



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

FIFTH SECTION

CASE OF VYROVYY v. UKRAINE

(Application no. 28746/03)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

12/10/2007

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 Vyrovyy 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 19 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 28746/03) 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 Illya Ivanovych Vyrovyy (“the applicant”), on 22 July 2003.

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

3. On 7 December 2005 the Court decided to communicate the complaint concerning the length of the 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 1936 and lives in Vinnytsya.

A. Background facts

5. In 1992 the applicant requested the State Cooperative Association “Zakhidlevatoragrosnetsbud” (the “Association”; *Державно-кооперативне об'єднання по агропромисловому будівництву*)

“Західелеваторазроснебуд”), his employer at the material time, to grant him and his family priority in the allocation of housing to employees. Subsequently his request was allowed on account of the fact that his father had fought and perished in World War II.

6. In January 1997 the Association attributed the applicant apartment no. 43 in a new building being constructed by several investors, including the Association. However, in September 1997 the Association transferred this apartment to another investor, as the value of its contribution into the construction project had been reassessed at a lower level.

7. On 1 March 1998 the Association transferred its assets to the State Company “Vinelevatorbud” (the “Company”; *Державне підприємство “Вінелеваторбуд”*) and ceased carrying out any business. However, the liquidation formalities were not completed.

B. Civil proceedings

8. On 9 December 1997 the applicant instituted civil proceedings in the Staromisky District Court of Vinnytsya (the “District Court”; *Староміський районний суд м. Вінниця*) against the Association, asserting his rights to apartment no. 43.

9. Between December and June 1998 the court adjourned five hearings on account of the Association's absence, and one on account of the court's relocation to another building.

10. On 8 June 1998 the District Court allowed the applicant's claims and allocated him apartment no. 43, having found that the re-distribution of the apartment between the investors was flawed and that the applicant's family were entitled to priority allocation of housing. The Association lodged an appeal in cassation.

11. On 14 July 1998 the Vinnytsya Regional Court (the “Regional Court”; *Вінницький обласний суд*)¹ quashed this judgment, having found that the analysis of facts and law by the District Court was insufficient and remitted the case to the District Court for a fresh consideration.

12. On 1 October 1998 the District Court dismissed the applicant's claims, having found that the re-distribution process was not in breach of applicable law. The applicant lodged an appeal in cassation.

13. On 1 December 1998 the Regional Court quashed this judgment and remitted the case to the District Court for a fresh consideration. In particular, it found that the District Court's analysis was insufficient.

14. Between January and April 1999 the District Court held two hearings, one of them being adjourned on account of the parties' failure to appear.

1. Since July 2001 the Vinnytsya Regional Court of Appeal (*Апеляційний суд Вінницької області*).

15. On 22 April 1999 the District Court found that, since the applicant was entitled to priority housing, the Association should have redistributed another apartment to the investors. The court further obliged the Association to provide the applicant with an apartment of equal value at its own expense. This judgment was not appealed against and became final in May 1999.

16. On an unspecified date the Staromisky District Bailiffs' Service initiated the enforcement proceedings in respect of the judgment of 22 April 1999 and requested the District Court to provide instructions as to the execution of the judgment, given that the Association had transferred all its assets to the Company.

17. On 30 September 1999 the District Court found the Company to be the Association's successor in respect of the judgment of 22 April 1999 and ordered it to pay the applicant 31,080 Ukrainian hryvnias (UAH)¹ instead of providing an apartment. This decision was not appealed against and became final in October 1999.

18. On 13 January 2000 the Presidium of the Regional Court quashed the ruling of 30 September 1999 following a "protest" instituted by the court's President and ordered the District Court to re-consider the request of the Bailiffs' Service. In particular, the Presidium noted that the District Court had not requested any liquidation documents and had insufficiently explored whether the Association had been succeeded by the Company. Furthermore, in breach of applicable law, the court had neither heard nor summoned the parties concerned.

19. On 14 April 2000 the District Court found that the Association had not been formally liquidated and ordered it to purchase an apartment for the applicant. This decision became final in April 2000.

20. On 30 May 2000 the applicant petitioned the District Court to re-open the proceedings in connection with a "newly disclosed circumstance" (*перегляд за нововиявленими обставинами*), namely that the Association had, in fact, ceased to exist.

21. On 7 July 2000 the District Court allowed the applicant's petition. It annulled the judgment of 22 April 1999 and remitted the case for a fresh consideration, having summoned the Company as the defendant in the Association's stead.

22. On 29 September 2000 the District Court allowed the applicant's claims and ordered the Company to provide him with an apartment. The Company appealed in cassation.

