



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF LAZARUK v. UKRAINE

(Application no. 6261/04)

JUDGMENT

STRASBOURG

19 November 2009

FINAL

19/02/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lazaruk 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,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 20 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 6261/04) 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 Yelena Romanovna Lazaruk (“the applicant”), on 8 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 applicant was born in 1949 and lives in the town of Mykolayiv, Ukraine.

5. On 25 November 1998 the applicant instituted civil proceedings in the Korabelnyy District Court of Mykolayiv (“the Korabelnyy Court”) against Mr L., her neighbour, disputing his right to use a plot of land. On 15 January 1999 Mr L. lodged a counterclaim, alleging that he was so entitled.

6. On 11 January 2000 the Korabelnyy Court dismissed the applicant's claim and upheld Mr L.'s counterclaim.

7. On 16 March 2000 the Korabelnyy Court rendered an additional judgment, requiring Mr L. to move the fence between his and the applicant's

land and ordering the applicant to pay Mr L. litigation expenses incurred by the latter.

8. On 12 April 2000 the Mykolayiv Regional Court¹ (“the Regional Court”) upheld the above judgments with slight amendments and they became final. In July 2000 they were enforced in full.

9. On 6 October 2000 the Presidium of the Regional Court quashed the judgments of 11 January and 16 March and the ruling of 12 April 2000, following an objection (*npomecm*) by the Acting President of the Regional Court and remitted the case for fresh consideration. The Presidium found that the courts had erred in their application of the law and had not sufficiently explored the relevant evidence.

10. On 14 August 2002 the Korabelnyy Court terminated the proceedings because Mr L. had died, leaving no heirs interested in succeeding him in the proceedings.

11. On 7 October 2002 the applicant appealed against this decision and requested leave to appeal out of time, referring to the Korabelnyy Court's failure to inform her about the decision of 14 August 2002 in due time.

12. On 3 December 2002 the Korabelnyy Court rejected the applicant's request. The applicant appealed.

13. On 27 February 2003 the Regional Court quashed the decision of 3 December 2002, having found, in particular, that the Korabelnyy Court had failed to pronounce the decision of 14 August 2002 publicly and to inform the applicant about it in due course.

14. On 3 April 2003 the Regional Court allowed the applicant's appeal against the decision of 14 August 2002. It remitted the case for fresh consideration, having found that the Korabelnyy Court had failed to take steps to identify successors to Mr L.

15. On 3 July 2003 the Korabelnyy Court admitted Mrs L.L., Mrs K.L., Mrs A.O. and Mrs K.I. to the proceedings as Mr L.'s successors.

16. On 1 September 2003 the Korabelnyy Court ruled that Mrs A.O. be questioned and some relevant court documents be served on her. Since Mrs A.O. was residing in the town of Novorossiysk, Russia, the court requested the Novorossiysk Court to carry out the above actions. By the same ruling, the court suspended the domestic proceedings. On 22 October 2003 the request was transmitted to the Mykolayiv Regional Department of the Ministry of Justice. On an unspecified date in October 2003 it was transmitted to the Russian authorities.

17. On 22 December 2003, following the applicant's request, the Korabelnyy Court attached the disputed plot of land, having prohibited, in particular, its division and disposal, including the preparation of any relevant documents, until the resolution of the dispute. Mr L.'s successors

¹ Since July 2001 – the Mykolayiv Regional Court of Appeal

appealed. On 14 January 2004 the Korabelnyy Court left their appeal without examination. On an unspecified date in January 2004 the court renewed the time-limit for appealing against the ruling of 22 December 2003. On 12 February 2004 the Korabelnyy Court transmitted the case to the Regional Court. On 1 March 2003 the latter scheduled a hearing for 12 March 2003.

18. On 2 March 2003 the Korabelnyy Court received a reply from the Novorossiysk Court.

19. On 12 March 2004 the Regional Court amended the ruling of 22 December 2003, reducing the scope of the restrictions imposed on the users of the plot.

