



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

FIFTH SECTION

CASE OF MYKULYN v. UKRAINE

(Application no. 35187/04)

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 Mykulyn 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,

Mirjana Lazarova Trajkovska,

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. 35187/04) 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 Ivan Mykhaylovych Mykulyn (“the applicant”), on 20 September 2004.

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

3. On 12 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 1941 and lives in the village of Stari Bogorodchany, Ivano-Frankivsk Region, Ukraine.

5. The applicant and Mr L. co-owned a small estate which comprised a plot of land, a house, a shed, a well and a fence (“the estate”). On 4 January 1995 the applicant instituted proceedings against Mr L. in the Bogorodchany Court seeking division of the estate.

6. On 18 January 1995 Mr L. lodged a counterclaim seeking a larger share of the estate. On the same day the Bogorodchany Court joined the proceedings.

7. On 12 April 1995, following an order of the Deputy President of the Ivano-Frankivsk Regional Court¹, the case was transferred to the Tismenitsky Court.

8. On 16 June 1999 the latter allowed the applicant's claim in part. The applicant appealed in cassation. On 4 January 2000 the Ivano-Frankivsk Regional Court upheld the judgment of 16 June 1999. The judgment became final.

9. On 14 July 2000, following an objection (*protest*) by the President of the Ivano-Frankivsk Regional Court, the Presidium of the Ivano-Frankivsk Regional Court quashed the judgment of 16 June 1999 and remitted the case to the Tismenitsky Court for fresh consideration.

10. On 29 June 2005, following an order of the Ivano-Frankivsk Regional Court of Appeal, the case was transferred to the Galitsky Court.

11. On 8 April 2008 the Galitsky Court partly allowed the applicant's and Mr L.'s claims.

12. On 6 May 2008 the Galitsky Court gave an additional judgment, ordering the applicant to reimburse legal expenses to Mr L.

13. The applicant appealed against these judgments.

14. On 30 September 2008 the Ivano-Frankivsk Regional Court of Appeal upheld the judgment of 8 April 2008 and the additional judgment of 6 May 2008.

15. The applicant appealed in cassation. On 10 March 2009 the Supreme Court upheld the decisions of the lower courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

16. 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...”

17. The Government contested that argument.

¹ Since June 2001, the Ivano-Frankivsk Regional Court of Appeal

18. 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. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 10 March 2009. Thus, the overall duration of the proceedings, excluding the period from 4 January 2000 to 14 July 2000 when the final judgment which was subsequently quashed was in force, was about eleven years. The case was considered by the courts at three levels of jurisdiction.

A. Admissibility

19. 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

20. 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).

21. 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).

22. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE OUTCOME OF THE PROCEEDINGS

23. The applicant finally complained under Article 6 § 1 of the Convention that the court failed to allow his claims in full.

24. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of Article 6 § 1 of the Convention. It

follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the claim.

28. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant did not submit any claim under this head. The Court, therefore, makes no award under it.

C. Default interest

30. 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 4,000 (four thousand 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