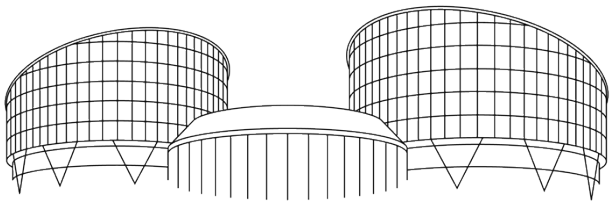

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF VARLAMOVA v. UKRAINE

*(Application no. 24436/06)*

JUDGMENT

STRASBOURG

19 April 2012

*This judgment is final but it may be subject to editorial revision.*

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

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

Mark Villiger, *President,*
Karel Jungwiert,
André Potocki, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 27 March 2012,

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

# PROCEDURE

1. The case originated in an application (no. 24436/06) 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 Raisa Alekseyevna Varlamova ("the applicant"), on 28 May 2006.

2. The Ukrainian Government ("the Government") were represented by their Agent, Ms V. Lutkovska, of the Ministry of Justice.

3. On 21 June 2010 the President of the Fifth Section decided to give notice of the application to the Government.

# THE FACTS

## THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1932 and lives in Sevastopol.

5. The circumstances of the case concern a dispute between the applicant and a State company over the execution of a contract pursuant to which the latter undertook, in June 1990, to install a tombstone at the applicant's son's grave.

6. On 21 August 1999 the applicant instituted civil proceedings in the Leninsky District Court of Sevastopol against the company for the alleged failure to comply with the contract.

7. On 28 December 2000 the court adopted a judgment, partly allowing the applicant's claim. It ordered the company to install the tombstone or to reimburse the money the applicant had paid for it. The court noted that although the applicant had missed the statutory time-limit for lodging her claim, it was justified, in the applicant's particular situation, to renew the time-limit.

8. On 6 February 2001 the Sevastopol City Court quashed that judgment, finding that the first instance court had erred in the assessment of facts and the application of law, and remitted the case for fresh consideration.

9. On 19 June 2001 the Leninsky Court rejected the applicant's claim as time-barred. It dismissed the applicant's request for renewal of the statutory time-limit as unsubstantiated. The applicant appealed.

10. On 29 January 2002 the Sevastopol City Court of Appeal upheld the judgment of 19 June 2001. Under the provisions of the Code of Civil Procedure in force at that time, the applicant had three months to lodge an appeal in cassation.

11. On 4 April 2002 an amendment to the Code of Civil Procedure became effective providing for one-month, instead of three-month, time-limit for lodging appeals in cassation.

12. The applicant appealed in cassation on 25 April 2002. The Leninsky Court refused to refer the cassation appeal to the Supreme Court, finding that it had been lodged more than one month after the delivery of the decision of 29 January 2002.

13. The applicant challenged the refusal, arguing that in her case the previous three-month time-limit had been applicable.

14. Subsequently, for about a year the courts at two levels of jurisdiction (first and appeal) reconsidered the admissibility of the applicant's cassation appeal. In particular, on 3 September 2002 and 23 January 2003 the applicant appealed against the first instance court's decisions of 7 August 2002 and 14 January 2003 respectively which concerned the admissibility of her cassation appeal.

15. Eventually, on 10 April 2003 the cassation appeal was referred to the Supreme Court.

16. On 25 January 2006 the Supreme Court, having examined the appeal in camera, rejected it as unsubstantiated. It found no ground to annul the decisions on the merits of the applicant's case.

17. A copy of the Supreme Court's decision was sent to the applicant on 18 April 2006. The applicant received it on 26 April 2006.

18. According to the Government, in the course of the proceeding, the applicant amended her claim for non-pecuniary damages and submitted additional petitions. Also, out of thirty-two scheduled hearings, five were adjourned due to the applicant's or her representative's failure to appear, one hearing was not held because of the respondent's failure to appear, one hearing was adjourned due to the judge's absence for health reasons. On several occasions the courts had to renew, at the applicant's request, the term for lodging an appeal which resulted in delays of about three months.

