



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

FOURTH SECTION

CASE OF VIRA DOVZHENKO v. UKRAINE

(Application no. 26646/07)

JUDGMENT

STRASBOURG

15 January 2019

FINAL

15/04/2019

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

In the case of Vira Dovzhenko v. Ukraine,

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

Faris Vehabović, *President*,

Ganna Yudkivska,

Egidijus Kūris,

Carlo Ranzoni,

Georges Ravarani,

Marko Bošnjak,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 11 December 2018,

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

PROCEDURE

1. The case originated in an application (no. 26646/07) 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, Ms Vira Grygorivna Dovzhenko (“the applicant”), on 13 June 2007.

2. The applicant, who had been granted legal aid, was represented by Mr Y.L. Boychenko, a lawyer practising in Strasbourg. The Ukrainian Government (“the Government”) were represented by their Agent, most recently Mr I. Lishchyna of the Ministry of Justice.

3. The applicant complained that the unauthorised letting of a plot of land owned by her for one year, coupled with the failure to award her any compensation in that regard, constituted unlawful and disproportionate interference with her rights guaranteed by Article 1 of Protocol No. 1 to the Convention.

4. On 15 May 2017 the Government were given notice of the complaint concerning the alleged violation of the applicant’s property rights, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1934 and lives in Bogdany.

6. On 26 January 2004 the applicant obtained from the State a deed of title to an agricultural plot of land (an official Land Registry title) based on a decree issued by the Varvynska local administration on 22 December 2003. This amounted to the official registration of her title to the land in accordance with the domestic procedures. At that point the applicant had not filed a request for the boundaries of the plot to be marked out and was not farming the land.

7. On 26 July 2004 the local administration concluded a lease agreement with the private company B., according to which the company would rent the applicant's land and pay the rent to the local administration. The applicant was not informed about this agreement. She learnt of the lease agreement only in September 2004, after the private company B. had planted seeds on the land.

8. On 4 October 2004 the applicant requested the local administration to allow her to establish the boundaries of her land. In this connection, on 19 October 2004, the local administration ordered the termination of the lease agreement with company B. and authorised the applicant to carry out work to mark out of the boundaries of her land.

9. In July 2005 the company removed its crop from the applicant's land. On 25 July 2005 amendments were introduced to the lease agreement of 26 July 2004, excluding the applicant's plot of land from the list of leased lands. From then on the applicant's land ceased to be a leased property, and company B. has not used it since. In the same month the boundaries of the applicant's land were established.

10. On 20 January 2006 the applicant lodged a civil claim with the domestic courts against the local administration and company B. Claiming that the lease agreement of 26 July 2004 infringed her property rights and should have been declared invalid, she sought compensation for the use of the land by company B. She argued that the amount of compensation to be paid to her should correspond to the value of the crop that had been harvested from her land.

11. On 2 June 2006 the Varva Local Court of Chernigiv Region allowed the applicant's claim. In particular, the court found that once the applicant had received a title to the plot of land in question, the local administration should not have concluded any agreement concerning the land with other parties. As to the boundaries, the court found that the local administration had unlawfully linked their establishment with the existence of the applicant's ownership rights. It also noted that despite the fact that the boundaries had not been marked out, the local administration should have learned about the applicant's title to the land in question from the land registry and local land plans. The court added that after lodging her request on 4 October 2004 for the boundaries of the plot to be marked out, the applicant had tried to accelerate the process by applying to the local administration and other authorities, to no avail. The court concluded that

the lease agreement of 26 July 2004 had violated the applicant's property rights and was to be declared invalid. The court also held that under domestic law the applicant was entitled to compensation for the use of her property equal to the value of the crops taken from her land (29,210 Ukrainian hryvnas (UAH); 4,493 euros (EUR) at the material time). The compensation, in the court's view, should have been paid to the applicant both by the local administration and by company B., as they were jointly and severally liable for the unauthorised use of the applicant's land.

12. The local administration appealed. On 12 September 2006 the Chernigiv Regional Court of Appeal quashed the above-mentioned judgment. The court noted that the use of the applicant's land by company B. had been lawful since it had been based on the lease agreement. The court further stressed that under Article 125 of the Land Code of Ukraine, the right of the owner of a plot of land to use it arose only once its boundaries had been marked out and after receipt by the owner of the document certifying that right. The appellate court concluded that the applicant was not entitled to compensation as the boundaries of her land had been marked out only in July 2005; as she could not have used the land before that date, she could not claim an interest in the harvested crop.

13. The applicant appealed on points of law. On 4 January 2007 the Supreme Court of Ukraine refused to examine the merits of the applicant's appeal on points of law, finding that it was frivolous.

