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

FIFTH SECTION

DECISION

Application no. 17036/06
PERELYGINA AND YATSENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 19 April 2016 as a Committee composed of:

Erik Møse, *President,*
Yonko Grozev,
Mārtiņš Mits, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 April 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Nadezhda Yakovlevna Perelygina and Ms Yekaterina Mikhailovna Yatsenko, are Ukrainian nationals who were born in 1949 and 1950 respectively and live in Kharkiv.

The Ukrainian Government ("the Government") were represented most recently by their Acting Agent, Ms O. Davydchuk, of the Ministry of Justice.

A. The circumstances of the case

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

In May 2004 the applicants and seventeen other shareholders of the Dytyachyi Svit company instituted proceedings in the Dzerzhynskyi District Court of Kharkiv against that company, requesting that the court invalidate contracts by which some of the company's shares had been sold to third

parties and annul changes that had been made to the company's articles of association.

Following several sittings at which it considered the admissibility of the applicants' claims, on 4 March 2005 the court refused to consider them as it found that they lacked specific and relevant details.

On 13 October 2005 the Kharkiv Regional Court of Appeal adopted a decision upholding the ruling of 4 March 2005. The appeal decision entered into force on the same date. The claimants were represented by a lawyer at the Court of Appeal.

On 14 December 2005 the lawyer lodged a cassation appeal on his clients' behalf.

On 4 January 2006 a judge of the Supreme Court rejected the appeal as lodged out of time, stating that the two-month period envisaged by Article 325 of the Code of Civil Procedure had already expired.

B. Relevant domestic law

The relevant extracts from the Code of Civil Procedure of 2004, as worded at the material time, read as follows:

Article 67. Types of procedural terms

"1. Terms for the performance of procedural acts shall be set by law, and if they have not been set by law [the terms shall be] set by the court."

Article 69. Start of the running of procedural terms

"1. A procedural term shall start running the day after the corresponding calendar date (*відповідної календарної дати*) or [the date of] the event [to which the term is linked]."

Article 70. Expiry of procedural terms

"...

2. A term [expressed] in months shall expire on the corresponding date (*відповідне число*) of the last month of the term ...

5. The last day of the term shall run until [midnight] ...

6. A term shall not be considered as missed if the claim, complaint, other documents or materials, or money have been submitted to the post office or transferred by other means of communication before its expiry."

Article 73. Renewal or extension of procedural terms

"1. The court shall renew or extend a term ... at the request of a party ... if it has been missed for justifiable reasons.

2. A question concerning the renewal or extension of a term which has expired shall be decided by the court ... to which a document or evidence was due to be submitted. The persons taking part in the proceedings shall be informed of the place and time of consideration of that question. The presence of those persons is not compulsory.

3. A document or item of evidence concerning which the request [for renewal or extension of a term] has been lodged may be submitted together with the request...”

Article 323. The court of cassation instance

“1. The court of cassation instance in civil cases is the court which is envisaged by the Judiciary Act as the court of cassation in such cases.”

Article 324. The right to challenge [judicial decisions] in cassation

“1. The parties and other persons taking part in a case ... have the right to challenge in cassation:

(1) judgments of the court of first instance, after they have been reviewed on appeal; judgments and rulings of the appeal court adopted [in the course of] the consideration [of the case] on appeal ...

(2) rulings of the court of first instance ... after they have been reviewed on appeal and rulings of the appeal court if they obstruct further proceedings in the case.

2. The grounds for [an appeal] in cassation are the wrongful application by the court of the rules of substantive law or a violation of the rules of procedural law.”

Article 325. The term for lodging an appeal in cassation

“1. An appeal in cassation ... may be lodged within two months of the day on which the judgment (ruling) of the appeal court enters into force.

2. If the term ... has been missed for reasons which the court has recognised to be justifiable, the court of cassation instance may, at the request of the person who lodged the appeal, renew that term, though that period cannot exceed one year from the day on which the right to an appeal in cassation arose.

3. An appeal in cassation lodged out of time ... shall be returned by the court of cassation to the person who lodged it if that person does not raise the question of a renewal of the term, and also if the [request for] renewal is refused.

4. The question of a renewal of the term ... shall be determined by a ruling of the court of cassation instance.”

Article 335. Scope of consideration of the case by the court of cassation instance

“1. In the course of its consideration of a case in cassation, the court shall verify, within the limits of the cassation appeal, the accuracy of the application of the rules of substantive or procedural law by the courts of first instance or appeal, [but it] shall have no power to establish or to hold proven any facts which were not established in the judgment or dismissed by it, [or] to decide questions of the reliability ... of [particular] evidence or of the weight to be given to certain evidence ...

