



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

FIFTH SECTION

CASE OF PYSATYUK v. UKRAINE

(Application no. 21979/04)

JUDGMENT

STRASBOURG

16 April 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Pysatyuk v. Ukraine,

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

Rait Maruste, *President*,

Karel Jungwiert,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 21979/04) 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, Mr Leonid Petrovich Pysatyuk (“the applicant”), on 20 May 2004.

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

3. On 11 October 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

4. The applicant was born in 1954 and lives in the city of Odessa, Ukraine.

5. In 1991 the applicant became a member of the housing cooperative “Verstatobudivelnyk-2” (“the cooperative”) in order to be provided with an apartment in the dwelling house to be constructed by the latter. At the same time he was employed part-time by the cooperative.

6. By decisions made at a general meeting of the members of the cooperative on 19 May 1999, 30 June 1999 and 29 September 1999 the applicant’s membership of the cooperative was cancelled on the grounds that he had failed to pay his contributions on time. Therefore, the applicant was not provided with the apartment to which he believed he was entitled

(“the apartment”). Later it was given to another member of the cooperative, Mr S.

7. In October 1999 the applicant instituted proceedings against the cooperative in the Illichevsk District Court of Odessa requesting the court to declare the above decisions null and void. He also claimed compensation for non-pecuniary damage.

8. Later, the applicant lodged additional claims against the Housing Department of the Odessa City Council, the Odessa Privatisation Agency and Mr S., challenging the latter’s right to own the apartment, seeking the removal of Mr S.’s family and claiming property rights over the apartment. The applicant also claimed payment of the salary arrears from the cooperative, and alleged that his contributions entitled him to a larger apartment.

9. In January 2003 the Illichevsk District Court of Odessa was closed down. On an unspecified date the applicant’s case was transmitted from that court to the Malinovsky District Court of Odessa (“the court”).

10. In the period from October 1999 to 20 October 2003 the domestic courts listed some thirty-nine hearings. Six hearings were adjourned due to the failure of the representative of the cooperative to appear or at his request. Two hearings were adjourned since Mr S. failed to appear. The domestic courts took no steps to ensure the defendants’ presence in the court. Three hearings were adjourned due to the applicant’s failure to appear or at his request. Most hearings were scheduled at intervals from several days to two months.

11. On 20 October 2003 the court allowed the applicant’s claims.

12. On 19 February 2004 the Odessa Regional Court of Appeal (“the court of appeal”) quashed the decision and remitted the case for fresh consideration to the court.

13. On 18 July 2005 the court found against the applicant.

14. On 5 October 2005 the court terminated proceedings concerning payment of the salary arrears and the applicant’s claim for a larger apartment since the applicant had failed to comply with procedural requirements prescribed by Ukrainian law. The applicant did not appeal against this ruling.

15. On 13 December 2005 the court of appeal quashed the judgment of 18 July 2005 and remitted the case for fresh consideration to the court.

16. On 11 July 2006 the court dismissed the applicant’s claims.

17. On 25 May 2007 the court of appeal quashed the judgment of 11 July 2005 and partly allowed the applicant’s claims.

18. In the period from 20 October 2003 until 25 May 2007 the court and the court of appeal listed some fifteen hearings. One hearing was adjourned because of the judge’s illness, one due to Mr S’s failure to appear, one at the applicant’s request. Most hearings were scheduled at intervals from several

days to two months. No hearings were scheduled by the court between 20 February 2004 and 29 March 2005.

19. The defendants appealed in cassation. On 5 December 2007 the Supreme Court upheld the judgment given by the court of appeal.

20. On 12 August 2008 the judgment of 25 May 2007 was enforced in full.

21. On an unspecified date in 2008 Mr S. instituted new proceedings against the applicant claiming his property rights over a part of the apartment on the ground that he had carried out certain repair works.

THE LAW

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

22. The applicant complained that the length of the judicial 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 October 1999 and ended on 5 December 2007. It thus lasted eight years and two months. The case was considered by courts at 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 maintained that the case had been complex and that the judicial authorities had acted with due diligence. They further averred that by lodging additional claims, demanding the provision of additional documents, requesting the adjournment of hearings, and appealing to the higher courts, the parties had caused certain delays to the proceedings and that the State could not be held liable for the parties’ behaviour.

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. 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 termination of the applicant's membership in the housing cooperative. 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.

30. 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.

31. The Court considers that a number of delays (in particular, lengthy consideration of the case by the first-instance court, remittals of the case for fresh consideration, failure to schedule hearings regularly, adjournments of hearings on account of the defendants' absence) are attributable to the Government (see *Golovko v. Ukraine*, no. 39161/02, §§ 61-65, 1 February 2007).

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, for example, *Yakymenko v. Ukraine*, no. 19142/03, § 39, 29 May 2008; *Pavlyulynets v. Ukraine*, no. 70767/01, § 53, 6 September 2005; and *Golovko v. Ukraine*, cited above, § 65).

33. In sum, having regard to the circumstances of the instant case, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicant complained under Articles 6 § 1 and 13 of the Convention of the unfairness and outcome of the proceedings. In his initial submissions he also complained under Article 1 of Protocol No. 1 of the violation of his property rights since he had not been provided with the apartment. He also invoked Articles 8 and 17 of the Convention in that

respect. Finally, he complained under Article 14 of the Convention about discrimination.

36. 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.

37. 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

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 USD 661,380 (United States dollars) in respect of pecuniary damage and USD 661,380 in respect of non-pecuniary damage.

40. The Government contested these claims.

41. 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 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant, who was not represented before the Court, claimed UAH 5,877.61 (Ukrainian hryvnias) (around EUR 634.20) for the costs and expenses incurred before the domestic courts and this Court. He produced the postal receipts for mailing correspondence to the domestic authorities and this Court, receipts for copying and for translation services. He also furnished receipts evidencing payments made to the local bar and to a law firm in respect of unspecified legal services and payments of court and other fees.

43. With respect to the postal expenses, expenses for copying and translation of the documents, the Government left the matter to the Court's

discretion. They contested the remainder of the applicant's claims under this head.

44. 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 are reasonable as to quantum. Regard being had to the information in its possession and to the above criteria, the Court awards the applicant EUR 300 in respect of costs and expenses, plus any tax that may be chargeable to the applicant, and dismisses the remainder of his claims under this head.

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, EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage as well as EUR 300 (three hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into the national currency of the respondent State 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 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 16 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President