



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

FIFTH SECTION

CASE OF UKRKAVA, TOV v. UKRAINE

(Application no. 10233/20)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Supreme Court's reinterpretation of clear and unambiguous statutory time-limit for the notarisation of a document if parties to proceedings were legal entities, rendered the outcome of proceedings instituted by the applicant company unforeseeable and contrary to the principle of legal certainty • Impugned reinterpretation resembled a statutory amendment more than an act of settling a case-law divergency on the issue • Supreme Court's refusal to apply the law, found by the Constitutional Court to be unambiguous and not open to interpretation, not a legitimate means of urging the legislator to amend it • Absence of compelling reasons

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 February 2025

FINAL

30/06/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Ukrkava, TOV v. Ukraine,

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

Mattias Guyomar, *President*,

María Elósegui,

Armen Harutyunyan,

Andreas Zünd,

Diana Sârcu,

Kateřina Šimáčková,

Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 10233/20) 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 company Ukrkava, TOV (“the applicant company”), on 11 February 2020;

the decision to give notice to the Ukrainian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 14 January 2025,

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

INTRODUCTION

1. The present case concerns the Supreme Court of Ukraine’s interpretation of a provision of domestic law in a manner that was allegedly unforeseeable and contrary to the principle of legal certainty. The applicant company raised this issue under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant company, Ukrkava, TOV, is a limited liability company registered in Ukraine. The applicant company was represented by Ms M.O. Popova, a lawyer practising in Odesa.

3. The Government were represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice.

4. The relevant facts of the case may be summarised as follows.

5. On 28 December 2011 the applicant company entered into a loan agreement, followed by a related mortgage, with the State Savings Bank (“the Bank”). According to the mortgage conditions, if the applicant company failed to comply with its loan obligations, the Bank could realise its security after having the mortgage document endorsed by a notary (“the

notarisation”). The mortgage agreement also provided for a limitation period of ten years, rather than the statutory period of one year.

6. On 4 May 2016 the Bank made a formal demand for repayment of the loan but the applicant company defaulted on its obligations. On 9 November 2017 the Bank had the mortgage document endorsed by a notary.

7. On 6 December 2017 the applicant company instituted proceedings against the Bank for a declaration that the notarised document was unenforceable for, *inter alia*, having been endorsed too late.

8. On 29 March 2018 the Commercial Court of the Odesa Region made the declaration the applicant company had sought. It observed that the first paragraph of Section 88 of the Notary Act provided that a mortgage document should be endorsed by a notary within one year of the security becoming realisable if both parties to the loan agreement were legal persons. Given that the Bank’s right to realise the security had become effective in May 2016 and the document had been endorsed by the notary only in November 2017, the one-year time-limit in the Notary Act had been missed.

9. On 18 July 2018 the Odesa Commercial Court of Appeal upheld the above judgment.

10. On 12 September 2018 the Cassation Commercial Court within the Supreme Court opened cassation proceedings and by a ruling of 21 November 2018 it relinquished jurisdiction in the case in favour of the Grand Chamber of the Supreme Court because the result would overturn the conclusions of the Cassation Civil Court within the Supreme Court of 17 May 2018 on whether the statutory limitation could be increased by contract (see paragraph 34 below).

11. The Grand Chamber of the Supreme Court then sought legal opinions on the matter from prominent Ukrainian civil law scholars. Those opinions varied. Some of the scholars considered that the statutory time limits in the Civil Code and in the Notary Act were related and should be the same, while others considered that the time-limits were different in nature.

12. On 2 July 2019 the Grand Chamber of the Supreme Court, in its role of a cassation court ensuring the uniform application of the law, overruled the lower courts’ decisions and decided against the applicant company. It departed from the position of the Cassation Civil Court in its decision of 17 May 2018 (see paragraph 34 below) and decided that the time-limits in Section 88 of the Notary Act could not be changed by agreement between the parties but only by legislation as provided in the second paragraph 2 of that Section (see paragraph 31 below). It further decided that the general three-year statutory limitation period for both individuals and legal persons to initiate civil proceedings was directly linked to the time-limit for obtaining the notarisation of a security document and that they should be the same despite the difference in their nature, which was irrelevant in the given context. The court went on to say that although the statutory limitation period had been the same for physical and legal persons since 1995, the first

paragraph of Section 88 of the Notary Act had not been brought into line with the current civil legislation, according to which the limitation period depended on the subject-matter of the case, in contrast to the previous legislation which defined the limitation period according to who the parties to the arrangement were. It concluded that in establishing a time-limit of one year for legal persons and three years for individuals to obtain the notarisation of a mortgage document, the provisions of the first paragraph of Section 88 of the Notary Act were discriminatory.