19. According to the applicant, she attended all the hearings.

# THE LAW

## I. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

20. The applicant complained under Article 6 § 1 of the Convention about the length of the domestic proceedings in her case. She also relied on Article 13 in this regard. The Court considers that the complaint must be examined solely under Article 6 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

21. The Government contested the applicant's argument, stating that there had been no delays in the course of the proceedings that could be attributed to the State. According to them, the case was complex as the courts had to seek various documents from third parties in order to determine the circumstances of the dispute. The Government also noted that the applicant contributed to the length of the proceeding by amending her claim, lodging additional petitions and failing to appear in court. They also submitted that the periods from 25 April to 3 September 2002 and from 23 January to 10 April 2003, during which the applicant's appeals concerning the admissibility of her cassation appeal had been pending, were not be attributable to the State.

### A. Admissibility

22. The Court notes that the complaint about the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

23. 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).

24 The Court notes that the period to be taken into consideration began on 21 August 1999 and ended on 26 April 2006, when the applicant was served with the final decision (see *Widmann v. Austria*, no. 42032/98, § 29, 19 June 2003, and *Gitskaylo v. Ukraine*, no. 17026/05, § 34, 14 February

2008). It thus lasted six years and eight months for three levels of jurisdiction. The Court notes that the proceedings were pending during the periods, to which the Government referred (see paragraph 21 above). Thus, they might not be excluded from the overall period to be taken into consideration. However, a question of responsibility for any delays during these periods will be examined below.

25. The Court notes that the proceedings concerned a dispute over the execution of a contract which was not legally or factually complex.

26. The Court acknowledges that the parties and in particular the applicant somewhat contributed to the length of the proceedings. It however considers that the parties' behaviour alone cannot justify the overall length of the proceedings.

27. The Court takes note of the particularly lengthy delay in the proceedings after the applicant lodged her cassation appeal (see paragraphs 12-16 above). It took the courts about four years to determine the appeal. The Court considers that primary responsibility for the delay rested with the domestic authorities because the applicant complied with the rules of procedure and could not be blamed for not lodging her cassation appeal within the shorter period of one month (see *Melnyk v. Ukraine*, no. 23436/03, §§ 28-31, 28 March 2006, in which the Court found that the retroactive application of procedural limitations in similar circumstances had undermined the principle of legal certainty and had been contrary to the rule of law). This was confirmed by the Supreme Court that eventually examined the appeal on the merits (see paragraph 16 above).

28. In these circumstances and having regard to its case-law on the subject (see *Frydlender*, cited above), 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. OTHER COMPLAINTS

29. Relying on Articles 1, 6 and 14 of the Convention, the applicant complained about the outcome and unfairness of the proceedings. She also complains about a violation of Article 1 of Protocol No. 1, stating that she had been deprived of her property because of the respondent company's failure to install the tombstone.

30. In the light of the materials in its possession, the Court finds that the applicant's complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

31. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 180,000 Ukrainian hryvnias (UAH)[1] in respect of pecuniary and UAH 20,000[2] in respect of non-pecuniary damage.

34. The Government contested these claims.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 900 under that head.

### B. Costs and expenses

36. The applicant also claimed UAH 73,50[3] for the costs and expenses incurred before the domestic courts, and UAH 357,06[4] for those incurred before the Court.

37. The Government contested some of these claims.

38. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 33 for the proceedings before the Court.

### C. Default interest

39. 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.

---

1. About 16,782 euros (EUR)
2. About EUR 1,864
3. About EUR 6,85
4. About EUR 33

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention 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;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the national currency at the rate applicable at the date of settlement:
      (i) EUR 900 (nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 33 (thirty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 19 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Stephen Phillips | Mark Villiger |
| Deputy Registrar | President |