



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

FIFTH SECTION

CASE OF LEBEDEVA v. UKRAINE

(Application no. 18345/03)

JUDGMENT

STRASBOURG

20 December 2007

FINAL

20/03/2008

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 Lebedeva 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 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 18345/03) 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, Mrs Alla Stepanovna Lebedeva (“the applicant”), on 5 April 2003.

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

3. On 13 March 2006 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 1950 and lives in Kharkiv.

5. The applicant is the grandmother of a minor P.E. born in 1990. After the death of her daughter, her son-in-law, P.V., did not allow her to see P.E.

6. On 10 January 1997 the applicant instituted proceedings against P.V., seeking permission to see her granddaughter regularly.

7. On 3 December 1999 the Ordzhonikidzevsky District Court of Kharkiv (hereafter “the Ordzhonikidzevsky Court”) allowed the applicant's claim in part.

8. On 18 January 2000 the Kharkiv Regional Court quashed this decision and remitted the case for a fresh consideration.

9. On 7 July 2000 Ordzhonikidzevsky Court found against the applicant.

10. On 5 September 2000 the Kharkiv Regional Court quashed this decision and remitted the case for a fresh consideration.

11. On 20 June 2001 the Frunzensky District Court of Kharkiv allowed the applicant's claim in part.

12. On 9 January 2002 the Kharkiv Regional Court of Appeal quashed this decision and terminated the proceedings and left the applicant's claim without consideration as she had not used the possibility of extrajudicial settlement of the dispute before the Tutelage Board. The applicant was informed that she could re-lodge her claim after exhausting this possibility.

13. On 14 August 2002 the Supreme Court upheld the ruling of the Kharkiv Regional Court of Appeal, thereby terminating the proceedings. The applicant received the copy of this ruling by regular mail on 7 October 2002.

THE LAW

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

14. 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...”

15. The Government contested that argument.

16. The Court notes that in the present case the proceedings began on 10 January 1997 and ended on 14 August 2002. Thus, part of the proceedings complained of relates to the period prior to 11 September 1997, the date on which the Convention came into force in respect of Ukraine. The length of the proceedings within the Court's competence was, therefore, four years and eleven months for three levels of jurisdiction. However, in assessing the reasonableness of the time that elapsed after 11 September 1997, account must be taken of the state of proceedings on that date (see *Milošević v. “the former Yugoslav Republic of Macedonia”*, no. 15056/02, § 21, 20 April 2006; *Styrkowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII; *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

A. Admissibility

17. 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

18. The Government submitted that the domestic courts considered the case without substantial delays attributable to the State. In particular, they outlined that the case was complex and that in the course of its first consideration by the Ordzhonikidzevsky Court the statements by several witnesses as well as representatives of the Tutelage Board, the Education Department, school and hospital were heard.

19. The applicant disagreed and stated that the proceedings had not been conducted with sufficient diligence.

20. 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).

21. Turning to the facts of the present case, the Court notes that the case concerned the applicant's right of contact with her grand-daughter after her daughter's death and, therefore, was of particular personal importance for her.

22. The Court outlines that the case was on three occasions examined by the first instance court following the applicant's appeals. In particular, for the first time the case was pending before the Ordzhonikidzevsky Court for more than two years and eleven months. Though the Court has no doubt that examination of such cases requires the statements of witnesses and third parties being heard, this period cannot be considered as reasonable regard being given to sensitivity of the proceedings' subject-matter and to the fact that the applicant's claim was finally left without consideration.

23. Furthermore, the Court notes that the protracted length of the proceedings was to the large extent due to repetitive re-examination of the case. Although the Court is not in a position to analyse the quality of the case-law of the domestic judicial authorities, it observes that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

24. 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).

25. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant further complained under Article 6 § 1 of the Convention about the outcome and unfairness of the proceedings in her case. She also complained in general terms about a violation of her right to a family life (Article 8 of the Convention in substance).

28. However, in the light of all the materials in its possession, the Court finds that these submissions do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

29. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed UAH 100,000 (EUR 14,900) in respect of pecuniary and non-pecuniary damage without specifying the amount or character of pecuniary damage caused to her.

32. The Government contested the claim as exorbitant and unsubstantiated.

33. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 1,200 under that head.

B. Costs and expenses

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

C. Default interest

35. 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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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 20 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President