

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

FIFTH SECTION

CASE OF SHPILKO v. UKRAINE

(Application no. 11471/08)

JUDGMENT

STRASBOURG

19 April 2012

This judgment is final. It may be subject to editorial revision.



In the case of Shpilko v. Ukraine,

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

Mark Villiger, *President,*
Ganna Yudkivska,
André Potocki, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 11471/08) 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, Mr Petr Ivanovich Shpilko ("the applicant"), on 11 February 2008.

2. The applicant was represented by Mr V.Y. Scherbachenko, a lawyer practising in Berdyansk. The Ukrainian Government ("the Government") were represented by their Agent, Ms V. Lutkovska, of the Ministry of Justice.

3. On 18 October 2010 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Berdyansk.

5. On 5 March 2001 the applicant initiated a civil action in the Berdyansk Town Court ("the Berdyansk Court") against two private persons and a local authority as regards his entitlement to a garage.

6. On 15 May 2009, following two remittals of the case to the first-instance court for fresh examination, the proceedings were completed by a final ruling of the Supreme Court rejecting the applicant's request for leave to appeal in cassation. As a result, his claim was rejected.

7. In the course of proceedings the hearings were adjourned for a total of about seven months for the applicant's failure to attend. Overall, there were sixteen adjournments caused by the parties' absence. Four of the hearings did not take place owing to the judge's leave or sickness.

THE LAW

I. COMPLAINTS CONCERNING THE LENGTH OF THE PROCEEDINGS AND THE LACK OF EFFECTIVE DOMESTIC REMEDIES IN THAT RESPECT

8. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement and that he had no effective domestic remedy in that regard. He relied on Articles 6 § 1 and 13 of the Convention which 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."

9. The Government contested that argument stating that there had been no delays attributable to the State. They submitted that, while the proceedings had not been complex, their length could be explained by the number of the parties involved and their conduct.

10. The proceedings, which began on 5 March 2001 and ended on 15 May 2009, lasted about eight years and two months for three levels of jurisdiction.

A. Admissibility

11. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

12. 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).

13. Turning to the facts of the present case, the Court notes that the proceedings concerned a property dispute which was not of any particular complexity.

14. The Court acknowledges that the parties and in particular the applicant somewhat contributed to the length of the proceedings. It however considers that the parties' behaviour alone cannot justify the overall length of the proceedings.

15. The Court observes that there were two remittals of the case for fresh consideration because of the appeal court's disagreement with the first instance court's findings (see paragraph 6 above). The Court reiterates that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

16. 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).

17. 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.

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

2. Article 13 of the Convention

18. The Court has also frequently found violations of Article 13 of the Convention, stating that the current Ukrainian legislation does not provide a remedy for complaints concerning the length of proceedings (see *Efimenko v. Ukraine*, no. 55870/00, 18 July 2006). In the present case the Court finds no reason to depart from that case-law.

19. There has accordingly been a breach of Article 13 too.

II. REMAINDER OF THE APPLICATION

20. Relying on Article 6 of the Convention, the applicant further complained about the unfairness of the proceedings, not specifying his arguments to that regard.

21. In the light of the materials in its possession, the Court finds that the applicant's complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed EUR 70,000-100,000 in respect of non-pecuniary damage.

25. The Government contested the claim.

26. The Court considers that the applicant must have sustained some non-pecuniary damage. His claim is however excessive. Ruling on an equitable basis, the Court awards the applicant EUR 1,800 under that head.

B. Costs and expenses

27. The applicant did not claim any costs and expenses; the Court therefore makes no award.

C. Default interest

28. The Court considers it appropriate that 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 complaints under Articles 6 § 1 and 13 of the Convention concerning the length of proceedings and the lack of effective remedies in that respect 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 has been a violation of Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 1,800 (one thousand eight hundred euros), to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President