



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

FIFTH SECTION

CASE OF GUTKA v. UKRAINE

(Application no. 45846/05)

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 Gutka v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *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. 45846/05) 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 Paraskoviya Volodymyrivna Gutka (“the applicant”), on 28 November 2005.

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

3. On 5 March 2009 the President of the Fifth Section decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect 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 1932 and lives in Lutsk, Ukraine.

5. By judgment of 14 December 1998 the Lutsk City Court partitioned a property inheritance between the applicant's mother and her relatives.

6. On 26 August 1999 the applicant's mother gifted the applicant part of an apartment in Lutsk awarded to her by the above-mentioned judgment.

7. In September 1999 the applicant's mother instituted proceedings in the Lutsk City Court against Z.V., M.V. and three other persons (her relatives), seeking their eviction from her apartment.

8. On 18 December 1999 the applicant's mother died. On 12 January 2000 the applicant was admitted to the proceedings as her next of kin.

9. In February 2000 Z.V. and M.V. lodged a counterclaim, seeking to have the contract of 26 August 1999 declared void; subsequently they sought invalidation of the applicant's mother's will which was in favour of the applicant. They also sought to have property rights over the relevant parts of the disputed apartment acknowledged as theirs.

10. On 29 January 2003 the court found for the applicant and ordered the defendants to vacate the apartment. It dismissed the counterclaim by Z.V. and M.V.

11. The defendants appealed but due to the shortcomings of their appeal the proceedings were protracted for four months.

12. On 13 August 2003 the Volyn Regional Court of Appeal, having found, *inter alia*, that the lower court had failed to examine crucial pieces of evidence, set aside that judgment and remitted the case for fresh examination.

13. On 5 September 2003 the applicant appealed in cassation against the latter decision; on 12 October 2006 the Supreme Court of Ukraine dismissed her appeal.

14. Of almost thirty hearings held between September 1999 and 12 October 2006 seven were adjourned due to the defendants' failure to appear before the court. Within this period three forensic examinations were held staying the proceedings in total for one year and four months.

15. In November 2006 the Lutsk City Court took over the case.

16. From 15 March to 23 July 2007 the proceedings were stayed as the additional forensic examination had been ordered.

17. On 20 December 2007 the Lutsk City Court declared the contract of 26 August 1999 and the applicant's mother's will void. It dismissed the applicant's request to have the defendants evicted.

18. Of the eleven hearings held by the first instance court one was adjourned due to the applicant's and two due to the defendants' failure to appear before the court.

19. On 2 April and 7 October 2008 the Volyn Regional Court of Appeal and the Supreme Court of Ukraine dismissed the applicant's appeals and upheld the judgment.

THE LAW

I. LENGTH OF PROCEEDINGS

20. 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...”

She also complained that there was no effective remedy for her complaint that the length of the civil proceedings in her case had been excessive. She relied in that respect on Article 13 of the Convention which reads as follows:

“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.”

21. The period to be taken into consideration began on 12 January 2000, when the applicant joined the proceedings, and ended on 7 October 2008. It thus lasted eight years and almost nine months for three levels of jurisdiction.

A. Admissibility

22. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

23. The Government submitted that the length of the proceedings in question had been caused by the complexity of the case. In this regard they referred to the number of litigants and other participants, the number of claims the courts had had to adjudge, the complexity of legal and factual issues raised in the case and that the courts needed forensic examinations on several occasions. They also maintained that the parties, whose conduct was not imputable to the respondent State, themselves caused considerable delays in the proceedings at issue, for example, by failing to attend court hearings, requesting additional pieces of evidence, modifying their claims,

lodging appeals against courts decisions, failing to comply with procedural requirements and so on. In sum they concluded that the domestic judicial authorities were acting with due diligence in the present case.

24. The applicant, albeit agreeing that the case was complex and needed more time for examination, disagreed that period in question was reasonable. In particular, she pointed at the deficiency of the judgment of 29 January 2003, which brought about retrial, and at the delay caused by the Supreme Court of Ukraine (see paragraph 13 above).

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. Turning to the circumstances of the present case, the Court agrees with the parties that the number of participants, number of claims, and the legal and factual issues involved complicated the case before the domestic courts. However, for the reasons set out below, such complexity itself cannot justify the length of proceedings under consideration.

27. The Court further accepts in part the Government's contention that the parties contributed to the length of the impugned proceedings. It is true that, although a party to civil proceedings cannot be blamed for using the avenues available to him under domestic law in order to protect his interests, he must accept that such actions necessarily prolong the proceedings concerned (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001). By failing to comply with the procedural requirements for lodging of an appeal the defendants protracted the proceedings for four months (see paragraph 11 above), whereas the applicant, by lodging appeals which were ultimately dismissed as unfounded, extended the proceedings for additional ten months (see paragraph 19 above).

28. The remainder of the Government's arguments concerning the parties' conduct does not exonerate the respondent State as it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-V and *Nesterova v. Ukraine*, no. 10792/04, § 43, 28 May 2009).

29. Moreover, the Court, agreeing with the applicant, points out that her appeal in cassation was pending before the Supreme Court of Ukraine for more than three years (see paragraph 13 above) and that cannot be considered as reasonable and proper administration of justice.

30. 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, and *Efimenko v. Ukraine*, no. 55870/00, § 58, 18 July 2006).

31. 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.

2. Article 13 of the Convention

32. Referring to their conclusion that there was no violation of Article 6 § 1 of the Convention in the present case, the Government contended that there was no violation of Article 13 of the Convention either.

33. The applicant disagreed.

34. The Court has frequently found violations of Article 13 of the Convention, stating that the current Ukrainian legislation does not provide a remedy for complaints concerning the length of proceedings (see *Efimenko v. Ukraine*, cited above, §§ 48-50 and 64 and subsequent case-law). In the present case the Court finds no reason to depart from that case-law.

There has accordingly also been a breach of Article 13.

II. OTHER COMPLAINTS

35. The applicant also complained under Article 6 § 1 of the Convention about the courts' assessment of the evidence and interpretation of the law and challenged the outcome of the proceedings. She also relied on Article 1 of Protocol No. 1.

36. Having carefully 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.

37. 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

38. 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

39. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government contested the claim.

41. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award her EUR 1,200 under that head.

B. Costs and expenses

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

C. Default interest

43. 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 complaints under Articles 6 § 1 and 13 of the Convention concerning the length of proceedings and lack of effective remedies in that respect 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* 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 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into 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