

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

FIFTH SECTION

CASE OF KULYK v. UKRAINE

(Application no. 40214/16)

JUDGMENT

STRASBOURG

9 May 2025

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



In the case of Kulyk v. Ukraine,

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

María Elósegui*, President*,
Gilberto Felici,
Kateřina Šimáčková*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 40214/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 June 2016 by a Ukrainian national, Mr Sergiy Mykolayovych Kulyk ("the applicant"), who was born in 1955, lives in the village of Solonchaky, Mykolaiv Region, and was represented by Ms L. Oliinyk, a lawyer practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko;

the parties' observations;

Having deliberated in private on 3 April 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's deprivation of land, following an action brought by a prosecutor.

2. In March 2006 the Ochakiv District State Administration of the Mykolaiv Region ("the Ochakiv DSA") decided to authorise the transfer of plots of land into the private ownership of eight individuals, including the applicant, and to permit those individuals to draw up the relevant technical documentation.

3. In April 2011 the Ochakiv DSA finalised the transfer and allocated the applicant a one-hectare plot of land for gardening. In October 2011 the applicant obtained ownership documents for that plot of land.

4. In May 2013 a local prosecutor brought an action on behalf of the State, seeking annulment of the Ochakiv DSA's 2011 decision to allocate the land, and of the applicant's title to it. The prosecutor argued that the applicant's land was located within two kilometres of the Dnipro-Bug estuary shoreline (the statutory width for a protected shoreline belt). Moreover, part of that protected land had also been allocated for use to the local forestry enterprise. The prosecutor determined the value of the applicant's plot of land to be 32,200 Ukrainian hryvnias (UAH; approximately 3,000 euros (EUR) at the time); this sum was calculated on the basis of a land valuation report that the prosecutor had commissioned in February 2013. Similar actions were also brought against other owners of land in the same area.

5. On 5 December 2013 the Ochakiv Local Court of the Mykolaiv Region ("the local court") rejected the prosecutor's claim. It found that there was no evidence that the applicant's plot of land had belonged to the water protection zone or that part of that land had been allocated for use to the local forestry enterprise. It also established that none of the grounds for termination of property rights over the land, as provided for in Article 140 of the Land Code, applied in the applicant's case.

6. On 27 March 2014 the above judgment was upheld by the Mykolaiv Region Court of Appeal. The Court of Appeal essentially agreed with the local court's findings and also established that the disputed plot of land had been used for agricultural purposes since 1959, in particular by the local collective farms. It also noted that the disputed plot was located 1,999.3 metres from the shoreline; thus, the larger part of this land could not have been considered as belonging to the "protected shoreline belt" at all.

7. On 26 November 2014 the Higher Specialised Civil and Criminal Court ("the HSCCC") remitted the case for fresh examination. The court found that Article 88 of the Water Code established a two-kilometre-wide protected belt of land along marine and estuarine shorelines. The precise boundaries of water protection zones of this nature had to be formalised by the appropriate technical documentation. In the absence of such documentation, however, the authorities responsible for deciding on the disposal of such land were required to take into account the legally-defined measurements of "protected shoreline belts" and the "approximate borders" of water protection zones. In that respect the HSCCC referred to Resolutions nos. 434 of 5 November 2004 and 486 of 8 May 1996 of the Cabinet of Ministers. Lastly, the HSCCC noted that land located within "protected shoreline belts" could not be transferred into private ownership. It could only be leased, and even then, for a limited list of purposes.

8. Based on the above-mentioned findings of the HSCCC, following the re-examination of the case, the lower courts granted the prosecutor's claim in full; the applicant's title was revoked. The lower courts also found that 0.2233 ha of the applicant's land had been allocated for use to the local forestry enterprise.

9. The final judgment in the case was adopted by the HSCCC on 23 December 2015 and served on the applicant in January 2016.

10. In his submissions to the domestic courts, the applicant argued that the disputed land had been considered for many decades as "agricultural land" and had never been subject to any restrictions relating to water protection. The applicant considered the prosecutor's claim to be a *de facto* confiscation that had no grounds in the domestic law, particularly those established by Chapter 22 of the Land Code, and specifically by Article 140 thereof. Lastly, he argued that he had been made to suffer the consequences of errors made by the State authorities.

THE COURT'S ASSESSMENT

I. SCOPE OF THE CASE

11. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention that he had been deprived of his property arbitrarily, in that the domestic courts had failed to assess his case properly and to give due reasons for their judgments.

12. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the applicant's complaints fall to be examined under Article 1 of Protocol No. 1 only.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

13. With regard to admissibility, the Government argued that the applicant had failed to exhaust domestic remedies as he had not submitted any claims for compensation. In support, they referred to an example of the domestic case-law, namely a judgment in case no. 488/6211/14-ц, in which a prosecutor had sought to reclaim certain plots of land back into State property as forestry land. The applicant disagreed with the Government's argument.

14. The Court has already examined similar arguments made by the Government regarding the possibility of obtaining the above-mentioned types of compensation and has rejected them (see *Drozdyk and Mikula v. Ukraine*, nos. 27849/15 and 33358/15, §§ 26-33, 24 October 2024). There is nothing in the present case to lead the Court to reach a different conclusion.

