



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

FIFTH SECTION

CASE OF GLOBAL v. UKRAINE

(Application no. 15729/07)

JUDGMENT

STRASBOURG

5 July 2012

FINAL

19/11/2012

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

In the case of Globa v. Ukraine,

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

Dean Spielmann, *President*,

Mark Villiger,

Karel Jungwiert,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 12 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 15729/07) 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 Ivan Mykhaylovyh Globa (“the applicant”), on 20 March 2007.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Ms Valeria Lutkovska.

3. The applicant alleged that the length of the proceedings in a housing dispute was excessive.

4. On 2 November 2010 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Kulikove, Poltava Region.

A. Housing dispute

6. At the material time the applicant was employed by a collective agricultural enterprise in which the State held no shares. The enterprise had

its own housing which was allocated to its workers or members. Since there was no vacant housing for the applicant he was placed first in the waiting list. When a flat became available, by a decision of the enterprise of 18 August 1995 two private individuals who were behind the applicant in the waiting list were offered the tenancy of the flat. On the same date and based on this decision, the Kulykove Town Council (“the Town Council”) issued a tenancy authorisation (*ордер на житлове приміщення*) in the name of the private persons in respect of the flat.

7. In November 1995 the applicant instituted proceedings before the Leninsky District Court, Poltava (“the Leninsky Court”) against the Town Council, the private individuals and the enterprise. He sought revocation of the tenancy allocation.

8. On 10 March 1999 the Leninsky Court allowed the applicant’s claim in part, finding that he had the right to the tenancy of the flat since, according to the internal regulations of the enterprise and national law, he had priority over private individuals for occupation of the flat. The court ordered the private individuals to be evicted from the flat and the enterprise to allocate the flat to the applicant and to find other housing for the two private individuals to be evicted. On 8 April 1999 the Poltava Regional Court (since June 2001 the Poltava Regional Court of Appeal, “the Court of Appeal”) upheld the judgment of 10 March 1999 and it became final.

9. On 26 January 2000 the applicant requested the Prosecutor General to intervene by lodging an appeal for supervisory review (*protest*) against the court decisions. On 4 February 2000 the Presidium of the Court of Appeal, acting on the *protest*, changed part of the lower courts’ decisions in respect of the size of the housing to be provided to the private individuals.

B. Enforcement of the judgment

10. On 12 December 2000 the Leninsky Court rejected the applicant’s request for interpretation of the judgment of 10 March 1999. The applicant did not appeal.

11. Having twice refused to open enforcement proceedings due to shortcomings in the writs of execution of the judgment of 10 March 1999, the Poltava Oktiabrsky District Bailiffs’ Service (“the bailiffs”) eventually opened the proceedings on 8 February 2001. Subsequently, the bailiffs several times requested the Leninsky Court to clarify the judgment at issue as, from their point of view, it was not sufficiently clear for enforcement purposes.

12. On 4 September 2002 the Town Council decided to take over the property, including the housing of the enterprise, which had gone into liquidation in the meantime.

13. On 24 December 2002 the bailiffs, on the basis of this decision, replaced the debtor company with the Town Council and ordered the head

of the Town Council to comply with the judgment. Subsequently, due to non-compliance with the judgment, the bailiffs twice fined the Head of the Town Council. The latter challenged these decisions before the Poltava Oktiabrsky District Court, which, on 1 October 2004, found the bailiffs' decision lawful and reasoned, but quashed the imposed fines on the ground that the debtor had not complied with the judgment for lack of appropriate housing. The parties did not appeal.

14. In the meantime, on 29 September 2004, the Town Council had authorised the private individuals to privatise the flat in issue.

15. On 14 March 2005 the Leninsky Court rejected the requests by the bailiffs and the applicant for the manner of execution of the judgment to be changed. On 7 June 2005 the Court of Appeal upheld the first-instance decision, finding that the bailiffs had failed to enforce the judgment by not attaching the flat, which had led to its privatisation, and by not taking any action against the Town Council. This decision was upheld by the Supreme Court on 4 April 2006.

16. On 16 February 2009 the Leninsky Court rejected the applicant's request for the manner of execution of the judgment to be changed. It found that the judgment was not enforced because the occupants of the flat had in the meantime privatised it and the Town Council had no substitute housing whatsoever. The higher courts left the applicant's appeals unexamined as the ruling of 16 February 2009 was not subject to appeal.

17. The flat at issue remains occupied by the private individuals. According to the Government, the applicant is now occupying another flat that the enterprise provided him with on an unspecified date. According to the applicant, he has not been offered any housing since 2000.

