



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

FIFTH SECTION

**CASE OF PAVLOVSKA v. UKRAINE**

*(Application no. 36949/02)*

JUDGMENT

STRASBOURG

3 July 2008

**FINAL**

***03/10/2008***

*This judgment will become final in the circumstances set out in Article 44  
§ 2 of the Convention. It may be subject to editorial revision.*



**In the case of Pavlovska v. Ukraine,**

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Volodymyr Butkevych,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 June 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 36949/02) 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, Mrs Lidiya Ivanivna Pavlovska (“the applicant”), on 23 September 2002.

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

3. On 16 October 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1951 and lives in the city of L’viv, Ukraine.

5. On 19 April 1999 the Shevchenkovsky District Administration of the L’viv City Council appointed the applicant as tutor of her disabled sister, P.

6. On 6 October 1999 the applicant instituted proceedings in the Shevchenkovsky District Court of L’viv [Шевченківський районний суд м. Львова] against M., seeking rescission of a purchase contract of an

apartment, concluded between him and P. Subsequently it was established that the apartment in question had been resold to G. and the latter, accordingly, was joined to the proceedings as a co-defendant.

7. On 1 November 1999 the court ordered the forensic psychiatric examination of P. It also ordered attachment of the disputed apartment.

8. On 21 April 2000 the expert report was submitted. According to this report, when concluding the above contract P. lacked legal capacity to act.

9. On 17 October 2000 the court ordered an additional forensic psychiatric examination.

10. On 18 December 2000 the second expert report confirmed the conclusions of the first examination.

11. On 5 April 2001 the court ordered a repeated forensic psychiatric examination. The applicant appealed against this ruling.

12. On 7 May 2001 the L'viv Regional Court upheld the ruling in question. In particular, it pointed out that ordering another expert examination was necessary in so far as the previous ones were not comprehensive.

13. On 9 July 2001 the third expert reached the same conclusions as the previous ones.

14. On 23 November 2001 the court ordered an expertise of the apartment's value.

15. On 26 December 2001 the expert report was submitted. According to this report, the disputed apartment cost 17,478<sup>1</sup> Ukrainian hryvnas (UAH).

16. On 4 January 2002 the Shevchenkivsky District Court of L'viv allowed the applicant's claim, invalidated the contracts at issue and awarded G. compensation in the amount of the apartment's value. The applicant appealed.

17. On 25 March 2002 the L'viv Regional Court of Appeal [*Апеляційний суд Львівської області*] (hereinafter "the Court of Appeal") upheld the judgment of the first instance court. The applicant appealed in cassation.

18. On 12 November 2003 the Supreme Court of Ukraine, pointing out a number of the lower courts' shortcomings, quashed the judgment of 4 January 2002 and the decision of 25 March 2002, and remitted the case for a fresh consideration to the first instance court.

19. On 26 May 2004 the Lychakivsky District Court of L'viv [*Личаківський районний суд м. Львова*] (hereinafter "the District Court"), to which the case was transferred, allowed the applicant's claim in part, invalidated the contracts at issue and awarded UAH 4,000<sup>2</sup> to be paid to M. by the applicant, and the same amount to be paid to G. by M.

---

<sup>1</sup> Around 3,629.37 euros (EUR)

<sup>2</sup> Around EUR 639.46

20. On 4 October 2004 the Court of Appeal quashed this judgment and remitted the case for a fresh consideration. It found, in particular, that such category of cases as the instant one should have been examined by a panel of judges whereas the impugned judgment had been rendered by a single judge.

21. On 26 September 2005 the District Court allowed the applicant's claim, invalidated the contracts in question and awarded UAH 4,000 to be paid to M. by the applicant, and the same amount to be paid to G. by M.

