



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

FIFTH SECTION

**CASE OF LUKYANOV v. UKRAINE**

*(Application no. 11921/04)*

JUDGMENT

STRASBOURG

19 June 2008

**FINAL**

*19/09/2008*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



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

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

Peer Lorenzen, *President*,  
Rait Maruste,  
Volodymyr Butkevych,  
Renate Jaeger,  
Isabelle Berro-Lefèvre,  
Mirjana Lazarova Trajkovska,  
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 May 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 11921/04) 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 Leonid Nikitovich Lukyanov (“the applicant”), on 12 March 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 5 April 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

4. The applicant was born in 1935 and lives in Yalta.

5. In November 2000 the applicant instituted civil proceedings in the Yalta Court (*Ялтинський міський суд*) seeking to oblige the Yalta Council’s Executive Committee (*Виконавчий комітет Ялтинської міської ради*) to provide his family of five residing in a one-bedroom apartment with larger housing. In his statement of claim the applicant noted, in particular, that he had been placed on the special waiting list for disabled

war veterans, which entitled him to obtain suitable housing within two years of the placement.

6. On 4 May 2001 the court ordered the Executive Committee to provide the applicant's family with an apartment meeting the standards established by Articles 48 and 50 of the Housing Code of Ukraine (*Житловий кодекс України*). By way of reasoning, the court dismissed the defendant's allegations that no municipal housing was available at the time. The court observed in this regard that the applicant's statutory right to obtain housing within two years of the date of the placement on the waiting list was unconditional.

7. On 19 September 2002 the Supreme Court of Ukraine upheld this judgment following cassation review and it became final.

8. On 17 December 2002 the Yalta Bailiffs (*Відділ Державної виконавчої служби Ялтинського управління юстиції*) initiated enforcement proceedings, having given the Executive Committee the time-limit of 17 January 2003 to comply with the judgment.

9. In summer 2003 the enforcement proceedings were terminated on account that vacant municipal housing was lacking.

10. On 23 March 2006 the Executive Committee decided to allocate a newly-constructed two-bedroom apartment and a one-bedroom apartment formerly belonging to a hostel to the applicant's family.

11. According to the applicant, the two-bedroom apartment at issue lacked necessary facilities, such as sanitary equipment and electric outlets. The apartment, which formerly belonged to a hostel, was unsuitable for establishing a permanent residence.

12. According to the Government, the apartments at issue complied with applicable housing norms, which had been certified by competent commissions. On 27 October 2006 the applicant registered his residence in the new two-bedroom apartment.

## II. RELEVANT DOMESTIC LAW

13. A description of the domestic law concerning the enforcement of judgments can be found in *Skubenko v. Ukraine*, (dec.), no. 41152/98, 6 April 2004.

14. According to Section 13 paragraph 18 of the Law of Ukraine "*On the Status of War Veterans, Guarantees of Their Social Protection*" (*Закон України «Про статус ветеранів війни, гарантії їх соціального захисту»*) of 22 October 1993 (as amended) disabled war veterans are eligible to obtain municipal housing within two years of having been placed on the waiting list.

15. Article 48 of the Housing Code of Ukraine (*Житловий кодекс України*) of 30 June 1983 (as amended) stipulates, in particular, that the minimal size of residential premises should comply with applicable

standards developed by the Cabinet of Ministers and the Trade Union Federation. According to Article 50 of the Code, residential premises should comply with sanitary and technical norms.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

#### A. Admissibility

16. The applicant complained about the lengthy non-enforcement of the court judgment of 4 May 2001 given in his favour. He invoked Article 13 of the Convention. The Court finds that the above complaint falls to be examined also under Article 6 § 1 of the Convention. These provisions read as follows:

#### Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

#### Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

17. The Government submitted that the judgment given in the applicant’s favour had been executed in full. He could therefore no longer claim to be a victim of the non-enforcement.

18. The applicant disagreed. He maintained that the two apartments allocated to his family were uninhabitable and did not meet the standards prescribed by Articles 48 and 50 of the Housing Code, to which the Yalta Court referred in its judgment of 4 May 2001. He submitted, therefore, that the judgment at issue had remained unenforced.

19. The Court notes that the applicant did not present any materials to support his allegations concerning the non-compliance of the apartments at issue with applicable housing provisions. Furthermore, according to the case-file materials, he did not raise any relevant complaints before the domestic authorities. In these circumstances, the Court does not have

reasons to doubt the Government's submissions and considers that the judgment of 4 May 2001 has been enforced (see e.g. *Gavrilenko v. Ukraine*, no. 24596/02, § 18, 20 September 2005).

20. However, the fact that the judgment in the applicant's favour has been enforced does not deprive him of a victim status in relation to the period during which this judgment remained unenforced (see e.g. *Skubenko*, cited above). Accordingly, the Court rejects the Government's preliminary objection.

21. The Court notes that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### **B. Merits**

22. In its observations on the merits, the Government submitted that the judgment given in the applicant's favour had been executed in full. There was, therefore, no breach of his Convention rights.

23. The applicant disagreed.

24. The Court recalls that the aforesaid judgment, which became final on 19 September 2002, remained unenforced for more than three and a half years. It finds that the Government have not advanced any convincing justification for this delay.

25. The Court, having regard to its extensive case-law on the matter of non-enforcement (see, e.g. *Skubenko v. Ukraine*, no. 41152/98, §§ 37-38, 29 November 2005) finds a violation of Article 6 § 1 of the Convention in respect of the unreasonable length of the enforcement of judgment in the applicant's case.

26. The Court does not find it necessary in the circumstances to examine under Article 13 of the Convention the same complaint as under Article 6 § 1.

## **II. ALLEGED VIOLATION OF ARTICLE 17 OF THE CONVENTION**

27. The applicant further complained about a violation of Article 17 of the Convention on account of the non-enforcement of the judgment in his favour.

28. The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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**

30. The applicant claimed the global sum of 600,000 euros (EUR) in respect of just satisfaction.

31. The Government did not comment on this claim.

32. The Court finds that the applicant must have suffered non-pecuniary damage on account of the lengthy non-enforcement of the judgment given in his favour. Ruling on an equitable basis, it awards the applicant EUR 1,300 in respect of non-pecuniary damage.

#### **B. Costs and expenses**

33. The applicant did not submit any claim under this head. The Court therefore makes no award.

#### **C. Default interest**

34. The Court considers it appropriate that the default interest 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 complaints under Article 6 § 1 and 13 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency 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 19 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President