

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

FIFTH SECTION

CASE OF MOROZ v. UKRAINE

(Application no. 63648/14)

JUDGMENT

STRASBOURG

12 September 2024

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



In the case of Moroz v. Ukraine,

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

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

Having regard to:

the application (no. 63648/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 12 September 2014 by two Ukrainian nationals, Ms Valentyna Denysivna Moroz and Ms Oksana Bogdanivna Moroz ("the applicants"), who were born in 1955 and 1974 respectively, live in Lviv and were represented by Mr I.M. Motrynets, a lawyer practising in Lviv;

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

the parties' observations;

Having deliberated in private on 11 July 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns an allegedly unlawful and unjustified eviction order served on the applicants – a mother and a daughter – who were living in a State-owned property they regarded as their home. The applicants relied, in particular, on Article 8 of the Convention.

2. In 2012 the applicants instituted proceedings against the Lviv Regional Council ("the Council") and the Lviv Regional Administration's Municipal Property Department, claiming adverse possession of the caretaker's flat located in the Lviv Regional Scientific and Pedagogical Library's building. They submitted that archival records dating back to at least 1910 indicated that the disputed premises had been designated as the "caretaker's flat". The flat had been in their family's possession since 1951, when it had been allocated as a dwelling to their relative, who had been serving as the library's caretaker at the material time. Since that time their family had dutifully paid all the charges due on the flat and had fully renovated the premises after the amenities had become obsolete. The renovation had been carried out at their own expense, but with permission from the library's administration. The applicants further noted that they had been officially registered with the passport authorities as residents of the flat since 1973 and 1990 respectively. While the second applicant had an alternative place of residence, the first

applicant had always occupied the disputed premises, regarding the flat as her only home.

3. The Council filed a counterclaim, seeking to evict the applicants from the library premises on the grounds that the library building belonged to the municipality and the premises they had been occupying were not part of the residential housing stock; the applicants therefore had no legal basis to establish their home in them.

4. On 10 April 2013 the Lychakivskyi District Court of Lviv dismissed both claims. While agreeing with the Council that the grounds on which the applicants had occupied the disputed premises had not met the formal requirements for occupying residential premises under the applicable law, the court found that there was sufficient evidence that the disputed premises *de facto* constituted their home, and that the first applicant had no alternative place of residence. Referring to Article 8 of the Convention, the court found that the Council had not justified the "necessity" of their eviction.

5. Both parties appealed.

6. On 11 November 2013 the Lviv Regional Court of Appeal dismissed the applicants' appeal and upheld the one lodged by the Council. It found that since the disputed premises had never been properly designated as "residential" under the applicable law, they could not qualify as the applicants' "home". They could therefore not enjoy the same level of protection as that accorded to registered housing. The Council, being the lawful owner of the library building, was therefore entitled to reclaim the non-residential premises, which constituted an integral part of the structure, and had been occupied by the applicants without any legal basis.

7. The applicants lodged a cassation appeal. In addition to their previous arguments they noted, in particular, that the courts at two levels of jurisdiction had dismissed a similar eviction claim lodged by the Council against their neighbours, who had been in an identical situation and had occupied an adjacent service flat in the same library. In the neighbours' case, the courts had recognised that notwithstanding the formal status of their flat as "non-residential premises", its occupants and the library were in a *de facto* contractual relationship based on a residential lease. The applicants argued that the order for them to vacate the premises had in fact constituted an eviction from their home, which was unfair and arbitrary. The applicants appended the decisions in their neighbours' case to their appeal.

8. On 12 February 2014 the Higher Specialised Court in Civil and Criminal Matters ("the Higher Specialised Court") dismissed the applicants' cassation appeal, having found that the Court of Appeal had correctly resolved their dispute. The applicants were notified of the decision on 13 March 2014.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

9. Relying on Articles 6 and 8 of the Convention, the applicants complained that they had been arbitrarily and unfairly ordered to vacate their home. The Court, being the master of the characterisation to be given in law to the facts of a case, considers that these complaints fall to be examined under Article 8 only.