C. Proceedings against the bailiffs

18. On 27 July 2006 the applicant lodged a complaint with the Leninsky Court, alleging that when opening the enforcement proceedings the bailiffs had failed to attach the flat in issue. He requested the court to take measures in respect of the bailiffs so that they could enforce the judgment, and to lodge a claim on his behalf seeking revocation of the privatisation of the flat. On 11 January 2007 the court rejected the complaint, finding that the applicant's requests for relief were without merit. It also found that the bailiffs had not taken all possible measures to ensure the implementation of the judgment when opening the enforcement proceedings, but that subsequently they looked for ways, and took measures, to implement it. On 6 March and 19 November 2007 respectively the Court of Appeal and the Supreme Court upheld the decision of 11 January 2007.

19. By the bailiffs' most recent decision, of 30 September 2008, the enforcement proceedings were discontinued, with the judgment of 10 March 1999 remaining unenforced. The applicant challenged this decision. On

4 November 2008 the Leninsky Court confirmed the decision, finding, in particular, that the bailiffs requested criminal prosecution of the Head of the Town Council and had no other option to enforce the judgement. On 11 December 2008 the Court of Appeal upheld the ruling of 4 November 2008. The parties did not appeal on points of law.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

20. The applicant complained that the proceedings in the housing dispute had been excessively long and that the judgment of 10 March 1999 remained unenforced. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, 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

21. The Court notes that this complaint 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

22. The applicant maintained his complaint. He specified that he was not able to take possession of the flat, because the bailiffs had neglected their duties, whereas the Town Council had allowed privatisation of the flat and had offered him no alternative housing.

23. The Government maintained that the period to be taken into consideration began only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect.

24. The Court observes that the proceedings on the merits of the applicant's claim started in November 1995. They ended by the judgment of the Leninsky Court of 10 March 1999 which became final on 8 April 1999 when it was upheld by the Court of Appeal (see paragraph 8 above). This judgment has remained unenforced, the length of its execution being therefore the main issue.

25. The Government submitted that the applicant's claim in the housing dispute had been considered without undue delays and that the Bailiffs had taken all possible measures to enforce the judgment of 10 March 1999. The fact that the judgment remained unenforced was caused by the Town Council's lack of available housing.

26. The Court reiterates that Article 6 § 1 of the Convention, protects, *inter alia*, the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see e.g. *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, § 40; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; and *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003). The State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

27. Further, the Court notes that it is up to the State to take all necessary steps, within its competence, to execute a final court judgment and, in so doing, to ensure the effective participation of its entire apparatus, failing which it will fall short of the requirements contained in Article 6 § 1 of the Convention. Lastly, the Court reiterates that enforcement proceedings by their very nature need to be dealt with expeditiously (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23, ECHR 2000-IV).

28. In the present application, the proceedings involved the applicant, two private individuals, a private company and a municipal authority. Though amended in the extraordinary review proceedings on 4 February 2000, the holdings of the lower courts as far as the applicant was concerned remained unchanged: the private individuals were to be evicted from the flat and the enterprise was to provide the applicant with the vacated flat (see paragraph 8 above). The State's duty after the judicial proceedings had been concluded was merely to organise and properly conduct the enforcement proceedings in order to ensure that the private individuals were evicted and the applicant was able to occupy the flat. Given that he has not been able to do so, (see paragraphs 16, 17 and 19 above), the Court must examine whether this is imputable to the State, and accordingly whether the delay was caused by the public authorities.

29. It observes that between 8 April 1999, the date of the final decision, and 8 February 2001, when the enforcement proceedings were opened, the judgment was subject to enforcement by the bailiffs. Due to shortcomings in the writs of execution (see paragraph 11 above), it was actually not enforced. This delay is certainly attributable to the State.

30. On 7 June 2005 the Court of Appeal upheld the decision of the Leninsky Court of 14 March 2005, finding, as was subsequently confirmed by the Supreme Court, that the bailiffs had failed to enforce the judgment by not attaching the flat and not taking any measures in respect of the Town

Council (see paragraph 15 above). Accordingly, the delay between 8 February 2001 and 14 March 2005 is also attributable to the State.

31. The Court further notes that on 1 October 2004 the court confirmed the replacement of the debtor company by the municipal authorities, hence no later than this date it became the State's duty not only to organise and properly conduct the enforcement proceedings, but also to comply with judicial decisions (see paragraph 13 above). However, the judgment of 8 April 1999 has remained unenforced due to the occupants' privatising the flat and the municipal authorities' lack of alternative housing (see paragraphs 13 and 16 above). The Court will not speculate to what extent the privatisation of the flat affected the length of the proceedings, since, in any case, it is clear that the judgment remains unenforced also as a result of the municipal authorities' lack of housing. Since lack of funds cannot excuse the authorities for not honouring a judgment against them, the length of the proceedings ensuing after 1 October 2004 is therefore attributable to the State, even if the applicant did not appeal on points of law against the court decisions which confirmed the last decision of the bailiffs by which they had discontinued the enforcement proceedings (see paragraph 19 above), and it is undetermined how the conduct of the occupants of the flat in issue affected the length of the proceedings after 1 October 2004.