20. On 8 April 2004 Mr L.'s successors appealed in cassation against the rulings of 22 December 2003 and 12 March 2004. On 15 June 2006 the Supreme Court rejected their appeal in cassation.

21. On 27 December 2006 the Korabelnyy Court partly allowed the applicant's claim, ordered Mr L.'s successors to move the fence between the plots and dismissed the counterclaim.

22. On 26 March 2007 the Regional Court dismissed an appeal lodged by Mr L.'s successors.

23. On 20 April 2007 Mr L.'s successors lodged an appeal in cassation with the Supreme Court against the judgment of 27 December 2006 and the ruling of 26 March 2007.

24. On 23 May 2007 the Korabelnyy District Bailiffs' Service initiated enforcement proceedings.

25. On 7 June 2007 the Korabelnyy Court rectified the judgment of 27 December 2006. On 30 January 2008 the Regional Court quashed the ruling of 7 June 2007.

26. In the period from 23 May 2007 to January 2009 Mr L.'s successors sought suspension of the enforcement proceedings, challenged the Bailiffs' actions, sought interpretation of the judgment of 27 December 2006 and sought an additional judgment on numerous occasions.

27. Following the applicant's request of 21 May 2008, on 20 June 2008 the Korabelnyy Court ruled to reverse the execution of the judgments of 11 January 2000 and 16 March 2000 which had been enforced in July 2000. The ruling of 20 June 2008 was upheld by the Regional Court on 16 October 2008.

28. In September 2008 the Korabelnyy District Bailiffs' Service lodged a request with the Korabelnyy Court seeking interpretation of the operative part of the judgment of 27 December 2006. Mr L.'s successors lodged a request with the same court seeking an additional judgment and interpretation of the same judgment. On 4 November 2008 the court dismissed these requests.

29. On 29 January 2009 the Regional Court quashed the ruling of 4 November 2009 and remitted the case to the first-instance court for fresh consideration.

30. The parties did not inform the Court about the outcome of the cassation appeal lodged by Mr L.'s successors on 20 April 2007.

THE LAW

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

31. 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

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.

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. They further contended that the period when the case was pending before the Novorossiysk Court should not be taken into account. The Government finally maintained that the length of proceedings in the applicant's case had not been unreasonable.

2. Period to be taken into consideration

34. The Court notes that the proceedings in question started on 25 November 1998 and are still pending. It further notes that despite the ruling of 1 September 2003 which requested certain actions be taken by

another jurisdiction, the proceedings remained pending before the Korabelnyy Court (see paragraphs 16 and 17 above). Therefore, the period when the request was pending before the Novorossiysk Court should not be excluded from the overall length of the proceedings.

35. Thus, the overall duration of the proceedings, excluding the period from 12 April 2000 to 6 October 2000 when there existed the final judgment, which was subsequently quashed, has been more than ten years. The case was considered by the courts at three levels of jurisdiction.

3. Reasonableness of the length of the proceedings

36. 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).

37. 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.

38. 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 (in particular, the remittals of the case for fresh consideration, even after a final judgment had been adopted, the failure to inform the applicant about a decision taken in the case, and a prolonged period of inactivity in considering Mr L.'s successors' cassation appeal) are attributable to the respondent State.

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).

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 finds that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. The applicant complained under Article 6 § 1 about unfairness of the proceedings in her case. In particular, she alleged that the judges sitting in her case were not impartial. She further complained that in rendering the

judgments of 11 January 2000 and 16 March 2000 the domestic courts had violated Article 1 of Protocol No. 1. Lastly, she complained without invoking any Article of the Convention or Protocols thereto about non-enforcement of the judgment of 27 December 2006 and the ruling of 20 June 2008.

43. 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

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 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

46. The Government contested the applicant's claim.

47. 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, ruling on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 3,200 in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant did not submit any separate claim for costs and expenses. Therefore, the Court makes no award under this head.

C. Default interest

49. 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 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 3,200 (three thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President