14. On an unspecified date the applicant lodged another civil claim against company B., claiming the value of the land that had been used by B., as well as rental charges for the use of her land. On 7 June 2006 the Varva Local Court of Chernigiv Region left this claim unexamined because of the applicant's attitude, citing the fact that she had been absent from the court hearings in her case on numerous occasions without good reason.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

Article 41

"Everyone shall have the right to own, use, or dispose of his or her property and of the results of his or her intellectual or creative activities.

The right to private property shall be acquired in compliance with the procedure established by law ..."

B. Civil Code of Ukraine of 16 January 2003**Article 373 Land (plots of land) as a property**

...“3. The right of ownership over land shall encompass the surface layer (soil) within the boundaries of the plot, bodies of water, perennial plantings ...”

C. Land Code of Ukraine (version applicable at the time of the circumstances of the case)**Article 125 Origins of the right of ownership and the right of use of a plot of land**

“1. The right of ownership over land or the right to its permanent use shall arise after receipt by the owner or by the user of the document certifying that right, and after its official registration.

...

2. It shall be prohibited to begin using a plot of land before the establishment of the boundaries of the land, before receipt by the owner of the document certifying the right to it, and before its official registration.”

Article 212 Return of arbitrarily appropriated plots of land

“1. Plots of land appropriated in an unauthorised manner shall be returned to their owners or users without compensation for any expenditure incurred during their unlawful use.”

D. Law of Ukraine establishing the procedure for the allocation of plots of land to their owners (Закон України “Про порядок виділення в натурі (на місцевості) земельних ділянок власникам земельних часток (паїв)”, version applicable at the time of the circumstances of the case)**Article 13 Use of unclaimed plots of land**

“Unclaimed plots of land may be rented out by the local authorities to be used for their designated purpose until their owners receive official title to the land ...”

E. Resolution of the Plenum of the Supreme Court of Ukraine of 16 April 2004 on judicial practice regarding the application of the land legislation in civil cases

“... plots of land appropriated in an unauthorised manner shall be returned to their owners or users, and any unharvested crops shall be transferred to the latter, without compensation for any expenditure incurred during their unlawful use.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

15. The applicant complained that the letting by the Varvynska local administration to company B. of a plot of land owned by her, without her consent and without any compensation, constituted unlawful and disproportionate interference with her rights guaranteed by Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

16. The Government argued that the applicant had failed to exhaust domestic remedies and that she had not suffered a significant disadvantage.

1. Non-exhaustion of domestic remedies

17. The Government maintained that the applicant had not intended to use the plot of land in question for the purpose of agricultural production as she had failed to mark out its boundaries (a legal precondition for the use of land) and had failed to provide any information about her plans in that regard. Therefore, according to the Government, the applicant was not entitled to compensation for the use of her property equal to the value of the crops taken from her land and could claim only the rental charges she could potentially have received by renting out the land. In their opinion, by lodging the claim on 20 January 2006 seeking compensation in the amount of the crops, the applicant has chosen a wrong remedy. They considered that the applicant should have instead lodged the claim seeking compensation in the amount of the rental charges. The Government further informed the Court that on an unspecified date the applicant lodged another civil claim against company B., claiming the value of the land that had been used by B., as well as rental charges for the use of her land. On 7 June 2006 the Varva Local Court of Chernigiv Region left this claim unexamined because of the applicant's attitude, citing the fact that she had been absent from the court hearings in her case on numerous occasions without good reason.

They therefore considered that the applicant had not exhausted the domestic remedies that were available to her.

18. The applicant replied that by lodging a claim with the domestic courts against the local administration and company B. on 20 January 2006 she had sought reimbursement of the value of the crops taken from her plot of land which in her opinion had been an appropriate compensation for the unlawful use of her land. She stated that the Government had failed to advance any argument to demonstrate that the procedure suggested by them would add anything to the possibilities offered by the remedy she had pursued.

19. The Court reiterates that the purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. Thus, the complaints intended to be made subsequently at international level must have been aired before the domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. However, the obligation under Article 35 requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible. In particular, the only remedies which the Convention requires to be exhausted are those that relate to the breaches alleged and are at the same time available and sufficient (see, for instance, *Sejdovic v. Italy* [GC], no. 56581/00, §§ 43-46, ECHR 2006-II). What is important for the purposes of this provision is that, by using an appropriate domestic remedy, the applicant gives the domestic courts the opportunity to decide first on the complaints under the Convention that he or she intends to raise before the Court (see, for instance, *Simons v. Belgium* (dec.), no. 71407/10, § 23, 28 August 2012, and *Hernaiz-van den Eynden v. Belgium* (dec.), no. 618/08, § 19, 7 May 2013).

