



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

FIFTH SECTION

CASE OF GAVRILYAK v. UKRAINE

(Application no. 31406/03)

JUDGMENT

STRASBOURG

3 April 2008

FINAL

03/07/2008

This judgment may be subject to editorial revision.

In the case of Gavrilyak v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 31406/03) 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 Olga Stepanovna Gavrilyak (“the applicant”), on 15 September 2003.

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

3. On 21 June 2007 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 1917 and lives in the city of Odessa.

1. Civil proceedings in respect of the applicant’s claim relating to the land dispute

5. In January 1998 the applicant and a Mr L. lodged a claim with the Zhovtnevy Court against a Mr G. in respect of a shed which he had built in their common yard.

6. On 28 September 1998 the applicant extended the claim to include the Odessa City Council.

7. On 2 November 1998 the Zhovtnevy Court joined the proceedings with a set of proceedings brought by Mr G. against the City Council.

8. Between 24 December 1998 and 17 December 1999 five out of thirteen hearings were adjourned due to the authorities' representatives' failure to appear before the court, and five due to the absence of both the applicant's advocate and the authorities' representatives. The applicant's representative Mrs S. was present at all hearings.

9. On 30 December 1999 the Zhovtnevy Court allowed Mr G.'s claim and found against the applicant.

10. On 15 February 2000 the Odessa Regional Court, following the applicant's cassation appeal, quashed this decision and remitted the case for a fresh consideration. The hearings resumed on 5 October 2000.

11. Between 5 October 2000 and 21 May 2002 seventeen out of thirty one hearings were adjourned due to the authorities' representatives' failure to appear before the court.

12. On 27 May 2002 the Zhovtnevy Court again allowed Mr G.'s claim in part and found against the applicant.

13. On 26 June 2002 the applicant lodged an appeal.

14. On 26 November 2002 the hearings were resumed before the Odessa Regional Court of Appeal (hereinafter "the Court of Appeal"). Two out of three hearings were adjourned due to the authorities' representatives' failure to appear before the court.

15. On 30 May 2003 the Court of Appeal upheld the judgment of 27 May 2002.

16. On 17 June 2003 the applicant lodged a cassation appeal against the decision of 27 May 2002.

17. On 29 August 2003 the applicant requested the first instance court not to send her cassation appeal to the Supreme Court as the case-file was not duly prepared. Her request was rejected, and various appeals against the rejection were rejected.

18. On 22 February 2006 the Supreme Court rejected the applicant's cassation appeal against the judgment of 27 May 2002, thereby terminating the proceedings. This decision was sent to the applicant on 26 April 2006.

2. Administrative proceedings instituted by the applicant

19. In November 2003 the applicant instituted administrative proceedings against the Public Prosecutor of Odessa seeking to find unlawful the refusal to lodge *a protest* against the decision of the Odessa City Council of 29 March 1994 on the use of the plot of land adjacent to her house.

20. On 25 February 2005 the Prymorsky District Court of Odessa rejected the applicant's complaint.

21. On 31 May 2005 and 21 June 2006 the Court of Appeal and the Higher Administrative Court, respectively, upheld this decision.

THE LAW

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

22. 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...”

23. The Government contested that argument.

24. The period to be taken into consideration began in January 1998 and ended on 22 February 2006. It thus lasted eight years and one month for three levels of jurisdiction.

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 Government submitted that the domestic courts considered the case within a reasonable time and without substantial delays attributable to the State. They underlined that the protracted length of the proceedings was due to the complexity of the case and the applicant’s repeated appeals. The Government further maintained that the hearings were adjourned on numerous occasions due to the parties’ failure to appear before the court.

27. The applicant disagreed.

28. 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).

29. The Court notes that the domestic courts based their judgments on examination of local authorities' decisions and parties' statements, and does not consider the case to have been particularly complex. As to Government's argument that the applicant was responsible for part of the time as she appealed against unfavourable judgments, the Court notes, for example, that the applicant's appeal against the first instance judgment of 30 December 1999 was successful, and that the proceedings on her appeal against the Zhovtnevy Court's judgment of 27 May 2002 were delayed because the authorities' representatives did not attend hearings on two occasions.

30. The Court further notes that significant delays were caused by repetitive adjournments of the case by the domestic courts due to the parties' absence. At the same time, these delays were attributable not only to the applicant's representative but also to the local authorities, whose representatives failed to appear before the courts on numerous occasions. However, the domestic courts failed to take any steps to assure the presence of the said persons in order to proceed with the case.

31. The Court also observes that significant periods of delay are attributable to the domestic courts. In particular, between 15 February and 5 October 2000, and between 26 June and 26 November 2002 the proceedings stagnated whilst the case was being transferred between the first and the second instance courts.

32. 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).

33. 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.

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

II. OTHER COMPLAINTS

35. The applicant also complained under Article 6 § 1 of the Convention about the unfair outcome of the civil and administrative proceedings. She further complained under Article 1 of Protocol No. 1 about a violation of her property rights.

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

37. 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

38. 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

39. The applicant claimed 10,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

40. The Government contested the claim.

41. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 1,600 under that head.

B. Costs and expenses

42. The applicant also claimed EUR 85 for the costs and expenses incurred before the Court.

43. The Government did not object to granting the applicant this amount.

44. The Court considers that the sum claimed should be awarded in full.

C. Default interest

45. 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, the following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 1,600 (one thousand and six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 85 (eighty five euros) for costs and expenses;
 - (iii) plus any tax that may be chargeable to the applicant on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 3 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President