



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

FIFTH SECTION

CASE OF BELOUS v. UKRAINE

(Application no. 22580/04)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

08/07/2010

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

In the case of Belous 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,

Isabelle Berro-Lefèvre, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 22580/04) 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 Yana Stanislavovna Belous (“the applicant”), on 7 June 2004.

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

3. On 12 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 1988 and lives in the town of Dneprodzerzhinsk, Ukraine.

A. Background information

5. As of August 1996, the applicant, then a minor, was registered as a resident in a State-owned apartment (“the first apartment”) along with S.B., her mother, A.Z., her maternal grandmother, and R.Z., her maternal uncle. According to the law in place at the material time, all residents had the right to privatise the apartment with equal shares.

6. However, at the material time the applicant's uncle was serving a sentence in a penitentiary, the applicant's mother was missing, and the applicant lived with G.G., subsequently appointed her legal guardian, at a different address. On 9 August 1996 A.Z. privatised the apartment and became its sole owner. The officers of the housing authority who had issued her with the necessary documents were subsequently indicted for fraud and negligence and later amnestied.

7. On 16 August 1996 A.Z. sold the apartment to Y.K. On 15 November 1996 Y.K. exchanged it for an apartment owned by T.M. ("the second apartment"). On 27 January 1997 he sold the second apartment to O.V., who then gave it as a gift to N.K. In 1998 T.M. died and her two minor sons, who remained the owners of the first apartment, were taken into public care and accommodated in boarding schools.

8. The first apartment has remained empty since its first sale.

B. First set of civil proceedings

9. On 15 December 1998 the Zavodsky District Prosecutor of Dniprodzerzhinsk, having determined that the applicant had insufficient means to pay for representation of her lawful interests before the court, instituted civil proceedings on her behalf in the Zavodsky District Court of Dniprodzerzhinsk ("the Zavodsky Court") seeking annulment of the privatisation and of the sale of the first apartment to Y.K.

10. The applicant's legal guardian, G.G. was summoned and participated in the proceedings as the applicant's statutory representative. On an unspecified date the applicant was summoned to the proceedings as a third party.

11. Between December 1998 and February 2000 there were no further procedural actions.

12. On 7 February 2000 the Prosecutor amended his claims, requesting annulment of all the transactions with regard to the first and the second apartments, restitution of the applicant's right to reside in the first apartment, as well as the return of the title to the second apartment to T. M.'s children.

13. The first hearing was scheduled for 12 October 2000.

14. Between October 2000 and June 2002 the court scheduled some nineteen hearings, some thirteen of which were adjourned on account of the absences of one or more of the defendants or their representatives. On three other occasions the Prosecutor failed to appear, and on one occasion the hearing was adjourned on account of the judge's sickness.

15. On 14 June 2002 the Zavodsky Court dismissed the Prosecutor's claims, having found that Y.K. had purchased the first apartment in good faith, while the requests for annulment of the subsequent transactions were unsubstantiated in this context. The Prosecutor appealed.

16. On 22 July 2002 the Zavodsky Court found that the Prosecutor had failed to provide full details of the parties in his appeal and gave him a fixed time-limit to rectify these shortcomings.

17. On 16 October 2002 the Zavodsky Court returned the Prosecutor's appeal as "not lodged" as he had not rectified the shortcomings as instructed.

18. On 6 March 2003 the Prosecutor appealed against the decision of 16 October 2002, requesting leave to appeal out-of-time, in view of the fact that the Zavodsky Court had not notified him of either the decision of 22 July or that of 16 October 2002.

19. On 11 March 2003 the Zavodsky Court gave the Prosecutor leave to appeal out-of-time.

20. On 21 May 2003 the Dnipropetrovsk Regional Court of Appeal ("the Regional Court") returned the submissions to the first-instance court as the latter had failed to supplement them with a copy of the Prosecutor's original appeal against the judgment of 14 June 2002.

21. On 21 August 2003 the Regional Court quashed the decision of 16 October 2002 to return the Prosecutor's appeal against the judgment as "not lodged".

22. On 23 October 2003 the Prosecutor was granted leave to appeal out of time against the judgment of 14 June 2002.

23. On 17 December 2003 the Regional Court quashed the judgment of 14 June 2002 and remitted the case for fresh consideration, having found that the first-instance court had not given due regard to the fact that A.Z., having fraudulently privatised the apartment, had been unable to convey good title to third parties.

24. Between February 2004 and December 2006 the court scheduled fifteen hearings, some seven of which were adjourned on account of the absences of one or more of the defendants. On three other occasions the Prosecutor failed to appear. On one occasion the judge failed to appear as he was on holiday, on three occasions because he was ill, and on five occasions because he was involved in other proceedings.

25. On 20 December 2006 the Zavodsky Court terminated the proceedings as the applicant had reached the age of majority.

C. Second set of civil proceedings

26. On an unspecified date in March 2007 the Dniprodzerzhinsk Prosecutor, acting in the applicant's interests, instituted new civil proceedings in the Zavodskoy Court. He challenged the privatisation of the apartment by A.Z and requested the court to declare null and void the sale and exchange of the first apartment. The Prosecutor also claimed the applicant's property right over the apartment. On 4 April 2008 the court allowed the claims.

THE LAW

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

27. The applicant complained that the length of the first set of the proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention. She further complained under Article 13 that there was no effective remedy for the length of proceedings complaint. The provisions at issue read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

28. The period to be taken into consideration began on 15 December 1998 and ended on 20 December 2006. It thus lasted approximately eight years at two levels of jurisdiction.

A. Admissibility

29. The Government contended that the dispute at issue did not concern the applicant's civil rights and obligations. They concluded therefore that Article 6 § 1 of the Convention was not applicable to the proceedings. The Government further submitted that the complaint should be rejected for non-exhaustion of domestic remedies since the applicant had failed to appeal against the ruling of 20 December 2006.

30. The applicant disagreed.

31. The Court observes that the claims were lodged in the applicant's interests by a public official, who had a power to intervene in order to protect the applicant's rights (see *Teliga and Others v. Ukraine*, no. 72551/01, § 82, 21 December 2006). The Court further notes that the applicant, as a minor, was represented by her guardian in the proceedings. The dispute at issue concerned, *inter alia*, the applicant's right to reside in the apartment in question. Accordingly, the proceedings in question concerned the determination of the applicant's civil rights in the sense of Article 6 § 1 of the Convention.

32. The Court notes that the application 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

33. The Government lodged no observations on the merits of the application.

34. The applicant maintained her complaint.

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 and Article 13 of the Convention in cases raising issues similar to the one in the present case (see for example *Frydlender*, cited above, § 46 and *Vashchenko v. Ukraine*, no. 26864/03, §§ 55 and 59, 26 June 2008).

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.

38. There has accordingly been a violation of Article 6 § 1 and Article 13 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. In her initial application the applicant claimed 3,000 euros (EUR) by way of compensation for pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

41. Within the time-limit allotted by the Court for submission of just satisfaction claims, the applicant claimed payment of compensation in respect of pecuniary and non-pecuniary damage. However, she did not specify the amounts to be paid.

42. The Government found the initial claims exorbitant and unsubstantiated.

43. 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 2,800 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

45. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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 2,800 (two thousand eight 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President