

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

FIFTH SECTION

CASE OF KLYMENKO v. UKRAINE

(Application no. 14301/14)

JUDGMENT

STRASBOURG

2 March 2023

This judgment is final but it may be subject to editorial revision.



In the case of Klymenko v. Ukraine,

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

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 14301/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 February 2014 by three Ukrainian nationals, Mr Mykola Oleksiyovych Klymenko, born in 1951, Ms Yuliya Mykolayivna Klymenko (the first applicant's daughter) born in 1983, and Mr Igor Mykolayovych Klymenko (the first applicant's son) born in 1986 ("the applicants"), who were represented by Ms O. Syerysheva, a lawyer practising in Kharkiv;

the decision to give notice of the complaints indicated in paragraph 1 below to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms M. Sokorenko, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 2 February 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the allegedly unlawful and unnecessary eviction of the applicants from a State-owned hostel. The applicants also complained that the domestic courts had not provided adequate reasons for their decisions or afforded them an effective remedy. The applicants relied on Articles 6, 8 and 13 of the Convention.

2. In May 2012 the applicants sued the Kharkiv National Medical University ("the University"), seeking an acknowledgment of their right to protected tenancy of a flat in a State-owned student hostel managed by the defendant. They noted that the disputed flat, which had been allocated to them in 1998 in connection with the first applicant's employment at the University, was their only home.

3. The University administration lodged a counter-claim seeking the applicants' eviction. They contended that they had not been obliged to extend the applicants' lease agreement, which had been due to expire in August 2012, as in the spring of 2011 the first applicant had terminated his employment.

4. The applicants contested that claim. They contended that in 1998, when they had first been allocated the disputed premises (which consisted of three separate rooms at that time), a special arrangement had been agreed with the Dzerzhynskyy District Council in Kharkiv, whereby those three rooms had been designated as a "separate flat" (*ізольована квартира*), and that they had entered into an open-ended protected tenancy agreement. The applicants had had to carry out the reconstruction work necessary in order to convert the three rooms into one flat at their own expense. In connection with that special arrangement, the applicants' family had been taken off the social housing waiting list at that time. In 2009 the 1998 arrangement had been retroactively annulled by the District Council on the ground that it breached the applicable law. At that time the applicants were no longer able to regain the place that they had lost on the housing waiting-list and had been forced to sign fixed-term annual leases with the University. Even so, they had considered that their occupancy right had remained protected, since the first applicant had served on the University faculty since 1974. By virtue of Article 125 of the Housing Code, which forbade employers owning corporate housing from evicting former employees of more than ten years' standing, the first applicant and his family members had been protected from eviction unless other housing was provided.

5. On 12 June 2013 the Dzerzhynskyy District Court, Kharkiv ("District Court") dismissed the applicants' claim and allowed the University's counter-claim, referring in its reasoning to the termination of the first applicant's employment and the expiration of the lease agreement. The court noted that the first applicant had been retained by the University as the chair of the pathological physiology department since 2004 on the basis of a fixed-term contract, which had subsequently been extended and eventually terminated in 2011. It further noted that Article 132 of the Housing Code stipulated that any entitlement of seasonal and fixed-term employees to occupy corporate hostel accommodation ceased upon termination of their employment. The District Court did not address the applicants' submissions concerning their personal circumstances or their argument that they had a special entitlement under Article 125 of the Housing Code to keep their accommodation in view of the long-standing uninterrupted service of the first applicant as a university faculty member.

6. The applicants appealed, reiterating their previous arguments and noting, in particular, that the first applicant had devoted his entire career to the University and had occupied various posts there without interruption since 1974. He had been a permanent faculty member until he had obtained his first "fixed-term" competitive post in 1999; and that he had left the faculty in 2011 on reaching the legal retirement age. The applicants also noted that in 2012 the second applicant had given birth to a child and that childcare authorities should therefore have been involved in the eviction proceedings.

7. On 5 August 2013 the Kharkiv Regional Court of Appeal dismissed the applicants' appeal. It endorsed the reasoning of the District Court and noted that the applicants' arguments concerning their former occupancy of the disputed accommodation under a special protected tenancy arrangement and the birth of the second applicant's child were immaterial, since the aforementioned arrangement had already been annulled and since the child's right to occupy the disputed premises was derived from that of the first and second applicants.

8. On 6 September 2013 the Higher Specialised Court rejected, in written proceedings, the applicants' request for leave to appeal on points of law and on 9 December 2013 it further rejected their request for leave to submit an application for review with the Supreme Court of Ukraine.

