



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

FIFTH SECTION

CASE OF ROSTUNOVA v. UKRAINE

(Application no. 20165/04)

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 Rostunova 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,

Zdravka Kalaydjieva, *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. 20165/04) 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 Lyudmila Alekseyevna Rostunova (“the applicant”), on 16 May 2004.

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

3. On 12 November 2007 the Court decided to give notice of the application to the Government. It 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 1951 and lives in Kyiv.

5. On 15 November 2000 the applicant instituted proceedings in the Podilsky District Court of Kyiv against the Doktor Aibolit Private Clinic seeking compensation for pecuniary and non-pecuniary damage allegedly caused to her by inappropriate dental treatment. Mr S., the doctor who had treated the applicant, joined the proceedings as a third party.

6. On 14 December 2000 the court ordered a forensic examination, which was completed in July 2001.

7. On 26 September 2001 Mr S. lodged a counter-claim against the applicant seeking compensation for damage allegedly caused to his reputation. On an unspecified date the counter-claim was disjoined from the proceedings.

8. On 30 April 2002 the court found against the applicant.

9. On 23 September 2002, following an appeal by the applicant, the Kyiv Court of Appeal quashed that judgment and remitted the case to the same court for fresh consideration.

10. On 21 November 2002 the applicant requested the court to join the Cabot Private Clinic to the case as a co-defendant. On an unspecified date that request was granted.

11. On 3 July 2003 the Podilskyi Court declined to consider the applicant's claim because she had failed to appear before the court on that day.

12. On 11 September 2003 the Court of Appeal upheld that ruling.

13. On 1 June 2005, following an appeal in cassation by the applicant, the Supreme Court quashed the decisions of 3 July and 11 September 2003 and remitted the case for fresh consideration on the merits to the Podilskyi Court.

14. On 11 May 2007 the Podilskyi Court rejected the applicant's claims as unsubstantiated.

15. On 11 June 2007 the applicant lodged an appeal.

16. On 19 March 2009 the Court of Appeal upheld the judgment of 11 May 2007.

17. On 7 August 2009 the Supreme Court rejected the applicant's request for leave to appeal in cassation as unsubstantiated.

18. The applicant modified her claims on three occasions and lodged several requests which concerned various procedural matters, including audio recording of hearings, withdrawal of judges, securing of evidence and so on. Out of thirty-five hearings held in the course of the proceedings, nine were adjourned on account of the absence of a judge, three were adjourned because of the unavailability of audio equipment used to record hearings, two were adjourned at the request of the applicant, five were adjourned owing to the defendants' failure to appear, one was adjourned owing to both parties' failure to appear, and two were adjourned owing to witnesses' failure to appear.

THE LAW

I. SCOPE OF THE CASE

19. The Court notes that, after the communication of the application to the respondent Government, the applicant introduced new complaints under Articles 2 and 14 of the Convention.

20. In the Court's view, the new complaints are not an elaboration of the applicants' original complaints lodged about five years earlier and on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

21. 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, in so far as relevant, reads as follows:

Article 6 § 1

“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 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

23. The Government submitted that the proceedings had been lengthy on account of the complexity of the case and the conduct of the applicant, who had lodged various appeals and procedural requests and had modified her claims on a number of occasions. In the Government's view there were no delays attributable to the domestic authorities.

24. The applicant disagreed.

25. The Court notes that the period to be taken into consideration began on 15 November 2000 and lasted until 7 August 2009. It thus lasted for about eight years and nine months.

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. The Court considers that, although the applicant contributed to the overall length of the proceedings by lodging appeals and procedural requests and by modifying her claims, the main responsibility for the protracted length of the proceedings rests with the domestic courts. The Court can see no valid reason why the proceedings, which did not involve any complicated factual or legal issues, should have remained uncompleted for such a substantial period of time.

28. 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).

29. Having examined all the materials submitted to it and in view of the above considerations, 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.

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

III. OTHER COMPLAINTS

31. The applicant complained under Article 3 of the Convention that the allegedly inappropriate dental treatment amounted to torture. The applicant also complained under Articles 6 § 1 and 13 of the Convention about the outcome of the proceedings. She further complained under Article 1 of Protocol No. 1 on account of the outcome of the proceedings.

32. Having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that the evidence discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

33. The applicant claimed 3,272,379 euros (EUR) in respect of non-pecuniary damage and EUR 72,076 in compensation for pecuniary damage.

34. The Government contested these claims.

35. 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 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

36. The applicant also claimed EUR 840 for costs and expenses incurred before the domestic courts.

37. The Government contested the claim.

38. 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 rejects the above claim.

C. Default interest

39. 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 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 1,600 (one thousand six 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