



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

FIFTH SECTION

CASE OF PREKRASNYI v. UKRAINE

(Application no. 33697/04)

JUDGMENT

STRASBOURG

18 February 2010

FINAL

18/05/2010

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

In the case of Prekrasnyy 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 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. 33697/04) 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, Mr Pyotr Fedotovych Prekrasnyy (“the applicant”), on 5 September 2004.

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

3. On 19 January 2009 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 1936 and lives in the town of Yalta, Ukraine.

5. The applicant was the owner of several underground garages. On 13 September 1995 the applicant and the private company OJSC Alima-K (“the company”) signed a joint venture contract (“the contract”) under which the company took on an obligation to construct two office buildings above the garages (“the disputed property”).

6. On 25 September 1998 the applicant instituted proceedings against the company in the Yalta Court, alleging that it had failed to comply with the terms of the contract. The applicant requested that the court declare the contract void. He also sought a ruling requiring the company to destroy the unfinished buildings. Lastly, he claimed compensation for pecuniary and non-pecuniary damage.

7. On 7 June 1999 the Yalta Court allowed the applicant's claims in part. The judgment became final.

8. On 22 October 1999, following an objection (*npomecm*) by the Prosecutor of the Autonomous Republic of Crimea, the Presidium of the Supreme Court of the Autonomous Republic of Crimea quashed the judgment of 7 June 1999 and remitted the case to the first-instance court for fresh consideration.

9. On 11 December 2000 the Yalta Court found against the applicant. On 15 December 2000 the Yalta Court adopted an additional judgment in the case. These judgments became final.

10. On 19 February 2001 the applicant lodged a new claim against the company seeking a ruling requiring the latter not to hinder him in use of the garages.

11. On 20 March 2001 the company instituted proceedings against the applicant seeking division of the disputed property and claiming ownership rights to half of it. The company also claimed compensation for pecuniary and non-pecuniary damage.

12. On 20 April 2001, following an objection (*protest*) by the Deputy Prosecutor of the Autonomous Republic of Crimea, the Presidium of the Supreme Court of the Autonomous Republic of Crimea quashed the judgment of the Yalta Court of 11 December 2000 and the additional judgment of 15 December 2000 and remitted the case to the first-instance court for fresh consideration.

13. On 30 July 2001 the Yalta Court joined the proceedings.

14. On 28 May 2002 the Yalta Court dismissed the applicant's claims and allowed the company's claims in part. On 16 September 2002 the Court of Appeal of the Autonomous Republic of Crimea upheld that judgment.

15. On 19 May 2004 the Supreme Court quashed the decisions of the lower courts and remitted the case to the first-instance court for fresh consideration.

16. By a judgment of 31 January 2006 the Yalta Court found against the applicant. By the same judgment the court partly allowed the company's claims. The court, *inter alia*, recognized the company's right to use a half of the disputed property.

17. On 15 November 2006 the Court of Appeal of the Autonomous Republic of Crimea remitted the case to the first-instance court since the latter failed to examine all the claims lodged by the parties to the proceedings.

18. By additional judgment of 26 January 2007 the Yalta Court examined the remainder of the claims. The court partly allowed the company's claim for ownership and rejected the remainder of the applicant's claim in respect of pecuniary damage.

19. On 24 April 2007 the Court of Appeal of the Autonomous Republic of Crimea upheld the judgment of 31 January 2006. By the same ruling the court of appeal dismissed the company's claim for ownership and upheld the remainder of the additional judgment of 26 January 2007.

20. The applicant appealed in cassation before the Supreme Court. On 25 March 2009 the Supreme Court quashed the part of the judgment of 31 January 2006 concerning the company's right to use a half of the disputed property and upheld the remainder of the decisions of the lower courts.

THE LAW

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

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 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...”

22. The Government contested that argument.

23. The period to be taken into consideration began on 25 September 1998 and ended on 25 March 2009. However, no proceedings were pending between 7 June and 22 October 1999 and between 15 December 2000 and 20 April 2001 after the respective judgments became final and until the original main proceedings were resumed after the quashing of these judgments. Therefore, the overall duration of the proceedings was about nine years and nine months. During this period the case was considered by the courts at three levels of jurisdiction.

A. Admissibility

24. 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

25. 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).

26. 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).

27. 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

28. The applicant further complained under Article 6 § 1 of the Convention about the outcome of the proceedings. In particular, he alleged that the domestic courts failed to allow his claims. He further invoked Article 41 and Article 1 of Protocol No. 1 referring to the facts of the case.

29. Having carefully examined the applicant's submissions in the light of all the material in its possession, and in so far 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.

30. 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

31. 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

32. The applicant claimed 484,626¹ Ukrainian hryvnias in respect of pecuniary damage. He further alleged that he had sustained non-pecuniary damage; he left this matter to the Court's discretion.

33. The Government contested the claim in respect of pecuniary damage. They further observed that the amount of compensation for non-pecuniary damage should be determined in view of the Court's case-law.

34. 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 2,400 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant made no claim for costs and expenses. Therefore, the Court makes no award under this head.

C. Default interest

36. 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 about 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 on account of the excessive length 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 2,400 (two thousand four 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;

¹ About 40,539 euros

(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