



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF BUBLYK v. UKRAINE

(Application no. 37500/04)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

18/09/2009

This judgment may be subject to editorial revision.

In the case of Bublyk 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,

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. 37500/04) 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 Tetyana Tarasivna Bublyk (“the applicant”), on 9 October 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev. The applicant was represented by Ms Vira Ivanivna Bublyk.

3. On 26 November 2006 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1972 and lives in Munich, Germany.

5. In 1996 the applicant entered into an agreement with a private company, Skorpion, under which the latter was obliged to construct an apartment in a block house. Following insolvency proceedings instituted against this company, the applicant entered into a debt transfer agreement (“the agreement”) with a private company, KGD, (“the company”), under which the latter accepted responsibility for the obligations of the Skorpion company.

6. On 17 June 1999 the applicant instituted proceedings against the company in the Ivano-Frankivsk Court. She requested the court to declare a

part of the agreement null and void and sought a ruling to oblige the company to fulfil the remainder of the agreement.

7. On 6 September 1999 the Ivano-Frankivsk City Court (“the City Court”) allowed the applicant’s claim.

8. On 16 November 1999 the Ivano-Frankivsk Regional Court¹ quashed this decision and remitted the case for fresh consideration.

9. On 3 February 2000 the company lodged a counterclaim seeking termination of the agreement on the ground that the applicant had failed to comply with the agreement.

10. On 6 December 2001 the City Court rejected the applicant’s claim and allowed the counterclaim.

11. On 13 March 2002 the Ivano-Frankivsk Regional Court of Appeal (“the Court of Appeal”) upheld this judgment.

12. On 11 March 2004 the Supreme Court, following a cassation appeal by the applicant, quashed the decisions of the lower courts and remitted the case to the first-instance court for fresh consideration.

13. In the course of the proceedings, the applicant modified her claims on several occasions. Finally she amended her claims on 22 August 2005. She claimed property rights over the apartment in the house constructed by the company which was occupied by Mr and Mrs K and sought their removal. She also challenged the title documents on this apartment which had been issued to Mr and Mrs K.

14. On 8 August 2005 the City Court, following a request by the applicant, attached Mr and Mrs K.’s apartment. On 3 November 2005 the Court of Appeal upheld this ruling.

15. On 6 March 2006 the company withdrew its counterclaim.

16. On 7 March 2006 the City Court found against the applicant.

17. On 12 July 2006 the Court of Appeal upheld this judgment.

18. On 15 September 2006 the Supreme Court dismissed the applicant’s cassation appeal as unsubstantiated.

19. The applicant tried to appeal against the decisions given in her case under extraordinary proceedings. However her efforts were to no avail.

20. According to the records provided by the Government, in the course of the proceedings, of forty-five listed hearings, four hearings were adjourned due to the company’s representative’s failure to appear and six due to his requests for adjournment. The domestic courts took no steps to ensure his presence in court. Three hearings were adjourned because the judge sitting in the case was involved in other proceedings. Two hearings were adjourned at the applicant’s request and five because the applicant’s representative or lawyer failed to appear or at their request.

¹ Since June 2001 - Ivano-Frankivsk Regional Court of Appeal

THE LAW

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

21. The applicant complained that the length of 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

22. The Court notes that the 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 ground. It must therefore be declared admissible.

B. Merits

23. The Government contended that the parties to the domestic proceedings had contributed to the length of the 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.

24. The applicant disagreed.

25. The Court notes that the proceedings at issue began in June 1999 and ended on 15 September 2006. Therefore, the proceedings lasted for about seven years and three months at three levels of jurisdiction.

26. 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).

27. Concerning the question of the complexity of the present case, the Court observes that it concerned a housing dispute. 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.

28. The Court notes that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings at issue in the present case. The Court considers that a number of delays (in particular, remittals of the case for fresh consideration, lengthy consideration of the case by the first-instance court after the ruling of the court of appeal of 16 November 1999, lengthy consideration of the cassation appeal lodged in 2002, adjournments of hearings on account of the company's representative's absence, adjournment of hearings because of the judge's involvement in other proceedings) are attributable to the Government.

29. 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*, no. 39161/02, § 65, 1 February 2007).

30. In sum, having regard to the overall length of the proceedings and other circumstances of the instant case, the Court concludes that there was unreasonable delay in disposing of the applicant's case.

31. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant also complained under Article 6 of the Convention about the outcome of the proceedings in her case and that they were unfair. Relying on Article 13 of the Convention she complained that in March 2002 her advocate had refused to represent her before the Court of Appeal. She also complained under Article 1 of Protocol No. 1 that her property rights had been violated since the domestic courts had found against her. Finally, she invoked Articles 14 and 17, on the same grounds.

33. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and 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 or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 1,099,384.46 Ukrainian hryvnias (UAH, about 103,992 euros (EUR) in respect of pecuniary damage. She further claimed EUR 500,000 in respect of non-pecuniary damage.

36. The Government contested these claims as exorbitant and unsubstantiated.

37. 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, it awards the applicant EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed UAH 3,342.40 (EUR 316.16) in relation to her representation, translation, postal expenses, court fees, and other expenses incurred both in the domestic and Convention proceedings.

39. 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.

40. 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 the above criteria, the Court considers it reasonable to award the sum of EUR 100 in respect of costs and expenses and dismisses the remainder of her claims under this head.

C. Default interest

41. 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 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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into 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 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President