23. On 21 November 2000 the Regional Court, by a final decision, upheld the judgment of 29 September 2000.

24. On 29 March 2001 the Presidium of the Regional Court quashed the judgment of 29 September 2000, following a "protest" lodged by the

1. 7,476.26 euros (EUR).

Deputy President of the Supreme Court, and remitted the case for a fresh consideration.

25. Between May 2001 and March 2002 the District Court adjourned seven hearings, one of the adjournments being attributable to the applicant (amendment of claims).

26. On 15 March 2002 the District Court partly allowed the applicant's claims. It obliged the Association and the Company jointly to provide an apartment to the applicant. The Company appealed.

27. On 4 June 2002 the Regional Court quashed this judgment and remitted the case for a fresh consideration, having found that the District Court had still failed to explore a number of issues, including that of succession between the Association and the Company.

28. On 19 December 2002 the District Court dismissed the applicant's claims, having found that the defendants had no apartments for distribution and the applicable law did not provide for monetary compensation in this event. Moreover, the applicant no longer qualified for priority treatment either by the Association or the Company, since he no longer worked for them and his living conditions were satisfactory. The applicant appealed.

29. On 1 April 2003 the Regional Court upheld this judgment. The applicant appealed in cassation.

30. On 23 May 2003 the District Court returned the applicant's appeal in cassation as "not lodged" on account of his failure to abide by the court's order to pay a court fee. The applicant appealed, seeking to be relieved of the obligation to pay the fee.

31. On 7 July 2003 the Regional Court dismissed the applicant's appeal against the decision of 23 May 2003. The applicant did not appeal in cassation.

THE LAW

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

32. 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..."

33. The Government contested that argument.

A. Admissibility

34. 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

35. The period to be taken into consideration began on 9 December 1997 and ended on 7 July 2003. It thus lasted five years and seven months for two levels of jurisdiction.

36. The Court notes that on 22 April 1999 the applicant obtained a final judgment in his favour, which was subsequently quashed on 7 July 2000. However, the period between the taking and the quashing of this judgment should not be excluded from the calculation as it remained unenforced and the enforcement proceedings were pending during the aforementioned period (see *Androsov v. Russia*, no. 63973/00, § 53, 6 October 2005 and *mutatis mutandis*, *Pobegaylo v. Ukraine*, no. 18368/03, §§ 18-19, 29 March 2007).

37. 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).

38. Turning to the facts of the present case, the Court finds that the matter before the domestic courts was of some complexity (particularly on account of the defendant's incomplete liquidation) and that the applicant contributed to the length of the proceedings by lodging appeals, requests, and amending his claims. The Court further finds no ground why the domestic courts should have dealt with the case with particular urgency *vis-à-vis* other cases pending before them.

39. At the same time, the Court finds that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings. It considers that the State authorities were responsible for a number of delays, including numerous remittals of the case for a fresh consideration, adjournment of hearings in connection with court matters and on account of the defendant's, a State entity's, failures to appear, as well as for the failure to enforce a final judgment given against a State-owned debtor.

40. The Court has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see e.g., *Frydlender*, cited above; *Svetlana Naumenko v. Ukraine*, no. 41984/98,

9 November 2004 and *Karnaushenko v. Ukraine*, no. 23853/02, 30 November 2006).

41. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. Additionally, the applicant complained that the proceedings were unfair and resulted in an unfair decision.

44. The Court recalls that the applicant failed to pay a court fee for examination of his appeal in cassation against the judgment of 19 December 2002 and did not challenge the order to pay such court fee before the Supreme Court. Thus, he has not exhausted the available domestic remedies in respect of his claims (see, *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002). Therefore, this part of the application should be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

III APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government contested the claim.

48. The Court considers that the applicant must have sustained non-pecuniary damage. Nevertheless, the particular amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant also claimed UAH 3,000 (EUR 486) for legal fees and UAH 134.95 (EUR 22) for postal services. He submitted copies of receipts for postal services.

50. The Government noted that the applicant was not represented by a lawyer before the Court and that he did not submit any justification for his claims concerning legal fees.

51. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Romanchenko v. Ukraine*, no. 5596/03, § 37-38, 22 November 2005).

52. The Court considers that as regards the applicant's claim for legal fees these requirements have not been met. It notes that the applicant first informed the Court of his representation in his final written submissions and neither named his lawyer nor presented any proof of payment. Regard being had to the circumstances of the case and the submissions of the parties, the Court awards the applicant EUR 22 for postal expenses and dismisses the remainder of the claims under this head.

C. Default interest

53. 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 1,622 (one thousand six hundred twenty two euros) in respect of non-pecuniary damage and 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President