

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

FIFTH SECTION

CASE OF KARAKUTSYA v. UKRAINE

(Application no. 18986/06)

JUDGMENT

STRASBOURG

16 February 2017

FINAL

16/05/2017

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



In the case of Karakutsya v. Ukraine,

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

Angelika Nußberger, *President,*
Erik Møse,
Faris Vehabović,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits, *judges,*
Sergiy Goncharenko, ad hoc *judge,*
Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 24 January 2017,

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

PROCEDURE

1. The case originated in an application (no. 18986/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 4 May 2006 by two Ukrainian nationals, Mr Andriy Karakutsya, born in 1977 ("the first applicant"), and his wife, Mrs Nadiya Karakutsya, born in 1978 ("the second applicant").

2. The applicants were represented by Ms S.V. Novytska, a lawyer practising in Kyiv. The Ukrainian Government ("the Government") were represented by their Agents, most recently, Mr I. Lishchyna of the Ministry of Justice.

3. The applicants alleged, in particular, that they had been deprived of a fair hearing, notably access to the Supreme Court, and unlawfully evicted from their accommodation.

4. On 21 October 2013 the application was communicated to the Government. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Fifth Section decided to appoint Mr S. Goncharenko to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. In December 1996 the first applicant concluded a three-year military service contract with the Ministry of Defence.

6. In March 1999 its housing commission allocated him a studio in a residence hall for students and employees of the National Defence Academy of Ukraine ("the Defence Academy"), located on Z. Street in Kyiv, and the applicants moved into this accommodation.

7. In December 1999 the first applicant concluded another three-year military service contract.

8. On an unspecified date in 2001 the applicants' daughter was born.

9. In December 2001 the first applicant rescinded his contract with the Ministry of Defence and resigned from military service, citing family circumstances.

10. On 4 April 2002 he was employed as a salesman by G., a private company.

11. On an unspecified date and for unknown reasons the first applicant registered himself as a temporary resident at an address on P. Street in Kyiv. However, according to the applicants' submissions, the family continued to live in and pay charges for the Z. Street studio, which they had renovated and modernised at their own expense.

12. In October 2002 the Defence Academy and Office of the Prosecutor General instituted proceedings in the Shevchenkivskyy District Court in Kyiv, seeking to evict the applicants' family from the Z. Street accommodation. Relying on Article 132 paragraph 1 of the Housing Code (see paragraph 35 below), the plaintiffs argued that because the first applicant had resigned from military service, he and his family were obliged to vacate the accommodation, which had been provided to them on a temporary basis in connection with the first applicant's military service.

13. During the trial, the applicants alleged that the first applicant had been "cantoned" or quartered in the disputed accommodation as a military serviceman, a fact which triggered a special duty on the part of the State to keep providing him with housing upon his resignation from the armed forces. Article 132 paragraph 1 of the Housing Code, which concerned accommodation for seasonal and temporary employees, did not apply in their case. They also noted that the first applicant had a dependent wife and young child, and that the family had no other accommodation in Kyiv.

14. On 11 November 2003, after hearing oral submissions of all interested parties and having examined the written evidence presented, the court ruled for the plaintiffs. It found that the disputed accommodation had been provided to the applicants on a temporary basis, as a privilege in connection with the first applicant's military service. Since it had been his

decision to terminate the contract early, there was no right to keep the accommodation or any duty of the State to provide other accommodation under the applicable law. Article 132 paragraph 1 of the Housing Code was therefore applicable and the applicants' family was legally obliged to vacate the Z. Street accommodation.

15. On 9 December 2003 the first applicant lodged an appeal with the Kyiv City Court of Appeal ("the Court of Appeal"). No copy has been provided to the Court.

16. On 29 January 2004 the Court of Appeal upheld the judgment of 11 November 2003, following a hearing attended by representatives of the Defence Academy but not by the first applicant. The court held, in particular, that his service contract had contained no clauses obliging the Ministry to provide him with housing during his service. The fact that he had been provided with temporary accommodation at the Ministry's discretion did not mean that the State had a duty to accommodate him or his family after termination of the contract.

17. According to the applicants, the Court of Appeal did not notify them of the date and time of the hearing of 29 January 2004. They further stated that on two occasions – in April 2004 and sometime in 2005 (the applicants could not recall the exact dates) – the first applicant had visited the Court to enquire about the status of the proceedings, but did not receive any meaningful response.