20. In the present case the applicant complained under Article 1 of Protocol No. 1 to the Convention that her plot of land had been unlawfully rented out by the Varvynska local administration to company B. for one year without her consent, and that she had not received any compensation in return. At the domestic level she lodged a civil claim against the local administration and company B. on 20 January 2006, arguing that the lease agreement of 26 July 2004 infringed her property rights and seeking compensation for the unlawful use of her land by that company.

21. The Court notes that the Government did not dispute that a civil claim for compensation was an appropriate domestic remedy to be used in the circumstances of the case. Nor did they argue that the applicant had failed to raise her complaint under Article 1 of Protocol No. 1 to the Convention at least in substance at the domestic level. They merely argued that she had wrongly sought to be paid the value of the harvest in compensation.

22. The Court observes further that the proceedings in question allowed the domestic courts to decide on the merits of the applicant's complaint concerning the alleged violation of her property rights and on the issue of compensation in that regard. It would then have been for the domestic courts to decide on the appropriate compensation if they had concluded that the applicant's rights had been infringed. The issue raised by the Government as regards the basis of the compensation claimed by the applicant is therefore irrelevant for the purposes of exhaustion of domestic remedies,

23. The Court thus does not accept the Government's submissions that the applicant should have lodged another civil claim seeking compensation in the amount of the rental charges. It is hence satisfied that, by lodging the claim of 20 January 2006, the applicant gave the domestic courts the opportunity to decide first on her complaint under Article 1 of Protocol No. 1 to the Convention, and therefore duly exhausted domestic remedies. Consequently, the Government's objection must be dismissed.

2. Whether the applicant suffered a significant disadvantage

24. The Government maintained their position that the applicant had not intended to use the plot of land in question for the purpose of agricultural production as she had failed to mark out its boundaries and thus, could not have claimed an interest in the harvested crop for the period during which her land had been let out. In their view, the applicant could only claim the rental charges she could potentially have received by renting out the land between 26 July 2004 and 25 July 2005 (the duration of the lease agreement between the local administration and company B.), the amount of which was UAH 1,136.48 (approximately EUR 186 at the material time).

25. The Government referred in this regard to the Court's case-law (see *Systun v. Ukraine* (dec.), no. 25250/16 and two other applications, 3 November 2016) in which it was found that the applicants did not suffer significant disadvantage as a result of the delayed enforcement of the judgments awarding them relatively small amounts (lower than EUR 200) of social allowances and various pension supplements. The Government concluded that since the applicant had not argued that the loss of such an amount would have significantly impacted on her personal life, she had not suffered a significant disadvantage and her complaint was inadmissible (Article 35 § 3 (b) of the Convention).

26. The applicant replied that her complaint had concerned violation of her property rights to the disputed plot of land which she could not have used and disposed of during one year due to unlawful actions of the local authorities. Thus, in her view, the violation at stake concerns important questions of principle and caused a significant disadvantage to her regardless of a particular pecuniary interest. She also stressed with respect to pecuniary interest that the amount of compensation that had been sought

by her in her claim of 20 January 2006 had been EUR 4,493 and it had been granted by the Varva Local Court of Chernigiv Region on 2 June 2006.

27. The Court observes that, in any event, the pecuniary interest involved is not the only factor in determining whether the applicant suffered a significant disadvantage. Indeed, a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interests (see, for instance, *Giuran v. Romania*, no. 24360/04, §§ 22-23, ECHR 2011 (extracts), and *Konstantin Stefanov v. Bulgaria*, no. 35399/05, §§ 46-47, 27 October 2015).

28. In the present case, the applicant complained that her property had been leased and used without her consent and that she had not received any compensation in return. Given the important questions that were therefore in issue, i.e. a complete denial of the applicant's *usus* and *fructus* rights attached to the ownership of the plot of land in question, the applicant cannot be deemed not to have suffered a significant disadvantage. It follows that the Government's objection has to be dismissed.

3. *Conclusion on admissibility*

29. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 §§ 1 and 3 (b) of the Convention, and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

30. The applicant submitted that the interference with her property rights had been unlawful as the local administration had had no legal basis on which to rent out her land in view of her title to it. In her opinion, the fact that by July 2004 the boundaries of the disputed land had not been marked out did not entitle the local administration to let out her possessions. The applicant added that she had requested that the boundaries of the plot be marked out as early as October 2004 but that the local administration had delayed this procedure in disregard of her numerous requests. Thus, in her opinion, the boundaries could have been established earlier if the land in question had not been occupied by company B., which had already planted seeds on the land and was expecting to realise a profit by harvesting the crop.

