



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

FIFTH SECTION

CASE OF PETRENKO v. UKRAINE

(Application no. 20330/03)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

12/09/2008

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 Petrenko 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 20 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 20330/03) 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 Yuliana Valentinovna Petrenko (“the applicant”), on 30 April 2003. The applicant was represented by her grandfather and legal guardian, Mr Aleksandr Khaymovich Bereslavskiy.

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

3. On 24 October 2006 the Court decided to give notice of the application 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 1994 and lives in Mykolayiv.

A. Background

5. After the death of the applicant's mother in 1995, Mr Bereslavskiy, the applicant's maternal grandfather, and his wife were appointed her legal guardians.

6. In 1996 the family of Mr V.P., the applicant's father, decided to sell two family apartments, one of them co-owned by the applicant and the other one by two other minors, O.D. and S.D., and to purchase a house. Mr V.P. obtained permission of the tutelage board to sell the applicant's share in an apartment, having promised in exchange to assign to the applicant a comparable share of the house to be purchased. A similar permission was obtained in respect of the shares owned by the other two minors in the other apartment.

7. On 15 July 1996 the apartment formerly co-owned by the applicant was sold to Ms S.L.. On 9 October 1996 Ms S.L. sold it on to Mr V.Kh. and Mrs A.Kh. The apartment formerly co-owned by O.D. and S.D. was also sold. However, the newly purchased house was registered solely in the name of Mrs N. P., one of the P. family members.

B. Civil proceedings

8. On 15 September 1997 the Leninsky District Prosecutor of Mykolayiv (*Прокурор Ленінського району м. Миколаїв*) instituted civil proceedings with the Zhovtnevy District Court of Odessa (*Жовтневий районний суд м. Одеса*)¹ on the applicant's behalf, seeking annulment of the sales contracts in respect of the apartment formerly co-owned by her. Subsequently, the prosecutor orally modified his claims and sought compensation for the applicant's share in the apartment.

9. Mr Bereslavskiy took part in the proceedings as the applicant's statutory agent. Four members of the P. family (the former co-owners of the applicant's apartment) and Ms S.L., its first buyer, were summoned to the proceedings as defendants. Mr V.Kh. and Mrs A.Kh. were summoned as "third parties" (*треті сторони*). Subsequently the proceedings were joined with the proceedings brought by the Kominternivsky District Prosecutor of Odessa (*Прокурор Комінтернівського району м. Одеса*) on behalf of O.D. and S.D. with similar claims concerning the sale of the other apartment.

10. Between September 1997 and May 1999 the District Court scheduled some twenty hearings with intervals ranging from several days to four months. Ten of these hearings were adjourned on account of the absence of one or more of the individuals taking part in the proceedings,

¹ Following the subsequent administrative districts' reform in Odessa – the Prymorsky District Court (*Приморський районний суд м. Одеса*).

excluding the applicant. Two hearings were postponed on account of various court matters.

11. On 27 May 1999 the District Court found that the annulment of the sales contracts in respect of the applicant's apartment would lead to the infringement of interests of the *bona fide* purchasers and ordered the four former owners of the apartment to pay the applicant 16,342.99 Ukrainian hryvnias (UAH) in compensation for her share in the apartment. Mr V.P. appealed in cassation.

12. On 20 June 2000 the Odessa Regional Court (*Одеський обласний суд*)¹ quashed this judgment and remitted the case for a fresh consideration. It found that the District Court had failed to examine a number of material circumstances of the case and that the claim concerning compensation instead of the annulment of the contracts had never been properly formalised.

13. On 16 November 2001 the District Court imposed a fine on Mr V.Kh and Mrs A.Kh. for their repetitive failures to appear for the hearings.

14. On 27 February 2002 the District Court discontinued proceedings in respect of the claims brought on behalf of O.D. and S.D. on the ground that, having reached the age of majority, they refused to support them.

15. Between June 2000 and June 2002 the District Court scheduled some fourteen hearings. Eight hearings were adjourned on account of the absence of one or more of the individuals taking part in the proceedings, excluding the applicant. Four hearings were postponed on account of various court matters. No hearings were scheduled between 22 November 2000 and 18 June 2001.

16. On 3 June 2002 the District Court awarded the applicant UAH 22,297 against the four former co-owners of the apartment, in compensation for her share in the apartment, referring to essentially the same grounds as in its previous judgment. The defendants appealed.

17. On 7 November 2002 the Regional Court upheld the judgment of 3 June 2002. Enforcement proceedings were instituted to collect the judgment award. After the expiration of the statutory time-limit for lodging a cassation appeal, this judgment became final.

18. On 19 February 2004, while the enforcement proceedings were still pending, two of the defendants requested renewal of the time-limit for lodging appeal in cassation against the judgment of 3 June 2002. Their request was granted and on 1 April 2004 their cassation appeal was transferred to the Supreme Court of Ukraine.

19. On 15 September 2004 the Supreme Court rejected the defendants' request for leave to appeal in cassation.

¹ Following the judicial reform of June 2001 the Odessa Regional Court of Appeal (*Апеляційний суд Одеської області*).

THE LAW

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

20. 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 15 September 1997 and ended on 15 September 2004. It thus lasted seven years for three levels of jurisdiction.

A. Admissibility

23. The Court notes that the application 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

24. 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).

25. Turning to the facts of the present case, the Court observes that the dispute before the domestic authorities was of some complexity, particularly, in view of the number of individuals involved in the proceedings. However, in the Court’s view, this complexity alone cannot explain the general duration of the proceedings. It finds that significant delays attributable to domestic authorities, include, in particular, a remittal of the case for a fresh consideration on account of the non-observance of procedural formalities and lack of exhaustive analysis of the circumstances of the case; repetitive adjournments of hearings on account of the court matters and absences of the defendants and third parties and a seven-month interval in scheduling hearings between November 2000 and June 2001. The Court further notes that the Government has not provided any explanation as to why the statutory time-limit for lodging a cassation appeal

was renewed for the defendants more than a year after the pronouncement of the final judgment.

26. 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. *Siliny v. Ukraine*, no. 23926/02, § 34, 13 July 2006; *Teliga and Others v. Ukraine*, no. 72551/01, § 95, 21 December 2006 and *Moroz and Others v. Ukraine*, no. 36545/02, §§ 59-60, 21 December 2006).

27. Having examined all the material submitted to it and 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 4,535.99 euros (EUR) in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

31. The Government contested these claims.

32. 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 finds that the applicant must have sustained non-pecuniary damage on account of the length of the proceedings. Ruling on an equitable basis, it awards the applicant EUR 1,200 in this respect.

B. Costs and expenses

33. The applicant also claimed EUR 720 for the costs and expenses. However, he failed to submit necessary documents in support of his claims.

34. The Government submitted that this claim should be rejected as unsubstantiated.

35. According to the Court’s case-law, an applicant is entitled to the reimbursement of 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. The Court considers that these requirements have not been met in the present case. It therefore gives no award.

C. Default interest

36. 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 application admissible;
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), 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President