18. According to the applicants, on 28 April 2004 they were evicted from the Z. Street accommodation.

19. On 7 May 2004 the Official Gazette of Ukraine (*Офіційний вісник України*) published the new Code of Civil Procedure (hereinafter "the 2004 Code"), which was adopted on 18 March 2004 and entered into force on 1 September 2005.

20. On 12 August and 26 September 2005 the first applicant lodged written complaints with the President of the Court of Appeal concerning the delay in examining his appeal.

21. On 3 October 2005 the Deputy President of the Court of Appeal informed him that his case had already been decided and that the judgment of 11 November 2003 had been upheld.

22. On 16 and 24 November 2005 the first applicant wrote to the Court of Appeal with a request to be provided with a copy of the decision taken on 29 January 2004.

23. On 29 November 2005 the applicants received a copy of that decision.

24. On 13 December 2005 the applicants lodged a request with the Supreme Court of Ukraine for leave to appeal in cassation out of time against the rulings of 11 November 2003 and 29 January 2004, on the grounds that they had not been notified of the latter ruling until 29 November 2005. They argued, in particular, that the Court of Appeal had

failed, in breach of the requirements of the applicable law, to notify them of the date and time of the appeal hearing and the decision taken in their case. They had hence been deprived of their statutory right to attend the appeal hearing and to lodge a cassation appeal within the statutory time-limit. They also argued that the lower courts had erred in their assessment of the facts and application of the law in their case. In particular, since the first applicant had resigned from military service in connection with family circumstances, his situation fell within the ambit of paragraph 3, not paragraph 1 of Article 132 of the Housing Code. Accordingly, his family could only be evicted from the accommodation reserved for military personnel if they had been provided with other comparable accommodation. The applicants also relied on section 12 of the Social Protection of Military Servicemen Act (see paragraph 36 below) as the basis for their entitlement to permanent accommodation.

25. On 20 December 2005 the Supreme Court rejected the applicants' request for leave to appeal out of time, noting that, in accordance with Article 325 § 2 of the new Code of Civil Procedure of 2004 such leave could only be granted within one year of pronouncement of the decision subject to appeal (see paragraph 34 below).

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure of Ukraine adopted on 18 July 1963 (as worded at the material time; repealed with effect from 1 September 2005 – "the 1963 Code")

26. Article 216 of the Code obliged the first-instance courts to send parties who were not actually present at the hearing a copy of the judgment adopted in their absence, within five days of pronouncement. The type of service was not specified.

27. The Code set out a specific time frame for organising an appeal hearing. On receipt of the case file, the appeal judge to whom the case was assigned would carry out the necessary preparatory measures within ten days (Article 299), following which the court would schedule, no later than one month after completion of the preparative measures, a date on which the case would be considered at a hearing. The court's registry was to immediately notify the parties to the case and other persons taking part in the proceedings of the time and place of that hearing (Article 300).

28. Article 302 provided that the rules of procedure applicable to the consideration of cases on appeal were the same as those for their consideration at first instance, unless expressly stated otherwise in the relevant provisions concerning the appeal procedure.

29. Article 303 stated that if the appellate court did not receive confirmation of delivery of the notification of the hearing to an absent party,

the hearing had to be postponed. If the court did receive confirmation, the court could proceed with its consideration of the case in the absence of the party duly notified of the hearing.

30. Under Articles 319 and 320, parties to civil litigation were entitled to appeal on points of law (in cassation) against decisions of first-instance and appellate courts to the Supreme Court of Ukraine, acting as the "court of cassation".

31. Article 321 provided that appeals on points of law had to be lodged within one month of the date of the ruling of the appellate court. If the above time-limit was missed for reasons which the court recognised as justified, it could, at the request of the person lodging the appeal in cassation, grant leave to appeal out of time (renew the applicable time-limit) if the request was lodged within one year of the date on which the right to appeal on points of law arose.

32. Under Article 336, the Supreme Court of Ukraine had to quash a judgment if the case had been considered in the absence of a party who had not been notified of the hearing on appeal.