13. The Grand Chamber of the Supreme Court held that the time-limit for obtaining notarisation should be three years regardless of what parties were concerned. It therefore applied a three-year time-limit in the applicant company's case, which meant that the Bank had obtained the notarisation within the time allowed.

14. The applicant company's representative was present at the hearing of 2 July 2019 when the introductory and operative parts of the final court decision were delivered, but the full text only became available to the public on 13 August 2019. A copy of the full text of the final court decision was sent to the applicant company on 20 August 2019, which received it on 29 August 2019.

15. On 2 September 2019 the applicant company lodged a constitutional complaint with the Constitutional Court seeking to have the first paragraph of Section 88 of the Notary Act, as applied in the final court decision in the case, declared incompatible with the Constitution.

16. On 4 September 2019 a state bailiff started enforcement proceedings against the applicant company. Its property was further seized within those proceedings.

17. On 1 July 2020 the Constitutional Court found that the first paragraph of Section 88 of the Notary Act was compatible with the Constitution. Most notably, it held that by establishing different time-limits for obtaining notarisation, depending on the parties to the proceedings, Parliament had acted within its exclusive legislative power to determine the organisation and operation of notaries under Article 92 of the Constitution (see paragraph 23 below). The Constitutional Court concluded that the contested legislative provision was clear, comprehensible and unambiguous, so there was no room for its free interpretation.

18. A judge rapporteur attached his partly dissenting and partly concurring opinion to the Constitutional Court's ruling. He added that by interpreting the first paragraph of Section 88 of the Notary Act as providing a single three-year time-limit for obtaining the notarisation of a security document, the Grand Chamber of the Supreme Court had actually changed the contested legislative provision, which established a clear distinction between limitation periods which depended on the parties concerned. The judge considered that the Grand Chamber of the Supreme Court had therefore intervened in a matter that was within the exclusive competence of Parliament

and had also breached the principle of legal certainty. Lastly, he emphasised that under the third paragraph of Section 89 of the Constitutional Court Act (see paragraph 25 below) the Constitutional Court should have stated that the Grand Chamber of the Supreme Court had interpreted the first paragraph of Section 88 of the Notary Act in a manner that was not compliant with the Constitution.

19. On 31 July 2020 the Bank lodged an extraordinary appeal with the Grand Chamber of the Supreme Court, requesting for a review of its final decision dated 2 July 2019 in the exceptional circumstances provided for in Article 320 of the Code on Commercial Procedure 1991 (see paragraph 29 below) in the light of the decision of the Constitutional Court of 1 July 2020 (see paragraph 17 above). In particular, it asked for the part of the assessment that the Grand Chamber of the Supreme Court had made which concerned Section 88 of the Notary Act to be deleted from the decision, given that the Constitutional Court had found the provisions of that Section to be constitutional.

20. On 8 September 2020 the Grand Chamber of the Supreme Court declined to review the decision, observing that the Constitutional Court had not reached a conclusion about the unconstitutionality of the first paragraph of Section 88 of the Notary Act, so there were no exceptional circumstances justifying a review of the final court decision of 2 July 2019. One of the judges of the Grand Chamber of the Supreme Court disagreed with this refusal and his dissenting opinion was attached to the decision.

21. On 19 May 2023 enforcement of the mortgage was suspended because the applicant company was in the process of liquidation.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Constitution

22. Part 2 of Article 19 of the Constitution provides that state entities and their officials may act only on the grounds, within the limits of the authority, and in the manner envisaged by the Constitution and the laws of Ukraine.

23. Under paragraph 14 of part 1 of Article 92 of the Constitution, the organisation and operation of notaries is regulated exclusively by Acts of Parliament.

24. Article 151-1 of the Constitution of Ukraine 1996 as amended provides that the Constitutional Court will decide whether laws are compatible with the Constitution on a constitutional complaint from a person who considers that the law applied in a final court decision in his or her case contravenes the Constitution; and that a constitutional complaint may be lodged only if all other domestic legal remedies have been exhausted.

