FIFTH SECTION

**CASE OF CHERNETSKIY v. UKRAINE**

*(Application no. 44316/07)*

JUDGMENT

STRASBOURG

8 December 2016

FINAL

08/03/2017

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Chernetskiy v. Ukraine,

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

Angelika Nußberger, *President,* Erik Møse, Khanlar Hajiyev, Ganna Yudkivska, André Potocki, Yonko Grozev, Síofra O’Leary, *judges,*  
and Milan Blaško, *Deputy* *Section Registrar,*

Having deliberated in private on 15 November 2016,

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

PROCEDURE

1.  The case originated in an application (no. 44316/07) 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 Vladimir Maryanovich Chernetskiy (“the applicant”), on 19 September 2007.

2.  The Ukrainian Government (“the Government”) were represented by their Agent, most recently, Mr I. Lishchyna.

3.  The applicant alleged, in particular, that the restrictions on his right to remarry during his detention in prison had been contrary to Article 12 of the Convention.

4.  On 10 January 2011 the application was communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1963. In 2002 he was convicted and sentenced to fifteen years’ imprisonment. At the relevant time the applicant was serving his sentence in a prison.

6.  On 1 February 2005, following a request submitted by the applicant’s wife in accordance with Article 107 of the Family Code, the local civil status registry dissolved their marriage. The applicant was sent a notification about the divorce.

7.  Later in February 2005 the applicant and his new female partner, K., were prevented from marrying as the applicant had not obtained a divorce certificate, as required by Article 116 of the Family Code. That document could be obtained exclusively by the applicant at the relevant civil status registry.

8.  The applicant requested that he be escorted to the registry in order to obtain the divorce certificate. His request was refused as the domestic law did not provide for the escorting of prisoners on such grounds.

9.  On 16 June 2005 the prosecutor informed the applicant that under Article 116 of the Family Code he had the right to remarry after he had obtained a divorce certificate. However, this would be possible only after his release from prison.

10.  On 17 August 2005 the Deputy Minister of Justice considered a complaint lodged by the applicant concerning the authorities’ failure to provide him with a divorce certificate for the purpose of remarriage. He stated that under domestic law it was not possible to carry out the relevant actions in prison; nor was it possible to issue a power of attorney for another person to act on behalf of the applicant in relation to that matter. The Deputy Minster informed the applicant that amendments to the domestic legislation had been prepared.

11.  On 23 January 2006 and 20 July 2007 the Ombudsman’s Office informed the applicant that they were aware of that issue and that amendments to the domestic legislation had been prepared by the Ministry of Justice.

12.  On 30 July 2007 the State Prison Department informed the applicant that he would be able to obtain a divorce certificate after his release from prison. The amendments to the domestic legislation had yet to be considered.

13.  On 16 October 2008 the Ministry of Justice issued Order no. 1761/5 providing for a temporary procedure for registering divorces and issuing divorce certificates in prisons.

14.  In December 2008 the applicant was personally informed of the procedure introduced by the Ministry of Justice.

15.  On 6 February 2009, at the applicant’s request, he was provided with a divorce certificate in prison.

16.  On 13 July 2009 the applicant and K. applied for the registration of their marriage. On 14 August 2009 the local civil status registry registered their marriage.

II.  RELEVANT DOMESTIC LAW

A.  Family Code of 10 January 2002 (as worded at the material time)

.  The relevant provisions of the Code provide:

Article 14. The exercise of family rights

“1. Family rights are closely linked to the person and therefore cannot be transferred to another person. ...”

**Article 21. The notion of marriage**

“1. A marriage is a union between a woman and a man registered in the State civil status registry.

2. The situation of a woman and a man living together as a family without being married shall not give rise to the rights and obligations of a married couple. ...”

Article 107. Dissolution of marriage by the State civil status registry at the request of one of the spouses

“1. A marriage may be dissolved by the State civil status registry at the request of one of the spouses if the other spouse:

...

3) has been convicted of crime and sentenced to imprisonment for a period of three years or more. ...”

Article 115. Registration of divorce

“... 2. The divorce shall be attested by a divorce certificate ...”

Article 116. Right to remarry

“1. After a person has dissolved his or her marriage and obtained a divorce certificate, that person shall have the right to remarry.”

B.  Code of Enforcement of Sentences of 11 July 2003

.  Under Article 110 of the Code, prisoners are entitled to short meetings, lasting no longer than four hours, and to long meetings, lasting no longer than three days. Short meetings may be granted to prisoners to meet with relatives or other persons and shall be held in the presence of a prison officer. Long meetings may be granted to prisoners to meet with close relatives only (spouse, parents, children, foster parents, foster children, siblings, grandparents, grandchildren). Long meetings may also be granted to a prisoner to meet with the person who lived with him or her as a spouse without being married, provided that they have common, minor children. The costs of using the meeting rooms should be covered by the prisoners or the visitors.

