



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

FIFTH SECTION

CASE OF OMELCHENKO v. UKRAINE

(Application no. 44158/19)

JUDGMENT

STRASBOURG

23 March 2023

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

In the case of Omelchenko 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. 44158/19) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 2 August 2019 by Mr Maksym Mykolayovych Omelchenko (“the first applicant”) on his own behalf and on behalf of his son, Mr Vladyslav Maksymovych Omelchenko (“the second applicant”), Ukrainian nationals born in 1982 and 2009 and living in Dnipro and Kraków respectively, who were represented by Mr B. Fokiy, a lawyer practising in Chernivtsi;

the decision to give notice of the complaints under Articles 6, 8 and 13 of the Convention regarding the duration of two sets of domestic proceedings, the details of which are set out below, to the Ukrainian Government (“the Government”), represented by their Agent, most recently Mr I. Lishchyna, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

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 proceedings regarding contact arrangements between the applicants and the second applicant’s travel abroad, and the alleged absence of an effective remedy in this regard. The applicants rely on Articles 6, 8 and 13 of the Convention.

2. On 4 November 2013 the first applicant initiated proceedings against O., the second applicant’s mother, arguing that she had been hindering communication between the applicants (“the first set of proceedings”). In the course of the proceedings a number of hearings were adjourned, mainly because O. could not or did not attend them and repeatedly challenged various procedural decisions. The first applicant amended his claim on four occasions and lodged numerous applications to expedite the proceedings, stating that he had had no meaningful contact with the second applicant, that they had met sporadically on a few occasions since November 2013, and that since

January 2015 they had not met at all. The case was decided by the Dnipro District Court, initially by a judgment of 14 January 2015, which was quashed on 27 March 2015, then by a judgment of 22 May 2015, which was reviewed and eventually quashed by appellate and cassation courts on 19 October 2015 and 27 April 2016 respectively, and lastly by a judgment of 14 November 2017. That last judgment was partly amended by the Dnipro Regional Court of Appeal on 1 June 2018, and finally upheld by the Supreme Court on 5 December 2018. The first applicant was informed of the Supreme Court's decision on 14 March 2019. The courts set out a detailed schedule for the applicants' regular meetings and communication, and ordered O. not to hinder it. On 18 March 2019 bailiffs started enforcement proceedings in respect of the judgment of 14 November 2017, but it has remained unenforced.

3. On 24 June 2014 O. applied to the Uman District Court, seeking permission to travel abroad with the second applicant without the consent of the first applicant ("the second set of proceedings"). On 25 July 2014 the court, having examined the case in the absence of the first applicant, granted such permission. The first applicant was only informed about those proceedings in May 2016, and he challenged that decision on 30 May 2016. On 7 December 2016 the Uman District Court quashed its previous decision and reopened the proceedings. On 2 February 2021, as requested by O., it left her application unexamined. According to the first applicant, he appealed against the decision of 2 February 2021. The outcome of his appeal is unknown.

4. In the meantime, in May 2015 O., together with the second applicant, had left Ukraine and started to live in Poland. On 23 February 2016, with the assistance of the Ministry of Justice of Ukraine, the first applicant instituted proceedings against O. before the Polish courts, seeking the second applicant's return to Ukraine under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"). On 11 March 2021 the Kraków Regional Court ordered the second applicant's return, having found that his relocation to Poland had wrongfully deprived the first applicant of his contact and custody rights. Following a request by the first applicant, on 18 June 2019 the Ministry of Justice of Ukraine informed him of the procedure which he had to follow in order to initiate enforcement proceedings in Poland in respect of the judgment of the Dnipropetrovsk District Court of 14 November 2017. It is unknown if the first applicant availed himself of that procedure. According to the most recent material before the Court, the second applicant remained in Poland.

THE COURT'S ASSESSMENT

I. EXCESSIVE LENGTH OF COURT PROCEEDINGS AND ABSENCE OF AN EFFECTIVE DOMESTIC REMEDY

5. Relying on Articles 6 and 8 of the Convention, the applicants complained that the domestic judicial proceedings had been unreasonably long. Relying on Article 13, they complained of the lack of an effective domestic remedy in that regard.

6. The Government argued, in the main, that the length of the proceedings at issue had not been unreasonable and that Article 13 did not apply.

7. The Court considers that the applicants' present complaints are to be examined solely under Article 6 § 1 and Article 13 of the Convention.

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

9. The relevant general principles regarding the State's obligations under Article 6 § 1 and Article 13 to ensure that cases concerning a person's relationship with his or her child are treated with special or exceptional diligence and that there is an effective remedy for an alleged breach of the requirement of the guarantee of "reasonable time" are summarised in several cases (see, among other authorities, *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I; *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI; and *Milovanović v. Serbia*, no. 56065/10, § 88, 8 October 2019).