2. The court of cassation instance shall [examine the question of] the lawfulness of judicial decisions only within the limits of the claims which were raised before the court of first instance.

3. The court shall not be limited by the arguments of the cassation appeal if, in the course of its consideration of the case, [it] discerns a wrongful application of the rules of substantive law or a violation of the rules of procedural law such as to constitute grounds for the compulsory quashing of the decision.”

Article 336. Powers of the court of cassation instance

"1. ...[T]he court of cassation instance has the power to:

(1) adopt a ruling dismissing the cassation appeal and leaving the [contested] decision in force;

(2) adopt a ruling fully or partly quashing the decision and referring the case back to the court of first instance or appeal for fresh consideration;

(3) adopt a ruling quashing the decision of the court of appeal and leaving in force the judicial decision which was erroneously quashed by the court of appeal;

(4) adopt a ruling quashing the judicial decisions and terminating the proceedings in the case or leaving the claim without consideration;

(5) quash the judicial decisions and adopt a new judgment or vary the judgment [on the merits of the case], without referring it back for fresh consideration ..."

COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention of the unfairness of the proceedings, alleging that the courts had been biased and that they had been unlawfully denied access to the Supreme Court. They further complained of the length of the proceedings and of a violation of Article 1 of Protocol No. 1 on account of the refusal of the courts to consider their claims.

THE LAW

1. The applicants complained that they had been unlawfully denied access to the Supreme Court, in breach of Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Government submitted that the Supreme Court had correctly applied the relevant procedural regulations because the two-month term provided for lodging an appeal in cassation in the applicants' case had expired on 13 December 2005.

They further argued that the applicants had not exhausted the domestic remedies available to them as they had not requested the renewal of that term, a step which had been available to them under the domestic procedure.

The applicants contended that their cassation appeal had been lodged on the last day of the two-month term. They argued that the term had started to run from the day following the date of the appeal decision, as envisaged by

Article 69 of the Code of Civil Procedure of 2004. That meant the term had ended on 14 December 2005.

The Court notes that in the instant case the parties' disagreement in essence turned on the interpretation and application of specific procedural regulations. In that connection, the Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of the interpretation and application of procedural rules, such as time-limits for filing documents or for lodging appeals. The role of the Court is limited to verifying whether the effects of such an interpretation are compatible with the Convention. Furthermore, the rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal or an application for judicial review are aimed at ensuring the proper administration of justice and compliance, in particular, with the principle of legal certainty (see, among other authorities, *Cañete de Goñi v. Spain*, no. 55782/00, § 36, ECHR 2002-VIII).

Bearing in mind those principles, the Court notes, in the first place, that the relevant procedural regulations on time-limits for lodging cassation appeals in civil proceedings were sufficiently precise to enable litigants, if necessary with the benefit of legal advice, to determine the date by which a cassation appeal should be lodged. In particular, Article 325 of the Code of Civil Procedure of 2004, as worded at the material time, prescribed a two-month term, which, having regard to the general rules contained in Articles 69 and 70, started to run from the day after the date on which the contested appeal decision became final and ended on the corresponding date of the second month thereafter (see the relevant extracts from the Code quoted above). Thus, in the applicants' case, the two-month term started to run on 14 October 2005 and ended on 13 December 2005, which was the final date for the applicants to lodge a cassation appeal (ibid.).

The applicants' submissions that they had had one more day, that is 14 December 2005, to lodge their cassation appeal, were not supported by any evidence or persuasive argument. Nor did the applicants demonstrate that there existed any divergence in domestic practice on the application of the procedural regulations in question.

On the whole, the Court notes that the applicants, who were assisted by a lawyer, had an effective and practical opportunity to lodge their cassation appeal in compliance with the procedural requirements prescribed by law and that they failed to do so due to their own interpretation of those requirements.

In the light of the foregoing, the Court does not consider it necessary to deal with the Government's argument of non-exhaustion.

Accordingly, the Court finds that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Having carefully examined the applicants' remaining complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 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 their allegations are unsubstantiated and do not lay a basis for an arguable claim of a breach of any of those provisions. It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 May 2016.

Milan Blaško
Deputy Registrar

Erik Møse
President