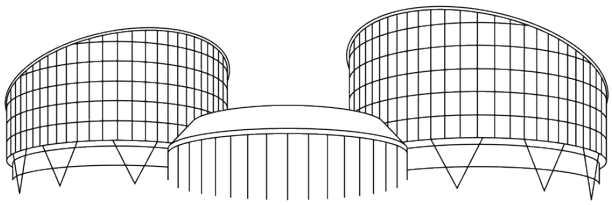

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF TVERDOKHLEBOV v. UKRAINE

(Application no. 27341/05)

JUDGMENT

STRASBOURG

19 November 2009

FINAL

19/02/2010

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 Tverdokhlebov v. Ukraine,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*
Mykhaylo Buromenskiy, ad hoc *judge,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 20 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 27341/05) 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 Russian national, Mr Vladimir Nikolayevich Tverdokhlebov ("the applicant"), on 29 June 2005.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Yuriy Zaytsev.

3. On 15 October 2008 the Court decided to communicate the complaint concerning the length of the civil proceedings to the Ukrainian Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. On 21 October 2008 the Government of the Russian Federation were asked whether they intended to intervene in the proceedings as a third party (Article 36 § 1 and Rule 44).

5. On 17 December 2008 the Government of the Russian Federation informed the Court that they did not wish to exercise their right to intervene in the proceedings as a third party.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and lived in Gukovo. In December 2007 the applicant died and his sister, Mrs Irina Nikolayevna Kulikova, indicated that she wished to pursue the case.

7. On 13 February 1997 the applicant was apprehended at the Chervonopartizanskyy border crossing point on suspicion of drug trafficking. On the same date the applicant's car, which he had been driving at the time, was seized together with his belongings, documents and money which were in it. The customs officers refused to compile an inventory of objects seized from the applicant. Subsequently, the Customs Service transferred the car to a private company called Forum for storage.

8. On 26 June 1997 the Sverdlovsk Court sentenced the applicant to five years' imprisonment for drug trafficking and confiscated all of his property.

9. On 8 October 1997 the Lugansk Regional Court modified that judgment, sentencing the applicant to five years' imprisonment, suspended, without confiscation.

10. On 5 November 1997 the applicant approached Forum to ask for the return of his car. When the car was returned, the applicant noted that it had been seriously damaged and lacked several parts, the documents and belongings had been torn up and his money had disappeared. According to the company, the Customs Service had transferred the car in that condition on 20 February 1997.

11. On 4 January 1998 the applicant instituted proceedings in the Sverdlovsk Court against the Sverdlovsk Customs Service seeking compensation for pecuniary and non-pecuniary damage and stating that the defendant had failed to comply with its obligation to keep his property undamaged and without loss.

12. On 26 March 1998 the court partially allowed the applicant's claims and awarded him part of the compensation claimed.

13. On 28 May 1998 the Lugansk Regional Court quashed that judgment and remitted the case for fresh consideration to the same court.

14. On 9 November 1998 the Sverdlovsk Court rejected the applicant's claims as unsubstantiated.

15. On 19 February 1999 the prosecutor's office initiated criminal proceedings against two customs officers, Mr V. and Mr C., following a request from the applicant in which he alleged that these persons were responsible for the damage to his car and belongings.

16. On 15 September 1999 the Presidium of the Lugansk Regional Court quashed the judgment of 9 November 1998 at the request of the prosecutor's

office and remitted the case for fresh consideration to the first-instance court.

17. On 16 February 2000 the Sverdlovsk Court suspended the civil proceedings pending the outcome of the criminal proceedings against Mr V. and Mr C.

18. The criminal investigation in the criminal case against Mr V. and Mr C. is still pending.

19. On an unspecified date following the applicant's death, his mother, Mrs Nasima Mullakhmetovna Tverdokhlebova, and daughter, Ms Mariya Vladimirovna Tverdokhlebova, joined the civil proceedings as the applicant's successors. They are represented before the domestic court by Mrs Irina Vladimirovna Kulikova, the applicant's sister.

