



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

FIFTH SECTION

**CASE OF KUKHARCHUK v. UKRAINE**

*(Application no. 10437/02)*

JUDGMENT

STRASBOURG

10 August 2006

**FINAL**

*10/11/2006*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Kukharchuk v. Ukraine,**

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

Mr P. LORENZEN, *President*,  
Mrs S. BOTOUCHAROVA,  
Mr V. BUTKEVYCH,  
Mrs M. TSATSA-NIKOLOVSKA,  
Mr R. MARUSTE,  
Mr J. BORREGO BORREGO,  
Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 10437/02) 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 national, Mr Yuriy Mykolayovych Kukharchuk (“the applicant”), on 26 February 2002.

2. The applicant was represented by Mr V. Pilganchuk, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

3. On 14 June 2005 the Court decided to communicate the complaint about the length of the proceedings to the respondent Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

**THE FACTS**

5. The applicant was born in 1958 and lives in Kyiv, Ukraine.

6. In 1994 Mrs S. obtained a loan from the Azhio Bank. In 1995, due to the failure of Mrs S. to repay the loan, the bank sold her flat to Mr S. The latter sold the flat to Mrs Sb., who further sold it to Mr G. On 22 January 1997 the applicant purchased the flat from Mr G.

7. In March 1997 the applicant instituted proceedings in the Vatutinsky District Court of Kyiv (“the Vatutinsky Court”), seeking the eviction of Mrs S. and her minor child from the flat. Mrs S. lodged a counter-claim and requested the court to invalidate all the sales contracts concerning the flat. The parties to these contracts were summoned to participate in the proceedings.

8. On 18 December 1997 the court found for the applicant and ordered the eviction of Mrs S. together with her child.

9. On 25 February 1998 the defendant requested an extension for lodging an appeal in cassation. On 2 March 1998 the Vatutinsky Court granted the extension requested on the ground that she had missed the initial deadline through no fault of her own.

10. On 1 April 1998 the Kyiv City Court (“the Kyiv Court”) rejected the defendant’s appeal in cassation against the decision of 18 December 1997.

11. On 13 April 1999, the Deputy General Prosecutor of Ukraine, following the complaint of the defendant, lodged a request for supervisory review (*protest*) of the applicant’s case with the Presidium of the Kyiv Court. On 26 April 1999 the Presidium allowed the request, quashed the decisions of 18 December 1997 and 1 April 1998, and remitted the case for a fresh consideration. It found that the lower courts misinterpreted the facts and law in the case.

12. On 23 November 1999 the Vatutinsky Court found for the applicant.

13. On 24 December 1999 the defendant requested an extension for lodging her appeal in cassation. On 5 January 2000 the Vatutinsky Court granted the extension requested. It found that ground that the defendant had missed the initial deadline through no fault of her own.

14. On 23 February 2000 the Kyiv Court quashed the decision of 23 November 1999 and remitted the case for a fresh consideration.

15. On 9 February 2001 the Vatutinsky Court found against the applicant.

16. On 23 February 2001 the applicant appealed in cassation against the decision of 9 February 2001. On 12 March 2001 the Vatutinsky Court granted the applicant an extension for lodging his appeal, as he had not been informed about the decision of 9 February 2001 in due time.

17. On 11 April 2001 the Kyiv Court quashed the decision of 9 February 2001 and remitted the case for a fresh consideration on the ground that the first instance court had considered the case in the absence of Messrs G. and S., Mrs Sb., and the third parties to the proceedings, Mrs A. and Mr K., who had not been informed about the hearings.

18. By the decisions of 28 August and 26 September 2001, the Vatutinsky Court discontinued the consideration of the applicant’s claims and the counter-claim of the defendant because of their failure to attend the hearings on the same dates.

19. On 7 March 2002 the applicant appealed in cassation to the Supreme Court of Ukraine against the decision of 28 August 2001, of which he had been informed on 15 February 2002.

20. On 20 February 2003 the Supreme Court of Ukraine quashed the decision of 28 August 2001 and remitted the case for a fresh consideration on the grounds that the Vatutinskyy Court had failed to inform the applicant about the date and place of the hearing 28 August 2001.

21. On 6 July 2004 the Desnyanskyy District Court of Kyiv (the former Vatutinskyy Court) found for the applicant and ordered the eviction of Mrs S. together with all other persons residing in that flat. The court held that the applicant had lawfully acquired the flat.

22. On 4 August 2004 the defendant appealed against the judgment of 6 July 2004. On 25 August 2004 the Desnyanskyy District Court of Kyiv granted the defendant a time-limit to rectify the shortcomings of her appeal.