33. The Code also set out that enforcement of judgments was possible either after a judgment "took effect" (*набирає чинності*) or, exceptionally, before that, if the first-instance court decided that "immediate enforcement" was warranted (Article 348). First-instance courts' judgments took effect either upon expiry of the statutory time-limit for lodging an appeal, or, where an appeal was lodged, after its dismissal at the second instance (Article 231). According to Article 317, rulings of the second-instance courts took effect immediately upon pronouncement (although an appeal on points of law could still be lodged against them). By virtue of Article 219 paragraph 3, it was not possible for a court to order "immediate enforcement" of a judgment, which concerned eviction from residential premises, before that judgment took legal effect in accordance with Article 231 of the Code.

B. Code of Civil Procedure of Ukraine adopted on 18 March 2004 ("the 2004 Code")

34. The relevant provisions of the 2004 Code, which entered into force on 1 September 2005, read as follows at the material time:

Article 319. Legal force of rulings and judgments of the appellate courts

"Rulings and judgments of the appellate courts shall take effect upon the date of their pronouncement."

Article 325. Time-limit for lodging an appeal in cassation (on points of law)

"1. An appeal in cassation (on points of law) ... may be lodged within two months of the date the judgment (ruling) of the appellate court takes effect.

2. If the time-limit ... has been missed for reasons which the court recognises as justified, the court of cassation may, at the request of the person lodging the appeal, renew that time-limit, within one year of the date on which the right to appeal in cassation arose.

3. An appeal in cassation lodged out of time ... shall be returned by the court of cassation to the person who lodged it ... if the [request for] renewal [of the time-limit] is refused ..."

Section XI (Final and transitional provisions)

"...

11. Decisions adopted by the appellate courts before the entry into force of this Code may be appealed against in cassation if the time-limit for [lodging] an appeal in cassation under the Code of Civil Procedure of 1963 has not expired ..."

C. Relevant provisions of the Housing Code of Ukraine adopted on 13 June 1983

35. The relevant parts of Article 132 of the Housing Code, as worded at the material time, read as follows:

Article 132. Eviction from hall of residence (hostel)

"Seasonal, temporary employees and persons previously employed under temporary employment contracts who have terminated their employment, ... are subject to eviction from the hall of residence (hostel) [they had been permitted to occupy] in connection with [their] employment, without being provided with other housing ...

Other employees ... living in a hall of residence (hostel) in connection with their employment may be evicted without being provided with other housing in the event that they have terminated their employment at will and [on non-]serious grounds; [or have been dismissed] for breaching working discipline or committing a crime.

Persons who have terminated [their] employment on other grounds ... may only be evicted if [they have been] provided with other housing ..."

D. Law of Ukraine "On the social and legal protection of military servicemen and members of their families" ("the Social Protection of Military Servicemen Act") no. 2011-XII of 20 December 1991

36. The relevant parts of Section 12 of the above Act, as worded at the material time, read as follows:

Section 12. Provision of housing to military servicemen and members of their families

1. The State shall provide housing to military servicemen ...

2. ... Military servicemen who enter into military service on a contractual basis shall be provided with "service accommodation" or living space in [a] hall of residence (hostel) for the first five years of service, in the event they have no housing in the locality of their service. In the event they continue military service beyond five years,

the provision of housing to them shall follow the same general rules [as apply to career servicemen]. ..."

E. Law of Ukraine "On enforcement proceedings" ("the Enforcement Act") no. 7518/1999 of 28 May 1999

37. Under the provisions of the Enforcement Act, as worded at the material time, a State bailiff could initiate enforcement proceedings upon receipt of a formal enforcement document (such as a writ issued by a competent court), which had to include the date of the decision on the basis of which the writ had been issued, and the date on which it had taken legal effect (sections 18, 18-1 and 19). The Enforcement Act also provided that a decision to initiate enforcement proceedings was to be communicated to the parties concerned, who could appeal against it (section 24) as well as seek a suspension or stay of the enforcement on various grounds (sections 32 and 33).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

38. The applicants complained that they had been arbitrarily deprived of access to the Supreme Court.

39. They relied on Articles 6 and 13 of the Convention. The Court, which is master of the characterisation to be given in law to the facts of the case, considers that this part of the application falls to be examined under Article 6 § 1 of the Convention only. The relevant part of this provision reads:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time... by [a] ... tribunal ..."

