

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

FIFTH SECTION

CASE OF TSYGANKOV v. UKRAINE

(Application no. 27552/08)

JUDGMENT

This version was rectified on 27 June 2012
under Rule 81 of the Rules of Court

STRASBOURG

10 May 2012

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



In the case of Tsygankov 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 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 27552/08) 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 Russian national, Mr Nikolay Ivanovich Tsygankov ("the applicant"), on 5 June 2008.

2. The Ukrainian Government ("the Government") were represented by their Agent, Ms V. Lutkovska, of the Ministry of Justice.

3. On 25 August 2010 the President of the Fifth Section decided to give notice of the application to the Government.

4. The Russian Government informed the Court that they did not wish to exercise their right to intervene under Article 36 § 1 of the Convention.

THE FACTS

5. The applicant was born in 1950 and lives in Simferopol.

A. Proceedings instituted by the applicant in 2001

6. On 16 July 2001 the applicant lodged with the Kyivsky District Court of Simferopol ("the Kyivsky Court") three separate claims against the K. company, seeking compensation for the company's alleged failure to comply with its contractual obligations and claiming the title to two garage-boxes erected by the latter pursuant to several contracts with the applicant.

7. Subsequently, the applicant amended his claims on several occasions.

8. The applicant's claims concerning the title to two garage-boxes were joined, while the compensation claim was examined separately.

1. Proceedings concerning the applicant's compensation claim (the first set of proceedings)

9. On 11 July 2002 the Kyivsky Court allowed the applicant's compensation claim in full. The respondent appealed.

10. On 6 November 2002 the Crimea Court of Appeal quashed the judgment and remitted the case for fresh consideration.

11. On 9 November 2006 the Kyivsky Court rejected the applicant's claim as unsubstantiated and time-barred. The applicant appealed on 5 December 2006.

12. On 21 February 2007 the Crimea Appeal Court upheld the judgment. The applicant appealed in cassation on 10 April 2007.

13. On 6 December 2007 the Supreme Court decided to reject the applicant's appeal in cassation. On 27 December 2007 a copy of the decision was sent to the applicant.

2. Proceedings concerning the title to two garage-boxes (the second set of proceedings)

14. In the course of the proceedings concerning the title to two garage-boxes the respondent company introduced a counter-claim, alleging that the applicant's claims had been already met, as his wife, acting on the applicant's behalf under a power of attorney, had obtained compensation for the property in question pursuant to two separate contracts dated 18 February 2002.

15. On 15 July 2003 the Kyivsky Court ruled against the applicant, allowing the respondent's counter-claim, finding that the respondent had performed its obligations under the contracts by paying the requisite compensation to the applicant's wife.

16. On 29 July 2003 the applicant appealed.

17. On 24 November 2003 the appeal was returned to the applicant for procedural shortcomings, which he was instructed to rectify by 26 December 2003.

18. On 13 April 2004 the Crimea Court of Appeal upheld the judgment of 17 July 2003. The applicant appealed in cassation.

19. On 22 June 2007 the Zaporizhzhya Court of Appeal, acting as a court of cassation, rejected the applicant's appeal in cassation as unsubstantiated.

20. On 12 June 2008 the applicant requested the Kyivsky Court to inform him of the outcome of his appeal in cassation.

21. On 17 July 2008 the applicant received a copy of the decision of 22 June 2007.

22. According to the Government, in the course of the proceedings the courts had to adjourn the hearings sixteen times in the first set and nineteen times in the second set of proceedings due to the parties' failure to appear

and requests for adjournments. In particular, some of the hearings were adjourned or not held due to the absence of the applicant's representative.

B. Proceedings instituted by the applicant in 2004

23. On 11 May 2004 the applicant lodged with the courts two separate claims against his wife and the company, challenging the validity of the contracts of 18 February 2002 (see paragraph 14 above).

24. By decisions of 30 June and 8 November 2004, the Zaliznodorozhnyi District Court and the Crimea Court of Appeal respectively invalidated the contracts of 18 February 2002 and ordered the applicant's wife to pay back to the company the amounts she had received under the contracts.

25. According to the applicant, he informed the courts dealing with his claims for the title to two garage-boxes about the latter decisions.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

26. The applicant complained that the length of the first and second sets of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

27. The Court notes that the complaint about the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The Government contested the argument of the unreasonableness of the proceedings stating that there had been no delays in the course of the proceedings that could be attributed to the State. According to them, the case was complex and the parties, the applicant in particular, contributed to

the length of the proceedings by introducing additional claims, lodging procedural requests and by failing to attend the hearings. The Government also submitted that the examination of the case by the court of cassation in the second set of proceedings had been somewhat delayed due to the high case-load at the Supreme Court. That problem was eventually resolved by legislative measures put in place in February 2007, according to which the backlog of cassation appeals was distributed between the courts of appeal.

29. The applicant did not comment on the Government's arguments.

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 period to be taken into consideration as to the first set of proceedings began in July 2001 and ended in December 2007, when the applicant was informed of the final decision (see *Widmann v. Austria*, no. 42032/98, § 29, 19 June 2003, and *Gitskaylo v. Ukraine*, no. 17026/05, § 34, 14 February 2008). It thus lasted about six years and five months for three levels of jurisdiction. As regards the period to be taken into consideration as to the second set of proceedings, it began on 16 July 2001 and ended on 17 July 2008, when the applicant was served with the final decision. It thus lasted seven years for three levels of jurisdiction.

32. The Court notes that the proceedings concerned a dispute which was not legally or factually complex. The parties and in particular the applicant somewhat contributed to their length. The Court notes that due to the applicant's or his representative's failure to appear and requests for adjournment of hearings, the first set of proceedings was protracted for about seven months, while the second set was protracted for about ten months. A further delay of about one month in the first set of proceedings was due to the applicant's failure to comply with procedural requirements for lodging appeals (see paragraphs 16-17 above).

33. The Court does not however consider that the applicant's behaviour alone can[1] justify the overall duration of the proceedings. The Court notes that the major delay in the first set of the proceedings was caused by the lengthy reconsideration of the case by the Kyivsky Court which lasted for four years (see paragraphs 10 and 11 above). As regard the second set of proceedings, it took the Zaporizhzhya Court of Appeal over three years to decide on the applicant's appeal in cassation and another year to inform him of its decision (see paragraphs 18-21 above).

[1] Rectified on 3 July 2012: "cannot" was replaced by "can."

The justification for the delay before the court of cassation in the second set of proceedings, provided by the Government (see paragraph 28 above), may not be accepted, because by the time the impugned legislative amendments were introduced the applicants' cassation appeal had been waiting for consideration for nearly three years.

34. In the light of the foregoing, the Court concludes that the State authorities bear the primary responsibility for the excessive length of the first and the second sets of proceedings in the present case.

35. 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).

36. 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 first and the second sets of proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER COMPLAINTS

37. Relying on Article 6 of the Convention, the applicant complained about the outcome and unfairness of the proceedings, challenging the courts' assessment of facts and application of law and their impartiality. He alleged that his appeal in cassation in the first set of proceedings had been heard by the wrong composition of the panel of judges. The applicant further complained that his cassation appeal in the second set of proceedings had not been heard by the Supreme Court and that he had not been informed of the hearing on his cassation appeal. Relying on Article 8 of the Convention and Article 1 of Protocol No. 1, the applicant claimed that he had been unlawfully deprived of his property on account of the outcome of the proceedings.

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

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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."

41. The applicant did not submit a claim for just satisfaction in accordance with the Court's procedure. Accordingly, there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint under Article 6 § 1 of the Convention concerning the excessive length of the first and second sets of proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 10 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President