B. Constitutional Court Act

25. The third paragraph of Section 89 of the Act sets out what the Constitutional Court must do if, when it is considering a constitutional complaint, it finds the provisions of the law it is considering to be in conformity with the Constitution but also observes that a court has interpreted the provisions of the law in a way that is not compliant with the Constitution. In that situation, the Constitutional Court must state in the operative part of its ruling that the interpretation applied was not in conformity with the Constitution.

C. The Civil Code

26. Under Article 256 of the Code the limitation period is defined as the time within which a person can apply to a court to protect their civil rights or interests.

27. Article 257 of the Code sets the general limitation period at three years.

28. Part 1 of Article 259 of the Code provides that a limitation period established by law may be extended by written agreement of the parties.

D. Commercial Procedure Code

29. Article 320 of the Code, as in force at the material time, foresaw that in exceptional circumstances the final decision of a commercial court could be reviewed on the grounds of unconstitutionality where that had been identified by the Constitutional Court in either the provisions of the law or its interpretation by a court in deciding a case, if the court decision has not yet been enforced (the first paragraph and point 1 of the third paragraph).

E. Judiciary and Status of Judges Act

30. Under the Judiciary and Status of Judges Act, the Supreme Court is the highest court of the judiciary in Ukraine. Its role is to ensure the sustainability and uniformity of case-law in the manner determined by procedural law (see the first paragraph of Section 36). The Grand Chamber of the Supreme Court is the standing collegiate body of the Supreme Court and is composed of twenty-one Supreme Court justices, whose role is, where specified by law, to review court decisions in cassation to ensure the uniform application of the law by the courts (see the first paragraph and point 1 of the second paragraph of Section 45).

F. Notary Act

31. Section 88 of the Notary Act, as worded at the material time, reads as follows:

Section 88 – Endorsement by a notary

“A notary shall notarise documents by an endorsement confirming a debt or other liability in favour of a creditor on condition that no more than three years have elapsed since the day the claim arose, and where both parties are enterprises, institutions or organisations – if no more than one year [has elapsed since the claim arises].

If a different time-limit is prescribed by law for the claim for which an endorsement is being notarised, an endorsement shall be notarised within that time-limit.”

32. On 2 September 2019 a draft law was submitted to Parliament by MP F. It originally proposed no changes to Section 88. A proposal to change provisions of Section 88 appeared as a proposal of MP F. when the draft was prepared for its second reading in June 2020. The draft was accepted and the amending legislation was passed on 14 July 2020 (in force since 8 August 2020). It provided for many amendments to be made, including the deletion of the words “*and between enterprises, institutions and organisations – if no more than one year [has elapsed since the claim arises]*” from the first paragraph of Section 88 of the Notary Act. Since then, the three-year time-limit for notarising endorsements applies to all parties, regardless of whether they are natural or legal persons.

II. JUDICIAL PRACTICE

A. Practice of the Constitutional Court

33. In two decisions predating its decision of 1 July 2020 (see paragraph 17 above), the Constitutional Court had refused to examine applications about Section 45 of the Notary Act (decision of 27 December 2001) and Section 88 of the Notary Act (decision of 5 June 2013). In the latter case, the applicant, O., had asked for among other things an official interpretation of the first paragraph of Section 88. O. considered that there had been a lack of uniformity in the application of that provision by the domestic courts in respect of documents confirming debts. The Constitutional Court rejected that application as unsubstantiated.

B. Decisions of the Cassation Civil Court within the Supreme Court of 17 May 2018 in case No. 307/1580/17

34. On 17 May 2018 the Cassation Civil Court within the Supreme Court in case No. 307/1580/17 decided that the time-limits established by Section 88 of the Notary Act should not apply in that case, given that the parties to the proceedings had agreed in writing to increase the limitation

period to fifty years under Article 259 of the Civil Code (see paragraph 28 above).

THE LAW

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

35. The applicant company complained that the Grand Chamber of the Supreme Court had applied a clear and unambiguous provision of the domestic law in unforeseeable manner, contrary to the principle of legal certainty. It referred to Article 6 § 1 of the Convention, which reads insofar as relevant as follows:

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

A. Admissibility

36. The Government considered that the application had been lodged out of time given that the applicant company’s representative had been present when the introductory and operative parts of the decision had been delivered by the Grand Chamber of the Supreme Court on 2 July 2019. Alternatively, they considered that the complaint was manifestly ill-founded.

