



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF YEROSHKINA v. UKRAINE

(Application no. 31572/03)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

18/09/2009

This judgment may be subject to editorial revision.

In the case of Yeroshkina v. Ukraine,

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

Peer Lorenzen, *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 26 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 31572/03) 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 Mariya Ivanovna Yeroshkina (“the applicant”), on 16 September 2003.

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

3. On 30 April 2008 the President of the Fifth Section decided to give notice of the applicant’s complaint under Article 6 § 1 of the Convention about the length of proceedings 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 1954 and lives in Odessa, Ukraine.

5. At the material time the applicant worked at the Odessa Naval College (“the ONC”), a State educational institution. According to the applicant, in July 1990 her family was provided by the ONC with an apartment. However, she was not provided with any documents certifying her title to this apartment.

6. In June 1997 the ONC instituted proceedings in the Zhovtnevy District Court of Odessa against the applicant, seeking eviction of her family. In this respect the ONC argued that the premises at issue were for administrative use only and that the applicant was occupying them without permission. The applicant lodged a counterclaim, seeking to acknowledge the habitable status of the disputed premises and her tenancy title thereto. She also sought to oblige the ONC to conclude a rent contract with her on the disputed premises.

7. On 9 September 1997 the court joined the local city administration to the applicant's case as a third party.

8. From 25 September to 6 November 1997 and from 2 December 1997 to 15 January 1998 the proceedings were stayed due to the illness of the applicant.

9. On 16 April 1998 the court ordered a forensic examination of the premises at issue. The expert's report was completed by 20 October 1998.

10. On 9 November 1998 the applicant lodged an additional claim, seeking compensation for non-pecuniary damage.

11. On 31 December 1998 the court found for the ONC and rejected the applicant's counterclaims. Accordingly, it ordered eviction of the applicant's family.

12. On 23 March 1999 the Odessa Regional Court (since June 2001 the Odessa Regional Court of Appeal) quashed this judgment on an appeal by the applicant, finding that the lower court had failed to identify the members of the applicant's family and to join them to the proceedings as co-defendants. Accordingly, it remitted the case for fresh consideration.

13. On 28 May 1999 the case was transferred for examination to the Leninsky District Court of Odessa.

14. From 9 June 1999 the court repeatedly requested the head of the military unit, the employer of the applicant's husband, to provide documents necessary for the case. A reply was sent to the court only on 12 October 1999.

15. On 25 June 1999 the applicant's husband and son were joined to the proceedings as co-defendants.

16. From 29 February to 26 April 2000 no hearing was held as the judge in charge was either away on business or ill.

17. On 26 April 2000 the court came to the same conclusions as the Zhovtnevy District Court of Odessa.

18. On 18 July 2000 the Odessa Regional Court quashed this judgment on the ground that the lower court had failed to address the statute of limitation issue in the case and the applicant's claim for compensation. Accordingly, it remitted the case for fresh consideration.

19. Of the eleven hearings held between April 1999 and 18 July 2000 two were adjourned due to the applicant's or her family members' failure to appear before the court, and four due to the ONC representative's failure to

appear before the court. One of the hearings, on 20 December 1999, was adjourned as none of these persons attended.

20. In July-September 2000 the courts considered the applicant's request to have her case examined on the merits by the panel of judges of the Odessa Regional Court of Appeal. This request was ultimately granted and the case transferred back to the Odessa Regional Court of Appeal which took it over on 20 September 2000.

21. Between 27 September and 21 November 2001 four hearings were adjourned due to the ONC representative's failure to appear before the court or upon his requests. Four hearings held between 27 March and 13 May 2002 were adjourned due to the applicant's failure to attend them. According to the applicant, she had not been duly summoned by the court and therefore those delays were not her fault.

22. On 29 May 2002 the Odessa Regional Court of Appeal found that the premises at issue were not habitable and were for administrative use only. It went on to say that these premises had been provided to the applicant on a temporary basis conditional upon her employment with the ONC and that the applicant was no longer working at the ONC. Accordingly, the court rejected the applicant's claim and ordered the eviction of her family.

23. Of the twenty-four hearings held between July 2000 and 29 May 2002 two were adjourned due to the applicant's and two due to the ONC representative's failure to appear before the court, in addition to those mentioned before (see paragraph 21). Four hearings were cancelled because the judge in charge was either travelling on business or ill.

24. On 13 March 2003 the Supreme Court of Ukraine upheld the judgment.

25. Apparently, the judgment of 29 May 2002 has still not been enforced.

THE LAW

I. LENGTH OF PROCEEDINGS

26. 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..."

27. 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. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the fact that at that time, the proceedings had been pending since June 1997

The period in question ended on 13 March 2003. The proceedings therefore lasted for five years and six months at three levels of jurisdiction.

