



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

FIFTH SECTION

CASE OF CHEPYZHNA v. UKRAINE

(Application no. 22581/04)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Chepyzhna v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 22581/04) 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, Ms Zinayida Ivanivna Chepyzhna (“the applicant”), on 29 May 2004.

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

3. The applicant was represented by Mr M. Vitchenko.

4. On 6 September 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**1. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1918 and lives in the town of Vyshgorod, Kyiv Region, Ukraine.

6. In 1994 the applicant, resident of Donetsk at that time, moved to Kyiv. She issued a letter of authority to Mr R. who promised to help the applicant to exchange her apartment in Donetsk for one in Kyiv.

7. Mr R. sold her apartment to Mrs P. and the latter had subsequently sold it to Mrs L. The applicant allegedly received no money for it.

A. First set of proceedings

8. In February 1995 Mrs L. instituted proceedings in the Voroshylovskyy District Court of Donetsk (the “Voroshylovskyy Court”), claiming that the applicant had lost her right to reside in the apartment.

9. On 22 February 1995 the Voroshylovskyy Court found for Mrs L.

10. On 30 October 1995 the Presidium of the Donetsk Regional Court, upon the *protest* lodged by the President of the same court, quashed the judgment of 22 February 1995 and remitted the case for a fresh examination.

11. On 23 June 2000 the Voroshylovskyy Court referred the claims of Mrs L. to the Kalininskyy District Court of Donetsk (the “Kalininskyy Court”) for examination.

B. Second set of proceedings

12. Meanwhile, in February 1995 the applicant instituted proceedings in the Voroshylovskyy Court against Mr R., Mrs P., Mrs L., Mr K. and Mr B., the latter two having acted as the real estate agents of Mrs P., asking the court to annul the sales contracts in respect of the apartment and seeking the eviction of Mrs L. from it. She further claimed her belongings which she had allegedly left in the apartment.

13. The Voroshylovskyy Court considered the case on three occasions and delivered judgments on 26 July 1995, 5 November 1996 and 10 November 1999, which were overturned by the decisions of the Donetsk Regional Court on 17 August 1995, 17 April 1997 and 30 March 2000, respectively.

14. On 26 June 2000 the case was remitted for a fresh examination to the Kalininskyy Court.

C. Joined proceedings

15. In July 2000 the Kalininskyy Court decided to examine the applicant’s claims and the claims of Mrs L. jointly.

16. On 29 October 2001 the court found against the applicant.

17. In the period from 10 December 2001 to 18 October 2002 the applicant lodged several requests for leave to appeal against the above judgment with the Kalinskyy Court and the Donetsk Regional Court of Appeal. The requests were rejected since the applicant failed to comply with procedural formalities and to respect the time-limits. No hearing was held during this period.

18. On 10 October 2002 the applicant requested the court to renew the time-limit for lodging an appeal against the judgment of 29 October 2001.

19. On 18 October 2002 the Kalininsky Court rejected the applicant's request to renew a time-limit for appeal against the above judgment.

20. The applicant appealed against the ruling of 18 October 2002. On 15 May 2003 the Donetsk Regional Court of Appeal quashed this ruling.

21. On 17 June 2003 the Kalininsky Court granted the applicant's request to renew a time-limit for lodging an appeal against the judgment of 29 October 2001.

22. On 5 August 2003 the Donetsk Regional Court of Appeal upheld the judgment of 29 October 2001.

23. On 19 November 2003 the Supreme Court rejected the applicant's request for leave to appeal in cassation. This ruling of the Supreme Court was sent to the applicant on 1 December 2003.

24. In the course of the proceedings there were five hearings postponed due to the applicant's failure to appear, twenty two hearings postponed due to the defendants' failure to appear and one - due to the parties' failure to appear.

THE LAW

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

25. 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..."

A. Admissibility

26. The Government submitted that the applicant had not complied with the six months' rule as prescribed by Article 35 § 1 of the Convention.

27. The Court recalls that the six months' time-limit is respected when an application is introduced not more than six months after the applicant has become aware of the decision constituting the final decision within the meaning of Article 35 § 1 of the Convention.

28. In the present case, it appears from the information provided by the applicant that the final decision of the Supreme Court of 19 November 2003 was sent to the applicant on 1 December 2003. The application with the Court was lodged by the applicant on 29 May 2004. In the light of these considerations, the Court dismisses the Government's preliminary objections.

29. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

30. 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*.

31. The applicant did not comment in that respect.

32. The Court notes that the proceedings complained of began in February 1995 and ended on 19 November 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 six years and two 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; *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).

2. Reasonableness of the length of the proceedings

33. The Government contested the applicant's complaint, stating that there were no significant periods of inactivity attributable to the State. They maintained that the case had been complex and that the judicial authorities had acted with a due diligence. According to the Government, the applicant and the defendants were responsible for some periods of delay in the proceedings. In particular, they stated that, while lodging her appeal, the applicant failed to comply with procedural rules. Further they pointed out that the applicant had lodged numerous demands to summon witnesses and provide additional documents, which the domestic courts had to consider. The Government finally maintained that the length of proceedings in the applicant's case was not unreasonable.

34. The applicant disagreed.

35. 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).

36. Concerning the question of the complexity of the present case, the Court observes that it concerned a number of issues raised by the applicant following the allegedly unlawful sale of her apartment. Although the court was required to examine quite an extensive amount of documentary evidence, the issues before the court were not of such a nature as to necessitate an extensive prolongation of the consideration of the applicant's case. Therefore, the Court concludes that the subject matter of the litigation at issue could not be considered particularly complex.

37. The Court agrees with the Government that the applicant contributed, to certain extent, to the length of the proceedings. Nevertheless, the applicant cannot be held primarily responsible for the overall length of the proceedings in the instant case.

38. The Court considers that a number of delays (in particular, repetitive remittals of the case for a new consideration, lengthy consideration of the case by the first instance court, and numerous adjournments of hearings on account of the defendant's absence) are attributable to the Government (see *Golovko v. Ukraine*, no. 39161/02, § 43, 1 February 2007).

39. The Court has frequently found a violation of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Golovko v. Ukraine*, no. 39161/02, §§ 61-65, 1 February 2007; *Terentyev v. Ukraine*, no. 39763/02, §§ 42-46, 29 May 2008; *Siliny v. Ukraine*, no. 23926/02, §§ 32-37, 13 July 2006, and *Teliga and Others v. Ukraine*, no. 72551/01, § 95, 21 December 2006).

40. Having examined all the materials 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. Even if the applicant contributed to the length of proceedings in some respects, her behaviour cannot be relied upon to justify the overall length of proceedings. 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.

II. OTHER COMPLAINTS

41. The applicant complained under Articles 6 § 1 and 13 of the Convention about the outcome of the proceedings in her case. The applicant also complained under Article 1 of Protocol No. 1 that the failure of the courts to allow her claims violated her property rights. The applicant finally invoked Articles 2, 3 and 4 of Protocol No. 7 of the Convention without any further specification.

42. The Court, in the light of all material before it and in so far as these remaining complaints fall within its competence, finds that they do not

disclose any appearance of an unjustified interference or breach of these provisions and rejects this part of the application in accordance with Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 2,000 euros (EUR) in respect of pecuniary damage. She further claimed EUR 9,000 in respect of non-pecuniary damage.

45. The Government contested these claims.

46. 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, ruling on an equitable basis, it awards the applicant EUR 600 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

48. 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 under Article 6 § 1 of the Convention 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 600 (six hundred euros) in respect of non-pecuniary damage, to be converted into the national currency at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President