23. On an unspecified date the defendant lodged with the same court the corrected version of her appeal.

24. On 9 November 2004 the Kyiv City Court of Appeal rejected the defendant's appeal against the judgment of 6 July 2004.

25. On 14 April 2005 the panel of three judges of the Supreme Court of Ukraine rejected the defendant's request for leave to appeal in cassation.

## THE LAW

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

26. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided 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..."

#### A. Admissibility

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### 1. *Period to be taken into consideration*

28. The Government maintained that the period to be taken into consideration began only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect, and ended on 14 April 2005, when the Supreme Court of Ukraine rejected the appeal in cassation of the defendant in domestic proceedings.

29. The applicant argued that the period in question began on 21 March 1997, when he lodged his claim with the domestic courts.

30. The Court notes that the proceedings at issue began in March 1997 and were completed in April 2005. Their overall duration was around seven years, excluding the period from 1 April 1998 until 26 April 1999, when no proceedings were pending. The Court recalls that the Convention entered into force in respect of Ukraine on 11 September 1997, thus the period falling within the Court's competence *ratione temporis* lasted six years and eight months.

### 2. *Reasonableness of the length of the proceedings*

31. The Government contested the applicant's complaint, stating that there were no significant periods of inactivity attributable to the State. According to the Government, the applicant and the defendant were responsible for some periods of delay in the proceedings, as they had failed to lodge their appeals within the time-limits set by the courts (see paragraphs 9, 13, 16, 19, and 22 above). The Government further submitted that there had been two hearings postponed due to the applicant's failure to appear. The Government maintained that the case was complicated due to the above circumstances.

32. The applicant disagreed.

33. 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).

34. As to the question of the complexity of the present dispute, the Court observes that it concerned a title to a flat and the national courts had to establish whether the bank had lawfully sold the flat to a third party (see paragraph 6 above). The courts did not order any expert examination in the case and based their decisions largely on the written evidence submitted by the parties. Although the case might have been somewhat complicated by the counter-claim lodged by the defendant, the Court observes that the counter-claim was lodged shortly after the original claim and concerned the

same subject matter. Therefore, the Court concludes that the subject matter of the litigation at issue could not be considered particularly complex.

35. As regards the Government's contentions that the applicant was responsible for some delays in the impugned proceedings, the Court observes that, since the applicant had not been informed about the decisions of 9 February and 28 August 2001 in due time, he could not timely appeal against these decision. The Court further observes that, according to the domestic courts, the defendant missed the initial deadlines for lodging her appeals against the decisions of 18 December 1997 and 23 November 1999 through no fault of her own. The Court also notes that the Government failed to specify the dates of the hearings, which the applicant had allegedly failed to attend, or to submit any evidence to substantiate this allegation.

36. Even assuming that there are some periods of delay which could be attributed to the applicant, the Court considers that the protracted length of the proceedings was to a large extent caused by the repeated re-examination of the case. Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it observes that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (*Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

37. In sum, having regard to the circumstances of the instant case as a whole, the Court concludes that there was unreasonable delay in disposing of the applicant's case.

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

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

39. The applicant also invoked Article 13 of the Convention and Article 1 of Protocol No. 1 in respect of the above complaint about the unreasonable length of the proceedings.

40. Having regard to its findings under Article 6 § 1 (see paragraphs 36-37 above), the Court concludes that this complaint is admissible, but considers that it is not necessary to rule whether, in this case, there has been a violation of Article 13 of the Convention or Article 1 of Protocol No. 1 (see *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### **A. Damage**

42. The applicant claimed UAH 73,835<sup>1</sup> in respect of pecuniary damage, which constituted the amount that the applicant allegedly could have received if he rented out the flat at issue. He also claimed UAH 30,000<sup>2</sup> in respect of non-pecuniary damage.

43. The Government maintained that the applicant’s claims were unsubstantiated.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court further considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 600 under that head.

### **B. Costs and expenses**

45. The applicant also claimed UAH 9,690<sup>3</sup> for the costs and expenses incurred before the Court.

46. The Government contested this claim.

47. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600 for costs and expenses in the proceedings before the Court.

### **C. Default interest**

48. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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1. Around 11,810 euros – “EUR”.

2. Around EUR 4,800.

3. Around EUR 1,550.

## 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 separately the applicant's complaint under Article 13 of the Convention and Article 1 of Protocol No. 1;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 600 (six hundred euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President