



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF PILIPEY v. UKRAINE

(Application no. 9025/03)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Pilipey v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 9025/03) 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, Mr Petr Lukich Pilipey (“the applicant”), on 1 March 2003.

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

3. On 3 September 2008 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 1946 and lives in the town of Rivne, Ukraine.

A. Proceedings instituted against the applicant’s father and uncle

5. In March 1976 the Executive Committee of the Rivne Local Council instituted proceedings against the applicant’s father and the applicant’s uncle in the Rivne People’s Court. The Committee sought confiscation of the house owned by them because there had been serious breaches of building regulations. The case was considered on several occasions. On 22 March 1977 the People’s Court ruled that the house should be

confiscated. On 28 April 1977 the Rivne Regional Court upheld that judgment. Following that decision the house was confiscated.

6. The applicant's father died in 1985. In 1990 the Rivne Local Council sold a part of the house ("the disputed property") to Ms K.

7. On 27 January 1993 the Presidium of the Rivne Regional Court, upon an objection (*npomecm*) by its President, quashed the judgment of 22 March 1977 and remitted the case to the same court for fresh consideration.

8. On 12 April 1993 the Rivne Court dismissed a claim lodged by the Executive Committee of the Rivne Local Council.

B. Civil proceedings instituted by the applicant

9. On 24 January 1994 the applicant and Mr P. instituted proceedings against Ms K. and the Executive Committee of Rivne Local Council in the Rivne Court, seeking to have the above-mentioned contract of sale declared null and void and claiming ownership of the disputed property.

10. On 12 April 1994 Mr K., husband of Ms K., lodged a counterclaim, seeking recognition of ownership of the disputed property.

11. On 25 January 1995 Ms S. and Ms Ko. instituted proceedings against Mr and Ms K., claiming ownership of the disputed property.

12. In the period from 26 January 1994 to 3 November 1996 the first-instance court scheduled ten hearings.

13. On 4 November 1996 the court granted a request by the applicant's lawyer to suspend the proceedings on the ground that the applicant was undergoing treatment. After that date the next hearing was scheduled by the court only for 18 May 1998.

14. On 25 March 1998 Ms. K died. On 18 May 1998 the court decided to suspend the proceedings until Ms K.'s successors joined the proceedings.

15. On 18 March 1999 the court decided to join Mr K. as a defendant in the case. On the same day the court joined the consideration of the above proceedings.

16. Between 19 May 1998 and 22 March 2000 the court scheduled one hearing.

17. Between 23 March 2000 and 15 October 2001 the court scheduled no hearings.

18. On 21 March 2002 the court found against the applicant. In particular, the court found unsubstantiated the applicant's allegation that he could claim inheritance rights over the disputed property.

19. On 26 June 2002 the Rivne Regional Court of Appeal upheld that judgment.

20. Between 16 October 2001 and 26 June 2002 the first-instance court and the court of appeal scheduled six hearings. Four hearings were adjourned on account of the one of the parties' failure to appear or at their request.

21. On 22 January 2003 the Supreme Court dismissed an appeal in cassation by the applicant.

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...”

A. Admissibility

23. 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*

24. The Government contended that the parties to the domestic proceedings had contributed to the length of proceedings and that the State could not be held liable for their behaviour. Further, they pointed out that the case was complex and that the judicial authorities had acted with due diligence. The Government lastly maintained that the length of proceedings in the applicant’s case had not been unreasonable.

25. The applicant disagreed.

2. *Period to be taken into consideration*

26. The applicant instituted proceedings in January 1994; however, the Court’s jurisdiction *ratione temporis* covers only the period after the entry into force of the Convention in respect of 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).

27. The judicial proceedings ended in January 2003, when the Supreme Court gave a final judgment in the applicant's case.

28. Therefore, the length of the judicial proceedings falling within the Court's competence *ratione temporis* was five years and four months for three levels of jurisdiction.

3. Reasonableness of the length of the proceedings

29. 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).

30. Although the domestic courts were required to examine a certain amount of documentary evidence, the issues before them were not of such a nature as to necessitate prolonged consideration of the applicant's case. Therefore, the Court concludes that the subject matter of the litigation at issue cannot be considered particularly complex.

31. The Court notes that the complexity of the case and the applicant's conduct cannot explain the overall length of the proceedings at issue in the present case. It finds that a number of delays can be attributed to the Government. In particular, the Court notes the prolonged periods of procedural inactivity and the failure to schedule the proceedings regularly (see paragraphs 13-17 above). The Court observes in that connection that it is the role of the domestic courts to manage the proceedings before them so that they are expeditious and effective (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-...).

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 *Loshenko v. Ukraine*, no. 11447/04, § 40, 11 December 2008).

33. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant also invoked Article 13 in respect of his complaint about the length of the proceedings. Having regard to its findings under

Article 6 § 1 (see paragraphs 34 above), the Court concludes that this complaint is admissible, but considers that it is not necessary to rule whether, in this case, there has been a violation of Article 13 of the Convention (see *Kushnarenko v. Ukraine*, no. 18010/04, § 25, 13 November 2008, and *Kukharchuk v. Ukraine*, no. 10437/02, §§ 39-40, 10 August 2006).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. The applicant complained about the outcome of the proceedings in his case. He relied on Article 6 § 1 and Article 13 of the Convention. The applicant further alleged that by having found against him, the domestic courts had violated Article 1 of Protocol No. 1 to the Convention. The applicant lastly invoked Article 1 of the Convention.

37. 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.

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 claimed 100,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

41. The Government contested these claims.

42. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses 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

43. The applicant did not submit any claim under this head; the Court therefore makes no award for costs and expenses.

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 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 is no need to examine separately the applicant's complaint under Article 13 of the Convention about the length of the proceedings;
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 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 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 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President