

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41119/07
by Mariya Dmytrivna RUDYSH
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 29 August 2007,

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 Mariya Dmytrivna Rudysh, is a Ukrainian national who was born in 1940 and lives in Stryy. The Ukrainian Government ("the Government") are represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice. On 17 January 2010 the applicant requested the Court to hold an oral hearing in her case. In accordance with Protocol no. 14, which entered into force on 1 June 2010, the application was allocated to a Committee of three Judges which decided to examine the case on the basis of the written submissions.

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

On 30 November 2000 the applicant lodged a claim against the Stryy Social Security Department and Pension Department seeking damages for belated assignment of her pension. On 27 December 2000 the Stryy City Court ("the City Court") dismissed her claim. This judgment was affirmed by a final ruling of the Lviv Regional Court ("Regional Court", since June 2001, the Lviv Regional Court of Appeal) on 29 January 2001. On 4 September 2002 the Supreme Court, upon the applicant's appeal in cassation lodged according to the Code of Civil Procedure (as amended on 21 June 2001), quashed the lower court's decisions and remitted the case to the City Court.

On 7 November 2002 the latter partly allowed the claim and awarded the applicant a compensation for her pension arrears. This judgment was upheld by the Regional Court on 3 February 2003.

On 15 March 2003 the Stryy State Bailiffs' Service ("the bailiffs") enforced in full the judgment of 7 November 2002.

On 26 May 2005 the Supreme Court quashed the last two decisions and remitted the case for fresh consideration to the Regional Court which, on 29 August 2005, partly allowed the applicant's claim and awarded her a compensation for non-pecuniary damage. On 29 May 2006 the Supreme Court transmitted the applicant's case to the Higher Administrative Court.

On 28 November 2006 the judgment of 29 August 2005 was complied with in full.

At a hearing of 23 May 2007, the Higher Administrative Court, in the presence of the applicant, her and the respondents' representatives, upheld the judgment of 29 August 2005. During the hearing, both parties presented their views and replied to the presiding judges' queries.

On 6 July 2007 the Supreme Court refused the Stryy Pension Department's request for the extraordinary review proceedings.

According to the Government, within the periods from 30 November 2000 to 29 January 2001 and from 4 September 2002 to 23 May 2007, the applicant filed one request to extend the time limit for lodging an appeal and three appeals, all meeting procedural requirements. She also modified her claim once. Of the twelve hearings scheduled during these periods, two were adjourned due to the applicant's failure to attend and one was adjourned due to the both parties' failure to attend. Overall, owing to the applicant's conduct, the proceedings were delayed for about two and a half moths during the aforementioned periods.

COMPLAINTS

The applicant complained under Article 6 § 1 about the unreasonable length of the proceedings. She further complained under Articles 6 § 1 and 13 of the Convention that the domestic courts had misinterpreted her evidence. Under Article 13 of the Convention she also complained that the Higher Administrative Court had failed to give her and her representative as much time to plead their case as had been given to the respondents. Relying on Article 17 of the Convention, the applicant claimed that the proceedings were unfair. Finally, under Article 1 Protocol No. 1, she complained in respect of the unfavourable outcome of the proceedings. Lastly, on 20 November 2009 she complained under Article 6 § 1 of the Convention of the protracted enforcement of the judgment of 29 August 2005.

THE LAW

1. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement under 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, referring to the Court's judgment in *Strannikov v. Ukraine* (no. 49430/99, § 37, 3 May 2005), asserted that the applicant had lodged her application out of time as the proceedings in her case had been terminated on 28 November 2006, when the judgment debt was paid to the applicant. Moreover, the parties had been responsible for the protracted length of the proceedings, yet overall the proceedings had been conducted within the reasonable time.

The applicant disagreed.

The Court observes that the last judgment debt in the applicant's case was indeed paid on 28 November 2006. However, the proceedings on her claim were going on beyond that date and eventually terminated with a final ruling of 23 May 2007. The Supreme Court's ruling of 6 July 2007, the Court notes, did not affect the length of the proceedings for the Convention purposes, since the Convention does not guarantee, as such, a right to re-open proceedings in a case which is the subject to a final decision (see *Kozak v. Ukraine*, no. 21291/02 (dec.), 17 December 2002). Given that the applicant complained about the overall length of the proceedings and lodged her application with this Court on 29 August 2007, she complied with the six-month rule. Thus, the Government's objection must be dismissed.

The Court notes that the proceedings in the applicant's case began on 30 November 2000 and ended on 23 May 2007, but it will take into account

only those periods when the case was actually pending before the courts, thus excluding the periods between the adoption of the final judgments and their revocation in the course of the extraordinary proceedings (see *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004, and *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 41-42, 6 September 2005). It is noted that the ruling of 29 January 2001 was *res judicata*, and it was only by virtue of the introduction of the new transitional remedy on 21 June 2001 that the applicant was able to challenge that decision. In such circumstances, the recourse to the Supreme Court to challenge proceedings which had been brought to an end by a final decision must be seen as akin to a request to reopen those proceedings by means of the extraordinary transitional remedy provided for by the Law of 21 June 2001 (see *Prystavska v. Ukraine* (dec.), no. 21287/02, ECHR 2002-X). Therefore, the period from 29 January 2001 to 4 September 2002 cannot be taken into account. The period to be taken into consideration lasted therefore less than four years and eleven months for three levels of jurisdiction.

The Court 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, among many other authorities, *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).

As regards the applicant's conduct, namely her filing of three appeals, the Court recalls 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). Further, the Court accepts the Government's argument that there was a two and a half months delay attributable to the applicant.

The Court reiterates that a delay at some stage may be acceptable if the overall duration of the proceedings cannot be deemed excessive (see, for example, *Pretto and Others v. Italy*, 8 December 1983, § 37, Series A no. 71). In the present case, although the delay attributed to the State could possibly 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 certain delays.

It follows 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 applicant also complained under Articles 6 § 1 and 13 of the Convention that the domestic courts had misinterpreted her evidence. Under Article 13 of the Convention she additionally complained of the Higher Administrative Court's failure to give her and her representative as much time to plead their case as had been given to the respondents. The applicant further complained, relying on Article 17 of the Convention, on account of unfairness of the proceedings. Finally, under Article 1 Protocol No. 1 she complained in respect of the unfavourable outcome of the 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
Deputy Registrar

Boštjan M. Zupančič
President