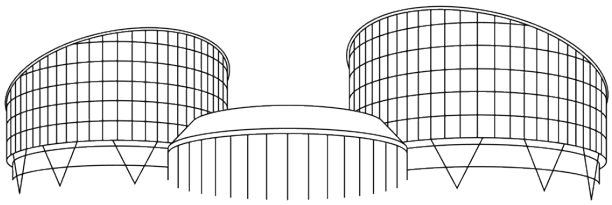

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SAVENKOVA v. UKRAINE

(Application no. 4469/07)

JUDGMENT

This judgement was rectified on 20 June 2013
under Rule 81 of the Rules of Court

STRASBOURG

2 May 2013

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

In the case of Savenkova v. Ukraine,

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

Angelika Nußberger, *President,*
André Potocki,
Aleš Pejchal, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 9 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 4469/07) 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 Lyudmyla Ivanivna Savenkova ("the applicant"), on 5 December 2006.

2. The Ukrainian Government ("the Government") were most recently represented by their Agent, Mr N. Kulchytskyy, of the Ministry of Justice.

3. On 23 November 2010 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1939 and lives in Kharkiv.

5. In November 1997 the applicant instituted civil proceedings in the Kyivskyy District Court of Kharkiv ("the District Court") against her neighbour, Ms. G., disputing her right to use a plot of land.

6. On 9 February 1999 Ms G. lodged a counterclaim, alleging that she was so entitled..

7. On 29 June 2006, following one remittal of the case to the first-instance court for fresh examination, the proceedings were completed by a final ruling of the Supreme Court finding against the applicant.

8. In the course of proceedings six forensic technical examinations were conducted at the parties' requests.

THE LAW

I. COMPLAINTS CONCERNING THE LENGTH OF THE PROCEEDINGS AND THE LACK OF EFFECTIVE DOMESTIC REMEDIES IN THAT RESPECT

9. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement and that she had no effective domestic remedy in that regard. She relied on Articles 6 § 1 and 13 of the Convention which read as follows:

Article 6 § 1

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

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."

10. The Government contested that argument stating that the case had been complicated by the number of the expert examinations and that the parties had also contributed to the overall length of the proceedings by their various procedural actions.

11. The proceedings, which began on 20 November 1997 and ended on 29 June 2006, lasted for around eight years and seven months for three levels of jurisdiction.

A. Admissibility

12. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

13. 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).

14. Turning to the facts of the present case, the Court notes that the proceedings concerned a land dispute in which no particular complexity is discernable. Even though the case examination might have been complicated by six expert examinations, the Court recalls that it is within the competence of a court to decide whether or not to seek outside advice (see *Dulskiy v. Ukraine*, no. 61679/00, § 71, 1 June 2006). As to the conduct of the parties, the Court acknowledges that they somewhat contributed to the length of the proceedings. The Court however considers that the applicant's conduct alone cannot justify the overall length of the proceedings.

15. In the light of the foregoing, the Court concludes that the State authorities bear the primary responsibility for the excessive length of the proceedings in the present case.

16. 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).

17. 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. 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

18. 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*, no. 55870/00, 18 July 2006). In the present case the Court finds no reason to depart from that case-law.

19. There has accordingly also been a breach of Article 13.

II. OTHER COMPLAINTS

20. Referring to Article 6 § 1 of the Convention, the applicant further complained that the courts had relied on expert reports which were unfavourable for her. She also complained about an alleged infringement of her property rights under Article 1 of Protocol No. 1 of the Convention.

21. 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.

22. 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

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 8,700 (Ukrainian hryvnias) UAH[1] in respect of pecuniary and 50,000 UAH[2] in respect of non-pecuniary damage.

25. The Government contested these 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, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,000 under that head.

B. Costs and expenses

27. The applicant also claimed 5,698.90 UAH3 for the costs and expenses incurred before the domestic courts and the Court. In particular, she provided receipts for correspondence and translation expenses incurred before the Court to the amount of 158,25 UAH4 and 710,00 UAH5, respectively.

28. The Government contested claims for the costs and expenses incurred before the domestic courts and authorities as well as some claims in respect of the correspondence expenses incurred before the Court, left the matter to the Court's discretion.

29. 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 76 for the proceedings before the Court.

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1. Around EUR 763.
2. Around EUR 4,386.
3. Around EUR 500.
4. Around EUR 14.
5. Around EUR 62.

C. Default interest

30. The Court considers it appropriate that the default interest rate 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 the 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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 76 (seventy-six 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[1] 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 2 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Angelika Nußberger President

1. Rectified on 20 June 2013 : the text was « on the above amount ».