



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

FIFTH SECTION

DECISION

Application no. 8809/07  
by Anastasiya and Vasiliy KALYUK  
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 22 June 2010 as a Chamber composed of:

Peer Lorenzen, *President*,  
Karel Jungwiert,  
Rait Maruste,  
Mark Villiger,  
Isabelle Berro-Lefèvre,  
Zdravka Kalaydjieva,  
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 13 February 2007,

Having regard to the unilateral declaration submitted by the respondent Government on 16 February 2010 requesting the Court to strike the application out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The application was lodged by two Ukrainian nationals, Mrs Anastasiya Profiryevna Kalyuk ("the first applicant") born in 1934 and Mr Vasiliy Ivanovich Kalyuk ("the second applicant") born in 1927. The second applicant lives in the Khmelnytsk Region. The Ukrainian Government ("the Government") were represented by their Agent, Mr Yuriy Zaytsev.

In May 2008 the first applicant died. In December 2009 her daughter, Mrs Krasnolutsкая, expressed the wish to pursue the application in her stead.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 5 December 1995 Mrs K. (a private individual), acting in her own interests and in the interests of her minor daughter, lodged a civil claim with the domestic courts against the applicants in an inheritance dispute concerning the title to a household and a plot of land.

Following three remittals of the case for a fresh consideration, by a final ruling of 17 October 2006, the Supreme Court allowed the claim of Mrs K. and declared her and her daughter's title to part of the household and the plot of land.

## COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention about unreasonable length of the proceedings in their case.

They also complained under Articles 1, 6 § 1, 13 and 17 of the Convention and under Article 1 of Protocol No. 1 about unfavourable outcome of the proceedings.

## THE LAW

### **A. *Locus standi* of Mrs Krasnolutsкая**

The Court notes that it has not been disputed by the parties that Mrs Krasnolutsкая is entitled to pursue the application in the first applicant's stead and the Court sees no reason to hold otherwise (see, for instance, *Svistun v. Ukraine*, no. 9616/03, §§ 13-14, 21 June 2007; *Stojkovic v. The Former Yugoslav Republic of Macedonia*, no. 14818/02, §§ 25-26, 8 November 2007; *Serafin and Others v. Poland*, no. 36980/04, § 68, 21 April 2009; and *Ivanovski and Others v. The Former Yugoslav Republic of Macedonia*, no. 34188/03, § 18, 26 November 2009). However, reference will still be made to the first applicant throughout the ensuing text.

### **B. The complaint about the length of the proceedings**

The applicants complained about unreasonable length of the proceedings in their case. They relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

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

By a letter dated 16 February 2010, the Government informed the Court of their unilateral declaration, signed on the same date, with a view to resolving the issue raised by this complaint. The declaration provided as follows:

“The Government of Ukraine acknowledge the excessive duration of the civil procedure in the applicants' case.

I, Yuriy Yevgenovych Zaytsev, the Agent of the Government of Ukraine, declare that the Government of Ukraine are ready to pay Mr Vasiliy Ivanovich Kalyuk and Mrs Anastasiya Profiriyevna Kalyuk *ex gratia* the sum of 1,200 euros to each of them.

The Government of Ukraine therefore invite the Court to strike the application no. 8809/07 out of the list of cases. They suggest that the present declaration might be accepted by the Court as “any other reason” justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

These sums of 1,200 euros, which [are] to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

This payment will constitute the final resolution of the case”.

In a letter of 29 March 2010, the applicants expressed the view that the sums mentioned in the Government's declaration were unacceptably low and requested the Court to award them EUR 100,000 in just satisfaction.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under paragraph 1 (a)-(c) of that Article. In particular, Article 37 § 1 (c) enables the Court to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

The Court also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will carefully examine the declaration in the light of the principles emerging from its case-law (see, in particular, *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court has established in a number of cases, including those against Ukraine (see, among many other authorities, *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 52-53, 6 September 2005; *Moroz and Others v. Ukraine*,

no. 36545/02, §§ 61-62, 21 December 2006; and *Golovko v. Ukraine*, no. 39161/02, §§ 64-65, 1 February 2007), its practice concerning complaints about violations of the right to a hearing within a reasonable time.

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amounts of compensation proposed, which are consistent with the amounts awarded in similar cases by the Court, the Court considers that it is no longer justified to continue the examination of this part of the application.

It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of this part of the application (Article 37 § 1 *in fine* of the Convention).

Accordingly, this part of the application should be struck out of the list.

### **C. The remaining complaints**

Having carefully examined the remainder of the applicants' complaints under Articles 1, 6 § 1, 13 and 17 of the Convention and Article 1 of Protocol No. 1 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.

For these reasons, the Court unanimously

*Takes note* of the terms of the respondent Government's unilateral declaration in respect of the complaint under Article 6 § 1 of the Convention about the excessive length of the proceedings in the applicants' case and of the modalities for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

*Declares* the remainder of the application inadmissible.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President