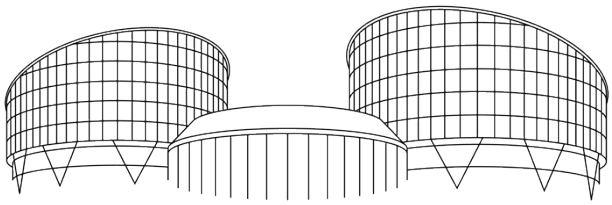

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF OLKHOVIKOVA v. UKRAINE

(Application no. 36002/08)

JUDGMENT

STRASBOURG

25 November 2010

This judgment is final but it may be subject to editorial revision.

In the case of Olkhovikova v. Ukraine,

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

Rait Maruste, *President,*
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 2 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 36002/08) 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, Mrs Lyubov Andriyivna Olkhovikova ("the applicant"), on 19 July 2008.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 19 October 2009 the President of the Fifth Section decided to give notice of the application to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee of three Judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Kherson.

5. In 1996-1997 the applicant's neighbours, Mr and Mrs P., who lived on the second floor of a two-storey dwelling house, reconstructed their two flats. As a result of this, the applicant's flat on the first floor of the same house and the property in it were flooded and damaged.

6. On 10 September 1997 the applicant lodged a civil claim with the Komsomolskyy Court against Mr and Mrs P., by which she asked it to declare unlawful the reconstructions they had made, sought elimination of obstacles in using the house and claimed damages. Subsequently, the applicant lodged a similar claim against the local authorities, by which she also sought refutation of information published in a local newspaper

concerning the applicant's alleged failure to pay for the utilities and claimed damages in this respect.

7. Between 9 September 1998 and 24 April 1999 the proceedings were suspended pending the outcome of the applicant's criminal complaint concerning the matter, which was eventually dismissed as unsubstantiated.

8. On 28 August 2001 the court discontinued the proceedings in respect of Mr P. because of his death.

9. Following two reconsiderations of the case, on 31 August 2005 the court allowed in part the applicant's claim, declared the reconstructions made by Mrs P. unlawful, obliged her to repair the house and the applicant's flat and ordered Mrs P. to pay the applicant certain amounts in compensation. The court rejected, as unsubstantiated, the applicant's claim against the local authorities.

10. On 12 December 2005 and 24 January 2008, respectively, the Kherson Regional Court of Appeal and the Kirovograd Regional Court of Appeal (the latter court acting as a court of cassation) upheld the above judgment. On 14 April 2008 the applicant was served with a copy of the decision of 24 January 2008.

11. According to the Government, in the course of the proceedings the applicant amended or specified her claims on six occasions and on one occasion she requested the courts to extend the time-limit for lodging her appeal. Nineteen hearings were adjourned upon the applicant's request or due to her failure to attend them. Thirty-five hearings were adjourned mainly due to the respondents' or third parties' failure to attend them and because of the absence of the judge. Three expert examinations were ordered in the course of the proceedings and lasted for about three months (in June-July 1999 and in May 2004).

12. The applicant disagreed that she had been responsible for the adjournment of some of the hearings mentioned by the Government.

THE LAW

I. SCOPE OF THE CASE

13. After the communication of the case to the respondent Government, the applicant introduced a new complaint about the non-enforcement of the judgment of 31 August 2005, without invoking any provision of the Convention.

14. In the Court's view, this complaint is not an elaboration of the applicant's original complaint about the length of the proceedings, lodged approximately one year and eight months earlier, on which the parties have

commented (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005). The Court considers, therefore, that the scope of the present case before it is limited to that original complaint. The complaint about the non-enforcement of the judgment of 31 August 2005 will be dealt with in a separate application (no. 42191/10).

II. THE COMPLAINT ABOUT THE LENGTH OF PROCEEDINGS

15. The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings in her case. The above provision reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within reasonable time by [a] ... tribunal ..."

16. The Government stated that that there had been no violation of the Convention in the present case.

17. The Court notes that, although the proceedings started on 10 September 1997, 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. They ended on 14 April 2008, when the applicant received a copy of the final ruling (see *Widmann v. Austria*, no. 42032/98, § 29, 19 June 2003, and *Gitskaylo v. Ukraine*, no. 17026/05, § 34, 14 February 2008). Between 9 September 1998 and 29 April 1999 the proceedings were formally suspended pending the outcome of the applicant's criminal complaint (see paragraph 7 above). In total, the proceedings lasted, therefore, for about ten years before three judicial instances.

A. Admissibility

18. 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

19. 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).

20. Turning to the circumstances of the case, the Court notes that the complexity of the case and the conduct of the applicant, who somewhat contributed to the length of the proceedings (see paragraphs 11-12 above), cannot explain their overall duration. On the other hand, it finds that substantial delays, mainly caused by the lengthy consideration of the applicant's appeal in cassation and repeated adjournment of the hearings, were attributable to the domestic courts. It concludes, therefore, that the main responsibility for the protracted length of the proceedings rested with the State.

21. 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, among many other authorities, *Pavlyulynets v. Ukraine*, no. 70767/01, § 53, 6 September 2005; and *Moroz and Others v. Ukraine*, no. 36545/02, § 62, 21 December 2006).

22. 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. It finds that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. REMAINING COMPLAINTS

23. The applicant also complained under Article 6 § 1 of the Convention about the outcome of the proceedings and about a violation of Article 1 of Protocol No. 1 on account of such outcome, alleging, in particular, that she had been unable to live in her flat damaged by the reconstructions and flooding.

24. Having carefully examined the applicant's submissions in the light of all the material in its possession and in so far 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.

25. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant relied on the Court's discretion in awarding her compensation for non-pecuniary damage. The Government also left the matter for the Court.

28. The Court considers that the applicant must have sustained non-pecuniary damage because of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant 3,200 euros (EUR).

B. Costs and expenses

29. The applicant did not submit a claim under this head. Accordingly, the Court makes no award.

C. Default interest

30. 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 applicant's complaint under Article 6 § 1 of the Convention about the length of the proceedings admissible and the remaining complaints 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 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), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 25 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Rait Maruste President