10. The Government noted that prior to claiming adverse possession of the disputed premises in the proceedings in question, the applicants had brought other proceedings against the same defendants, claiming the right to privatise those premises as protected tenants. As those proceedings had ended on 22 May 2008 with a finding that the Council was the only lawful owner of the premises, the calculation of the six-month time-limit for lodging the present complaint had started running from that date. The present complaint, lodged on 12 September 2014, had therefore been submitted outside the six-month time-limit.

11. The Court accepts the applicants' argument that the final court decision ordering them to vacate the disputed premises was not taken until 12 February 2014 and that the six-month time-limit for lodging the present complaint should be calculated from the date on which that decision was served on them, that is, from 13 March 2014 (see paragraph 8 above). The present complaint can therefore not be dismissed as having been lodged outside the six-month time-limit and the Government's objection in this respect must consequently be dismissed.

12. The Government further invited the Court to declare the present complaint incompatible *ratione materiae* with Article 8 of the Convention or, alternatively, manifestly ill-founded. In that connection they contested that the disputed premises could qualify as the applicants' home; argued that the applicants had not lived in them on a permanent basis; noted that the second applicant had another place of residence; and observed that there had been no evidence that the eviction order had actually been enforced.

13. The Court notes that the case file contains sufficient material for the disputed premises to fall within the concept of a "home", within the meaning of Article 8 of the Convention (see, in particular, *Lazarenko and Others v. Ukraine* (dec.), no. 27427/02, § 53, 11 December 2012). It also observes that the existence of an eviction order may amount to interference irrespective of whether or not it has been enforced (see, in particular, *Ćosić v. Croatia*, no. 28261/06, § 18, 15 January 2009). The Court therefore dismisses both of the Government's objections. Having found no other grounds for inadmissibility, it declares the present complaint admissible.

14. Viewing 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; *Ćosić*, cited above, §§ 18-23; and *Kryvitska and Kryvitskyy v. Ukraine*, no. 30856/03, §§ 42-44, 2 December 2010), the Court finds that the court order for the applicants to vacate the municipally owned premises occupied by them as their dwelling amounted to an interference with their right to respect for their home.

15. The Court is prepared to accept the Government's arguments that the disputed interference had some basis in domestic law as interpreted by the domestic courts and pursued one or several legitimate aims, including preserving the economic well-being of the country and protecting the rights of third parties.

16. The Court notes, at the same time, that the Court of Appeal ordered the applicants to vacate the disputed premises on the sole grounds that they had been registered as "non-residential", without having analysed the applicants' specific situation. In its reasoning, the Court of Appeal did not address the applicants' arguments that the disputed premises had been initially granted to their family by the Council more than sixty years prior to the repossession proceedings, to serve as their place of residence, and that the applicants had officially established and registered their home in them, renovated them at their expense and paid various charges as *de facto* tenants for the duration of their occupancy. Its reasoning also did not indicate, in any manner, that the court had sought to weigh up the desire of the claimant – a public authority – to have the disputed premises vacated against the applicants' submissions that retaining occupancy of the premises, which they had being officially living in for some forty and twenty-three years respectively prior to the proceedings, was an issue of vital importance for them. In those circumstances, the Court cannot find that the Court of Appeal provided sufficient reasons to demonstrate a pressing social need for the disputed eviction order or that it justified the proportionality of that order for the purposes of Article 8 of the Convention. The Higher Specialised Court, with which the applicants lodged a further appeal, dismissed it without taking those matters into consideration.

17. The Court has previously found violations of Article 8 of the Convention in other cases, including in cases against Ukraine, in the context of eviction proceedings concerning publicly owned premises used as homes, where the applicants had not had the benefit of an examination of the necessity of the interference (see, for example, *Kryvitska and Kryvitskyy*, cited above, §§ 51-52; *Dakus v. Ukraine* [Committee], no. 19957/07, §§ 52-53, 14 December 2017; and *Sadovyak v. Ukraine* [Committee], no. 17365/14, §§ 34-35, 17 May 2018).

18. In the present case the Court likewise finds that there has been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 12 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President