

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

FIFTH SECTION

CASE OF MUKIY v. UKRAINE

(Application no. 12064/08)

JUDGMENT

STRASBOURG

21 October 2021

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



In the case of Mukiy v. Ukraine,

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

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

Having regard to:

the application (no. 12064/08) 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 2008 by two Ukrainian nationals, Mr Vladimir Davydovich Mukiy and Ms Galina Stepanovna Mukiy, born in 1953 and 1954 respectively and living, according to the most recent information in the case file, in Kurortne village, Crimea ("the applicants"), who were represented by Mr M. Shulga, a lawyer practising in Feodosiya;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, most recently Mr I. Lishchyna of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 30 September 2021,

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

SUBJECT-MATTER OF THE CASE

1. In March 2004 the applicants, who were tenants of a flat owned by the Karadagskyy State Nature Reserve ("the Reserve") in Kurortne for about twenty-five years, brought civil proceedings in the Feodosiya Town Court ("the Feodosiya Court") against the local authorities and the Reserve's administration, challenging the latter's refusal to allow the flat's privatisation which had been based on the prohibition to privatise real estate located in a nature reserve. By judgment of 18 August 2004, the Feodosiya Court allowed the applicants' action. While the Reserve's ensuing appeal was rejected for failure to comply with procedural requirements, the Court of Appeal quashed that judgment upon an appeal which had been lodged by the Feodosiya Town Prosecutor in the Reserve's interests on 20 September 2004 and had contained essentially similar submissions on the merits of the case. The appellate court, in its judgment of 28 February 2005, noted that the prosecutor's appeal was ultimately aimed at the protection of the economic and social interests of the State, since it concerned a nature reserve, which was part of the national heritage, and dismissed the applicants' action for the reason that under the relevant legislation no part of the latter could be privatised. On 21 November 2007 the Zaporizhzhya Regional Court of Appeal, acting as a court of cassation, dismissed as

unsubstantiated the applicants' appeal on points of law, in which they argued, *inter alia*, that the prosecutor had missed the deadline for lodging his appeal. The cassation court found no breach of procedural or substantive law on the part of the appellate court. During the proceedings in question the applicants were represented by a lawyer, who, *inter alia*, took part in the appellate court's hearing of 28 February 2005 and raised objections to the merits of the prosecutor's appeal of 20 September 2004.

2. The applicants complained under Article 6 § 1 of the Convention that the lodging, allegedly after the expiry of the one-month time-limit, and subsequent examination of the prosecutor's appeal against the judgment of the Feodosiya Court of 18 August 2004 had been unlawful and contrary to the equality of arms principle, since the appeal in the interests of the respondent party already represented by a lawyer had sought to put pressure on the applicants and they had not been given an opportunity to comment on it.

3. The applicants further complained under Article 6 § 1 of the Convention about the length of the proceedings and also, under Article 6 of the Convention and Article 1 of Protocol No. 1, that the court decisions in their case had been incorrect and unfair.

4. The Government disputed the applicants' allegations.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE PROSECUTOR'S INTERVENTION IN THE APPLICANTS' CASE

5. The Court notes that the applicants' complaints concerning the prosecutor's intervention in their case (see paragraph 2 above) are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. They must therefore be declared admissible.

6. The relevant general principles were summarised in *Kress v. France* [GC], no. 39594/98, §§ 65 and 74, ECHR 2001-VI; *Regner v. the Czech Republic* [GC], no. 35289/11, § 146, 19 September 2017; *Todorov v. Bulgaria* (dec.), no. 39832/98, 14 March 2002; *Yvon v. France*, no. 44962/98, § 32, ECHR 2003-V; *F.W. v. France*, no. 61517/00, § 27, 31 March 2005; *Milatová and Others v. the Czech Republic*, no. 61811/00, § 59, ECHR 2005-V; *Menchinskaya v. Russia*, no. 42454/02, § 35, 15 January 2009; *Batsanina v. Russia*, no. 3932/02, § 27, 26 May 2009; and *Korolev v. Russia (no. 2)*, no. 5447/03, § 34, 1 April 2010, with further references.

7. Turning to the present case, the Court notes the Government's position according to which the domestic courts did not consider that the

prosecutor had missed the relevant time-limit, since his appeal against the judgment of 18 August 2004 had been lodged on 20 September 2004, the date to which the one-month term had been automatically extended because its last day, 19 September 2004, had fallen on a Sunday. The Court finds no reason to disagree with the Government, since this was specifically provided for in Articles 87 and 292 of the Code of Civil Procedure of 1963 as worded at the material time (the Code was repealed with effect from 1 September 2005). The applicants' different reading of those provisions is not supported by any evidence or persuasive argument.

8. Nor did the applicants show that the prosecutor's intervention in the proceedings had been unlawful or unjustified. On the contrary, the dispute was centred on whether or not the property that the applicants wished to have privatised was located within the perimeter of the State-owned nature reserve and thus concerned identifiable and important State assets and interests (compare and contrast *Menchinskaya*, §§ 36 and 37, and *Korolev*, § 37, both cited above). Pursuant to Article 121 of the Constitution, Articles 13, 121 and 122 of the Code of Civil Procedure of 1963, and sections 5, 20, 34, 35, 36(1) and 37 of the Prosecutors Act of 1991 (most of its provisions were repealed with effect from 15 July 2015) as worded at the material time, public prosecutors had the right to intervene at any stage of civil proceedings with the aim, *inter alia*, of defending the interests of the State. Thus, the prosecutor's intervention in the present case in order to protect such interests can be considered as having a sufficient legal basis.

9. It is true that the intervention at issue was evidently to the benefit of the applicants' main opponent – the Reserve's administration – and, moreover, helped to ensure that the judgment of 18 August 2004, which had not found in its favour, could be appealed against, given that the appeal by the Reserve itself was rejected as inadmissible on procedural grounds.

10. However, the Court attaches weight to the fact that under the relevant law (see paragraph 8 above), the prosecutor had essentially the same procedural status as any other party, including the applicants. There is nothing pointing to any privileged treatment given to the prosecutor's submissions or any procedural advantages accorded to him in the present case (compare *Todorov v. Bulgaria* (dec.), no. 39832/98, 14 March 2002 and contrast *Yvon*, cited above, § 37; *Martinie v. France* [GC], no. 58675/00, § 50, ECHR 2006-VI; and *Menchinskaya*, cited above, § 39).

11. According to the domestic case file, the prosecutor's appeal had been notified to the applicants before the Court of Appeal heard it on 28 February 2005. Even though the applicants stated that they had not received it, no complaint in that regard was raised by their lawyer during that hearing or in the applicants' appeal on points of law. Moreover, at both stages of the proceedings the applicants or their lawyer challenged the prosecutor's arguments on the merits. The applicants' right to have

knowledge of and comment on all evidence adduced or observations filed in the proceedings appears to have been fully respected in the present case.

12. Thus, the Court finds that the prosecutor's intervention complained of by the applicants did not put them at a "substantial disadvantage" *vis-à-vis* the opposing parties to the proceedings in issue.

13. Nor is there any reason to believe that the prosecutor's intervention in the present case had the aim or effect of unduly influencing the courts or undermining the appearances of a fair trial (see *Batsanina*, cited above, § 27, with further references).

14. There has accordingly been no violation of Article 6 § 1 of the Convention under this head.

II. REMAINING COMPLAINTS

15. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicants' remaining complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 (see paragraph 3 above) do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the applicants' complaints under Article 6 § 1 of the Convention concerning the prosecutor's intervention in the proceedings to which they were party 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 21 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President