A. Admissibility

40. The Government did not provide any comments on the admissibility of the above complaint.

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

B. Merits

42. The applicants complained that the Court of Appeal had failed to notify them of the hearing of 29 January 2004 or provide them with a copy of the decision taken on that date in good time. They had therefore been prevented from taking part in the hearing and deprived of the opportunity to appeal in cassation against the decision before the expiry of the applicable statutory time-limit. The applicants also submitted that their right of access to the court of cassation had been restricted by the legislative provision providing that the time-limit for lodging an appeal in cassation could only be renewed within one year of the date on which the right to an appeal in cassation had arisen. They added that the Supreme Court had retrospectively applied Article 325 § 2 of the 2004 Code to their appeal in cassation because that Code had entered into force on 1 September 2005, even though the decisions in their case had been taken earlier.

43. The Government disagreed. They submitted that, in the applicants' case, the restriction of the time-limit for lodging a request for leave to appeal in cassation out of time was fully compatible with domestic law and had not restricted the applicants' right of access to a court in a manner incompatible with Article 6 § 1 of the Convention.

44. The Court reiterates that Article 6 of the Convention does not compel Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the requirements of Article 6 must be complied with, such as the guarantee to litigants of an effective right of access to the courts for the determination of their "civil rights and obligations" (see, among other authorities, *Delcourt v. Belgium*, 17 January 1970, §§ 25 and 26, Series A no. 11 and *Morice v. France* [GC], no. 29369/10, § 88, ECHR 2015). The "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, particularly where the conditions of admissibility of an appeal are concerned (see, among other authorities, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 33, *Reports of Judgments and Decisions* 1997-VIII and *Vo v. France* [GC], no. 53924/00, § 92, ECHR 2004-VIII). On numerous occasions the Court has held that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This applies, in particular, to the interpretation by courts of rules of a procedural nature such as time-limits governing the submission of documents or lodging of appeals. The Court's role is, however, to ascertain whether the effects of such an interpretation are compatible with the Convention (see *Muscat v. Malta*, no. 24197/10, § 43, 17 July 2012 with further references). The Court's approach in this respect has been that procedural limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and

the aim sought to be achieved. Overall, procedural rules must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired (see, as a recent authority, *Baka v. Hungary* [GC], no. 20261/12, § 120, ECHR 2016).

45. On a number of occasions the Court has found that domestic courts may undermine the very essence of an applicant's right to a court by deciding not to examine the merits of a case on the basis of a particularly strict construction of a procedural rule (see, for example, *Běleš and Others v. the Czech Republic*, no. 47273/99, § 51, ECHR 2002-IX). However, at the same time the Court has recognised that the rules which govern the conditions for the admissibility of appeals are designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty, and that those concerned must expect those rules to be applied (see, among other authorities, *Mikulová v. Slovakia*, no. 64001/00, § 52, 6 December 2005).

46. Turning to the facts of the present case, the Court notes that, according to the applicants, they were unable to lodge an appeal on points of law before the Supreme Court against the decisions taken by the lower courts in the eviction proceedings brought against them because the appellate court had failed to notify them of the date and time of the appeal hearing or send them a copy of the decision pronounced on that date.

47. The Court observes at the outset that the second applicant was not a party to the appeal proceedings. However, and also noting the absence of any objections from the Government concerning her victim status, the Court will consider that, as a party to the eviction proceedings she, like the first applicant, retained her right to lodge a cassation appeal and receive a copy of the Court of Appeal's decision (see paragraphs 26, 28 and 30 above). The Court also takes into account that the first applicant could and did complain in his cassation appeal of a failure to notify him of the appeal hearing. Had the Supreme Court found his relevant submissions substantiated, it should have quashed the decision of 29 January 2004 (see paragraph 32 above). Accordingly, the ultimate issue for the Court to examine in the present case is whether the Supreme Court's refusal to grant the applicants leave to appeal in cassation out of time and examine their submissions on the merits was compatible with the right of access to a court within the meaning of Article 6 of the Convention.

48. In this connection, the Court notes that the Supreme Court rejected the applicants' request for leave to appeal in cassation as being out of time on the basis of Article 325 of the 2004 Code, which provided that such requests could only be lodged within one year of the date on which the original right to lodge such an appeal arose (see paragraph 31 above). It is not disputed by the parties that the implementation of the rule concerned pursued a legitimate aim, namely, to ensure legal certainty.