37. The applicant company submitted that the information obtained by its representative on 2 July 2019 had been insufficient to understand the reasons for the decision of the Grand Chamber of the Supreme Court. The full text of the decision was published online on 13 August 2019 and the applicant company obtained its copy by post on 29 August 2019. The applicant company considered that the six-month time-limit should be calculated as running from 13 August 2019.

38. The Court recalls that the six-month period (as applicable at the relevant time) starts running from the date on which the applicant or his representative has had sufficient knowledge of the final domestic decision. In principle, this is the date of service if provided for under domestic law, except where it has been shown that the party concerned has had sufficient knowledge of the decision on an earlier date. It is for the State which relies on the failure to comply with the six-month time-limit to establish the date when the applicant became sufficiently aware of the final domestic decision (see *Z. v Bulgaria*, no. 39257/17, §§ 58-59, 28 May 2020, with further references). In the present case, it cannot be considered that the relevant starting date was the date of the oral delivery of the introductory and operative parts of the final decision: the Government have not established that such partial information was sufficient, in particular, having regard to the fact that the alleged violation of the Convention concerns specifically the reasoning of the impugned decision. It is further unnecessary to decide whether the

six-month time limit started running on 13 or 29 August 2019 as in any event the application was introduced less than six months after the earlier of those two dates. It follows that the Government's objection must be dismissed.

39. Given that the applicant company's complaint is not inadmissible on any other grounds listed in Article 35 of the Convention, it must be declared admissible.

B. Merits

1. The Parties' arguments

40. The applicant company maintained that the Grand Chamber of the Supreme Court had no legal grounds to apply a clearly formulated legislative provision of law in a manner different from that in which it was expressed. The direct application of the clear and unambiguous provision of the Notary Act was the only way that conformed with the principle of legal certainty. It also noted that majority of scholars who had been asked to comment on the matter (see paragraph 11 above) concluded that limitation in the Civil Code was different in nature from limitation in the Notary Act. It pointed out that the legislative changes made to the Notary Act in July 2020 confirmed the ruling of the Constitutional Court that the regulation of the operation of notaries is within the exclusive competence of Parliament as the sole legislative body in Ukraine.

41. The Government maintained that the Supreme Court had acted within its powers and provided sufficient reasoning for its decision. They considered that the Supreme Court could have acted in three different ways:

1) it could have followed established practice and confirmed that the recognition of agreements between the parties to extend limitation applied to notarised endorsements as well;

2) it could have established, as it had done, that the statutory limitation period set out in the first paragraph of Section 88 of the Notary Act could not be changed by agreement of the parties given the second paragraph of the same Section, but that as the statutory limitation period in the Notary Act was related to the limitation period in the Civil Code, the two should be the same; or

3) it could have deviated from the established practice of treating an agreement between the parties to extend the limitation period as also applying to notarised endorsements and concluded that there was no relationship at all between limitation in the Civil Code and limitation in the Notary Act.

The Government considered that the applicant company was not happy that the third scenario had not been chosen in its case. They also referred to the opinions of the four scholars who had supported the position that had ultimately been taken by the Grand Chamber of the Supreme Court.

2. *The Court's assessment*

(a) General principles

42. The Court reaffirms that under Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. Given the subsidiary nature of the Convention system, it is not the Court's function to deal with alleged errors of fact committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention and unless that domestic assessment is manifestly arbitrary (see *Kononov v. Latvia* [GC], no. 36376/04, § 189, ECHR 2010, and *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 160, ECHR 2015).

43. It is in the first place for the national authorities, and notably the courts, to interpret domestic law and to resolve problems of interpretation of domestic legislation (see *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 51, ECHR 2015, and *Jidic v. Romania*, no. 45776/16, § 83, 18 February 2020). The Court will not substitute its own interpretation for theirs in the absence of arbitrariness. This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or the lodging of appeals (see *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII; and *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 33, ECHR 2000-I).

44. In this regard the Court also reiterates that the right to a fair trial must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States. Now, one of the fundamental aspects of the rule of law is the principle of legal certainty, which, *inter alia*, guarantees a certain stability in legal situations and contributes to public confidence in the courts. The persistence of conflicting court decisions, on the other hand, can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 57, 20 October 2011, with further references). Furthermore, it would be contrary to the principle of legal certainty enshrined in the Convention if the domestic courts could take decisions contrary to law and so construe the provisions of domestic law unforeseeably, having based themselves on an abstract assertion outside of any reasonable judicial discretion (see, *mutatis mutandis*, *Anđelković v. Serbia*, no. 1401/08, § 27, 9 April 2013; and *Pantolon v. Croatia*, no. 2953/14, § 52, 19 November 2020).

