



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SHASTKIV AND VALITSKA v. UKRAINE

(Application no. 3638/04)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Shastkiv and Valitska v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 3638/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Ms Nina Grygorivna Shastkiv (“the first applicant”) and Ms Olga Pavlivna Valitska (“the second applicant”), the mother of the first applicant, on 9 January 2004.

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

4. The first applicant was born in 1956 and lives in the town of Kamyanets-Podilskyy. The second applicant was born in 1925 and lives in the village of Slobidka Gumenetska, the Khmelnytsky Region.

A. Background information

5. In February 1993 the first applicant signed a deed of gift (“the first deed”) for the house belonging to Mr I. Sh., her husband, an advocate by profession, in favour of the second applicant. This deed was certified by the village council, but it was never registered on the local real-estate register.

6. In August 1993 the first applicant and Mr I. Sh. divorced.

7. In November 1993 Mr I. Sh. gave the first applicant power of attorney to manage his property in connection with his decision to leave the country. In August 1994 the first applicant, acting on the basis of this power of attorney, signed at a notary office a deed of gift for the house (“the second deed”) in favour of the second applicant, making no reference to the previous deed.

8. Having returned from abroad, Mr I. Sh. challenged the validity of the first deed before the Kamyanets-Podilsky District Court. On 20 December 1994 the court annulled the first deed, having found that at the material time the first applicant had had no right to dispose of Mr I. Sh.’s house. This judgment was not appealed against and became final.

B. The dispute concerning the validity of the second deed of gift and the house ownership

9. On 3 November 1995 Mr I. Sh. challenged the second deed of gift.

10. On 18 June 1996 the Kamyanets-Podilsky Court annulled the second deed, having found that when it had been signed the disputed house had already belonged to the second applicant under the first deed, then in force. The first applicant appealed.

11. On 18 July 1996 the Khmelnytsky Regional Court (“the Regional Court”)¹ quashed this judgment and remitted the case for a fresh consideration. The court noted, in particular, that the first-instance court had incorrectly interpreted the law, since the first deed should have been considered null and void from the date of its signature.

12. On 2 December 1996 the proceedings were transferred to the Dunayevetsky Court.

13. On 15 December 1998 the Dunayevetsky Court dismissed Mr I. Sh.’s claims, having found that the first deed had been null and void from the date of signature and the second deed had been concluded on the basis of a valid power of attorney given by Mr I.Sh. to the first applicant.

14. On 4 February 1999 the Regional Court quashed this judgment on Mr I. Sh.’s appeal and remitted the case for a fresh consideration. It found, in particular, that the first-instance court had given insufficient weight to the fact that the first deed had not been formally annulled at the time when the second deed had been concluded.

15. On 26 April 1999 the Dunayevetsky Court allowed Mr I. Sh.’s claims, referring essentially to the same grounds as the Kamyanets-Podilsky Court in its judgment of 18 June 1996. The applicants appealed.

16. On 27 May 1999 the Regional Court upheld the judgment and it became final.

¹ Since July 2001 – the Khmelnytsky Regional Court of Appeal

17. On 9 June 2000 the Presidium of the Regional Court quashed the judgments of 26 April and 27 May 1999, following an objection (*npomecm*) introduced by the Deputy President of the Supreme Court and remitted the case for a fresh consideration. The Presidium instructed the courts to pay due regard to the fact that the first deed should have been considered null and void as of the date of its signature. The proceedings were transferred to the Kamyanets-Podilskyy Town Court.

18. There were no hearings scheduled between 10 June and 26 November 2000.

19. In the meantime, Mr I. Sh. sold the disputed house to a certain Mr V. P. The second applicant challenged the validity of the sale contract.

20. On 2 April 2001 the Kamyanets-Podilskyy Town Court annulled the second deed as fictitious, having observed that the second applicant had never registered her ownership of the disputed house and had resided in another locality. The court further declared the sale contract signed between Mr I.Sh and Mr V.P valid. The second applicant appealed.

21. On 28 August 2001 the Regional Court quashed this judgment and rendered a new one, dismissing the claims of both parties. In particular, the court ruled that the second deed had not been fictitious, but that the sale contract with Mr V. P. could not be annulled, since it had been concluded in good faith at a time when there existed a final judgment recognizing that Mr I. Sh. was the owner of the disputed house. The second applicant appealed in cassation before the Supreme Court.

22. On 14 August 2002 the Supreme Court quashed the judgment of 28 August 2001, having found that the Regional Court could not recognize both the second deed and the sale contract as valid, and remitted the case for a fresh consideration on appeal.

23. On 6 November 2002 the Regional Court quashed the judgment of 2 April 2001 and remitted the case for a fresh consideration at first instance. It observed, in particular, that the first-instance court had erred in its statement that the second applicant had not registered her ownership of the house and had never used it. It noted that the latter had been registered as the house's resident and allowed her daughter (the first applicant) and her grandson to live there.

