



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

FIFTH SECTION

CASE OF NATALIYA SHEVCHENKO v. UKRAINE

(Application no. 68762/01)

JUDGMENT

STRASBOURG

15 May 2008

FINAL

15/08/2008

This judgment may be subject to editorial revision.

In the case of Nataliya Shevchenko v. Ukraine,

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

Peer Lorenzen, *President*,

Snejana Botoucharova,

Karel Jungwiert,

Volodymyr Butkevych,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 68762/01) 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 Nataliya Leonidovna Shevchenko (“the applicant”), on 27 September 2000.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska, succeeded by Mr Y. Zaytsev.

3. On 26 May 2004 the Court 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****A. Civil proceedings**

4. The applicant was born in 1965 and lives in Kyiv.

5. Between 1991 and September 1997 the applicant and her minor son born in 1984 were officially registered as residents in a municipal hostel

rented by the Municipal Post Office, the applicant's employer, for its employees. Throughout this period, the Post Office, in fact, never provided the applicant with a room in this hostel, citing lack of available premises. The applicant and her son were allowed to occupy two beds in a hostel for single individuals managed by "D.H.", another company. After the expiration of the residency registration, in October 1997 the applicant found an unoccupied room in the Post Office's hostel and moved there with her son.

6. On 28 November 1997 the Post Office brought eviction proceedings against the applicant (and her minor son) before the Starokyivsky District Court of Kyiv (*Старокиївський районний суд м. Києва*).

7. On 10 December 1997 the Starokyivsky District Court of Kyiv, citing the lack of territorial jurisdiction, referred the case to the Leningradsky District Court of Kyiv (*Ленінградський районний суд м. Києва*). The latter, in turn, on 22 March 1998, transmitted the case to the Minsky District Court of Kyiv ("the District Court" *Мінський районний суд м. Києва*)¹.

8. On 4 June 1998 the applicant lodged a counter-claim, asserting her right to occupy the room in the Post Office's hostel.

9. In 1999 the Kyiv State Administration decided to convert the Post Office's hostel into a municipal apartment building enabling its occupants to apply for life-long tenancies.

10. On 20 January 2000 the District Court ordered the applicant's and her son's removal to the "D.H.'s" hostel and dismissed her counterclaim. The court found, in particular, that the applicant had never obtained proper authorisation to occupy the room in the Post Office's hostel. On 29 March 2000 the Kyiv City Court ("the City Court"; *Київський міський суд*)² upheld this judgment on the applicant's appeal in cassation, it became final and enforcement proceedings were instituted.

11. On 25 September 2000 Deputy City Prosecutor ordered suspension of the enforcement proceedings.

12. On 25 December 2000 the Presidium of the Kyiv City Court quashed the previous judgments following the *protest* introduced by the Deputy City Prosecutor and remitted the case to the District Court for a fresh consideration. The court found, in particular, that "D.H." should have been summoned to the proceedings, as it was unclear whether the applicant had any right to reside in its hostel.

13. On 25 December 2001 the District Court rejected the Post Office's eviction claim, at the same time having refused to recognize the applicant's right to occupy the room in its former hostel. It found that, although the applicant had no proper authorisation to move into the room at issue, she

1. Following subsequent administrative reform the Obolonsky District Court of Kyiv (*Оболонський районний суд м. Києва*).

2. Following the judicial reform of June 2001 the Kyiv City Court of Appeal (*Апеляційний суд м. Києва*).

could not be evicted, as her status of a “D.H.” hostel resident had never been regularized and she had no alternative lodging. Both parties appealed.

14. On 2 April 2002 the City Court quashed this judgment and remitted the case for a fresh consideration, having found, in particular, that the first-instance court had failed to instruct the applicant that, in view of the City Administration’s decision to convert the hostel into an apartment building, she could request to be issued with an authorisation for life-long tenancy.

15. On 20 December 2002 the applicant amended her claims, seeking, in particular, to obtain authorisation of tenancy. Her son, having reached the age of majority, joined the proceedings.

16. On 12 March 2003 the District Court dismissed the Post Office’s eviction claim and ordered the City Administration to issue the applicant with tenancy authorisation. The court found, in particular, that, having been registered as a resident in the Post Office’s hostel, the applicant had acquired the right to occupy a room in it as early as in 1991. The Post Office, however, had unlawfully failed to provide her with a room. The Post Office appealed.

