



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

FIFTH SECTION

CASE OF CHUYAN v. UKRAINE

(Application no. 24131/03)

JUDGMENT

STRASBOURG

15 November 2007

FINAL

15/02/2008

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 Chuyan v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 24131/03) 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, Ms Olga Nikolayevna Chuyan (“the applicant”), on 4 July 2003.

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

3. On 20 November 2006 the Court declared the application partly inadmissible and decided to communicate the 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.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Odessa.

5. In October 1993 the applicant instituted civil proceedings in the Malynivsky District Court of Odessa (“the Malynivsky Court,” *Малинівський районний суд м. Одеса*) against Ms T. V., her sister, seeking to divide their house and adjacent land. Subsequently the proceedings were transferred to the Kyivsky District Court of Odessa (“the Kyivsky Court,” *Київський районний суд м. Одеса*).

6. Between 1993 and 2000 some six expert assessments were carried out to develop proposals for dividing the house and the land.

7. On 12 December 2000 the Kyivsky Court rejected the applicant's claims. The court found that it was not possible to divide the property to the satisfaction of the parties. This decision became final.

8. On 6 June 2001 the Presidium of the Odessa Regional Court ("the Regional Court")¹ quashed this judgment, following a *supervisory protest*, lodged by its Deputy President, and remitted the case for a fresh consideration. Ms T. V. lodged a counter-claim, proposing an alternative scheme for dividing the house and the land.

9. On 5 December 2001 the Kyivsky Court partly allowed the claims of both parties, having divided the house and the land between them. Ms T. V. appealed, seeking to re-divide the house. Neither party sought to re-divide the land, and the judgment of 5 December 2001 in this part became final.

10. On 20 June 2002 the Regional Court amended the judgment of 5 December 2001, having re-divided the house between the parties. This judgment became final on 17 January 2003, after the Supreme Court had rejected the applicant's request for leave to appeal in cassation.

11. In July 2002 Ms T. V. requested the Kyivsky Court to explain how to reconcile the land-division scheme ordered by the judgment of 5 December 2001 with that of the house division pursuant the judgment of 20 June 2002. In its explanatory decision of 9 August 2002, the court re-divided the land to remove the inconsistencies with the house-division scheme. The enforcement proceedings were instituted.

12. The applicant appealed against the explanatory decision of 9 August 2002.

13. On 30 March 2004 the Regional Court found that, by re-dividing the land, the Kyivsky Court had altered the final judgment of 20 June 2002 and thereby exceeded its jurisdictional authority. The court therefore quashed the explanation of 9 August 2002.

14. On 13 April 2004 Ms T. V. requested the Regional Court to re-open the proceedings and review its decision of 20 June 2002 "in the light of newly disclosed circumstances" (the quashing of the explanatory judgment of 9 August 2002).

15. On 18 May 2004 the Regional Court re-opened the proceedings and on 16 June 2004 re-divided the land to accommodate for the house-division scheme established on 20 June 2002.

16. On 12 July 2004 the applicant appealed in cassation against the judgments of 5 December 2001 and 20 June 2002 and against the decision of 16 June 2004 to re-divide the land.

1. Since June 2001 the Odessa Regional Court of Appeal (*Апеляційний суд Одеської області*).

17. On 6 December 2006 the Supreme Court rejected the applicant's request for leave to appeal in cassation against the aforementioned judgments, finding that on 17 January 2003 they had already been subject to cassation review. However, the Supreme Court remitted the case for a new consideration "in the light of newly disclosed circumstances", having quashed the decision of 16 June 2004. In particular, it found that this decision had been taken by an incompetent judicial panel, since one of its members had previously signed the judgment of 20 June 2002.

18. On 5 April 2007 the Regional Court annulled the land-division scheme established by the judgment of 5 December 2001 and ordered the division, consistent with the division of the house pursuant the judgment of 20 June 2002.

19. The applicant has lodged a cassation appeal against this decision, seeking to re-divide the house. The consideration of her cassation appeal is pending.

THE LAW

I. SCOPE OF THE CASE

20. Following the Court's admissibility decision, the applicant made submissions on the merits, in which she repeated and elaborated on all of her original complaints.

21. The Government made no comments.

22. The Court recalls that, in its partial decision on admissibility of 20 November 2006, it adjourned the examination of the applicant's complaints under Article 6 § 1 and Article 13 of the Convention concerning the length of her proceedings against Ms T.V. regarding the division of property and the lack of effective remedies in this respect. At the same time, all other complaints of the applicant were declared inadmissible. Thus, the scope of the case now before the Court is limited to the complaints, which have been adjourned (see *Agrotehservis v. Ukraine*, no. 62608/00, § 37, 5 July 2005).

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

23. 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..."

24. The Government contested that argument.

A. Admissibility

25. 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

26. The proceedings started in 1993. 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.

27. The Court further finds that the period between 12 December 2000 and 6 June 2001 cannot be taken into account, as during this period there existed a final judgment in the applicant's case and no court or enforcement proceedings were pending.

28. The period in question has not yet ended. It has thus lasted nine years and seven months so far. During this period the applicant's claims were examined by three levels of jurisdiction.

29. 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).

30. 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 e.g., *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 49-52, 6 September 2005 and *Moroz and Others v. Ukraine*, no. 36545/02, § 58-62, 21 December 2006).

31. 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.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

33. 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.

34. The Court refers to its findings in paragraphs 25 and 31 above and notes that this complaint is linked to the applicant's complaint under Article 6 § 1. The Court finds that it must be declared admissible.

35. 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.

36. 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).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 14,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government contested the claim.

40. The Court considers that the applicant must have sustained non-pecuniary damage on account of the length of the proceedings. Ruling on an equitable basis, it awards her EUR 2,400 under that head.

B. Costs and expenses

41. The applicant also claimed EUR 3,000 in legal fees.

42. The Government contested the claim, having noted that the applicant had never informed the Court of her representation until in her final submissions before it.

43. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the applicant submitted no documentary justification for the legal fees claimed. Furthermore, as regards the Convention proceedings, the Court observes that the case was of no particular complexity, that the applicant was granted leave to use Russian language, and that her representative made no submissions on her behalf. Regard being had to the information in its possession, the Court rejects the applicant's claim for legal fees.

C. Default interest

44. 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 remainder of 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 2,400 (two thousand four 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 15 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President