



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

FIFTH SECTION

CASE OF SHAPOVAL v. UKRAINE

(Application no. 7411/05)

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 Shapoval 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,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *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. 7411/05) 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, Mr Oleg Yuryevich Shapoval (“the applicant”), on 10 February 2005.

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

3. On 6 May 2008 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 1956 and lives in the city of Donetsk, Ukraine.

1. Background to the case

5. At the material time the applicant and four other shareholders had equal shares in the private company A. (“the company”). In 1993 the

company bought certain premises from a private company in a building previously owned by the State.

6. In November 1993 the shareholders decided to liquidate the company and the liquidation procedure was initiated. On 27 March 1995 the liquidation procedure was completed and the company was removed from the relevant companies' register. As a result of the distribution of the company's property, the applicant acquired the title to the aforesaid premises ("the disputed property"). However, according to the applicant's submissions, he did not register his ownership of them.

2. Proceedings before the domestic courts

7. On 14 February 2000 Mrs K. and her minor children, the heirs of one of the shareholders of the company, instituted proceedings in the Kyivsky District Court of Donetsk against the applicant, challenging his title to the disputed property. The other shareholders and the Donetsk Regional Department of the State Property Fund were involved in the proceedings as third parties. The applicant lodged a counterclaim, seeking recognition of his title to the disputed property.

8. On 20 September 2000 the court ordered the attachment of the disputed premises.

9. In May 2004 the applicant lodged a claim against the State Property Fund before the Kyivsky District Court of Donetsk alleging that the latter had sold a part of the premises situated in the same building to a private company. The applicant challenged the sales contract alleging that these premises formed part of the disputed property. Initially the court considered the claim within the proceedings which were already pending. By a ruling of 14 June 2004 the court disjoined the claim into separate proceedings.

10. On 14 June 2004 the Kyivsky District Court of Donetsk found for Mrs K. It held, in particular, that the shareholders had failed to comply with the relevant legal procedure for the company's liquidation and the distribution of its property. In consequence, the court declared the related shareholders' decisions null and void, and redistributed the company's property. The court acknowledged Mrs K.'s title to the disputed property apart from the premises in question (see paragraph 9 above). The court awarded the applicant and the other shareholders 64,056¹ Ukrainian hryvnias (UAH) each, to be paid by Mrs K. By the same ruling the court lifted the premises' attachment.

11. On 16 August 2004 the Donetsk Regional Court of Appeal upheld that judgment.

¹ About 10,307 euros at the material time.

12. On 21 September 2004 the applicant appealed in cassation. On 21 August 2007 the Kyiv City Court of Appeal, acting as a court of cassation, dismissed the applicant's appeal.

THE LAW

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

13. 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...”

14. The Government contested that argument.

15. The period to be taken into consideration began on 14 February 2000 and ended on 21 August 2007. It thus lasted seven years and six months at three levels of jurisdiction.

A. Admissibility

16. 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

17. 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).

18. 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).

19. 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

20. Referring to Article 6 § 1 of the Convention, the applicant complained that the proceedings had been unfair. In particular, he alleged that the judges sitting in the domestic courts lacked impartiality and independence. The applicant also complained about the non-enforcement of the judgment of 14 June 2004. The applicant further asserted that by attaching the premises on 20 September 2000 and deciding against him on 14 June 2004, the State authorities had infringed Article 1 of Protocol No. 1. Finally, the applicant complained under Article 13 of the Convention that he had no effective remedy in respect of the complaints under Article 6 § 1 of the Convention about unfairness and Article 1 of Protocol No. 1.

21. 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.

22. 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

23. 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

24. The applicant claimed 3,470,880.10 euros (EUR) in respect of pecuniary damage. He further alleged that he had suffered non-pecuniary damage. He left the matter to the Court's discretion.

25. The Government contested the applicant's claims.

26. 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 EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant claimed five percent of the value of the disputed premises that is, according to him, about EUR 79,229.50 plus EUR 10,445.42 in fees for the valuation of the premises.

28. The applicant, who was not represented before this Court, additionally claimed EUR 7,352.94 for the legal services. The applicant furnished a contract with a lawyer but he did not provide any document evidencing payment of any amount to her.

29. The Government contested the claims.

30. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the applicant's claims under this head.

C. Default interest

31. 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 concerning 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;
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 1,200 (one thousand two 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;

4. *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