



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

FIFTH SECTION

CASE OF FANDRALYUK v. UKRAINE

(Application no. 22775/03)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

30/04/2008

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 Fandralyuk v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 22775/03) 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 Mariya Vasilyevna Fandralyuk (“the applicant”), on 19 June 2003.

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

3. On 12 December 2006 the Court decided to communicate the complaint concerning the length of the first set of 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 1935 and lives in Kyiv, Ukraine.

First set of proceedings

5. In April 1994 the applicant instituted proceedings in the Irpin Town Court (*Ірпінський міський суд Київської області*) against her former husband seeking to divide their property. The latter lodged a counterclaim.

On 18 August 1995 the court divided the property between the applicant and her former husband.

6. On 6 February 1996 the Kyiv Regional Court (*Київський обласний суд*)¹ quashed this judgment and remitted the case for a fresh consideration.

7. On 23 December 1997 the Irpin Town Court adopted another judgment on the division of property between the applicant and her former husband. The court further rejected the remainder of principal and counter claims.

8. On 10 March 1998 the Kyiv Regional Court quashed this judgment and, because of the complexity of the issues involved, took over the case. In its ruling the court stated *inter alia* that by partially rejecting the principal and counter claims the Irpin Town Court in fact had left unsettled the matter of property right over the house which was a part of the disputed property.

9. In the course of the aforesaid proceedings a number of forensic examinations have been ordered by the courts. In particular, in their rulings of 22 October 1996 and 22 April 1999 the courts, ordering additional examinations, noted *inter alia* that “inasmuch as long period of time ha[d] lapsed since the previous forensic examination[s]” they, accordingly, were out-of-date and did not correspond to the actual state of things.

10. By its letter of 16 July 2001 the Kyiv Regional Court of Appeal remitted the case back to the first instance court for examination. The court did not provide any reasoning for this remittal except for a general reference to Article 31 of the Judiciary Law, which, at the material time, set forth the competence of a court of appeal.

11. On 19 February 2002 the Irpin Town Court divided the property between the applicant and her former husband. In particular, the court held that the applicant did not have any property rights regarding the house, in which she lived with her former husband.

12. On 2 July 2002 the Kyiv Regional Court of Appeal upheld this judgment.

13. On 20 January 2003 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

Second set of proceedings

14. In April 2003 the applicant instituted proceedings in the Irpin Town Court against her former husband complaining that he had evicted her from the house in which they lived. She also sought to move in the house in question. On 26 June 2003 the court found against the applicant and held that the house in question was owned by the applicant's former husband and a certain M. Moreover, in March 2003 the applicant's former husband had sold his part of the house to D. Therefore, the applicant had no property

1. Since June 2001 – the Kyiv Regional Court of Appeal (*Апеляційний суд Київської області*).

rights over the house in question and there were no legal grounds to move her in. On 21 October 2003 the Kyiv Regional Court of Appeal upheld this judgment. On 29 August 2005 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

THE LAW

I. THE LENGTH OF THE FIRST SET OF PROCEEDINGS

15. The applicant complained that the length of the first set of 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...”

A. Admissibility

16. The Court notes that the applicant's complaint about the length of the proceedings 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

1. Period to be taken into consideration

17. The Government maintained that 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. Therefore, the applicant's complaints related to the events prior to that date should be rejected as incompatible *ratione temporis*.

18. The applicant argued that the period in question began in April 1994, when she lodged her claim with the domestic courts.

19. The Court notes that the proceedings complained of began in April 1994 and were completed on 20 January 2003. Their overall duration was eight years and nine months. The Court recalls that the Convention entered into force in respect of Ukraine on 11 September 1997, thus the period falling within the Court's competence *ratione temporis* lasted five years and four months. 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; *Styranowski 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).

2. Reasonableness of the length of the proceedings

20. The Government submitted that the length of the proceedings in the applicant's case was reasonable. In particular, they stated that the delays in the proceedings at issue had been caused by the applicant's appeals. Further they pointed out that the case was complex and that the judicial authorities had acted with a due diligence.

21. The applicant disagreed.

22. 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).

23. Turning to the facts of the present case, the Court observes that the case concerned the division of property between the applicant and her former husband and required the taking of expert evidence. Although in the course of the proceedings the Kyiv Regional Court took over the case because of its alleged complexity, the Court notes that subsequently the Kyiv Regional Court remitted it back to the first instance court. The Court is of the opinion that the subject matter of the litigation at issue could not be considered particularly complex either on the points of law or facts.

24. The Court further recalls that, although a party to civil proceedings cannot be blamed for using the avenues available to him under domestic law in order to protect his interests, he must accept that such actions necessarily prolong the proceedings concerned (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001). The Court notes that the applicant has contributed to the overall length by contesting the judgments in her case before the higher courts. Nevertheless, she cannot be held primarily responsible for the length of the proceedings in the instant case.

25. The Court observes that the case was twice remitted for a fresh consideration (paragraphs 6 and 8 above). Therefore, it considers that the delay in the proceedings was also caused by the repeated re-examination of the case. Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, 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 (*Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). Moreover, it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 183, ECHR 2006-...).

26. By the same token these remittals led to further delays given the courts' need for updated forensic expert reports (paragraph 9 above).

27. The Court further points out that the length of the proceedings was mainly caused by the Kyiv Regional Court's taking over the case and its subsequent remittal to the first instance court (paragraphs 8-10 above). Neither the Kyiv Regional Court in its letter of 16 July 2001, nor the Government in their observations have specified the reasons for such remittal or for the inability of the Regional Court to decide the case after more than three years' consideration. In the Court's view this approach can hardly be considered as an expeditious and effective management of the proceedings.

28. 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, §§ 46-53, 6 September 2005 and *Moroz and Others v. Ukraine*, no. 36545/02, § 55-62, 21 December 2006).

29. 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.

II. OTHER COMPLAINTS

30. The applicant also complained under Article 6 § 1 about an allegedly unfair hearing and the outcome of the civil proceedings and, without reference to any Article of the Convention, about her eviction from her only place of residence. Lastly, the applicant complained under Article 1 of Protocol No. 1 of a violation of her property rights.

31. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far 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.

32. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 51,555¹ Ukrainian hryvnas (UAH) in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

35. The Government did not express an opinion on the matter.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to the claim for non-pecuniary damage, the Court is of opinion that in the circumstances of the case it is not necessary to afford to the applicant any just satisfaction other than that resulting from the finding of a violation of her rights.

B. Costs and expenses

37. The applicant also claimed UAH 4,971.67² for the costs and expenses. In this respect she provided the vouchers amounting in total to UAH 1,721.67³. She also submitted that she had been represented by a lawyer at the domestic proceedings but could not provide the relevant vouchers since her case-file had been destroyed by fire.

38. The Government did not express an opinion on the matter.

39. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 200.

C. Default interest

40. 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.

1. Around 7,176.80 euros (EUR).

2. Around EUR 692

3. Around EUR 240

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the excessive length of the first set of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of excessive length of the first set of proceedings;
3. *Holds* that the preceding findings amount in themselves to adequate just satisfaction under Article 41 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 200 (two hundred euros) in respect of 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 to her;
 - (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 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President