49. Insofar as the applicants alleged that the rule at issue was applied in an unforeseeable manner and retroactively, the Court observes that the 2004 Code was adopted in March and published in the Official Gazette in May of that year. Thus, the applicants had ample opportunity to consult its provisions, if need be, with appropriate legal advice, before its entry into force on 1 September 2005. Furthermore, the repealed 1963 Code, like the 2004 version, provided for a one-year time-limit for lodging requests for leave to appeal in cassation out of time (see paragraphs 31 and 48 above), and the transitional provisions contained in the 2004 Code established a general rule, whereby it was possible to appeal in cassation against rulings of appellate courts adopted prior to 1 September 2005 within the time-limits established by the 1963 Code (see paragraph 34 above). In these circumstances, the Court considers that the application of the "one-year rule" in the applicants' case was sufficiently foreseeable and accompanied by necessary procedural safeguards.

50. It remains to be examined whether, in the applicants' particular case, the construction of the "one-year rule" was too strict and the very essence of their right of access to a court was extinguished by the nature of its application.

51. The Court notes at the outset that, as appears from the text of Article 325 of the 2004 Code (see paragraph 34 above), the rule establishing the one-year time-limit for requesting leave to appeal in cassation out of time is phrased as envisaging no possibility of derogation, irrespective of the reasons provided by the parties for being late. At the same time, the length of the period during which such a leave can be requested is not short in absolute terms. In any event, the Court's task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they affected the applicants gave rise to a violation of the Convention (see *Zavodnik v. Slovenia*, no. 53723/13, § 74, 21 May 2015).

52. According to the applicants, they did not receive any notification from the Court of Appeal concerning the adoption of the ruling on 29 January 2004. Consequently, they did not learn about the existence of that ruling until 3 October 2005 and received its copy on 29 November 2005 only (see paragraphs 21 and 23 above), that is, after the expiry of the non-renewable one-year time-limit allowed for requesting leave to appeal out of time.

53. In this respect the Court reiterates that the right to a fair hearing entails the entitlement to receive adequate notification of judicial decisions, particularly in cases where an appeal might be sought within a specified time-limit (see, in particular, *Zavodnik*, cited above, §§ 70 and 71, with further references). At the same time, Article 6 § 1 of the Convention does not provide for a specific form of service of documents (see *Bogonos v. Russia* (dec.), no. 68798/01, 5 February 2004, and *Shytik v. Ukraine* (dec.), no. 2911/03, 30 September 2008). In addition, on numerous

occasions the Court has stated that it is incumbent on the interested party to display special diligence in the defence of his interests and to take the necessary steps to apprise himself of the developments in the proceedings (see, among other authorities, *Teuschler v. Germany* (dec.), no. 47636/99, 4 October 2001; *Sukhorubchenko v. Russia*, no. 69315/01, § 48, 10 February 2005; *Gurzhyy v. Ukraine* (dec.), no. 326/03, 1 April 2008; and *Muscat*, cited above, § 44). The question to be decided is whether an individual's access to a court has been denied in the circumstances of a particular case (see, generally, *Hennings v. Germany*, 16 December 1992, Series A no. 251-A, and *Bogonos*, cited above).

54. In several cases, where it had been demonstrated that the necessary notifications were duly sent out by the courts, but not received by the applicants for various reasons not imputable to the judicial authorities, the Court found no issue under Article 6, having considered that the applicants in those cases had failed to display special diligence in protecting their interests (see, for example, *Teuschler,* cited above, concerning the applicant's failure to make arrangements for picking up mail during her sickness; *Shytik*, cited above, concerning the applicant's failure to raise correctly an issue regarding authenticity of a signature on a delivery slip; and *Muscat*, § 44, cited above, concerning the applicant's failure to indicate the correct address). In *Gurzhyy*, cited above, where the applicant did not receive copies of the court rulings sent to her by the local court by regular mail (which was allowed by applicable law), the Court considered that it was called upon to examine not only what steps had been taken by the judicial authorities in order to ensure that the applicant had been promptly served with their decisions, but also what actions the applicant had undertaken herself in order to apprise herself of the developments in her proceedings. It further noted that the applicant, who had not received any information concerning progress in her case for about one and a half years, could have reasonably been expected to contact the court to verify its status.