9. On 7 October 2013 the applicants were evicted.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

10. The applicants complained that their eviction had been neither lawful nor necessary and that the domestic courts had failed to provide adequate responses to their main arguments and to assess their personal circumstances. In response to the Government's objection that the second applicant's complaint was manifestly ill-founded since at the time of the proceedings she was studying abroad, where she had also given birth to her child, they claimed that she had remained a Ukrainian resident and had had no other housing to return to upon the completion of her studies.

11. The Court considers that the second applicant cannot be considered to have lost her connection with the disputed flat as a "home" on account of her temporary absence (see, in particular, *Lazarenko and Others v. Ukraine* (dec.), no. 27427/02, § 53, 11 December 2012). Nor does it discern, from the domestic courts' judgments, that her studies abroad, of which they had been made aware, were a material consideration for them in deciding on her eviction or that of her child (compare *Dakus v. Ukraine* [Committee], no. 19957/07, § 51, 14 December 2017). The Court considers that the objection at issue should be dismissed. It further finds that the present complaint, raised by all three applicants, is neither manifestly ill-founded nor inadmissible on any other grounds and that it must therefore be declared admissible.

12. The Government contended that the applicants' eviction had been lawful and necessary and that there had been no breach of Article 8 in the present case.

13. Reviewing the facts of the case in the light of its established case-law (see, among other authorities, *McCann v. the United Kingdom*, no. 19009/04, § 50, ECHR 2008, and *Kryvitska and Kryvitskyy v. Ukraine*, no. 30856/03,

§§ 42-44, 2 December 2010), the Court notes that the applicants' eviction from a State-owned hostel amounted to an interference with their right to respect for their home, and that this fact was not in dispute between the parties.

14. The Court is prepared to accept that the disputed interference could have been in pursuit of a legitimate aim, namely, the protection of the rights of students and other persons affiliated with the University, who needed housing, and that it had some basis in domestic law, in particular in the provisions of Article 132 of the Housing Code, as interpreted by the national courts.

15. At the same time the Court notes that the reasoning adduced by the domestic courts (see paragraphs 5 and 7 above) indicates that, having decided that the applicants' lease agreement and the first applicant's fixed-term employment with the University had ended, they gave those factors paramount importance. They provided no further reasoning for rejecting the applicants' key argument under Article 125 of the Housing Code concerning the importance of the total length of the first applicant's uninterrupted employment. Nor did the courts address, in their reasoning, the applicants' other arguments concerning their personal situation or indicate, in any manner, that they sought to weigh up the State-owned defendant's decision to recover the flat for the benefit of unspecified third persons against the applicants' submissions that retaining the lease was an issue of vital importance for them. In those circumstances, the Court cannot find that the domestic authorities provided "sufficient reasons" to demonstrate a "pressing social need" for the disputed eviction or justified its "proportionality" within the meaning of Article 8 of the Convention.

16. The Court has previously found violations of Article 8 of the Convention in other cases, in particular cases against Ukraine where the applicants had not had the benefit, in the context of proceedings concerning eviction from public housing, of an examination of the necessity of the interference (see, for example, *Kryvitska and Kryvitskyy*, cited above, §§ 51-52; *Dakus*, cited above, §§ 52-53; and *Sadovyak v. Ukraine* [Committee], no. 17365/14, §§ 34-35, 17 May 2018).

17. In the present case also, the Court finds that there has been a violation of Article 8 of the Convention.

II. OTHER COMPLAINTS

18. The applicants also invoked Articles 6 and 13 of the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicants claimed, jointly, EUR 60,000 euros (EUR) representing, in their view, the average cost of acquiring a flat comparable to the one from which they had been evicted; EUR 475 for the removal and storage of their belongings upon their eviction; and EUR 141 in medical expenses purportedly incurred in connection with the stress suffered on account of the eviction by way of pecuniary damage. They also claimed EUR 10,000 each in respect of non-pecuniary damage. Finally, they claimed EUR 2,572 in legal fees, EUR 78 in domestic court fees and EUR 19 in correspondence expenses. They presented various documents in support of the aforementioned fees and expenses.

20. The Government noted that, the applicants' not having been owners of the disputed accommodation and the case not raising an issue under Article 1 of Protocol No. 1, there was no causal link between the pecuniary damage claimed and the violation alleged. They further noted that the claims for non-pecuniary damage and legal fees were exorbitant and unsubstantiated. They did not make any objections against the claims for reimbursement of court fees or for correspondence expenses.

21. The Court does not discern a causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicants jointly EUR 4,500 in respect of non-pecuniary damage plus any tax that may be chargeable.

22. Having regard to the documents in its possession, the Court considers it reasonable to award the applicants EUR 2,669, plus any tax that may be chargeable to them, covering costs under all heads.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the complaints under Articles 6 and 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,669 (two thousand six hundred and sixty-nine euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President