



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

FIFTH SECTION

CASE OF ZELENTSOV AND OTHERS v. UKRAINE

*(Application no. 40978/05 and 4 others -
see appended list)*

JUDGMENT

STRASBOURG

3 May 2018

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

In the case of Zelentsov and Others v. Ukraine,

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

André Potocki, *President*,

Síofra O’Leary,

Mārtiņš Mits, *judges*,

and Liv Tiggerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 12 April 2018,

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

PROCEDURE

1. The case originated in applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Ukrainian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the excessive length of civil proceedings and of the lack of any effective remedy in domestic law. In application no. 25925/17, the applicant also raised another complaint under the provisions of the Convention.

THE LAW**I. JOINDER OF THE APPLICATIONS**

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

6. The applicants complained principally that the length of the civil proceedings in question had been incompatible with the “reasonable time” requirement and that they had no effective remedy in this connection. They relied on Article 6 § 1 and Article 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.”

7. In respect of application no. 14664/09, lodged on 3 March 2009, the Government submitted that the applicant had failed to comply with the six-month time-limit under Article 35 § 1 of the Convention since the final decision in the applicant’s case had been delivered on 14 September 2007. The Government, referring to domestic law provisions, stated that the applicant should have received a copy of the decision without significant delay.

8. The Court observes that the Government’s assertion is based on a presumption that the decision should have been received by a certain date, whilst the applicant provided a consistent explanation and documentary evidence that the final decision in his case had been served on him on 4 February 2009, hence less than six months before he lodged his application before the Court.

9. In the light of the above, the Court considers that the above application cannot be rejected for failure to comply with the six-month time-limit.

10. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

11. In the leading case of *Krasnoshapka v. Ukraine* (no. 23786/02, 30 November 2006), the Court already found a violation in respect of issues similar to those in the present case.

12. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different

conclusion on the admissibility and merits of these complaints. 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.

13. The Court further notes that the applicants did not have at their disposal an effective remedy in respect of these complaints.

14. These complaints are therefore admissible and disclose a breach of Article 6 § 1 and of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

15. The applicant in application no. 25925/17 submitted another complaint under Article 6 § 1 of the Convention which also raised issues, given the relevant well-established case-law of the Court (see appended table).

16. The Court finds that this part of the application, which concerns the non-enforcement or delayed enforcement of domestic decisions, is a follow-up to the *Burmych* judgment and shall be dealt with in accordance with the procedure envisaged therein (*Burmych and Others v. Ukraine* (striking out) [GC], nos. 46852/13 et al, § 221, 12 October 2017), i.e. struck out and transmitted to the Committee of Ministers of the Council of Europe in order for it to be dealt with in the framework of the general measures of execution of the pilot judgment in the case of *Yuriy Nikolayevich Ivanov v. Ukraine* (no. 40450/04, 15 October 2009).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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.”

18. Regard being had to the documents in its possession and to its case-law (see, in particular, *Krasnoshapka v. Ukraine*, no. 23786/02, §§ 61 and 66, 30 November 2006), the Court considers it reasonable to award the sums indicated in the appended table.

19. 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. *Decides* to join the applications;
2. *Decides* to strike the part of application no. 25925/17 concerning the non-enforcement or delayed enforcement of domestic decisions out of the Court's list of cases pursuant to Article 37 § 1 (c) of the Convention and transmit it to the Committee of Ministers of the Council of Europe in order for it to be dealt with in the framework of the general measures of execution of the above-mentioned *Ivanov* pilot judgment;
3. *Declares* the remainder of application no. 25925/17 as well as the other applications admissible;
4. *Holds* that these applications disclose a breach of Article 6 § 1 and Article 13 of the Convention concerning the excessive length of civil proceedings;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 3 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

André Potocki
President

APPENDIX

List of applications raising complaints under Article 6 § 1 and Article 13 of the Convention
(excessive length of civil proceedings and lack of any effective remedy in domestic law)

No.	Application no. Date of introduction	Applicant name Date of birth	Start of proceedings	End of proceedings	Total length Levels of jurisdiction	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	40978/05 01/11/2005	Aleksey Nikolayevich Zeleantsov 31/08/1971	01/07/2002	24/10/2011	9 years, 3 months and 24 days 3 levels of jurisdiction		1,600
2.	14664/09 03/03/2009	Vladimir Semenovich Retinskiy 23/01/1939	11/09/1997	14/09/2007	10 years and 4 days 3 levels of jurisdiction		1,700
3.	81381/12 06/12/2012	Vladimir Vasilyevich Solyar 13/06/1959	01/03/2004	18/09/2012	8 years, 6 months and 18 days 3 levels of jurisdiction		1,300
4.	31042/15 25/06/2013	Sergey Nikolayevich Kuzmenko 09/06/1972	03/06/2004	13/02/2013	8 years, 8 months and 11 days 3 levels of jurisdiction		1,300
5.	25925/17 28/03/2017	Nadiya Mykolayivna Fanda 03/04/1964	29/01/2008 02/12/2010	24/03/2009 21/09/2016	1 year, 1 month and 25 days 3 levels of jurisdiction 5 years, 9 months and 20 days 3 levels of jurisdiction	Art. 6 (1) - non-enforcement or delayed enforcement of domestic decisions: non- enforcement of the decision of the Gorodok Local Court of Khmelnytsky Region of 14/07/2006	900

¹ Plus any tax that may be chargeable to the applicants.