



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

## FIFTH SECTION

### **CASE OF TERESHCHENKO v. UKRAINE**

*(Application no. 35481/20)*

## JUDGMENT

STRASBOURG

19 October 2023

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



**In the case of Tereshchenko v. Ukraine,**

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

Carlo Ranzoni, *President*,

Mattias Guyomar,

Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 35481/20) lodged with the Court against Ukraine under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 5 August 2020 by a Ukrainian national, Mr Oleksandr Petrovych Tereshchenko, who was born in 1983 and lives in Kyiv (“the applicant”);

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 28 September 2023,

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

**SUBJECT MATTER OF THE CASE**

1. The case concerns the domestic courts’ alleged failure to establish a schedule providing sufficient contact for the applicant to be able to maintain and develop a relationship with his daughter, who was born in 2016 and lives with her mother (B.) separately from the applicant. The applicant complained of a violation of Articles 6, 8 and 13 of the Convention.

2. Specifically, in December 2017 the applicant brought civil proceedings in the Pervomaisk Town Court (“the first-instance court”), contending that B. had prevented him from having contact with his daughter and asking the court to establish arrangements for regular contact with his child every Saturday and Sunday between 12 noon and 6 p.m. at the child’s place of residence, including outside walks with her between 2 and 4 p.m. without the presence of B. The guardianship authority, intervening in the proceedings as a third party, noted that the relationship between the applicant and B. was strained and opined that the applicant should be given the opportunity to meet with his daughter every Saturday and Sunday between 12 noon and 6 p.m. in the presence of both parents. B. agreed with the contact schedule recommended by the guardianship authority. She also submitted a psychologist’s report stating that the child had developed an attachment to her, had a “tense, emotionally traumatic and distrustful relationship” with the applicant and had

suffered “psychological pressure” from him. The report contained no reference to any specific incidents.

3. On 2 July 2019 the first-instance court ordered B. not to prevent the applicant’s contact with the child and ruled that he could meet with his daughter on the first and third Saturday and Sunday of every month between 12 noon and 6 p.m. at the child’s place of residence and could have outside walks with her between 2 and 4 p.m. in B.’s presence.

4. The applicant appealed, arguing, *inter alia*, that the first-instance court had failed to give any reasons for not allowing the requested frequency of meetings. On 11 September 2019 the Mykolaiv Court of Appeal upheld the first-instance judgment, finding that the reduced frequency of meetings with the applicant’s daughter (compared to that recommended by the guardianship authority) had been ordered to ensure that the child communicated with the applicant in the presence of her mother, regard being had to the psychologist’s report (see paragraph 2 above) and the best interests of the child.

5. The applicant appealed on points of law, arguing, *inter alia*, that the lower courts had disregarded the provisions of Article 19 of the Family Code, by which the courts deciding on disputes concerning parents’ participation in a child’s upbringing were entitled to disagree with the opinion of a guardianship authority – which the courts were obliged to involve in such proceedings – only if the authority’s opinion was insufficiently substantiated or if it was contrary to the interests of the child. On 8 April 2020 the Supreme Court dismissed the applicant’s appeal as unfounded, holding that the first-instance court had established the frequency of the applicant’s meetings with the child “in the light of the circumstances of the case and the interests of the child” and had given “due consideration” to the guardianship authority’s opinion.

## THE COURT’S ASSESSMENT

6. Relying on Articles 6, 8 and 13 of the Convention, the applicant complained that the courts had unfairly limited his contact with the child without sufficient grounds.

7. The Government contended that the contested domestic decisions had been duly reasoned and in the best interests of the applicant’s daughter. The limited frequency of the applicant’s meetings with his child had not adversely affected their mutual enjoyment of each other’s company. It remained open to the applicant to seek the revision of the contact arrangements in a new set of proceedings, which he had brought in 2019.

8. The Court finds that the applicant’s complaint falls to be examined solely under Article 8 of the Convention.

9. The Court notes that this 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.

10. The relevant general principles under Article 8 that require the domestic authorities to strike a fair balance between the interests of the child and those of the parents and to attach particular importance to the child's best interests when dealing with disputes between parents regarding access to children have been summarised in, among other authorities, *Sahin v. Germany* ([GC], no. 30943/96, § 66, ECHR 2003-VIII) and *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-07, 10 September 2019).