32. Hence, the length of the proceedings on the merits of the applicant's claim together with the enforcement of the final judgment has been more than fourteen years of which a delay of more than twelve years is attributable to the State.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant complained of a violation of his right to a home on account of the length of the proceedings in the housing dispute and the authorities' failure to enforce the final judgment in his favour. He relied on Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

35. The Government argued that the applicant sought not to obtain housing but to improve his living conditions, as he already lived in a flat provided by the enterprise.

36. The applicant insisted that the judgment at issue remained unenforced and his living conditions had not been improved.

37. The Court reiterates that “home” is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular premises constitutes a “home” which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (see *Buckley v. the United Kingdom*, 25 September 1996, *Reports* 1996-IV, §§ 52-54, and *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts)). The Court reiterates further that Article 8 of the Convention only protects a person’s right to respect for his present home (see, for example, *Strunjak and Others v. Croatia* (dec.), no. 46934/99, ECHR 2000-X). Moreover, the Convention cannot be interpreted as conferring on an individual a right to enjoy any given standard of living (see *Wasilewski v. Poland* (dec.), no. 32734/96, 20 April 1999).

38. In the case of *Akimova v. Azerbaijan* ((dec.), no. 19853/03, 12 January 2006) the court found that the applicant’s mere intention to move into an apartment in the future, without any other significant links to that apartment, was not a sufficient basis to hold that it had been her “home” within the meaning of Article 8 of the Convention. In particular, the applicant had never taken occupation of the apartment, never lived there for any period of time and had not moved her belongings there, whereas the current occupant had been the only one who had established his home there, albeit allegedly without a lawful right to do so. Additionally, it appeared that she had already established her “home” in the place where she lived with her relatives.

39. The applicant in the present case had an enforceable right to enter and occupy the flat (see paragraph 8 above). However, he was never able to live in the flat or move his belongings there, the current occupants having established their home there (see paragraph 17 above). The Government submitted that the applicant was occupying another flat already provided by the enterprise. The applicant does not dispute this assertion, merely complaining that there had been no improvement in his living conditions. Accordingly, he established his “home” in another place.

40. The Court finds, therefore, that even if the applicant had had the enforceable right to enter and occupy the flat in question, it did not constitute his “home” within the meaning of Article 8 of the Convention.

41. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. Lastly, the applicant complained under Article 6 § 1 of the Convention about the outcome and unfairness of the proceedings in the

housing dispute and the proceedings that ended with the Leninsky Court ruling of 12 December 2000 and the Oktiabrsky Court judgment of 1 October 2004. Without reference to any provision of the Convention, he also complained that the higher courts' decisions, declining to examine his appeal against the ruling of the Leninsky Court of 16 February 2009, were unlawful.

43. Having carefully examined the applicant's submissions in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage arising from the excessive length of the proceedings on his housing claim. He also claimed EUR 37,355 in respect of pecuniary damage which would compensate him for the value of the flat he was not able to take possession of.

47. The Government argued that the pecuniary damage claim was unsubstantiated, but left the non-pecuniary damage claim to the Court's discretion.

48. The Court first notes that, having due regard to its findings in the instant case, that the most appropriate form of redress would be to execute the judgment of 10 March 1999 by which the applicant's right to the tenancy of the flat was confirmed. Thus, the applicant would be put as far as possible in a situation equivalent to the one in which he would have been had there not been a breach of Article 6 of the Convention (see, *mutatis mutandis*, *Gladysheva v. Russia*, no. 7097/10, § 106). In addition, the Court has no doubt that the applicant suffered distress and frustration on account of the violations found. Deciding on an equitable basis, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant also claimed EUR 200 for his expenses for travel to the domestic courts and to the bailiffs. He submitted a document attesting to the price of travel from Kulikove to Poltava. He further claimed EUR 588 for costs and expenses incurred in the proceedings before the Court. He presented invoices for that sum from a lawyer.

50. The Government contested the applicant's claims.

51. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the instant case, the applicant did not provide documents in evidence of his travel and other expenses. Moreover, while he submitted a document attesting that he had paid for legal services, there is no contract in this respect and no document with a detailed account of these services. In any event, on 25 November 2010 the applicant sought leave to present his own case before the Court, which was granted. In the light of these circumstances, the Court rejects the claim for costs and expenses in the domestic proceedings and the proceedings before the Court.

C. Default interest

52. 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 complaint concerning the excessive length of the proceedings on housing claim admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of length of the proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President