22. On 6 October 2005 G. lodged an appeal against this judgment.

23. On 12 January 2006 the case-file was sent to the Court of Appeal.

24. On 3 April 2006 the Court of Appeal revealed a number of procedural shortcomings of the inferior court, namely the failure to comply with its instructions as to the examination by a panel of judges (see paragraph 20 above), to follow instructions of the Supreme Court of Ukraine given in its decision of 12 November 2003 (see paragraph 18 above), and to summon the defendants in a proper way. Accordingly, it quashed the judgment of 26 September 2005 and remitted the case for a fresh consideration. The applicant appealed in cassation.

25. On 8 August 2006 the Supreme Court of Ukraine rejected the applicant's request for leave to appeal in cassation against the ruling of 3 April 2006.

26. On 25 June 2007 the District Court found in part for the applicant. In particular, it invalidated the purchase contract between P. and M., and ordered the latter to pay UAH 17,478 to the applicant. With regard to the purchase contract concluded between M. and G., the court found the latter to be a *bona fide* purchaser, and therefore this contract was valid. The applicant appealed.

27. On 8 November 2007 the Court of Appeal quashed this judgment in the part related to the compensation owed to the applicant by M., and rejected this claim. It upheld the remainder of the lower court's findings.

28. The applicant appealed in cassation and the proceedings are still pending before the Supreme Court of Ukraine.

29. Meanwhile, on 3 December 2007 the District Court lifted the attachment order of 1 November 1999 (see paragraph 7 above). On 14 April 2008 the Court of Appeal upheld this decision.

## THE LAW

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

30. The applicant complained that the length of 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...”

31. The Court notes that the proceedings at issue began on 6 October 1999 and are still pending. They have thus lasted eight years and eight months for three levels of jurisdiction.

#### A. Admissibility

32. The parties did not submit any observations in respect of the admissibility of this complaint.

33. 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

34. The Government contended that the applicant and the defendants had contributed to the length of proceedings and that the State could not be held liable for their behaviour. In particular, they averred that by requesting to adjourn the hearing on several occasions, constantly modifying her submissions, challenging judges, appealing against courts’ decisions, etc., the applicant herself caused certain delays to the proceedings. Further they pointed out that the case was complex and that the judicial authorities had acted with due diligence.

35. The applicant disagreed.

36. 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).

37. Turning to the facts of the present case, the Court observes that the case concerned the rescission of a purchase contract concluded by the applicant’s sister who had been declared incapacitated and required the

taking of expert evidence. However, the Court notes that by November 2001 all necessary pieces of expert evidence were taken and therefore the alleged complexity on points of facts could in no way prolong the proceedings up to the present day. By the same token the Court is not convinced that the present case was particularly complicated on points of law.

38. The Court further recalls 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). The Court agrees with the Government that the applicant has contributed, to certain extent, to the length of the proceedings by contesting the judgments in her case before the higher courts. Nevertheless, she cannot be held primarily responsible for the overall length of the proceedings in the instant case.

39. The Court observes that, although the national courts examined the case with a more or less reasonable expediency, the case was thrice remitted for a fresh consideration (paragraphs 18, 20 and 24 above). Therefore, it considers that the delay in the proceedings was mainly caused by the repeated re-examination of the case. Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it observes that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (*Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). Moreover, it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-...).

40. In the present case, the first instance court failed, amongst other, to comply with the higher courts' instructions. For instance, one of the reasons for reversal of the judgment of 26 September 2005 was the first instance court's disregard of the Supreme Court's instructions given in its decision of 12 November 2003. Another flaw was a repeated failure to examine the case by a panel of judges (see paragraph 24). Consequently the reversal of the judgment of 26 September 2005 led to one more round of the proceedings which are still pending.

41. In sum, having regard to the circumstances of the instant case as a whole, the Court concludes that there was unreasonable delay in disposing of the applicant's case.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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**

43. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

44. The Government contested the claim.

45. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 1,600 under that head.

### **B. Costs and expenses**

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

### **C. Default interest**

47. 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 remainder of the application admissible;
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 and six hundred euros) 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, plus any tax that may be chargeable;
  - (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 3 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President