11. The Court has previously found a violation of Article 8 in cases where restrictions on the frequency and other aspects of applicants' meetings with their children had been imposed without a proper assessment of all the relevant aspects of the case and the interests at stake (see, for instance, *Cînta v. Romania*, no. 3891/19, §§ 45-58, 18 February 2020).

12. The present case concerns a similar issue. The domestic courts limited the applicant's meetings with his daughter to four days per month without providing any concrete reasons or indications that this would be in the child's interests.

13. While the appellate court stated that it was in the child's best interests to have her mother present when communicating with the applicant, it did not explain how that could imply that the frequency of the applicant's meetings with the child should be reduced (see paragraph 4 above). The decisions of the first-instance court and the Supreme Court contain no assessment at all of how the reduced frequency of the meetings could be in the child's best interests (see paragraphs 3 and 5 above). Nor did the courts point to any grounds set out in Article 19 of the Family Code allowing them to depart from the guardianship authority's opinion (see paragraph 5 above).

14. The courts can be seen as having relied largely on the psychological report submitted by the child's mother, according to which the child had a "tense, emotionally traumatic and distrustful relationship" with the applicant and had suffered "psychological pressure" from him. However, the courts did not investigate the factual background to the psychologist's conclusions, and the report did not refer to any specific incidents. The material before the Court contains no indication that the applicant ever abused or traumatised the child or that meeting him in person presented a risk to the child's well-being or security. Regard being had to the guardianship authority's opinion in this case and to the first-instance court's finding that B. had hindered the applicant's contact with the child, it cannot be ruled out that the child's attitude towards him was linked to the strained relationship between the applicant and B. In any event, the psychologist's conclusions as such did not suggest that the meetings should have been less frequent than requested by the applicant and recommended by the guardianship authority – on average eight days per month, an arrangement to which the child's mother agreed (see paragraphs 2 and 3 above).

15. Furthermore, the courts did not explore whether the alleged problem in the applicant's relationship with his daughter could have been alleviated

by other measures to give practical effect to the guarantee of mutual enjoyment by parent and child of each other's company (see *Strand Lobben and Others*, cited above).

16. The Court is mindful that the domestic courts, which have, *inter alia*, the benefit of direct contact with the interested parties, are better placed to evaluate specific situations relating to disputes between parents regarding contact arrangements with their children and to balance the conflicting interests at stake. The Court's task is not to substitute its own assessment for that of the domestic courts, provided that the decision-making process was fair and allowed those concerned to present their case fully, and that the best interests of the child were defended (see, among other authorities, *X v. Latvia* [GC], no. 27853/09, § 102, ECHR 2013, with further references).

17. In this case, however, the decision-making process did not satisfy the relevant requirements of Article 8 (see paragraphs 10 and 16 above), because the domestic courts adduced no relevant and sufficient reasons to justify the imposition of limitations on the frequency of the applicant's meetings with his daughter. Accordingly, it was not established that those limitations were in the child's best interests, and the applicant's interest in meeting his child more often was not duly taken into account.

18. There has been a violation of Article 8 of the Convention on that account.

19. The new set of contact-arrangement proceedings, which the applicant brought in 2019 and the outcome of which is unknown, is of no relevance to the issue decided in the present case.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed 1,463,225.04 Ukrainian hryvnias (UAH – equivalent to approximately 42,500 euros (EUR)) in respect of pecuniary damage, UAH 100,000 (equivalent to approximately EUR 2,900) in respect of non-pecuniary damage, UAH 16,482 (equivalent to approximately EUR 500) in respect of costs and expenses incurred before the domestic courts and UAH 8,370 (equivalent to approximately EUR 250) in respect of those incurred before the Court, regarding which he submitted copies of his legal assistance contract and receipts.

21. The Government contested those claims.

22. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 2,900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

23. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 250 in respect of costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, 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 2,900 (two thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 250 (two hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller  
Deputy Registrar

Carlo Ranzoni  
President