15. The Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

16. On the merits, the Government conceded that there had been an interference with the applicant's property rights. They argued, however, that, as established by the domestic courts, the land had been allocated to the applicant in breach of the relevant regulations on "protected shoreline belts" and that, in order to correct that mistake, it had been necessary to revoke the applicant's title. As regards proportionality, the Government maintained their position that the applicant had had the possibility to claim compensation from the local authorities and emphasised that the Court's powers to review the application and interpretation of domestic law by the domestic courts were limited.

17. The applicant argued that the domestic courts' conclusions were arbitrary and violated the principle of good governance. He emphasised that only a small part of his land could be considered as falling within the

two-kilometre-wide "protected shoreline belt", as the boundary of his plot of land was 1,999.3 metres from the shoreline. In any event, he argued that his land had never been designated as a water protection zone and had been used for agricultural purposes for decades. He therefore considered that the deprivation had neither pursued a legitimate aim nor struck a fair balance.

18. The Court considers that there was an interference with the applicant's possessions in the present case. Whether regarded as deprivation or control of use of property, the applicable principles remain the same (see *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, no. 3503/08, § 39-40, 13 October 2015, and, for example, *Kryvenkyy v. Ukraine*, no. 43768/07, §§ 41-42 and § 45, 16 February 2017). The Court will therefore consider whether the interference was lawful (including the "quality of law" requirement), pursued the public interest and was proportionate.

19. On the issue of lawfulness, it is apparent from the domestic courts' judgments that the applicant's case centred around the question of whether the boundaries of the "protected shoreline belt" should have been formalised. As established by the HSCCC in its judgment of 26 November 2014 (the conclusions of which were essentially repeated by the lower courts in their re-examination of the case), boundaries of this nature ought to be formalised as a matter of course. In accordance with Resolutions nos. 434 of 5 November 2004 and 486 of 8 May 1996 of the Cabinet of Ministers, in those cases where the boundaries had not been formalised, the authorities responsible for land allocation had to rely on the statutory size of "protected shoreline belts" and the "approximate borders" of water protection zones. The Court considers that this approach left open the possibility of mistakes and misuse, and thus raises doubts as to compliance with the "quality of law" requirement.

20. In that connection the Court observes that in the applicant's case, no formalised boundaries existed for the protected land in the area at issue. Moreover - and this was not disputed at the domestic level - the applicant's land was located 1,999.3 metres from the shoreline, that is, only a 70 cm (0.07 m) stretch of the plot of land could potentially be considered to fall within the "protected shoreline belt". The Court cannot but note that this figure is negligeable compared to the belt's total statutory width of two kilometres. Nor did the Government dispute that the land in question had been used for agricultural purposes for decades and that the applicant had obtained (and had been using) it for the same purposes.

21. Equally, the Court cannot overlook the local court's conclusion in its initial examination that none of the grounds for termination of property rights over land, as established by Article 140 of the Land Code, were applicable to the applicant's case (for a similar situation, and the text of that Article, see *Drozdyk and Mikula*, cited above, §§ 21 and 44). On re-examination of the case, the domestic courts did not analyse this issue at all.

22. In consequence, the Court has doubts as to the lawfulness of the interference. For the same reasons it also considers questionable the existence

of a general interest for the invalidation of the applicant's title. At the same time, the Court does not find it necessary to rule on these matters since, in any event, the present interference did not comply with the requirement of proportionality.

23. Indeed, the crux of the present case lies under the proportionality head and, in particular, the existence of an opportunity for the applicant to obtain compensation or any other form of reparation for the deprivation of his property. In the above-cited *Drozdyk and Mikula* case, which concerned deprivation of property under similar circumstances, the Court found that the Government had presented no convincing arguments to show that there existed any clear domestic regulation that would allow for monetary or any other form of compensation for any damage whatsoever (§ 49). In this connection the Court reiterates that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (ibid., § 45, with further references).

24. In the present case the applicant obtained no compensation for the land he had been deprived of and no attempt was made to offer him such compensation or any other form of reparation. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 65,780 Ukrainian hryvnias (UAH) in respect of pecuniary damage, comprising the value of the land as of May 2013 (UAH 32,200), when the prosecutor brought his action (see paragraph 4 above), the amount he had paid in land tax, and the cost of drawing up the technical documentation for the allocation of land. The applicant provided no detailed calculations for the latter two amounts. The applicant also claimed EUR 3,000 in respect of non-pecuniary damage.

26. The Government contested those claims, reiterating their position that there had been no violation of the applicant's rights and arguing that the amounts claimed were excessive.

27. Considering its findings above as regards the violation of the applicant's property rights and having regard to the approach applied in the case of *Drozdyk and Mikula* (cited above, §§ 60-62), the Court considers that the applicant would be put as far as possible in a situation equivalent to the one in which he would have been had there not been a breach of Article 1 of Protocol No. 1 to the Convention if the respondent State were to restore his title to the land and return that land to him (including by way of reopening the domestic proceedings, if applicable). In the alternative, the respondent State should provide monetary compensation to the applicant (calculated in

accordance with the domestic requirements on the valuation of property and the Court's practice) or provide him with comparable property.

28. The Court also awards the applicant EUR 1,500 in respect of non-pecuniary damage.

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 shall ensure, by appropriate means and within a reasonable time, full restitution of the applicant's title to the land he has been deprived of, or provision of monetary compensation or of comparable property to the applicant;
   (b) that the respondent State is to pay the applicant, within three months, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (c) 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	María Elósegui
Deputy Registrar	President