20. According to Mrs Kulikova, in May 2009 the hearings in the civil case in question resumed and the case is currently pending before the first instance court.

THE LAW

I. PRELIMINARY OBSERVATION

21. The applicant died in December 2007, while the case was pending before the Court (see paragraph 4 above). It has not been disputed that the applicant's sister is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise. However, reference will still be made to the applicant throughout the ensuing text.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

22. The applicant complained that the length of the civil proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention. The applicant also invoked Article 13 of the Convention. In so far as they are relevant, the provisions invoked read as follows:

Article 6 § 1

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

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

23. The Court, master of the characteristic to be given in law to the facts of a case, finds that the applicant's complaint falls to be considered solely under Article 6 § 1 of the Convention.

A. Admissibility

24. The Government submitted that the applicant had failed to exhaust domestic remedies because he had not appealed against the decision of 16 February 2000.

25. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see *Khokhlich v. Ukraine*, no. 41707/98, § 149, judgment of 29 April 2003).

26. Turning to the circumstances of the present case, the Court notes that on 16 February 2000 the civil proceedings were suspended pending the outcome of the criminal proceedings, which are decisive for the applicant's civil claims. The Court is not convinced that lodging an appeal against the decision of 16 February 2000 would have accelerated the criminal proceedings and, consequently, unblocked the civil proceedings at issue.

27. In these circumstances, the Court concludes that the applicant was not required to pursue the remedy invoked by the Government and has therefore complied with the requirements of Article 35 § 1. Accordingly, it dismisses the Government's objection.

28. 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

29. The Government submitted that the period to be taken into consideration had lasted from July 1999 to February 2000 and the length of the civil proceedings could not be considered unreasonable. In their view, the applicant contributed to the length of the proceedings by lodging two cassation appeals. The Government further maintained that the case was

complex and there were no substantial delays attributable to the domestic authorities.

30. 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).

31. The Court notes that the proceedings in question have lasted since 4 January 1998 (excluding the interval between 9 November 1998 to 15 September 1999, when no proceedings were pending) and have not yet ended. The period to be taken into consideration has thus lasted for about ten years and ten months to date.

32. The Court notes that the civil proceedings at issue were blocked for more than nine years due to the failure of the domestic authorities to conclude the criminal investigations, the findings of which are decisive for the applicant's civil claim. Therefore, the responsibility for the protracted length of proceedings in the present case rests with the domestic authorities.

33. 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 *Frydlender*, cited above; *Baglay v. Ukraine*, no. 22431/02, § 33, 8 November 2005 and *Solaz v. Ukraine*, no. 35184/02, § 43, 12 June 2008).

34. 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.

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

III. OTHER COMPLAINTS

36. The applicant complained under Article 14 of the Convention that he had been discriminated against during the court proceedings on the basis of his nationality and financial situation. The applicant also complained of a violation of Article 1 of Protocol No. 1 stating that the State was responsible for the damage to his property.

37. The Court notes that the applicant did not raise his complaint under Article 14 of the Convention before the domestic courts and the proceedings in question are still pending. Therefore, this part of the application must be declared inadmissible for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 2,000,000[1] Russian roubles (RUB) in respect of non-pecuniary damage and RUB 10,000,000[2] and 12,049.6[3] Ukrainian hryvnias (UAH) in respect of pecuniary damage.

40. The Government contested these claims.

41. 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, the Court, making its assessment on an equitable basis, as required by Article 41, awards the beneficiaries of the applicant's estate 4,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant also claimed UAH 2,055.6[4] and EUR 1,000 for the costs and expenses incurred before the domestic courts.

43. The Government contested this claim.

44. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

45. 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. About EUR 46,000.
2. About EUR 230,787.
3. About EUR 1,150.
4. About EUR 184.

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* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the beneficiaries of the applicant's estate, 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 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 amount 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 19 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Peer Lorenzen President