31. The applicant also stated that the interference in question had imposed an excessive burden on her in that she had been refused any compensation for the unlawful use of her land. She further noted that the decision to terminate the lease of her land had been taken as early as 19 October 2004, whilst the amendments to the lease agreement excluding

the applicant's land plot from the list of leased lands had been introduced only on 25 July 2005, after company B. had harvested the crop from her land. Before that date her plot had been used by company B. Thus, in the applicant's opinion, there had been a significant delay in the local authorities' attempts to remedy the situation. In the absence of any award of compensation in the applicant's favour, this constituted disproportionate interference with her property rights.

32. The Government observed that according to domestic law the applicant could not have used her plot of land before its boundaries had been established. According to them, even though the applicant had an official Land Registry title to the land in question, she did not have a legitimate expectation of actually using it until the boundaries had been marked out and thus could not claim compensation for the use of her land for agricultural purposes, including reimbursement of the value of the harvested crop.

33. The Government also maintained that once the local administration had become aware of the erroneous lease of the applicant's land, it had immediately taken all the necessary steps to remedy the situation. Thus, in their opinion, given the fact that the local administration had corrected its mistake promptly by excluding the applicant's land from the list of leased lands, the burden imposed on the applicant in this respect could not be considered excessive.

2. The Court's assessment

34. The Court first notes that it is clear from the case file that the plot of land in issue constituted the applicant's "possession" within the meaning of Article 1 of Protocol No. 1. Indeed, it is not disputed by the Government that she was the owner of the land and had had an official Land Registry title since January 2004 certifying her ownership rights. Neither is it disputed that the letting of the applicant's property without her consent amounted to interference with her right to peaceful enjoyment of her possessions.

(a) As to the applicable rule of Article 1 of Protocol No. 1

35. The Court next reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to

peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 78, ECHR 2006-V).

36. The Court is of the opinion that the letting of the applicant's land by the local administration to company B. did not amount to a "deprivation of property" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention. Indeed, the applicant continued to remain the legal owner of the plot as her title was never annulled, and it appears from the file that the local administration never intended to expropriate it. Furthermore, the interference with her property rights complained of was in fact limited to the *usus* and *fructus*, and lasted no more than one year.

37. The Court also observes that the letting of the applicant's land was not carried out in the context of the enforcement of specific domestic legislation aiming at allowing State control over the use of property (compare with *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 140, 27 November 2007). It would therefore not be appropriate to examine the case in the light of the second paragraph of Article 1 of Protocol No. 1 to the Convention.

38. The Court will therefore examine the case in the light of the general rule set out in the first sentence of that Article.

(b) As to the justification of the interference

39. The Court reiterates that Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The Court recalls in this connection that in order to be lawful, the interference must first and foremost have a legal basis in domestic law (see *Shchokin v. Ukraine*, nos. 23759/03 and 37943/06, § 51, 14 October 2010; *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, no. 3503/08, § 37, 13 October 2015; and *Kristiana Ltd v. Lithuania*, no. 36184/13, §§ 102-103, 6 February 2018).

40. Although the applicant was not entitled to use the disputed plot of land due to the lack of established boundaries, the Court notes that when the disputed plot of land was rented out, the applicant already possessed the official Land Registry title which certified her exclusive ownership rights over it in accordance with Article 125 of the Land Code of Ukraine and precluded other persons from any form of intervention in her possessions. It appears thus that at the time of the circumstances of the case there were no provisions of the domestic law which formed a sufficient legal basis for the impugned restrictive measures.

41. This means that the interference with the peaceful enjoyment of the applicant's possessions as defined above, manifestly in breach of Ukrainian law, was not lawful for the purposes of the analysis under Article 1 of Protocol No. 1.

42. The above conclusion makes it unnecessary to ascertain whether the interference in question pursued a legitimate aim and whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the applicant's rights (see, *Iatridis v. Greece* [GC], no. 31107/96, §§ 58 and 62, ECHR 1999-II; see also, *Dimitar Yordanov v. Bulgaria*, no. 3401/09, §§ 63 and 65, 6 September 2018).

43. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 4,493 euros (EUR) in respect of pecuniary damage. She based her claim on the amount of compensation for the harvested crop awarded to her by the Varva Local Court of Chernigiv Region on 2 June 2006, and submitted the relevant calculations in that regard. She also claimed EUR 5,000 in respect of non-pecuniary damage.

46. The Government contested the applicant's claim, arguing that it was unsubstantiated. They added with regard to pecuniary damage that the loss that the applicant had actually suffered should not be equated to the value of the crop as she did not have an expectation of using the land for agricultural purposes.

47. The Court, ruling on an equitable basis, awards the applicant EUR 4,000 under both heads for the illegal use of her property.

B. Costs and expenses

48. The applicant did not claim any amount for costs and expenses.

C. Default interest

49. 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 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of pecuniary and 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 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 15 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariarena Tsirli
Registrar

Faris Vehabović
President