A. First set of proceedings

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

11. The proceedings lasted around five years and took place before the domestic courts at three levels of jurisdiction. For most of that period – around three years in total – the case was pending before the first-instance court, which had to re-examine it three times. This period was extremely long, and even though the first applicant repeatedly informed the court that his contact with the second applicant was being hindered by the opposing party, a fact which was eventually confirmed by the Dnipro District Court's judgment of 14 November 2017, no meaningful action was taken to expedite the proceedings (see paragraph 2 above).

12. The applicant partly contributed to the overall length of the proceedings by amending his claims on several occasions and lodging various procedural applications and appeals, but there is no evidence that he abused

his procedural rights instead of engaging in legitimate procedural activity, and his actions caused no significant delays.

13. The Government pointed to the opposing party's delaying tactics, but such tactics do not absolve authorities of their duty to ensure that proceedings are conducted expediently (see, among other authorities, *Karcheva and Shtarbova v. Bulgaria*, no. 60939/00, § 47, 28 September 2006, and *Mincheva v. Bulgaria*, no. 21558/03, § 68, 2 September 2010). This is especially true in the applicants' case, where the courts did not take special precautions in order to avoid any unnecessary delays, notably by ensuring that the parties adhered to a very tight schedule.

14. 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). There has accordingly been a breach of Article 6 § 1 of the Convention.

15. The Court has frequently found violations of Article 13 in cases raising issues similar to those in the present case, and has stated that current Ukrainian legislation does not provide a remedy for complaints under Article 6 § 1 concerning the length of proceedings (see *Efimenko v. Ukraine*, no. 55870/00, §§ 48-50 and § 64, 18 July 2006; *Vashchenko v. Ukraine*, no. 26864/03, § 59, 26 June 2008; and *Zabara v. Ukraine* [Committee], no. 26007/17, §§ 23-24, 7 November 2019). There is nothing to suggest that such a remedy was available to the applicants in the present case. Accordingly, there has also been a violation of Article 13 of the Convention on that account.

B. Second set of proceedings

16. Having regard to its findings above (see paragraphs 14 and 15 above), the Court considers that it is unnecessary to assess whether there has been a violation of the Convention as regards the length of the second set of proceedings, which, for the most part, overlapped with the first set of proceedings that has already been examined.

II. LENGTHY NON-ENFORCEMENT OF THE JUDGMENT OF THE DNIPRO DISTRICT COURT OF 14 NOVEMBER 2017

17. The applicants also complained under Articles 6 and 8 of the Convention about the length of the enforcement proceedings in respect of the Dnipro District Court's judgment of 14 November 2017. The Court notes that by the time that judgment was delivered the second applicant was already

living with his mother in Poland, and eventually he remained there. The Ukrainian authorities explained to the first applicant which procedure he could pursue in order to have the judgment at issue enforced in Poland, and also assisted him in making a request for the second applicant's return to Ukraine under the Hague Convention (see paragraph 4 above). The measures taken by the Ukrainian authorities do not appear to be inadequate or insufficient (compare *Nerivnya v. Ukraine* (dec.) [Committee], no. 36525/19, § 21, 18 February 2021, and contrast *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 59, ECHR 2003-V). The question of the enforcement of the return order issued by the Kraków Regional Court on 11 March 2021, in respect of which the applicants lodged with the Court a separate application against Poland in September 2021, falls outside the scope of the present case.

18. Accordingly, the Court finds that this part of the present application should be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage; 8,219.40 Ukrainian hryvnias (UAH – the equivalent of around EUR 250) in respect of domestic court fees and postal and translation costs incurred in the proceedings before the Court; and EUR 5,460 for their representative's work in the proceedings before the Court (forty-five and a half hours at an hourly rate of EUR 120) – the first applicant had already paid part of that amount to the representative, and had undertaken to pay him the remaining part. The applicants submitted copies of the relevant contracts, invoices and a detailed account of the legal work carried out by their representative, and they asked that the amount claimed for that work be paid directly into Mr B. Fokiy's bank account.

20. The Government contended that most of the claims were unsubstantiated and/or excessive.

21. The Court awards the applicants EUR 7,500 jointly in respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 1,000 for the legal costs of the proceedings before the Court, plus any tax that may be chargeable to the applicants. The latter amount is to be paid directly into the bank account of Mr B. Fokiy (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.

22. 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 applicants' complaints under Article 6 § 1 and Article 13 of the Convention concerning the length of the domestic judicial proceedings and the absence of an effective domestic remedy in that regard admissible, and the remainder of the application 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;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy in that regard;
4. *Holds* that it is not necessary to decide whether there has been a violation of the Convention on account of the length of the proceedings regarding the second applicant's travel abroad;
5. *Holds*
 - (a) that the respondent State is to pay the 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;
 - (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 into the bank account of Mr B. Fokiy;
 - (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;
6. *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