



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

FIFTH SECTION

CASE OF YELENA IVANOVA v. UKRAINE

(Application no. 4640/04)

JUDGMENT

STRASBOURG

18 February 2010

FINAL

28/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yelena Ivanova v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 4640/04) 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 Nikolayevna Ivanova (“the applicant”), on 13 January 2004.

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

3. On 10 November 2008 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1957 and lives in the town of Gorlovka, Ukraine.

1. Background to the case

5. From 30 January 1991 to 12 June 1998 the applicant was married to S.D. During this period they lived in an apartment situated in a private house owned by S.D. (hereafter “the apartment”).

6. On 23 May 1998 S.D. made a written undertaking to pay a debt to K.A., a third person, by 30 May 1998. On the latter date S.D. made another written undertaking to pay a debt to S.N., a third person, by 30 June 1998.

7. On 18 June 1998 S.D. made a gift of his apartment to the applicant which was certified by a notary officer.

8. Subsequently K.A. and S.N. sued S.D. By two separate judgments of 7 October 1998 the Tsentralno-Miskyy District Court of Gorlovka ("the District Court") ordered S.D. to pay the claimed debts. In consequence, enforcement proceedings were instituted.

2. Proceedings on rescission of the gift

9. On 4 January 1999 S.D. instituted proceedings in the District Court against the applicant, asking the court to declare the gift of the apartment of 18 June 1998 void.

10. On 7 February 2000 the District Court ordered the attachment of the apartment upon S.D.'s request.

11. On 1 March 2000 the District Court declared the gift of 18 June 1998 null and void. On 29 May 2000 the Donetsk Regional Court (after June 2001 the Donetsk Regional Court of Appeal - hereafter "the Court of Appeal") upheld this judgment.

12. On 2 April 2001 the District Court lifted, upon S.D.'s request, the attachment order of 7 February 2000 as the judgment of 1 March 2000 had already become final. The applicant appealed.

13. On 9 July 2001 the Court of Appeal quashed the decision of 2 April 2001 and remitted the case for fresh consideration.

14. On 5 November 2001 the District Court lifted the attachment order of 7 February 2000.

15. On 24 March 2003 the Supreme Court of Ukraine, acting under the new cassation procedure, dismissed the applicant's appeal against the decisions of 1 March and 29 May 2000.

3. Proceedings on the property right over the apartment

16. On 3 August 2000 the applicant instituted proceedings in the District Court against S.D., K.A. and S.N., claiming ownership of a part of the apartment.

17. Meanwhile, in the course of the proceedings on enforcement of the judgments of 7 October 1998, two public auctions managed by the Ukrspetsjust State Company and aiming to sell the disputed apartment were held but nobody expressed the wish to buy it. On 28 May 2001, following these unsuccessful auctions, the State Bailiffs' Service decided to transfer the property right over this apartment to K.A. and S.N. in payment of the debts awarded to them. On 12 June 2001 this transfer was certified by the relevant notary office.

18. On 30 July 2001 the District Court suspended the proceedings pending outcome of the proceedings against the Bailiffs' Service (see paragraph 28 below). The next hearing was held on 14 October 2002.

19. On 24 February 2004 the court found against the applicant. On 14 October 2004 the Court of Appeal quashed this judgment and remitted the case to the District Court for fresh consideration.

20. On 16 September 2004 the local prosecutor entered the proceedings on behalf of the applicant.

21. On 25 October 2004 the applicant lodged an additional claim challenging the decision of 28 May 2001 and the transaction of 12 June 2001.

22. In April 2005 the applicant amended her claims, challenging the property right of K.A. and S.N. over the disputed apartment.

23. On 12 May 2005 the District Court ordered the attachment of the half of the house in which the disputed apartment was situated.

24. On 17 August 2005 the District Court rejected the applicant's claims. On 17 March 2006 the Court of Appeal quashed this judgment and remitted the case to the District Court for fresh consideration.

25. Subsequently, in the course of the proceedings before the District Court, the State Bailiffs' Service and the Ukrspetsjust State Company entered the proceedings as third parties.

26. In April 2007 the applicant introduced an additional claim challenging the contract concluded between third persons on the sale of another part of the house in which the apartment was situated.

27. The proceedings are still pending before the District Court.

4. Other proceedings

28. On an unspecified date the applicant instituted proceedings in the District Court against the State Bailiffs' Service. She challenged its actions aiming to sell the disputed apartment. She also asked the District Court to annul the decision of 28 May 2001 and the transaction of 12 June 2001. On 22 February 2002 the court discontinued the proceedings as the applicant was not a party to the impugned enforcement proceedings. On 16 May 2002 the Court of Appeal rejected the applicant's appeal.

29. On an unspecified date the applicant instituted proceedings in the District Court against the local department of justice and the notary's office, which had certified the transfer of the property right from S.D. to K.A. and S.N., seeking to annul the decision of 28 May 2001 and the transaction of 12 June 2001, respectively. On 16 August 2002 the court issued a ruling about the shortcomings of the applicant's claim and gave her the possibility to correct these shortcomings. The applicant did not provide any further information.

30. The applicant also tried to institute criminal proceedings against the State Bailiffs, K.A. and S.N., but to no avail.

THE LAW

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

31. The applicant complained about the excessive length of the proceedings instituted in August 2000. The Court will consider her complaint under Article 6 § 1 of the Convention. As far as relevant, this Article 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...”

32. The Government contested that argument.

33. The period to be taken into consideration began on 3 August 2000 and has not yet ended. It has thus lasted nine years and six months for two levels of jurisdiction.

A. Admissibility

34. 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

35. 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).

36. 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).

37. 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 ALLEGED VIOLATIONS OF THE CONVENTION

38. Without invoking any Article of the Convention or Protocols thereto the applicant complained about unfairness and outcome of the proceedings. She further complained under Article 1 of Protocol No. 1 that she had been deprived of her property. Lastly, she invoked Article 5 of Protocol No. 7 to the Convention referring to the facts of the case.

39. Having 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.

40. 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

41. 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

42. The applicant requested that the Court award her compensation in respect of pecuniary and non-pecuniary damage. She left the matter to the Court's discretion.

43. The Government contested the applicant's claim.

44. 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, it awards the applicant EUR 3,200 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant made no separate claim as to costs and expenses. Therefore, the Court makes no award under this head.

C. Default interest

46. 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 instituted in August 2000 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) plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President