45. However, the requirements of legal certainty and the protection of the legitimate confidence of the public do not confer an acquired right to

consistency of case-law. Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], cited above, § 58, with further references).

(b) Application of those principles in the present case

46. The Court notes at the outset that the reason behind the relinquishment of the applicant's appeal in cassation to the Grand Chamber of the Supreme Court was conflicting case law on the question of whether the time limits foreseen in Section 88 of the Notary Act could be extended by means of written agreement between the parties (see paragraphs 10, 31 and 34 above). The Grand Chamber of the Supreme Court interpreted Section 88 of the Notary Act in the sense that the time limits in question could be changed only by law. This aspect of the new interpretation does not appear to have been challenged by the applicant company and is not the object of its complaint before the Court.

47. The applicant company is dissatisfied by the fact that the Grand Chamber of the Supreme Court went further and gave a new interpretation of the first paragraph of Section 88 of the Notary Act as to the different time-limits for natural and legal persons. The Grand Chamber of the Supreme Court decided that the time-limit should be the same, although Section 88 was clear and unambiguous in this regard: if both parties to the proceedings were legal persons, the time-limit was one year, whereas in all other cases, the time-limit was three years.

The Court observes that the first paragraph of Section 88 of the Notary Act left no room for interpretation as to the length of the time limit at issue given that both the applicant company and the Bank were legal persons. This conclusion was also confirmed by the Constitutional Court which found the first paragraph of Section 88 of the Notary Act to be constitutional and not open to interpretation (see paragraph 17 above). Furthermore, it was not suggested by the parties that different interpretations of that provision existed prior to the decision of the Grand Chamber of the Supreme Court of 2 July 2019. In these circumstances, having regard to the clear text of the law, the impugned change of interpretation resembled a statutory amendment more than an act of settling a case-law divergency.

The Government argued that the decision in the applicant company's case had had the useful effect of triggering changes to the Notary Act. However, having regard to the separation of powers between Parliament and the judiciary and between various judicial authorities as established in Ukrainian law, the Court cannot endorse the idea that a refusal by the highest judicial body of general jurisdiction of Ukraine to apply the law, found by the Constitutional Court unambiguous and not open to interpretation, was a legitimate means of urging the legislator to amend it.

48. The Court cannot exclude that even in a situation of established case-law on the relevant issue, a superior national court may legitimately operate a change of interpretation if justified by important considerations and if applied with due regard to its effects on pre-existing situations (see, *mutatis mutandis*, *Valverde Digon v. Spain*, no. 22386/19, § 53, 26 January 2023). The core of the reasons given by the Grand Chamber of the Supreme Court was the difference between the time-limits for bringing civil claims under the relevant civil legislation and the time limits for notarisation under the Notary Act and, on that basis, the desirability of a uniform approach (see paragraph 12 above). The Grand Chamber of the Supreme Court did not mention any serious adverse consequences having materialised – despite the existence of the different time limits for more than two decades – so as to justify such a radical change of interpretation as the impugned one. Indeed, its position did not seem to be unanimously or overwhelmingly accepted by legal scholars (see paragraphs 11, 40 and 41 above). Neither did the Supreme Court consider the effects of its new interpretation on pre-existing situations and, hence, on legal certainty.

49. In sum, in the present case, the Grand Chamber of the Supreme Court reinterpreted the clear and unambiguous one-year time-limit established by Parliament for the notarisation of an endorsement on a document if the parties to the proceedings were legal entities in a manner contrary to the provision itself and did so without any compelling reason and without regard to the effects of the change of interpretation on legal certainty. The foregoing considerations are sufficient to enable the Court to conclude that the reinterpretation of the unequivocal provisions of Section 88 of the Notary Act rendered the outcome of the proceedings unforeseeable and was contrary to the principle of legal certainty.

50. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

51. On the basis of the same facts and arguments as set out above, the applicant complained under Article 1 of Protocol No. 1 to the Convention about a violation of its property rights.

52. Having regard to its findings under Article 6 of the Convention, the Court considers that it has already addressed the main issue in the applicant company's complaint and that it is not necessary to give a separate ruling on the admissibility and merits of the allegation of a breach of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. The applicant company did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award it any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 6 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Mattias Guyomar
President