



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

FIFTH SECTION

**CASE OF TERYTYEV v. UKRAINE**

*(Application no. 39763/02)*

JUDGMENT

STRASBOURG

29 May 2008

**FINAL**

***29/08/2008***

*This judgment may be subject to editorial revision.*



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

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

Peer Lorenzen, *President*,  
Karel Jungwiert,  
Volodymyr Butkevych,  
Mark Villiger,  
Isabelle Berro-Lefèvre,  
Mirjana Lazarova Trajkovska,  
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 May 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 39763/02) 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 Vladimir Yemelyanovich Terentyev (“the applicant”), on 8 October 2002. The applicant was represented before the Court by Mrs S. Toropchina-Agalakova.

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

3. On 11 May 2006 the Court decided to give notice of the application 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 applicant was born in 1937 and lives in Dnipropetrovsk.

5. After the death of his father, the applicant inherited 38/100 of a house and the right to use the adjacent plot of land.

### A. First set of proceedings

6. On 14 May 1996 the applicant instituted civil proceedings in the Babushkinsky District Court of Dnipropetrovsk (*Бабушкінський районний суд м. Дніпропетровська*), “the Babushkinsky Court”, alleging that Mrs N., the co-owner of the house, perpetually abused her land use rights and seeking to divide the plot of land between them.

7. On 22 August 1996 the court ordered an expert assessment to determine the manner in which to divide the plot and suspended the proceedings. On 6 May 1997 an expert report, containing several possible solutions, was delivered to the court.

8. On 7 August 1997 the court ordered an additional expert assessment and in October 1997 suspended the proceedings pending its outcome. The following hearing in the case was scheduled for 23 June 1998.

9. On 15 January 1999 the applicant amended his initial claims, additionally seeking recognition of his right to a part of the cellar and of the waste funnel. In April 1999 the court decided to disjoin the applicant’s new claims, however, eventually they were decided within the framework of the initial proceedings.

10. On 13 April 1999 Judge R. replaced Judge M., who had been initially dealing with the applicant’s case, as the latter’s term of office had expired. The case was adjourned until 13 October 1999.

11. On 27 December 2000 the court decided to divide the land according to one of the options proposed by the experts. The applicant appealed in cassation, alleging that that option was unsatisfactory.

12. On 2 April 2001 the Dnipropetrovsk Regional Court (*Дніпропетровський обласний суд*), “the Regional Court”,<sup>1</sup> quashed the judgment of 27 December 2000 and remitted the case for a fresh examination.

13. On 29 January 2003 the court discontinued proceedings in the case on the ground that the parties had failed to use the non-judicial means of settlement of their dispute. The applicant appealed.

14. On 15 April 2003 the Regional Court quashed the decision of 29 January 2003 and remitted the case for a fresh consideration.

15. On 24 December 2003 the court divided the land according to another option suggested by the experts and dismissed the applicant’s claims concerning the waste funnel and the cellar as lodged outside the statute of limitation. The defendant appealed.

16. On 1 April 2004 the Regional Court rejected the defendant’s appeal and the judgment of 24 December 2003 became enforceable.

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

17. After the expiration of the statutory period for lodging cassation appeal, when the judgment in the case had become final, Ms K., who had acquired the house from the defendant, unsuccessfully sought renewal of the time-limit for lodging cassation appeal. The last decision concerning this request was taken on 10 September 2004.

18. Between September 1997 and 24 December 2003 the trial court scheduled the total of some twenty-seven hearings with intervals from three weeks to ten months. Some sixteen of these hearings were adjourned, ten adjournments being attributable to the defendant's absences.

19. In May 2004, following the applicant's request, the bailiffs' service instituted enforcement proceedings in respect of the judgment of 24 December 2003. In November 2005 the applicant sold his part of the house and requested that the enforcement proceedings were discontinued. On 22 November 2005 this request was allowed.

## **B. Second set of proceedings**

20. On 17 April 1998, in the course of the first set of proceedings, the applicant lodged with the Babushkinsky Court an additional claim, seeking pecuniary and non-pecuniary damages for Mrs N.'s abuses of her land use right. On 19 December 2000 the court decided to consider this claim separately from the initial set of proceedings.

21. On 11 July 2001 the court discontinued proceedings in the case due to the parties' failure to appear.

22. On 28 December 2001 the applicant lodged an appeal against the decision of 11 July 2001, referring to the failure of the Babushkinsky Court to notify him about the date of the hearing.

23. On 6 March 2002 the Babushkinsky Court refused to grant the applicant leave to appeal on the ground that the latter had been lodged out of time. The applicant appealed, alleging that he had missed the time-limit because the Babushkinsky Court had failed to notify him about the decision of 11 July 2001 in good time.

24. On 29 April 2002 the Regional Court quashed the decision of 6 March 2002 and remitted the question of the admissibility of the applicant's appeal for a fresh consideration.

25. On 31 May 2002 the Babushkinsky Court refused to grant the applicant leave to appeal for essentially the same reasons as stated in its decision of 6 March 2002.

26. On 10 October 2002 the Regional Court quashed the decision of 31 May 2002 and remitted the applicant's appeal for a decision on its admissibility.

27. On 13 November 2002 the Babushkinsky Court granted the applicant leave to appeal against the decision of 11 July 2001.

28. On 20 January 2003 the Regional Court rejected the applicant's appeal against the decision of 11 July 2001 as being unsubstantiated.

