

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39670/08
by Leonida Mykolayivna POKHVALOVA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 22 February 2011 as a Committee composed of:

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

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 August 2008,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Leonida Mykolayivna Pokhvalova, is a Ukrainian national who was born in 1943 and lives in Khmelnytskyy. The Ukrainian Government ("the Government") are represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

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

1. Proceedings instituted in 1998

In August 1998 the applicant lodged a claim against a certain P., seeking a court order clarifying the use of a cellar and a land. On 25 September 1998 the Khmelnytskyy City Court ("the City Court") dismissed the applicant's claim. On 9 October 1998 this decision became final.

2. Proceedings instituted in 2002

On 19 August 2002 the applicant lodged a claim against P. and the Khmelnytskyy authorities seeking to cancel the registration of P.'s garage and to enable the applicant to use his premises. On 30 August 2002 the applicant supplemented his original claim.

On 11 September 2002 the City Court ordered a building expert examination.

In a judgment of 17 March 2003 the court granted the applicant's claims.

On 10 June 2003 the Khmelnytskyy Regional Court of Appeal ("the Court of Appeal") quashed this judgment and remitted the case to the City Court.

On 7 July 2003 the applicant appealed in cassation.

According to the documents submitted by the applicant, on 7 December 2004 the Supreme Court found that she had failed to pay properly a court fee and had transmitted the case file to the City Court. According to the Government, the Supreme Court had done so on 7 December 2003.

On 28 December 2004 the Supreme Court received the case file from the City Court.

On 16 April 2007 the Supreme Court, according to the Judicial System Act (as amended on 22 February 2007), transmitted the appeal in cassation to the Zhytomyr Regional Court of Appeal which, on 31 August 2007, decided against the applicant.

On 3 December 2007 the City Court dismissed the applicant's claim.

On 22 January 2008 the Court of Appeal quashed this judgment in respect of the registration of the garage and dismissed this part of the applicant's claim. It upheld the remainder of the judgment.

By a final ruling of 7 April 2008, the Supreme Court upheld the first instance judgment as amended by the Court of Appeal.

During the proceedings, the applicant filed three appeals one of which did not meet procedural requirements and, therefore, protracted the proceedings for about a month. Of all the hearings held in the proceedings, four were held prior to August 2003 and eight after April 2007.

COMPLAINTS

The applicant complained that the length of the proceedings instituted in 2002 was excessive. She also complained under Articles 13 and 14 of the Convention that the courts did not properly assess the evidence and interpret the national law. She challenged the outcome of the two proceedings.

THE LAW

1. The applicant complained that the length of the proceedings instituted in 2002 had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads 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 contended that the applicant had not raised any complaint under Article 6 § 1 of the Convention and, therefore, could not claim to be a victim.

They further maintained that the proceedings had been complicated by the need to conduct the expert examination and to deal with the applicant's supplementary claim. Moreover, the parties had protracted the proceedings. According to the Government, the delay in the first examination of the case by the Supreme Court had been caused by a backlog of the cases before this jurisdiction and had been offset by the further prompt proceedings.

The applicant disagreed.

The Court first notes that the applicant clearly submitted in her letter of 3 September 2008, that "the domestic courts protracted examination" of her case. She had therefore made a claim under Article 6 § 1 of the Convention which guarantees, *inter alia*, the right to proceedings within a reasonable time. Accordingly, the Government's objection must be dismissed.

The Court further notes that the period to be taken into consideration began on 19 August 2002 and ended on 7 April 2008. The proceedings thus lasted about five years and seven months for three levels of jurisdiction.

It recalls 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 *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). With regard to the conduct of the applicant and the domestic courts, the Court reiterates that only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Humen v. Poland* [GC], no. 26614/95, § 66, 15 October 1999).

Turning to the present case, the Court observes that the proceedings were to some extent complicated by the need to conduct the expert examination and the applicant's supplementary claim. It finds, however, that the subject matter of the litigation cannot be considered particularly complex.

With regard to the applicant's conduct, the Court accepts the Government's argument that there was a month delay attributable to her. However, in respect of the applicant's properly filed appeals, the Court reiterates that although a party to civil proceedings cannot be blamed for using the avenues available to her under domestic law in order to protect her interests, she must accept that such actions necessarily prolong the proceedings concerned (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001).

As regards the conduct of the judicial authorities, the Court observes that there were periods of procedural inactivity, according to the applicant's submissions, from August 2003 to November 2004, and from January 2005 to April 2007. That is her appeal in cassation remained before the Supreme Court for three years and eight months. According to the Government, during the cassation proceedings there were periods of procedural inactivity from January to November 2004, and from January 2005 to April 2007 or about three years and three months overall.

Whichever account of the facts is accepted, the Court observes that the domestic courts heard the case without undue delays prior to July 2003 and attempted to speed up the proceedings after April 2007. In particular, there were four hearings held at two levels of jurisdiction and one expert examination was ordered during the nine-month period leading up to July 2003. After April 2007 the courts held eight hearings in less than twelve months.

The Court, reiterating that a delay at some stage may be acceptable if the overall duration of the proceedings cannot be deemed excessive, finds in the present case that although the delay attributed to the State could perhaps have been avoided, it is not such as to warrant the conclusion that there has been a violation, given the total duration of the proceedings and that the applicant had also caused a delay.

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

2. The applicant also complained under Articles 13 and 14 of the Convention that the courts did not properly assess the evidence and interpret the national law. She challenged the outcome of the two proceedings.

The Court finds that, in the light of all the materials in its possession, and insofar as the matters complained of are within its competence, that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must be also rejected as 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	Boštjan M. Zupančič
Deputy Registrar	President