

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

FIFTH SECTION

CASE OF KALYUZHNA v. UKRAINE

(Application no. 16443/07)

JUDGMENT

STRASBOURG

7 April 2011

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



In the case of Kalyuzhna v. Ukraine,

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

Boštjan M. Zupančič, *President,*
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 15 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 16443/07) 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 Larysa Mykhaylivna Kalyuzhna ("the applicant"), on 3 April 2007.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Yuriy Zaytsev.

3. On 5 May 2009 the Court decided to give notice of the application to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee of three Judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Zaporizhzhya.

A. Proceedings prior to 1990

5. On an unspecified date the Zavodsky District Court of Zaporizhzhya ("the District Court") gave an unspecified decision on the claim of the applicant's former husband, Z., lodged against the applicant for division of their property. By a final ruling of 5 February 1985, the Zaporizhzhya Regional Court ("the Regional Court", since June 2001, the Zaporizhzhya Regional Court of Appeal), ordered Z. to compensate the applicant for her share of their property.

6. In 1985 the Prosecutor's Office of Zaporizhzhya and the Zavodsky District Police Department invited the applicant to discuss the residence registration of her daughter, O.

7. In 1988-1989 the applicant lodged claims with the Budenovsky District Court of Donetsk and Donetsk Regional Court seeking division of her common property with Z. There is no indication whether and, if so, how these claims were handled by the courts.

B. Proceedings against K.Vi. and K.Vo.

8. In 1991-2005 the applicant unsuccessfully tried to have her brothers, K.Vi. and K.Vo., prosecuted for hooliganism and theft. She was not found to be a civil party to these proceedings.

C. Civil proceedings

9. On 9 November 1992 K.Vi. and K.Vo. lodged a claim against the applicant challenging the validity of their mother's will over a house and belongings.

10. On 25 September 1998 the District Court partly allowed the claim.

11. Following a "protest" of the Zaporizhzhya Regional Prosecutor of 25 September 1998, the Regional Court quashed this judgment on 25 December 1998 and remitted the case to the Distrcit Court which, on19 February 2004 partly allowed the applicant's claim.

12. On 26 May 2004 the Regional Court upheld this judgment. On 22 June the applicant appealed in cassation. On 12 July 2006 she requested the Supreme Court to speed up examination of her case. By a final ruling of 4 October 2006, notified to the applicant on 19 October, the Supreme Court upheld the lower court's decisions.

13. According to the Government, between 11 September 1997 and 4 October 2006, the applicant filed three procedural requests and two appeals which all met procedural requirements. Moreover, of the twenty nine hearings scheduled, eleven were adjourned at the claimants' request, five were adjourned at the applicant's request, four were adjourned due to the claimants' or witness's failure to attend, one was adjourned due to the applicant's failure to attend, one was adjourned at the parties' request, and three were adjourned for reasons beyond the parties' control. Overall, due to the applicant's requests or her failure to attend, the proceedings were delayed for about eleven moths.

THE LAW

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

14. 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, 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 ..."

15. The Government contested that argument.

A. Admissibility

16. The Court notes that this complaint 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

17. The period to be taken into consideration began on 11 September 1997, when the Convention entered into force with regard to Ukraine. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 19 October 2006. It thus lasted more than nine years and one month for three levels of jurisdiction.

18. The Government maintained that the parties had been responsible for several delays, in particular the applicant had filed procedural requests and appeals. Nevertheless, the proceedings were conducted within reasonable time, according to the Government.

19. The applicant disagreed.

20. 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, e.g., *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

21. In the case at hand, the Court notes that the applicant's property rights were at stake and the matter was, therefore, of some importance to her. It further considers that the subject matter of the litigation was not complex.

22. With regard to the applicant's conduct, the Court accepts the Government's argument that there were certain delays attributable to the applicant (see paragraph 13 above). However, in respect of her procedural requests and appeals, the Court notes that she merely exercised her procedural rights and cannot be blamed for using the avenues available to her under the domestic law in order to protect her interests (see, *Silin v. Ukraine*, no. 23926/02, § 29, 13 July 2006).

23. The Court notes that the conduct of the parties to the domestic proceedings cannot explain the overall length of the proceedings at issue in the present case. It finds that the main delay in the proceedings took place during the examination at the first-instance court that lasted, taking into consideration the Court's competence *ratione temporis*, more than six years and five months. Another substantial delay was caused by the Supreme Court that reviewed the case for more than two years and three months.

24. 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).

25. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant also complained that the length of the proceedings had resulted in an infringement of her right to respect for her home contrary to Article 8 of the Convention.

28. Having regard to the findings in the paragraphs 21-26 above, the Court concludes that this complaint must be declared admissible, but that it is not necessary to examine it on the merits (see, *mutatis mutandis*, *Laino v. Italy* [GC], no. 33158/96, §§ 23-25, ECHR 1999-I, and *S.C. Prodcomexim SRL v. Romania (no. 2)*, no. 31760/06, § 48, 6 July 2010).

III. OTHER COMPLAINTS

29. The applicant further complained under Article 6 § 1 of the Convention that the proceedings on Z.'s claim had been unfair and she had been prevented from accessing courts in the Donetsk region. Relying on Article 13 of the Convention, she complained of the lack of prosecution of

K.Vi. and K.Vo. for taking her and O.'s property and assaulting their honour and reputation.

30. She argued that that due to the excessive length of the civil proceedings her right to elect or be elected had been violated in contravention of Article 3 Protocol No. 1. In respect of the length of the proceedings, she additionally argued that her right to social security had been infringed.

31. The applicant alleged that the prosecutors and police had forced her to register her residence in Zaporizhzhya contrary to Article 2 Protocol No. 4. Referring to Article 1 Protocol No. 1, she in substance complained of the assessment of evidence in the civil proceedings. Finally, she complained that since 1976 the State had continuously failed to respect O.'s rights for residence, health care, subsistence and education. Lastly, in her submissions of 9 November 2009, she additionally complained under Article 13 of the Convention and Article 1 Protocol No. 1 in respect of the length of the civil proceedings.

32. 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.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed UAH 200,000 (16,000 euros, EUR)[1] in respect of non-pecuniary damage.

36. The Government contested the claim.

37. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,400 under that head.

1. 1 UAH = 0.08 EUR

B. Costs and expenses

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

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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the civil proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;

3. *Holds* that there is no need to examine on the merits the complaint under Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into the national currency of the respondent State at the rate applicable on 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 amounts 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 7 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Boštjan M. Zupančič President