment, were still pending.

A. Admissibility

23. 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

24. 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).

25. The Court notes that the matter before the domestic judicial authorities was of some importance for the applicant. Every decision taken on the merits of the case was in the applicant's favour. The judgment of 24 July 2001 was quashed on a procedural ground only, namely, the court's failure to notify the defendant about the date of a hearing. The Court does not find that the applicant, although he did not attend some of the hearings, contributed to the length of the proceedings in a substantial way. In the Court's opinion, major delays were caused by the remittal of the case for a fresh consideration; the defendant's conduct, which largely remained

unpunished by the judicial authorities; and by prolonged periods of inactivity in the cassation proceedings (eleven and fifteen months).

26. 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; *Pavlyulynets v. Ukraine*, no. 70767/01, 6 September 2005; and *Siliny v. Ukraine*, no. 23926/02, 13 July 2006).

27. 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.

28. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. The applicant further complained that he had no effective remedies for his complaint concerning the excessive length of the proceedings. He relied on Article 13 of the Convention.

30. 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.

31. The Court refers to its findings in paragraphs 23 and 28 above and notes that this complaint is linked to the applicant's complaint under Article 6 § 1 and must therefore likewise be declared admissible.

32. 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.

33. 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 his right to have his 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. 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 5,000 euros (EUR) in respect of pecuniary and 10,000 euros 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, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 600 under that head.

B. Costs and expenses

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

C. Default interest

39. 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 application admissible;
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 600 (six 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