



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

FIFTH SECTION

CASE OF BURYAK v. UKRAINE

(Application no. 1866/04)

JUDGMENT

STRASBOURG

19 February 2009

FINAL

19/05/2009

This judgment may be subject to editorial revision.

In the case of Buryak v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 1866/04) 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, Mrs Mariya Semyonovna Buryak (“the applicant”), on 18 November 2003.

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

3. On 6 December 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1941 and lives in the village of Sheludkovka, the Kharkiv Region, Ukraine.

5. The applicant’s mother owned a plot of land and an old house. On unspecified date the applicant started constructing a new house on this plot without a construction permit and other necessary documentation. On 25 April 1995 the applicant’s mother died. The plot of land and the old house had been transferred shortly before her death under a donation agreement to Mr E.Ts.

6. On 29 July 1997 the applicant instituted civil proceedings against Mr. E.Ts. (“the defendant”), the Sheludkovsky Local Council (“the local council”) and the Zmiyiv State Notary Office (“the notary office”) in the Zmiyiv Court. She challenged the donation agreement and claimed her property right to the unfinished building. She also challenged the resolutions of the local council by which the latter had refused to provide her with the plot of land on which she had started the above construction works.

7. On 12 April 2002 the Zmiyiv Court dismissed the applicant’s claims concerning annulment of the donation agreement and the local council’s resolutions. The court further terminated the proceedings in respect of her claim for the unfinished building. The applicant appealed.

8. On 17 July 2002 the Kharkiv Regional Court of Appeal amended the judgment. The court of appeal considered the applicant’s claim concerning the unfinished building and dismissed it since the applicant had conducted construction works without the necessary permit. The court of appeal upheld the rest of the judgment.

9. On 13 August 2002 the applicant appealed in cassation. On 3 December 2002 the Supreme Court left the applicant’s appeal without consideration since she had failed to comply with procedural requirements prescribed by law.

10. On 15 January 2003 the applicant rectified the shortcomings and re-lodged her appeal in cassation. On 3 September 2003 the Supreme Court dismissed the applicant’s request for leave to appeal in cassation.

11. According to the records provided by the Government, in the course of the proceedings falling within the Court’s competence *ratione temporis*, of thirty listed hearings eleven were adjourned due to the defendant’s failure to appear and two due to his requests for adjournment. Two hearings were adjourned since the defendant and the representative of the State notary office failed to appear. The domestic courts took no steps to ensure the defendant’s presence in the court. One hearing was adjourned due to the failure of the representative of the local council to appear. Three hearings were adjourned due to the applicant’s request for adjournment, and three due to the applicant’s lawyer’s failure to appear.

12. Most hearings were scheduled at intervals from several days to two months. No hearings took place between 8 July 1998 and 11 May 1999, from 18 August 1999 and 12 January 2000, and from 1 June and 15 October 2001.

THE LAW

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

13. 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

14. 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

1. *The parties’ submissions*

15. The Government contended that the applicant and the defendant had contributed to the length of proceedings and that the State could not be held liable for their behaviour. In particular, they submitted that the proceedings had been extended for two years since the defendant failed to appear in court on numerous occasions. They further averred that by demanding to summon witnesses and provide additional documents, requesting to adjourn the hearing, and appealing against the judgment to the higher courts the parties had caused certain delays to the proceedings.

16. The applicant disagreed.

2. *Period to be taken into consideration*

17. The applicant took her case to the court on 29 July 1997; however, the Court’s jurisdiction *ratione temporis* covers only the period after the entry into force of the Convention with respect to Ukraine, on 11 September 1997. Nevertheless, 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).

18. The period to be taken into consideration ended on 3 September 2003. The proceedings thus lasted almost six years at three levels of jurisdiction.

3. *Reasonableness of the length of the proceedings before the domestic courts*

19. 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).

20. The Court agrees with the Government that the applicant contributed, to certain extent, to the length of the proceedings by lodging requests to adjourn the proceedings, summon witnesses and provide additional documents, and contesting the judgment before the higher courts. Nevertheless, the applicant cannot be held primarily responsible for the overall length of the proceedings in the instant case.

21. The Court notes that the defendant delayed the proceedings for a period of two years since he failed to appear in the court on numerous occasions. These periods of delay should be attributed to the authorities, as no appropriate steps were taken by the domestic authorities to ensure the defendant's presence in the court (see *Golovko v. Ukraine*, no. 39161/02, § 62, 1 February 2007). The Court further notes three significant intervals of a total of one year and seven months in scheduling the hearings (see paragraph 12 above). The Government did not provide any explanation for these intervals. The Court finally takes note of eight months procedural inactivity in consideration of the applicant's appeal in cassation by the Supreme Court (see paragraph 10 above).

22. There has accordingly been a violation of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. The applicant complained under Article 6 § 1 of the Convention about the outcome of the proceedings in her case. She also alleged that the judges at the domestic courts were partial and lacked independence.

24. Having carefully examined the applicant's submissions in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

25. 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

26. 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

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

28. The Government contested this claim.

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

B. Costs and expenses

30. The applicant made no claim as to costs and expenses. Therefore, the Court makes no award under that head.

C. Default interest

31. 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, EUR 600 (six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be

converted into the national currency of the respondent State at the rate applicable on 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 19 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President