



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

FIFTH SECTION

CASE OF FEDORCHUK v. UKRAINE

(Application no. 20746/05)

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 Fedorchuk 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 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 20746/05) 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 Natalya Vladislavovna Fedorchuk (“the applicant”), on 18 May 2005.

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

3. On 24 October 2005 the Court decided to communicate the complaints concerning the length of the civil 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 1962 and lives in Kherson.

A. Criminal proceedings

5. In April 1997 the applicant instituted criminal proceedings against Mr V.S., accusing him of fraud and forgery. She contended that in 1995 she

had prepared a notarially recorded power of attorney in his name with an intention to authorize him to sell her apartment. However, she had not handed the original document to him and left for Russia, where she had worked until 1997. Having returned to Kherson, she had learned that Mr V.S. had sold her apartment to a certain Mr D.D., who had subsequently exchanged it for Mrs L.Ch.'s house.

6. Subsequently, an expert established that the particular copy of the power of attorney, which had been used by Mr V.S. for concluding the sale agreement, contained the applicant's forged signature.

7. On 30 April 1997 the criminal proceedings were suspended, as Mr V.S.'s whereabouts were unknown and he was placed on the national "wanted" list.

B. Civil proceedings

8. In April 1997 the applicant also instituted civil proceedings against Mrs L.Ch., Mr D.D., and Mr V.S., claiming restitution of the apartment.

9. On 30 June 1997 the Suvorovsky District Court of Kherson (*Суворовський районний суд м. Херсона*) allowed the applicant's claim. This judgment became final.

10. On 28 November 1997 the Presidium of the Kherson Regional Court ("the Regional Court"; *Херсонський обласний суд*)¹ quashed the judgment of 30 June 1997 following a *supervisory protest* of the Deputy Regional Prosecutor and remitted the case for a fresh consideration.

11. On 30 August 2000 Mr D.D. and Mrs L.Ch. lodged a counterclaim, maintaining that Mr V.S. had been duly authorized to sell the apartment.

12. On 5 September 2000 the Suvorovsky Court dismissed the applicant's claim and allowed the counterclaim. It recalled that the applicant had not officially revoked the authorization to sell her apartment, which had remained on the notary register, and so the forgery of a particular copy of the power of attorney had not made the sales agreement null and void. This judgment became final.

13. On 18 December 2000 the Regional Court quashed this judgment following a *supervisory protest* introduced by the Deputy Regional Prosecutor and remitted the case for a fresh consideration.

14. On 15 November 2002 the Suvorovsky Court dismissed the applicant's claim and allowed the counterclaim, having found that it could not invalidate the sales agreement solely on the basis of an expert opinion that a copy of the power of attorney had been forged. The applicant appealed pursuant a newly introduced appeal procedure.

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

15. On 5 March 2003 the Regional Court dismissed the applicant's appeal. On 17 March 2003 the applicant appealed in cassation.

16. On 19 November 2004 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

17. In the course of the proceedings, the first-instance court scheduled some fifty hearings. Some twenty of them were adjourned on account of the defendants' absences. Some seven adjournments were attributable to the applicant's absences or her requests for adjournments. Four hearings were adjourned on account of both parties' absence.

THE LAW

I. COMPLAINT ABOUT THE UNREASONABLE LENGTH OF THE CIVIL PROCEEDINGS

18. The applicant complained that the length of the civil 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...”

19. The Government contested that argument.

20. The Court notes that the proceedings at issue were instituted in April 1997. 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.

21. The period in question ended on 19 November 2004. It thus lasted seven years and two months for three levels of jurisdiction. The Court recalls, however, that it is appropriate to take into account only those periods when the case was actually pending before the courts, that is the periods when the authorities were under an obligation to determine the issue within a “reasonable time” (*Golovko v. Ukraine*, no. 39161/02, § 49, 1 February 2007). Accordingly, the two-month period between 11 September and 28 November 1997 and the three-month period between 5 September and 18 December 2000, when there existed a final judgment in the case (paragraphs 10 and 13 above), should be excluded from the calculation. Thus, the period to be taken into consideration lasted six years and nine months.

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.

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 finds that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings. It considers that a number of delays (in particular, remittals of the case for a fresh consideration after the judgments therein became final, prolonged period of inactivity in considering the applicant's cassation appeal and failures of the first-instance court to ensure the defendants' presence) 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 *Frydlender*, cited above; *Smirnova v. Ukraine*, no. 36655/02, 8 November 2005 and *Golovko v. Ukraine*, cited above).

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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

28. 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.

29. 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.

30. The Court refers to its findings in paragraphs 22 and 27 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.

31. 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 indicate any such remedy available to the applicant.

32. 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

33. The applicant also complained under Article 6 § 1 about an allegedly unfair hearing and the outcome of the civil proceedings; about a lack of legal certainty in that the judges took opposing views; about partiality of the courts and the unreasonable length of the criminal proceedings against Mr V.S. Lastly, the applicant invoked Article 1 Protocol No. 1 to the facts of the present case.

34. 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.

35. 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

36. 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

37. The applicant claimed 47,800 dollars (38,700 euros (EUR)) in respect of pecuniary damage and EUR 15,000 in respect of non-pecuniary damage.

38. The Government contested these claims.

39. 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 600 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed 22,500 hryvnyas (EUR 3,780) in legal fees incurred in connection with her domestic and Convention proceedings. She presented receipts for a total amount of 14,000 hryvnyas (EUR 2,350).

41. The Government contested the claim.

42. 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, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

43. The Court considers that these requirements have not been met in the instant case. As regards the applicant's Convention proceedings, it notes that the case was not particularly complex and the lawyer did not sign any submissions to the Court on the applicant's behalf. Regard being had to the information in its possession and to the above considerations, the Court awards the applicant EUR 200 under this head.

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 complaints concerning the excessive length of the civil 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 800 (eight hundred euros) in respect of non-pecuniary damage, 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;
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