A. Admissibility

28. The Government submitted that the six-month time-limit had expired on 13 September 2003. In so far as the applicant had lodged her application on 16 September 2003, they requested the Court to reject it as being lodged out of time.

29. The applicant argued that she had learned about this decision only in May 2003.

30. The Court reiterates that it is for the Government pleading non-respect of the six-month rule to demonstrate the date on which the applicant became aware of the final decision (see *Ali Şahmo v. Turkey* (dec.), no. 37415/97, 1 April 2003). As the Government have failed to do that, the Court dismisses their objection.

31. 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

32. The Government pleaded that the case before the domestic courts was complicated, having regard to the number of participants and claims lodged. They added in this regard that the authorities had had to establish certain facts which dated back to 1990, seven years before the proceedings had been initiated, and had to conduct several forensic examinations and on-site inspections. The Government further maintained that the parties had contributed to the length of the proceedings by failing to attend hearings, lodging numerous requests and appealing against the court decisions. In their view the State could not be held liable for the parties' behaviour and the delays they had caused.

33. 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).

34. The Court agrees that the number the number of participants and claims can complicate the case. However, this cannot be said with regard to

the present case because, as appears from the available documents, the local city administration did not take an effective part in the impugned proceedings, the submissions, if any, by the applicant's family members did not vary and the number of witnesses was not particularly large. The Court further points out that some applicant's claims in the case depended on the outcome of others (a claim for non-pecuniary damages) and, therefore, the courts, having dismissed the latter, did not go into the merits of the former. Lastly, the forensic examination and on-site inspections, as mentioned in the court decisions, seem to have been completed before the first judgment in the case was taken. Accordingly, the Court comes to the conclusion that the case before the domestic authorities was not particularly complex.

35. The Court accepts the Government's contention that the applicant contributed to the length of the impugned proceedings. It is true that her illness and non-attendance at court hearings caused certain delays (see paragraphs 8, 19 and 23 above). However, the Court notes that the delays between 27 March and 13 May 2002 (see paragraph 21 above) cannot be attributed to the applicant, as the Government did not respond to her argument that she had not been properly summoned and failed to prove the contrary. In its opinion the delays by the applicant were not so significant as to justify the length of the proceedings in question.

36. The Court further observes that, although a party to civil proceedings cannot be blamed for using the avenues available to him under domestic law in order to protect his interests, he must accept that such actions necessarily prolong the proceedings concerned (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001). The Court agrees with the Government that the applicant has also contributed to a certain extent to the length of the proceedings by contesting the judgments in her case before the higher courts. Nevertheless, she cannot be held primarily responsible for the overall length of the proceedings in the instant case.

37. In particular, on two occasions (paragraphs 12 and 18) the applicant's appeals were upheld by the higher court. In this context the Court emphasises that the reasons for remittals were the lower courts' omissions on simple issues which did not imply the complex analysis. Therefore, it considers that the delay in the proceedings was mainly caused by the repeated re-examinations of the case. Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it observes that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

38. Furthermore, the Court observes that certain delays (see paragraphs 14, 16, 19, 21 and 23) were caused by persons whose acts and omissions were directly attributable to the respondent State (see, *mutatis mutandis*, *Serdyuk v. Ukraine*, no. 15002/02, § 33, 20 September 2007).

39. 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 *Frydlender*, cited above, and *Efimenko v. Ukraine*, no. 55870/00, § 58, 18 July 2006).

40. 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.

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

II. OTHER COMPLAINTS

41. The applicant also complained under Article 6 § 1 of the Convention about the courts’ assessment of the evidence and interpretation of the law and challenged the outcome of the proceedings. She further complained under Articles 3 and 14 of the Convention of her own suffering and discrimination allegedly caused by the domestic courts. The applicant also complained under Article 8 of the Convention that the State authorities had failed to respect her right to a home guaranteed by this provision. She also relied on Article 1 of Protocol No. 1.

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

43. 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

44. 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

45. The applicant claimed 120,000 euros (EUR) in respect of pecuniary and EUR 100,000 in respect of non-pecuniary damage.

46. The Government contested these claims.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to the claim for non-pecuniary damage, the Court is of opinion that in the circumstances of the case it is not necessary to afford to the applicant any just satisfaction other than that resulting from the finding of a violation of her rights.

B. Costs and expenses

48. The applicant also claimed 1,300 Ukrainian hryvnyas (UAH)¹ for the costs and expenses incurred before the domestic courts and UAH 180² for those incurred before the Court. In support of the last-mentioned claim she provided relevant vouchers in the total amount of UAH 54.70³.

49. The Government contested these claims.

50. 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. In the present case, regard being had to the information in its possession and to the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 5 for the proceedings before the Court.

C. Default interest

51. 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 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 the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

¹ About EUR 125.

² About EUR 17.22.

³ About EUR 5.

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 5 (five euros) in respect of costs and expenses, to be converted into national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;

(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