55. In the present case, according to the applicants' submissions not contested by the Government, they did not receive any notification from the Court of Appeal concerning the adoption of the ruling of 29 January 2004 within the period allowed for challenging this ruling on points of law. However, unlike in the cases mentioned in the preceding paragraph, it is not clear what brought about this situation and whether it resulted from an omission of the State authorities. As it is not possible to exclude State responsibility for defective notification, the Court accepts that the applicants' non-compliance with the one-month period ordinarily allowed for lodging appeals on points of law under Article 321 of the 1963 Code (see paragraph 31 above) may have been objectively justified.

56. However, this finding is insufficient for a conclusion that the applicants were denied access to the Supreme Court, as Article 321 still allowed them to request leave to appeal belatedly within one year of the

date on which the original right to appeal had arisen. The Court is therefore called upon to decide whether the applicants' failure to comply with this second time-limit has also been justified in the circumstances of the case.

57. In this connection, it is notable that the first written enquiry about the status of the appeal proceedings was lodged by the first applicant only on 12 August 2005 (see paragraph 20 above), that is, one year and eight months after the appeal proceedings had been initiated. Insofar as an allegation has been made that earlier enquiries were made orally and did not yield any meaningful response (see paragraph 17 above), it is to be noted that the applicants, represented by a lawyer in the Convention proceedings, did not provide any details necessary for the Court to establish and examine the relevant facts. Among all, it is not clear why no meaningful response was given and whether the applicants took all reasonable steps to obtain one. The Court is therefore not in a position to take these oral enquiries into account.

58. As regards the written enquiry on 12 August 2005, the Court does not find that one year and eight months' waiting period before making it has been justified in the present case. In this regard it observes, firstly, that the 1963 Code established a number of procedural time-limits for processing appeals at the second instance (see paragraph 27 above). Notably, according to Articles 299 and 300, preparatory measures with a view to scheduling the case for the appeal hearing were expected to be completed within ten days of assigning the case to a judge, and the hearing itself was to be scheduled within one month of the completion of its preparation. It appears that by consulting the text of these provisions, if need be, with the assistance of a lawyer, the applicants could reasonably expect that, in compliance with the statutory time-limits, an appeal lodged in December 2003 could be examined sometimes before March 2004. Accordingly, it appears that absence of any news from the Court of Appeal, which was bound by applicable law to notify the parties of the date of the hearing (see paragraph 27 above) within this period suggested an irregularity in the proceedings, which might have prompted the applicants to take action in order to protect their interests (compare and contrast *Zavodnik*, cited above, §§ 78 and 80, where the Court decided that it was unrealistic to expect of the applicant to regularly consult the court's notice board to find out the date of a hearing, which took eight years to be scheduled).

59. The Court further observes that, according to the applicants, the eviction order against them was enforced on 28 April 2004 (see paragraph 18 above). They have not provided any details concerning the actual mode of the enforcement procedure in their case. Having examined the text of the applicable legal provisions, the Court finds it improbable that the applicants would remain unaware of the outcome of the appeal proceedings after having been evicted on 28 April 2004. It appears from the provisions of the 1963 Code and the Enforcement Act (see paragraphs 33

and 37 above) that, as a precondition for implementing the eviction order, a bailiff was supposed to notify the applicants that this order had gained legal effect following the conclusion of the appeal proceedings on 29 January 2004, which, in the present case meant that the first applicant's appeal had been dismissed. Even assuming that it was not done, or that there might have been a misunderstanding, as a result of which the applicants genuinely continued to believe that the appeal proceedings were still pending as of April 2004, it remained open to them to oppose the enforcement, particularly as the 1963 Code expressly prohibited eviction from residential premises while appeal proceedings were pending (see paragraph 33 above). Based on the case file, it appears that the applicants did not take any action to oppose the enforcement or have it stayed. It is true that they were apparently not represented by a lawyer in the appeal proceedings, which may have made it more difficult for them to orient themselves in the procedural rules. However, there is nothing in the case file suggesting that the applicants' decision to seek or not to seek assistance of a lawyer was a matter potentially engaging responsibility of the Government.

60. Regard being had to the considerations advanced in paragraphs 57-59 above, the Court cannot conclude that the applicants displayed special diligence in following their proceedings. It therefore does not find that their failure to lodge an appeal on points of law within the additional time-limit established for requesting leave to appeal belatedly has been objectively justified.