29. On 30 September 2004 the Supreme Court of Ukraine allowed the applicant's appeal in cassation and quashed the decisions of 11 July 2001 and 20 January 2003. It held that there was no evidence that the parties had been duly informed about the hearing on 11 July 2001. The Supreme Court remitted the case for a fresh consideration on the merits.

30. In November 2005 the applicant withdrew his claim for compensation. On 18 November 2005 the Babushkinsky Court terminated the proceedings.

31. According to the case-file materials, in the course of the proceedings the trial court scheduled at most eight hearings. None of them was attended by the defendant.

## THE LAW

### I. SCOPE OF THE CASE

32. The Court notes that, after the communication of the case to the respondent Government, the applicant additionally complained under Article 13 of the Convention about lack of effective remedies for his complaint about the unreasonable length of the civil proceedings in his case.

33. In the Court's view, this new complaint is not an elaboration of the applicant's original complaint under Article 6 § 1, lodged with the Court four years earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take this matter up in the present context (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

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

34. The applicant complained that the length of the proceedings in the case concerning his dispute with Mrs N. 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..."

## A. Admissibility

35. The Court notes that the application 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. The period to be taken into account*

36. According to the Government, the period to be taken into account with respect to the first set of proceedings commenced on 11 September 1997, when the Convention entered into force in respect of Ukraine. This period lasted through 10 September 2004, the date of the last decision dismissing the defendant's request for renewal of the time-limit for lodging an appeal in cassation.

37. As regards the second set of proceedings, the Government submitted that they lasted from 19 December 2000, when these proceedings were disjoined from the first set, until 18 November 2005, when the court discontinued proceedings following the applicant's decision to withdraw his claim.

38. The applicant disagreed. He maintained that the second set of the proceedings should not be examined in isolation from the first set, since both sets of the proceedings concerned a dispute with the same person regarding the same property.

39. The Court recalls that the first set of proceedings concerned division of land, while the second one concerned the applicant's right to compensation for the defendant's alleged abuse of common property. The two sets of proceedings were pending simultaneously for over three years and, based on the materials in the Court's possession, there is no conclusive evidence that their factual and evidentiary basis was identical or that the outcome of the proceedings concerning the division of land was decisive for the determination of the applicant's right to compensation (see by contrast *Svetlana Naumenko v. Ukraine*, no. 41984/98, §§ 74-75, 9 November 2004). Moreover, according to the case-file materials, the applicant never lodged an appeal against the trial court's decision to disjoin his claims. In these circumstances, the Court finds that the length of the two sets of proceedings should be examined separately.

40. The first set of proceedings started in May 1996. However, the period to be taken into consideration began only on 11 September 1997, when Ukraine officially recognised the right of individual petition. Nevertheless, 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

judicial stage of the proceedings lasted until 1 April 2004, resulting in adoption of an enforceable judgment concerning the applicant's claims. The subsequent unsuccessful attempts of the defendant to obtain re-opening of the proceedings after this judgment had become final cannot be taken into account, since such proceedings fall outside the scope of Article 6 § 1 (see e.g. *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002). The proceedings in their judicial phase thus lasted six years and seven months for two levels of jurisdiction. Between May 2004 and November 2005 the applicant was further a party to enforcement proceedings in the above case.

41. As regards the second set of proceedings, the Court recalls that the applicant initiated the "determination" of his "civil rights" within the meaning of Article 6 § 1 of the Convention by lodging a compensation claim on 17 April 1998 and withdrew it in November 2005. The proceedings thus lasted seven years and seven months for three levels of jurisdiction.

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

42. 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).

43. The Court notes that the complexity of the case and the applicant's conduct alone cannot explain the overall length of both sets of the proceedings at issue in the present case. It finds that a number of delays (in particular, repetitive remittals of the cases for a fresh consideration, prolonged periods of procedural inactivity and numerous adjournments of hearings on account of the defendant's absence) can be attributed to the Government.

44. 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; *Siliny v. Ukraine*, no. 23926/02, § 34, 13 July 2006; and *Moroz and Others v. Ukraine*, no. 36545/02, §§ 59-60, 21 December 2006).

45. 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 two sets of proceedings was excessive and failed to meet the "reasonable time" requirement.

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

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

49. The Government contested this claim.

50. The Court considers that the applicant must have sustained non-pecuniary damage on account of the excessive length of proceedings in his cases. Ruling on an equitable basis, it awards him EUR 3,200 under that head.

#### B. Costs and expenses

51. The applicant presented receipts for UAH 483.22 in postal and photocopying expenses in connection with his application to the Court. Additionally he requested UAH 5,000 for his legal representation before the Court without providing supporting documents. Lastly, the applicant assessed that he had spent around UAH 7,193 in connection with his efforts to speed up the proceedings at the domestic level, including UAH 4,950 in legal fees, for which he presented receipts. A receipt for UAH 1,200 dated October 2003 includes the following reference: “*Payment in connection with filing complaints about delay in the proceedings*”. The other receipts refer to fees for drafting appeals and other court documents or bear no reference to the type of legal advice received.

52. The Government contested these claims.

53. 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).

54. Regard being had to the information in its possession and the above criteria, the Court awards the applicant EUR 80 for postal and photocopying costs and EUR 200 in legal fees. The Court dismisses the remainder of the applicant’s claim under this head.

### C. Default interest

55. 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 application admissible;
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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,200 (three thousand two hundred euros) in respect of non-pecuniary damage and EUR 280 (two hundred eighty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on the above amounts, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President