

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

FIFTH SECTION

DECISION

Application no. 43791/05
by Anzhela Volodymyrivna KVASNEVSKA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 6 December 2011 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Ann Power-Forde,
Angelika Nußberger, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 November 2005,

Having regard to the comments submitted by the respondent Government,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Ms Anzhela Volodymyrivna Kvasnevska, is a Ukrainian national who was born in 1969 and lives in the Vinnytsya Region. The Ukrainian Government ("the Government") were represented by their Agent, Ms Valeria Lutkovska, of the Ministry of Justice.

The facts of the case, as submitted by the parties, may be summarised as follows.

In October 1995 Mrs G. (the applicant's grandmother) lodged a civil claim with the Bar Court against the applicant in a dispute over a title to a house. In the course of the proceedings the applicant, her husband and parents lodged a counter-claim against Mrs G. concerning the same matter.

On 21 November 1997, following one remittal of the case for fresh examination, the above court delivered a judgment. On 17 February 1998 the Vinnytsya Regional Court upheld it and it became final. On 20 August 1998, following the objection lodged by the local prosecutor, the Vinnytsya Regional Court quashed the above decisions and remitted the case to the Zhmerynka Court for fresh examination.

On 8 February 2001 the above court delivered a judgment. On 10 April 2001 the Vinnytsya Regional Court quashed it and remitted the case for fresh examination. On 9 October 2001 the Supreme Court upheld the decision of 10 April 2001.

On 18 April 2002 the case was transferred to the Bar Court, which on 25 March 2004 ruled against the applicant. On 7 July 2004 and 25 May 2005, respectively, the Vinnytsya Regional Court of Appeal and the Supreme Court upheld that judgment.

According to the Government, in the course of the proceedings the applicant twice modified her counter-claim and twice challenged the judges. She lodged her appeal in cassation in breach of the procedural formalities and the courts extended the time-limits so as to allow her to rectify the appeal. Twenty-seven court hearings were adjourned due to the applicant's, her representative's or all parties' failure to appear or upon the applicant's requests, which delayed the proceedings by one year and nine months approximately. On one occasion the courts fined the applicant for her repeated failure to appear. Five further hearings were adjourned due to the other parties' failure to appear or upon their requests. Four expert examinations were ordered, one of them upon the applicant's request (lasted for almost four months).

## COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings. She also complained under the same provision and under Article 1 of Protocol No. 1 about and on account of their unfavourable outcome.

## THE LAW

1. The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings. The above provision 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..."

The Government disagreed stating that the case had been complex and that the applicant had contributed to the overall length of the proceedings.

The Court notes that, although the proceedings started in October 1995, the period to be taken into consideration began only on 11 September 1997, when Ukraine ratified the Convention. The proceedings ended on 25 May 2005. Between 17 February and 20 August 1998 no proceedings were pending (see *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 41-42, 6 September 2005). In total, the proceedings lasted for seven years and two and a half months before three judicial instances.

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).

Turning to the circumstances of the case, the Court considers that the case was not particularly complex. It further considers that, even though the proceedings were of certain importance for the applicant, it does not appear that she treated her case as urgent. In particular, the Court notes the delays attributable to the applicant, notably twenty-seven adjournments of the hearings, which protracted the proceedings by one year and nine months. It further notes that the applicant amended her counter-claim, challenged the judges and lodged her appeal in cassation in breach of the procedural formalities. One of the expert examinations, which lasted for almost four months, was ordered upon her request. In this connection, the Court 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 or she must accept that such actions necessarily prolong the proceedings (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001).

As to the conduct of the domestic courts, the Court notes that certain delays could be attributed to them (notably, the remittals of the case for fresh examination and the period of examination of the case by the Zhmerynka Court) and could perhaps have been avoided. However, those delays were not such as to warrant the conclusion that there has been a violation, especially given the fact that the applicant herself significantly contributed to the overall duration of the proceedings. The Court thus concludes that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. The Court has also examined the applicant's remaining complaints. Having regard to all the material in its possession, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected

as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Stephen Phillips
Deputy Registrar

Boštjan M. Zupančič
President