61. In these circumstances the Court considers that by rejecting, on the basis of applicable law, the applicants' request for leave to appeal in cassation lodged nearly two years after the judgment appealed against had gained legal effect, the Supreme Court did not act arbitrarily and did not restrict the applicants' right of access to a court in a manner incompatible with Article 6 of the Convention.

62. There has therefore been no breach of Article 6 in the present case.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

63. The applicants complained that their eviction had violated their "right to home" envisaged by 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."

64. The Government argued that there had been no breach of the applicants' rights under Article 8 in the present case. They had been provided with the disputed accommodation on a temporary basis, in connection with the first applicant's contractual military service. He rescinded this contract early and resigned from the military after serving less than five years. The State authorities had been under no legal duty to house the applicants after the first applicant's resignation.

65. The applicants disagreed. According to the applicable law, they had been entitled, as the family of a former military serviceman, to remain in the residence after the first applicant's resignation, unless they had been provided with other housing. They stressed that the first applicant had resigned from military service on serious grounds in connection with family circumstances. His status was therefore not comparable to that of temporary employees or people who had resigned on non-serious grounds, within the meaning of Article 132 of the Housing Code and other similar provisions. The applicants also submitted that their family, including a very young daughter and relying on the first applicant as the only breadwinner, had no other housing available to them at the time of their eviction and had to do with renting accommodation from private landlords.

66. The Court notes at the outset that the merits of the applicants' complaint were not reviewed by the Supreme Court in cassation proceedings. However, in the absence of any plea concerning non-exhaustion on the Government's behalf, the Court cannot dismiss the applicants' complaint as non-exhausted (see *Dobrev v. Bulgaria*, no. 55389/00, §§ 112-114, 10 August 2006). It also observes that since the applicants failed to appeal in cassation against the decision of 29 January 2004 within the one-month statutory time-limit, it became final in February 2004 and was enforced, according to the applicants' submissions, in April 2004. In the meantime, the present application was not lodged until May 2006. However, the Court does not find it necessary to examine whether the applicants, who alleged that the above-mentioned decision had not been notified to them in good time, complied with the six-month rule in the present case, as it considers that their complaint under Article 8 is in any event manifestly ill-founded.

67. It has not been disputed at the domestic level or by the parties in the course of the Convention proceedings that, notwithstanding that the first applicant was registered as a temporary resident at a different address at the time when the eviction claim was considered by the District Court (see paragraph 11 above), the applicants did in fact reside in the Z. Street accommodation at the material time. The Court therefore concludes that the disputed Z. Street accommodation constituted the applicants' home within the meaning of Article 8 of the Convention and their eviction, accordingly, amounted to interference with their rights guaranteed by that provision.

68. The Court next reiterates from its settled case-law that loss of one's home is a most extreme form of interference with the right to respect for the home (see, among other authorities, *McCann v. the United Kingdom*, no. 19009/04, § 50, 13 May 2008; *Kryvitska and Kryvitskyy v. Ukraine*, no. 30856/03, § 41, 2 December 2010; and *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, §§ 52-53 with further references, 21 April 2016). This interference constitutes a violation of Article 8 of the Convention, unless it pursues one of the legitimate aims enumerated in Article 8 § 2, is "in accordance with the law", and can be regarded as "necessary in a democratic society" (see, among other authorities, *Kryvistska and Kryvitskyy,* cited above, § 42). The decision-making process leading to the measures of interference must also have been fair. The Court will therefore attach particular weight to the existence of procedural safeguards available to applicants at risk of an interference of this magnitude for protecting their interests (see *Rousk v. Sweden*, no. 27183/04, § 137, 25 July 2013). At the same time, Article 8 of the Convention does not give a right to be provided with a home or to reside in a particular property (see, among other authorities, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 99, ECHR 2001-I).

