



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

FIFTH SECTION

**CASE OF KIRICHENKO AND BELINSKIY v. UKRAINE**

*(Application no. 36283/02)*

JUDGMENT

STRASBOURG

15 May 2008

**FINAL**

*15/08/2008*

*This judgment may be subject to editorial revision.*



**In the case of Kirichenko and Belinskiy v. Ukraine,**

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

Peer Lorenzen, *President*,  
Karel Jungwiert,  
Volodymyr Butkevych,  
Renate Jaeger,  
Mark Villiger,  
Isabelle Berro-Lefèvre,  
Mirjana Lazarova Trajkovska, *judges*,  
and Claudia Westerdiek, *Section Registrar*.

Having deliberated in private on 22 April 2008,  
Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 36283/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Ms Raisa Pavlovna Kirichenko and Mr Viktor Aleksandrovich Belinskiy (“the applicants”), on 19 July 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska, succeeded by Mr Y. Zaytsev.

3. On 15 March 2005 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1940 and 1937 respectively and live in Odessa.

5. In 1994 and 1995 the applicants made contributions to “U.”, a trust fund (“the Trust Fund”), which invested them in the construction of apartments by “M.”, a construction company (“the Construction Company”), co-founded by the municipal authorities and other unspecified shareholders. Initially each applicant was assigned a specific apartment.

However, subsequently the investment contract between the Trust Fund and the Construction Company was annulled and the latter entered into a contract with another company, following which those apartments had been reassigned to other persons.

6. On 28 May 1996 and 10 June 1996 the first and the second applicant respectively brought actions against the Trust Fund and the Construction Company before the Suvorovsky District Court of Odessa (*Суворовський районний суд м. Одесса*) alleging breach of contracts. On 24 June 1996 these actions were joined.

7. On 12 August 1996 the court found that the Trust Fund had complied with its obligations *vis-à-vis* the applicants. It further held that the Construction Company was in default, declared each of the applicants an owner of an apartment and awarded them default interest and non-pecuniary damages. On 21 August 1996 the court amended its judgment, having specified the concrete apartments to be assigned to the applicants.

8. On 29 October 1996 the Odessa Regional Court (*Одеський обласний суд*)<sup>1</sup>, following the Construction Company's appeal, quashed the part of the judgment relating to the monetary award and remitted the respective claims for a fresh consideration. As regards the applicants' entitlement to ownership of the apartments, the judgment was upheld and became final.

9. On 5 February 1997 the Presidium of the Regional Court, following a *protest* (an extraordinary appeal) of its President, quashed the previous decisions to the extent that they upheld the applicants' ownership and remitted these claims for a fresh consideration. On several occasions the applicants unsuccessfully attempted to have this decision repealed. In particular, they requested the Constitutional Court to interpret provisions of applicable legislation, this request having been rejected in November 2000.

10. In the meantime, in March 1998 the Construction Company's registration was annulled and its founders were obliged to carry out liquidation formalities. In May 2000 the Construction Company's director, his deputy and the chief accountant were convicted of several criminal offences in connection with the company management.

11. On 25 September 2001 the applicants lodged a cassation appeal with the Supreme Court of Ukraine against the decision of 5 February 1997 following the newly introduced cassation procedure.

12. On 10 January 2002 the Supreme Court rejected their request for leave to appeal in cassation.

13. Between April 2002 and April 2004 the proceedings were suspended on account of lack of information about the location of the defendant entities.

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1. Since July 2001 the Odessa Regional Court of Appeal (*Апеляційний суд Одеської області*).

14. Between 14 July and 29 November 2004 no hearings were scheduled on account of the second applicant's illness.

15. On 16 March 2005 the District Court decided to leave the applicants' claims without consideration referring to their repeated failures to appear before the court. The applicants appealed.

16. On 22 December 2005 the Regional Court quashed the decision of 16 March 2005 for want of evidence that the applicants had been duly notified about the hearings.

17. On 27 July 2006 the proceedings were suspended on account of the second applicant's illness. According to the applicants, no hearings were scheduled since that time and the proceedings are currently pending before the first-instance court.

18. Between September 1997 and the present time the court scheduled the total of some forty hearings. Only some three of the hearings took place. The other hearings were adjourned predominantly on account of the absence of one or both of the defendants.

## THE LAW

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

19. The applicants complained that the length of the proceedings 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..."

20. The Government contested that argument.

21. 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. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted over ten and a half years for two levels of jurisdiction.

#### A. Admissibility

22. The Government raised objections, contested by the applicants, concerning the observance of the six-month rule and the exhaustion of domestic remedies, similar to those which the Court has already dismissed in other cases (see e.g. *Zhurba v. Ukraine* (dec.), no. 11215/03,

19 June 2007 and *Moroz and Others v. Ukraine*, no. 36545/02, §§ 46-49, 21 December 2006). The Court finds that these objections should be dismissed on the same grounds.

23. The Court notes that the complaint about the length of the proceedings 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**

24. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. Turning to the facts of the case, the Court finds that the complexity of the case and the applicants' conduct alone cannot explain the overall length of the proceedings. It considers that a number of delays (in particular, repetitive adjournments of hearings in view of the defendants' absence and prolonged periods of procedural inactivity) can be attributed to the Government.

26. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see e.g. *Smirnova v. Ukraine*, no. 36655/02, § 69, 8 November 2005 and *Siliny v. Ukraine*, no. 23926/02, § 34, 13 July 2006 and *Moroz and Others v. Ukraine*, no. 36545/02, § 59, 21 December 2006).

27. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

28. There has accordingly been a breach of Article 6 § 1.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicants further complained under Article 1 of Protocol No. 1 that the domestic authorities had failed to uphold their ownership rights in the apartments and under Article 13 of the Convention that they had no effective remedies for this complaint, in particular, since the Constitutional Court had refused to consider their application. Finally, the applicants invoked Article 14 of the Convention to the facts of the case.

30. The Court reiterates that the domestic proceedings concerning the determination of the applicants' ownership claim are still pending before the first-instance court. Having carefully examined the applicants' submissions in the light of all the material in its possession and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

31. It follows that this part of the application must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicants claimed the equivalent of the present-day cost of the apartments in which they had invested their funds by way of compensation for pecuniary damage. They further claimed UAH 125,506 and UAH 158.631 respectively by way of non-pecuniary damage.

34. The Government contested these claims.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it finds that the applicants must have sustained non-pecuniary damage on account of the excessive length of the proceedings. Ruling on an equitable basis, the Court awards each applicant EUR 4,000 in this respect.

### B. Costs and expenses

36. The applicants also claimed UAH 700 each in legal fees.

37. The Government contested this claim.

38. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

39. The Court considers that these requirements have not been met in the instant case. It notes that the case was not particularly complex and the applicants first informed the Court of their representation in their final written submissions to the Court. The Court further notes that the applicants were granted leave to use Russian in the written procedure before the Court that would make unnecessary any expenses for the translation and certification of the documents presented to the Court. Regard being had to the information in its possession and to the above considerations, the Court rejects the applicants' claim for costs and expenses.

### C. Default interest

40. 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.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand Euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency at the rate applicable at 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President