



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SEBOVA v. UKRAINE

(Application no. 4430/04)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Sebova v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *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. 4430/04) 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 Mariya Mikhaylovna Sebova (“the applicant”), on 13 December 2003.

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 applicant was born in 1947 and lives in the city of Odessa, Ukraine.

A. The first set of civil proceedings

5. In February 1996 Mr I. M., the father of the applicant’s grandson, exchanged his share in the apartment in which he cohabited with his parents, for the apartment of Mrs I.S, his grandmother, who moved in with his parents. This transaction was recorded in a residential premises exchange bureau (*бюро обміну житловими приміщеннями*), but was not certified by a notary.

6. In May 1996 Mr I. M. gave the applicant a power of attorney authorising her to manage all his property.

7. In June 1996 the applicant, acting on the basis of this power of attorney, sold the apartment Mr I.M. had acquired from Mrs I.S to Mr Y. S., the applicant's former husband, who in October 1996 sold it on to Mr V. K.

8. On 23 June 1997 Mr I. M. instituted civil proceedings in the Malynivsky District Court of Odessa ("the Malynivsky Court") against the applicant, Mr Y. S. and Mr V. K., seeking to annul the sales of his apartment, which he alleged had been effected in breach of confidence.

9. On 9 October 1997 Mrs I.S. lodged a claim against Mr I. M., his parents, the applicant, Mr Y. S. and Mr V. K., seeking to annul the initial apartment exchange and subsequent sales. These proceedings were joined to the proceedings that had been brought by Mr I.M.

10. On 17 May 1999 the Malynivsky Court dismissed Mr I. M.'s claim for breach of confidence and upheld Mrs I.S.'s claim for the annulment of the exchange, considering that the exchange had not been certified by a notary in breach of applicable law. However, having found that Mr V. K. had purchased the apartment in good faith, the court declared him the lawful owner of the apartment and ordered the applicant and Mr Y. S. jointly to pay Mrs I.S. compensation of 41,181 Ukrainian hryvnias¹ for the loss of the apartment. The applicant and Mr Y. S. appealed in cassation.

11. On 31 December 1999 Mrs I.S. died.

12. On 11 April 2000 the Odessa Regional Court² authorised Mrs L. M. to join the proceedings as Mrs I.S.'s successor.

13. On 25 April 2000 it quashed the judgment of 17 May 1999 as regards the amount of compensation awarded against the applicant and Mr Y. S. after finding that the first-instance court had insufficiently explored the relevant evidence, and remitted the case for a fresh consideration.

14. On 21 August 2001 the Malynivsky Court ordered the applicant and Mr Y. S. to pay Mrs L. M. UAH 56,112³ in compensation for the loss of the apartment. The applicant and Mr Y. S. appealed.

15. On 17 October 2002 the Regional Court quashed that judgment and remitted the case for fresh consideration. The applicant and Mr Y. S. appealed in cassation.

16. On 29 May 2003 the Supreme Court rejected their request for leave to appeal in cassation.

17. On several occasions the applicant and her husband unsuccessfully challenged the decision to allow Mrs L. M. to join the proceedings.

1. Approximately 9,650 EUR

2. Since July 2001 the Odessa Regional Court of Appeal

3. Approximately EUR 11,450

18. On 18 December 2006 the Malynivsky Court ordered the applicant and Mr Y.S to pay Mrs L. M. UAH 80,653.33¹ in compensation for the loss of the apartment.

19. On 27 March 2007 the Odessa Regional Court of Appeal upheld that judgment. The applicant and Mr Y. S. appealed in cassation.

20. On 31 May 2007 the Supreme Court upheld the judgments of the lower courts.

B. The second set of civil proceedings

21. On 7 October 1999 the applicant instituted civil proceedings in the Central District Court of Odessa, alleging that Mr I. M. had failed to repay her 7,000 United States dollars (USD) he had received as a loan.

22. On 24 May 2000 the court heard the case in the defendant's absence and allowed the applicant's claim. It noted, in particular, that the defendant had systematically ignored its orders summoning him to the hearings. This judgment was not appealed against and became final.

23. On 21 February 2001 the Presidium of the Odessa Regional Court quashed that judgment following an objection (*npomecm*) instituted by the Deputy President and remitted the case for fresh consideration. The Presidium confirmed that the defendant had been duly notified of the hearings. However, it considered that the interests of justice required his presence in order to clarify ambiguities as to the nature and terms of the agreement between the parties.

24. On 20 March 2002 the Central District Court decided to hear the case in the defendant's absence in view of his repeated refusals to accept service of the summons. It dismissed the applicant's claim. The applicant appealed.

25. On 11 July 2002 the Regional Court quashed that judgment, after finding the evidence that the defendant had been duly notified of the hearings unpersuasive. Subsequently, the proceedings were transferred to the Prymorsky District Court of Odessa (the Prymorsky Court).

26. On 24 December 2003 the Prymorsky Court dismissed the applicant's claim after hearing evidence from both parties. It found that the applicant had failed to prove that Mr I. M. owed her the money claimed.

27. On 28 April 2004 the Regional Court quashed that judgment and remitted the case for fresh consideration. Mr I. M. appealed in cassation.

28. On 22 September 2006 the Supreme Court rejected Mr I. M.'s request for leave to appeal in cassation.

29. On 3 April 2007 the first-instance court terminated the proceedings since the parties failed to appear. The applicant appealed.

1. Approximately EUR 12,750

30. On 11 July 2007 the Regional Court quashed the ruling of 3 April 2007.

31. On 8 October 2007 the first-instance court allowed the applicant's claim in part.

THE LAW

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

32. The applicant complained that the length of both sets 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..."

33. The Government contested that argument.

34. The Court observes with respect to the first set of proceedings that 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. It notes, however, that in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at that time. The period in question ended on 31 May 2007. It thus lasted almost nine years and six months for three levels of jurisdiction.

35. With respect to the second set of proceedings, the period to be taken into consideration began on 7 October 1999 and ended on 8 October 2007. The overall duration of the proceedings, excluding the period when there existed a final judgment in the case, which was subsequently quashed, was about seven years and three months. The case was considered by the courts at three levels of jurisdiction.

A. Admissibility

36. 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

37. In their observations the Government contended that there had been no violation of Article 6 § 1 of the Convention.

38. The applicant disagreed.

39. 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).

40. The Court notes that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the two sets of proceedings at issue in the present case. It finds that a number of delays (in particular, repeated remittals of the cases for fresh consideration) are attributable to the respondent State.

41. 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).

42. 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 each of the two sets of 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

43. The applicant further complained under Article 6 § 1 of the Convention of procedural unfairness and about the outcome of the proceedings. Additionally, relying on the same facts, she invoked Article 10 of the Convention.

44. 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

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 applicant claimed UAH 250,000 (about EUR 23,961) in respect of pecuniary damage and UAH 250,000 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 the non-pecuniary damage, ruling on an equitable basis, it awards the applicant EUR 3,600.

B. Costs and expenses

49. The applicant claimed UAH 9,570 (about EUR 926) for costs and expenses. This amount included, *inter alia*, expenses of UAH 170 (about EUR 17) for postage.

50. The Government left the question of postage to the Court's discretion. They contested the remainder of her claims under this head.

51. 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 were 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 20 under this head.

C. Default interest

52. 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 first and second sets of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the excessive length of both sets of the proceedings;
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 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage and EUR 20 (twenty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, 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 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President