69. In examining whether the applicants' eviction in the present case was lawful, the Court notes that the eviction order was taken by a competent court, which found at the close of the adversarial proceedings in the course of which the applicants were able to state their case, that their entitlement to occupy the disputed accommodation had been of a temporary nature and closely connected to the first applicant's military service (see paragraphs 14 and 16 above). This entitlement had therefore terminated upon the first applicant's resignation and his family was accordingly obliged under Article 132 paragraph 1 of the Housing Code to vacate the disputed premises. In so far as the applicants considered that this conclusion was incorrect, and that they were, in fact, entitled to permanent accommodation under the domestic legal provisions, the Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. It will not substitute its own interpretation for theirs in the absence of manifest arbitrariness (see, among other authorities, *Orlić v. Croatia*, no. 48833/07, § 61, 21 June 2011). The present case does not disclose any appearance that the substantive conclusions reached by the District Court and confirmed by the Court of Appeal were manifestly arbitrary. The Court therefore considers that the applicants' eviction had a basis in the substantive provisions of domestic law.

70. In so far as the applicants may have implied that the lawfulness of their eviction could be compromised because the Court of Appeal failed to notify them of the appeal hearing and the decision taken in their case in time for them to lodge a cassation appeal, the Court has already examined these issues under Article 6 of the Convention and found that they did not

undermine the fairness of the proceedings in a manner incompatible with Article 6 of the Convention (see paragraphs 61-62 above). The Court concludes that the same considerations are pertinent for examining the present complaint under Article 8. It finds that the domestic law contained sufficient procedural safeguards enabling the applicants to contest the purported flaws in the appellate proceedings (such as a one-year time-limit for requesting leave to appeal in cassation out of time and to complain to the Supreme Court about the failure to notify them of the appeal hearing). The fact that the applicants did not avail themselves of the relevant opportunities in good time cannot be imputed to the State. Accordingly, the Court concludes that the decision-making process leading to the applicants' eviction was accompanied by the requisite safeguards enabling them to defend their interests.

71. The Court further considers that the interference complained of pursued a legitimate aim of the economic well-being of the country and protection of the rights of others, namely students and employees of the Defence Academy and other military servicemen in need of accommodation in connection with their service.

72. As regards the necessity of the interference, the Court notes that it appears from the summary of the applicants' submissions before the District Court that the crux of their argument was their purported entitlement to permanent housing under the applicable domestic law. At the same time, they also stated, as in the present application, that their family, including a very young child, had no other home and that the first applicant was the only breadwinner, which apparently implied that finding and renting other accommodation would entail a serious financial outlay for the young family. It appears that the District Court did not reflect on these arguments in its reasoning.

73. In this connection, the Court reiterates that, even where the lawful right to occupy premises has come to an end, an individual should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles of Article 8 of the Convention (see, among other authorities, *McCann*, cited above, § 50; and *Kryvitska and Kryvitskyy*, cited above, § 44). On a number of occasions the Court has found a violation of the applicants' right to respect for their home on the grounds that the national courts had not carried out the proportionality test when eviction orders had been issued (see, among other authorities, *McCann*, cited above, § 50; *Kryvitska and Kryvitskyy*, cited above, §§ 50-52; *Yordanova and Others v. Bulgaria*, no. 25446/06, § 122, 24 April 2012; *Orlić,* cited above, §§ 64-72; and *Winterstein and Others v. France*, no. 27013/07, § 156, 17 October 2013). At the same time, the Court has also emphasised in its case-law that the proportionality issue does not arise automatically in each case concerning an eviction dispute. If an applicant wishes to raise an Article 8 defence to prevent eviction, it is for

him to do so and for a court to uphold or dismiss the claim (see *Orlić*, cited above, § 66).

74. Based on the material before the Court, the applicants in the present case did not pursue a proportionality argument beyond making some rather general submissions before the first-instance court. Notably, it is not clear whether the first applicant raised relevant arguments in his ordinary appeal (no copy was provided to the Court), or whether he chose, as in his cassation appeal, to focus entirely on the lawfulness argument. The second applicant did not avail herself of the opportunity to lodge an ordinary appeal. Moreover, as already mentioned in the Court's Article 6 analysis, the applicants apparently did not contest the institution of the enforcement proceedings with a view to evicting them, request a stay of execution, or take any active steps to find out about the outcome of the first applicant's appeal proceedings until more than a year after having been evicted. Based on the material presented, the Court cannot discern that their eviction from the Z. Street accommodation actually constituted a disproportionate burden on them or that they at least raised a relevant argument in a manner obliging the domestic judicial authorities to give full consideration to their personal situation.

75. Having regard to the above, the Court considers that the present complaint does not disclose an appearance of an issue under Article 8 of the Convention.

76. Accordingly, the Court considers that the present complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 16 February 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President