

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

FIFTH SECTION

CASE OF BOLSHENKO v. UKRAINE

(Application no. 9725/20)

JUDGMENT

STRASBOURG

23 March 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Bolshenko v. Ukraine,

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

Carlo Ranzoni*, President*,
Lado Chanturia,
María Elósegui*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 9725/20) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 February 2020 by four Ukrainian nationals living in Kryvyi Rih, whose names and years of birth are listed in the appended table ("the applicants") and who were represented by Mr S. Yakymenko, a lawyer practising in Kryvyi Rih;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, most recently Mr I. Lishchyna, of the Ministry of Justice;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated in private on 2 March 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the allegedly excessive length of court proceedings regarding contact arrangements between the applicants and the alleged non-enforcement of the judgments delivered in those proceedings. The applicants relied on Articles 6, 8 and 13 of the Convention.

2. On 13 May 2015 the first applicant initiated proceedings before the Tsentralno-Miskyi District Court in Kryvyi Rih ("the District Court") against V., the second applicant's mother, arguing that she had been preventing any contact and communication between him and the second applicant since July 2014. In the course of the proceedings, at least fifteen hearings were adjourned mainly because V. and/or her representative could not or did not attend. Two hearings (in October 2018 and February 2019) were adjourned at the first applicant's request and on account of his absence. Between September 2016 and December 2017 the case was reassigned three times to different judges following the prolonged absence for medical reasons of two judges and another judge's resignation. Between August and December 2017 the proceedings were adjourned pending a court-ordered forensic psychiatric examination. The first applicant lodged several applications to expedite the proceedings, stating that he had had no contact with the second applicant during the entire duration of the first-instance proceedings. By a judgment of

8 July 2019, the District Court set out a detailed schedule for the first and second applicants' regular meetings and communication. On 30 September 2020 the Dniprovskyi Regional Court of Appeal partly amended that judgment. According to the material before the Court, when the first and second applicant eventually met in December 2019, the latter did not wish to communicate with the former.

3. In the meantime, on 3 February 2016 the District Court approved a settlement agreement between the paternal grandparents of the second applicant (the third and fourth applicants) and V. setting out contact arrangements between those applicants.

THE COURT'S ASSESSMENT

I. EXCESSIVE LENGTH OF COURT PROCEEDINGS

4. Relying on Articles 6 and 8 of the Convention, the first applicant complained, on behalf of himself and the second applicant, that the excessive duration of the proceedings initiated in May 2015 had had a significant adverse effect on their relationship.

5. The Government argued, in the main, that the length of the proceedings at issue had not been unreasonable.

6. The Court considers that the first and second applicants' present complaint is to be examined solely under Article 6 § 1.

7. The Court finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

8. The relevant general principles regarding the State's obligations under Article 6 § 1 to ensure that cases concerning a person's relationship with his or her child are treated with special or exceptional diligence are summarised in several cases (see, among other authorities, *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I, and *Milovanović v. Serbia*, no. 56065/10, § 88, 8 October 2019).

9. The proceedings at issue concerned the hindering of communication and contact between a father and his child. The child was eight and a half years old when the proceedings were initiated, and by their nature they had to be treated with exceptional diligence.

10. The proceedings lasted around five years and four months before the domestic courts at two levels of jurisdiction. For most of that period – around four years and two months – the case was pending before the first-instance court. This period was too long, and even though the first applicant informed the court that his contact with the second applicant was being completely hindered by the mother, a fact which was eventually confirmed by the District Court's judgment of 8 July 2019, no meaningful action was taken to expedite the proceedings (see paragraph 2 above).

11. The first applicant partly contributed to the overall length of the proceedings by asking for an adjournment and being absent from several hearings, but there is no evidence that his actions caused any significant delay. Nor is there any indication of any particular substantive or procedural complexity that could explain their length. It appears that they lasted so long mainly because the hearings were repeatedly adjourned and/or postponed and no effort was made by the judicial authorities to ensure that all the parties adhered to a very tight schedule to avoid any unnecessary delays. Also, it appears that delays of several months were caused by the case being repeatedly reassigned to different judges (see paragraph 2 above).

12. In the light of the foregoing, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement (see, for comparable situations, *Zabara v. Ukraine* [Committee], no. 26007/17, §§ 19-22, 7 November 2019; *Ponomarenko v. Ukraine* [Committee], no. 17030/20, §§ 7-12, 22 September 2022; and *Tryetyak v. Ukraine* [Committee], no. 10919/20, §§ 10-18, 22 September 2022). Accordingly, the Court finds a violation of Article 6 § 1 of the Convention on that account.

II. LENGTHY NON-ENFORCEMENT OF JUDGMENTS

13. Relying on Articles 6, 8 and 13 of the Convention, all four applicants complained that the judgments of the District Court of 3 February 2016 and 8 July 2019 delivered in the child contact proceedings (see paragraphs 2 and 3 above) had not been enforced.

14. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto. It follows that those complaints must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicants claimed 70,000 euros (EUR) in respect of non-pecuniary damage; EUR 150 in respect of legal costs they allegedly incurred in the domestic proceedings; and EUR 3,200 they undertook to pay for their representative's work in the proceedings before the Court (thirty and a half hours at an hourly rate of EUR 105), a detailed account of which they submitted to the Court. They asked that the amounts claimed be paid directly into Mr S. Yakymenko's or the first applicant's bank account.

16. The Government contended that the claims were unsubstantiated and/or excessive.

17. The Court awards the first and second applicants EUR 7,500 jointly in respect of non-pecuniary damage, plus any tax that may be chargeable, which is to be paid directly into the first applicant's bank account, and EUR 1,000 for the legal costs of the proceedings before the Court, plus any tax that may be chargeable to those applicants. The latter amount is to be paid directly into Mr S. Yakymenko's bank account (see, for example, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, 15 December 2016). The remainder of the applicants' claim should be rejected.

18. The default interest rate 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 first and second applicants' complaint under Article 6 § 1 of the Convention about the length of the domestic judicial proceedings admissible and the remainder of the applications inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings concerning contact arrangements between the first and second applicants;

3. *Holds*
   (a) that the respondent State is to pay the first and second applicants jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be paid directly into the first applicant's bank account;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly into Mr S. Yakymenko's bank account;
   (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 23 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Carlo Ranzoni President

APPENDIX

List of applicants

No.	Applicant's Name	Year of birth	
1.	Sergiy Grygorovych BOLSHENKO	1976	First applicant
2.	Bogdan Sergiyovych BOLSHENKO, the first applicant's son	2006	Second applicant
3.	Grygoriy Mykhaylovych BOLSHENKO, the first applicant's father	1955	Third applicant
4.	Tetyana Petrivna BOLSHENKO, the first applicant's mother	1957	Fourth applicant