



Ukraine's absolute ban on buying and selling of farm land led to rights violation, Government should pass more balanced law

In today's **Chamber** judgment¹ in the case of [Zelenchuk and Tsytsyura v. Ukraine](#) (application nos. 846/16 and 1075/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned a complaint by two people about a State ban on the sale of agricultural land, which they said had violated their property rights as the owners of such plots.

The Court observed that after the fall of the Soviet Union Ukraine had mostly distributed farm land to people who had previously worked on collective farms but had introduced, supposedly on a temporary basis, a ban on the sale of such land, known as the "land moratorium". The Government had argued that the measure prevented the concentration of land in a few hands, stopped rural people becoming poorer and made sure land stayed in cultivation.

However, the Court found that the State had not struck a fair balance between the general interests of the community and the applicants' property rights. The Court noted that no other Council of Europe state had such a ban and referred to the inconsistency of Ukraine's approach to ending the moratorium. It was also not clear why a less restrictive measure would not be effective in achieving the same goals.

The Court held that the Government should take legislative measures to ensure the required fair balance for owners of farm land, although that did not mean Ukraine had immediately to introduce an unrestricted market in agricultural land. No monetary compensation was awarded to the applicants.

Principal facts

The applicant in application no. 846/16 was Sofiya Stepanivna Zelenchuk, who is a Ukrainian national who was born in 1947 and lives in Ivano-Frankivsk (Ukraine). The applicant in application no. 1075/16 was Viktor Antonovych Tsytsyura, born in 1939 and living in Ternopil.

Both applicants received small plots of farm land by inheritance in 2000 and 2004 respectively and received property certificates in 2007 and 2008. Both plots have been rented out to companies. The first applicant receives rent in kind, either grain or sunflower oil, while the second has received rent of between 20 and 36 euros per hectare.

The plots are subject to the ban on the sale of agricultural land under the Land Code. The ban was initially set to be in force until 2005, pending the adoption of various land-related laws considered essential for the creation of a well-functioning land sales market infrastructure. However, it has been extended several times. The Transitional Provisions of the Land Code currently impose a moratorium

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

on the disposal of most agricultural land, except by way of inheritance, swap transactions and expropriation for public use, until the passing of a Circulation of Agricultural Land Act.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 to the Convention, the applicants complained about the legislative restrictions applicable to their land.

The applications were lodged with the European Court of Human Rights on 22 and 23 December 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. De Gaetano (Malta), *President*,
Ganna Yudkivska (Ukraine),
Paulo Pinto de Albuquerque (Portugal),
Faris Vehabović (Bosnia and Herzegovina),
Georges Ravarani (Luxembourg),
Marko Bošnjak (Slovenia),
Péter Paczolay (Hungary),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

[Article 1 of Protocol No. 1](#)

A key factor for the Court in leading to its finding of a violation of the applicants' property rights was that Ukraine itself had consistently set a goal of allowing the buying and selling of agricultural land, once the market infrastructure had been created. However, contrary to that proclaimed goal, the initial moratorium had been extended several times and was now treated for all practical purposes as being indefinite, despite periodic deadlines for legislation to regulate the issue, which have not been met. That showed a lack of consistency on the part of the authorities.

It took note of the Government's arguments about the need for the restriction, such as it preventing the impoverishment of the rural population, that it avoided land being concentrated in the hands of a few groups, such as wealthy individuals or hostile powers, and stopped it being taken out of cultivation.

However, the first argument did not take account of the fact that the applicants lived in a city and did not want to farm. Moreover, the legislature itself had not found that the ban was needed to achieve the goal in question in respect of the rural population in general, but was rather aimed at allowing enough time to pass the necessary legislation. The further two goals mentioned by the Government could be achieved through other laws, including those already on the books in Ukraine, such as caps on the amount of land owned and taxes which appeared to benefit cultivated land.

No other Council of Europe state had such a blanket ban, including similar transition economies, which had used other laws to achieve the goals cited by the Government. It was not the Court's task to say whether Ukraine's choice was the best solution, but in a situation where the State itself had set a goal of a well-regulated land sales market, it had to give reasons for a more restrictive solution, which it had failed to do in any consistent fashion.

The Court found that the burden imposed on the two applicants had been excessive. They had suffered the consequences of the authorities' failure to meet their own deadlines, while the authorities had given only weak reasons for failing to pass less restrictive measures. Ukraine had

failed to strike a fair balance between the general interests of the community and that of the applicants and had exceeded its power of discretion (“margin of appreciation”).

Article 46

The Court stressed that the case concerned the general legislative situation and was not restricted to the applicants alone. It held that Ukraine should take appropriate legislative or other measures to ensure a fair balance between the interests of farm land owners and the general community. The Court highlighted that it did not require the immediate introduction of an unrestricted market in agricultural land and that the State remained free to choose what measures to take.

Just satisfaction (Article 41)

The Court held that the finding of a violation was sufficient just satisfaction for any non-pecuniary damage and did not award any monetary compensation. In doing so, it bore in mind its finding that Ukraine had to take general measures to comply with the judgment and that very many people were affected by the situation. However, if the State showed unreasonable delay in passing the necessary measures, monetary awards might become warranted. It awarded 3,000 euros for each applicant for costs and expenses but stressed that it would normally make no such awards in future cases of this type.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.