C.  Order no. 1761/5 of the Ministry of Justice adopted on 16 October 2008 (repealed on 30 August 2010)

.  The Order provided for a temporary procedure for the registration of divorces in prisons. At the request of a prisoner, an official from the local civil status registry could register a divorce and issue a divorce certificate in a prison.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

20.  The applicant complained under Article 12 of the Convention that the domestic authorities’ failure to register his new marriage had violated his right to marry and to found a family.

21.  Article 12 of the Convention provides as follows:

“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

A.  Admissibility

22.  The Government submitted that the legal obstacle which prevented the applicant from remarriage had ceased to exist with the introduction of the temporary procedure by the Ministry of Justice. The matter was further regulated by Parliament in legislation on the registration of civil status acts. The Government emphasised that the applicant had been provided with a divorce certificate on 6 February 2009, but that he and his new female partner had applied to have their marriage registered almost half a year later. The Government concluded that the applicant lacked victim status in respect of his complaint.

23.  The applicant maintained his complaint.

24.  The Court notes that the applicant’s complaint refers to the period between February 2005 and October 2008 when the authorities acknowledged the applicant’s issue, but did not provide him with a remedy. Accordingly, the applicant could claim to be a victim in relation to the period at issue (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999‑VI). The subsequent period, referred to by the Government, is not the subject-matter of the case. The Court therefore dismisses the Government’s objection that the applicant did not have victim status.

25.  The Court further notes that the complaint is not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention. It notes that such complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

26.  The applicant maintained his complaint.

27.  The Government did not comment on the merits.

28.  The Court reiterates that Article 12 secures the fundamental right of a man and woman to marry and found a family. The exercise of the right to marry gives rise to social, personal and legal consequences. It is subject to the national laws of the Contracting States but the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired (see *O’Donoghue and Others v. the United Kingdom*, no. 34848/07, § 82, ECHR 2010 (extracts), with further references).

29.  Personal liberty is not a necessary pre-condition for the exercise of the right to marry. Imprisonment deprives a person of his liberty and also – unavoidably or by implication – of some civil rights and privileges. This does not, however, mean that persons in detention cannot, or only very exceptionally can, exercise their right to marry. As the Court has repeatedly held, a prisoner continues to enjoy fundamental human rights and freedoms that are not contrary to the sense of deprivation of liberty, and every additional limitation should be justified by the authorities (see *Jaremowicz,* cited above, § 51 and *Frasik v. Poland*, no. 22933/02, § 91, ECHR 2010 (extracts)).

30.  Although a right to divorce cannot be derived from Article 12 of the Convention, if national legislation allows divorce, it secures for divorced persons the right to remarry without unreasonable restrictions (see *F. v. Switzerland*, 18 December 1987, § 38, Series A no. 128). In particular, a three-year prohibition on remarriage, imposed as a civil sanction, was found to violate Article 12 (ibid., §§ 33-40). A failure on the part of the domestic authorities to conduct divorce proceedings within a reasonable time has raised, in specific circumstances, an issue under Article 12 of the Convention (see *V.K. v. Croatia*, no. 38380/08, § 106, 27 November 2012).

31.  As to the present case, the applicant, a prisoner, could not marry his new female partner between February 2005 and October 2008 because the authorities could not finalise the registration of the applicant’s divorce and provide him with the divorce certificate in prison. As noted above, during that period of time the authorities acknowledged the applicant’s issue, but did not provide him with any remedy.

32.  The Court further notes that the resulting restriction on the applicant’s right to remarry was considerable in its duration as it continued for more than three years and seven months. The restriction was further aggravated by the fact that the applicant’s right to private meetings with other persons was strictly limited in prison. In particular, under Article 110 of the Code of Enforcement of Sentences the applicant could request short meetings with his new partner which would last no longer than four hours and would be held in the presence of a prison officer. A long private meeting was not possible until the marriage was registered (see paragraph 18 above).

33.  Given the circumstances of the case, the Court concludes that the restriction at issue was unjustified and impaired the very essence of the applicant’s right to marry and found a family with his new female partner.

34.  There has therefore been a violation of Article 12 of the Convention with respect to the period between February 2005 and October 2008.

II.  ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

35.  The applicant complained that, as a prisoner, he had been subjected to discriminatory treatment as regards his ability to exercise the right under Article 12 of the Convention.

36.  The complaint falls under Article 14 of the Convention, which provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

37.  The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

38.  Having regard to the above findings under Article 12 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 14 (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 68, ECHR 2015, and *Mamchur v. Ukraine*, no. 10383/09, § 118, 16 July 2015).

III.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

39.  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

40.  The applicant claimed 50,000 euros (EUR) in respect of non‑pecuniary damage.

41.  The Government submitted that the claim was unsubstantiated.

42.  The Court considers that the applicant must have suffered anguish and distress on account of the facts giving rise to the finding of a violation in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B.  Costs and expenses

43.  The applicant did not submit any claims under this head. The Court therefore makes no award.

C.  Default interest

44.  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 application admissible;

2.  *Holds* that there has been a violation of Article 12 of the Convention with respect to the period between February 2005 and October 2008;

3.  *Holds* that there is no need to examine the complaint under Article 14 of the Convention;

4.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage 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 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 8 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Angelika Nußberger  
 Deputy Registrar President