17. On 12 June 2003 the City Court quashed this judgment and remitted the case for a fresh consideration. It found, in particular, that the District Court’s conclusions concerning the applicant’s right to reside in the Post Office’s hostel were insufficiently reasoned. The applicant appealed in cassation against this ruling.

18. On 15 September 2003 the Supreme Court rejected the applicant’s request for leave to appeal in cassation.

19. On 26 January 2005 the District Court rejected the Post Office’s eviction claim and upheld the applicant’s right to occupy the room. This judgment was not appealed against.

20. In the course of the proceedings the District Court scheduled some sixty hearings. Some twelve of these hearings were adjourned on account of the applicant’s or her representative’s absences in court; eleven on account of the plaintiff’s absences or requests; and fifteen on account of judges’ vacations and various other court matters.

B. Other events

21. The applicant also maintained, without providing details, that her employer was deliberately processing data on her family life in violation of the law, that the bailiffs had unlawfully interfered with her possessions during the enforcement proceedings and that her son had been unable for a prolonged period of time to receive a passport and to obtain access to professional education on account of lack of residency registration. The applicant did not raise any relevant complaints before the domestic judicial authorities.

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.

A. Admissibility

24. 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

25. The Court observes that the period to be taken into consideration began on 28 November 1997 and ended on 26 January 2005. However, the Court notes that the three-month period between 25 September and 25 December 2000, when neither the judicial, nor the enforcement proceedings were pending, should not be included in the calculation of the overall length of the proceedings (see *Vyrovy v. Ukraine*, no. 28746/03, § 36, 12 July 2007). The proceedings thus lasted six years and eleven months, during which period the matter was considered on the merits by two levels of jurisdiction on several occasions.

26. 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).

27. The Court finds that the proceedings at issue in the present case, which concerned determination of the applicant’s housing rights were important for the applicant. It further considers that the complexity of the case and the applicant’s conduct alone cannot explain the overall length of the proceedings. It finds that a number of delays (in particular, repetitive remittals of the case for a fresh consideration, including after a judgment therein became final, adjournments of hearings on account of court matters

and the conduct of the defendant – a State entity) are attributable to the Government.

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., *Frydlender*, cited above; *Golovko v. Ukraine*, no. 39161/02, § 50, 63, 1 February 2007; *Karnaushenko v. Ukraine*, no. 23853/02, §§ 59, 30 November 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. The applicant further complained of the fact that in Ukraine there was no court to which application could be made to complain of the excessive length of proceedings. She relied on Article 13 of the Convention.

32. The Government contested that argument.

33. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

34. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier cases (see among other authorities, *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006) and sees no reason to reach a different conclusion in the present case.

35. Accordingly, 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. The applicant further complained under Article 6 § 1 about the unfairness of the proceedings in her case and under Article 8 about the failure of the domestic judicial authorities to uphold her right of occupancy. She further alleged a violation of Article 8 on account of the unlawful processing of data concerning her family life and of Article 1 of

Protocol No. 1 on account of alleged interference with her possessions in the course of enforcement of her eviction order in 2000 as well as complaining under Article 2 of Protocol No. 1 and Article 1 of Protocol No. 4 about alleged interference with her son's right to education and his freedom of movement on account of the lack of official residency registration. Lastly, the applicant invoked Articles 4, 5, 7, 12 and 14 of the Convention to the facts of the present case.

37. 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.

38. 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

39. 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

40. The applicant submitted that she had suffered pecuniary and non-pecuniary damage on account of the prolonged failure of the judicial authorities to decide her claims. However, she was not able to specify the amount of these claims and requested the Court to rule on an equitable basis.

41. The Government left the matter to the Court's discretion.

42. 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, the Court takes the view that the applicant must have suffered some non-pecuniary damage as a result of the violations found (see e.g. *Silka v. Ukraine*, no. 3624/03, § 23, 18 January 2007). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

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 proceedings and lack of 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 2,000 (two thousand euros), plus any tax that may be chargeable in respect of non-pecuniary damage, to be converted into the national currency 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President