24. In the meantime, Mr V. P. had sold the house to Mr O. Ch. The latter instituted proceedings against the applicants and the first applicant's son, seeking to enjoin them from interference with his property right. In particular, he complained that the first applicant and her son unlawfully resided in the house without having registered their residence, while the second applicant, who resided in another locality, unlawfully remained registered as a resident. The second applicant lodged a counterclaim, challenging Mr O. Ch.'s title to the house. These proceedings were joined to the initial proceedings and referred back to the Kamyanets-Podilskyy District Court.

25. On 6 March 2003 the Kamyanets-Podilsky District Court found that both sale contracts were valid, since they had been concluded in good faith and on the basis of the title recognized by judgments then in force. However, it found that the second deed of gift had also been lawful and awarded the second applicant 33,192¹ Ukrainian hryvnias (UAH) in damages against Mr I. Sh. in compensation for the loss of the house. The court further obliged the second applicant to deregister her residence and ordered the eviction of the first applicant and her son.

26. On 25 March 2003 the applicants and Mr I. Sh. appealed.

27. On 11 July 2003 the Regional Court dismissed their appeals.

28. On 30 July 2003 the applicants appealed in cassation before the Supreme Court.

29. On 18 December 2003 the Supreme Court dismissed the applicants' appeal in cassation.

30. According to the records provided by the Government, in the course of the proceedings falling within the Court's competence, the domestic courts scheduled some twenty-five hearings between September 1997 and December 2003. Sixteen hearings were adjourned because one or more parties to the domestic proceedings or witnesses failed to attend. Out of these adjourned hearings, the applicants were entirely responsible for the adjournment of four hearings.

THE LAW

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

31. The applicants 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

32. 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.

¹ Around 5,850 euros.

B. Merits

1. *The parties' submissions*

33. 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 had been complex and that the judicial authorities had acted with due diligence. The Government finally maintained that the length of proceedings in the applicants' case had not been unreasonable.

34. The applicants disagreed.

2. *Period to be taken into consideration*

35. 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 state of proceedings at the time. The period in question ended on 18 December 2003.

36. The overall duration of the proceedings, excluding the period when there existed a final judgment in the case, which was subsequently quashed, was seven years and one month, out of which five years and three months fall within the scope of the Court's jurisdiction *ratione temporis*.

3. *Reasonableness of the length of the proceedings*

37. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

38. 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 applicants' case. Therefore, the Court concludes that the subject matter of the litigation at issue cannot be considered particularly complex.

39. The Court notes that the complexity of the case and the applicants' conduct cannot explain the overall length of the proceedings at issue in the present case. The Court finds that the main delays in the resolution of the dispute were caused by the numerous remittals of the case for a fresh consideration, including after a final judgment had been adopted. The Court further observes that these remittals appear largely attributable to manifest inconsistencies in the domestic courts' approach to interpretation of

applicable facts and law. The Court notes, in particular, that some of the judgments had been based on essentially the same analysis as the judgments which had been previously quashed. The Court reiterates that repetitive re-examination of claims within one set of proceedings can disclose a serious deficiency in the domestic judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). Although the Court has previously rejected some cases concerning repeated remittals, having observed that the judicial authorities had acted diligently in handling a complex matter (see *Zhurba v. Ukraine* (dec.), no. 11215/03, 19 June 2007, and *Bespalov v. Ukraine* (dec.), no. 11484/05, 15 January 2008), it cannot find a similar justification for the remittals in the present case. The Court finally notes that there were five months of procedural inactivity after the judgment was quashed on 9 June 2000.

40. 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, *Pavlyulynets v. Ukraine*, no. 70767/01, § 53, 6 September 2005; and *Moroz and Others v. Ukraine*, no. 36545/02, § 62, 21 December 2006).

41. 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 finds 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 ALLEGED VIOLATIONS OF THE CONVENTION

42. The applicants further complained under Article 6 § 1 of the Convention that the outcome of the proceedings had been unfair and that the courts had not been impartial, since Mr I.Sh., being a professional advocate, had a special relationship with the local judiciary. The applicants further invoked Articles 13 and 14 of the Convention and Article 1 of Protocol 1 in respect of the same complaint.

43. Having carefully examined the applicants’ submissions in the light of all the material in its possession, and insofar 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.

44. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicants claimed UAH 272,171 (EUR 25,590) in respect of pecuniary damage. They further claimed UAH 25,000 (EUR 2,350) each in respect of non-pecuniary damage.

47. The Government contested these claims.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to non-pecuniary damage, the Court considers that in the circumstance of the case the mere finding of a violation constitutes sufficient just satisfaction.

B. Costs and expenses

49. The applicants made no separate claim under this head. The Court therefore makes no award in that respect.

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* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President