

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

FIFTH SECTION

CASE OF YAKOBSON v. UKRAINE

(Application no. 77736/12)

JUDGMENT

STRASBOURG

21 November 2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Yakobson v. Ukraine,

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

Lado Chanturia*, President*,
Mykola Gnatovskyy,
Úna Ní Raifeartaigh*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 77736/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 29 November 2012 by a family of four, who, at the time of lodging their application, were Ukrainian nationals, and whose relevant details are listed in the appended table, ("the applicants") and who, having been granted legal aid, were represented by Mr R.V. Kotyk, residing in Kotykivka;

the decision to give notice of the complaints listed 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 24 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the fairness and necessity of the annulment of the first applicant's title to a house and the applicants' eviction from it. The applicants also raised complaints concerning the fairness and length of civil proceedings and access to an appellate court. They relied on Articles 6, 8 and 13 of the Convention and on Article 1 of Protocol No. 1.

2. In June 2005 P.P., the former owner of a house acquired by the first applicant in 2003 at a public auction administered by the State Bailiffs, instituted proceedings seeking to reclaim it as having been unlawfully sold. An eviction claim against the applicants was subsequently added to the proceedings.

3. On 2 December 2011, after two rounds of proceedings at three levels of jurisdiction, the Tysmenytsky District Court dismissed P.P.'s claims, which were pursued following his death by his daughter, S.M. It noted that the first applicant had bought the house in question in 2003 for a total fee of 15,700 Ukrainian hryvnias (UAH)[1]. The house had been put up for sale at a public auction as M.P., P.P.'s wife, who had pledged it to private bank P.

[1] This payment, which amounted to approximately 2,300 euros (EUR) at the material time, comprised UAH 11,646 in unpaid debt claimed by the bank and UAH 4,054 retained by bailiffs as commission.

as collateral for her loan, had defaulted on repayment. The court held that the pledge agreement had been lawful as M.P. had had a power of attorney from P.P. authorising her to undertake any transactions relating to the house. The bailiffs had advertised the house at a price agreed upon by the parties to the pledge agreement and, as such, the sale had also been lawful. The first applicant had financed the purchase of the house through the sale of his family's previous residence for UAH 17,172[2]. He had purchased it in good faith and his family had settled there. In the court's view, the defendants could not be forced to give up possession of the house or be evicted.

4. On 31 January 2012 the Ivano-Frankivsk Court of Appeal allowed an appeal by S.M. It found, in particular, that M.P. had not had the authority to secure her personal loan against P.P.'s house; that the bank had breached the foreclosure procedure as it had not shown that P.P. had received notification of its intention to foreclose; that the notary had breached the rules for validating the foreclosure as P.P.'s notification status had not been checked; and that the bailiffs had set an unfairly low sale price and had not collected full information as to the ownership status of the property. In view of the various defects, the pledge, foreclosure and sale of the house had to be declared void; the first applicant's title had to be annulled; and his family had to be evicted as they had lost their right to occupy the house. The court further ordered the bank to reimburse the first applicant the UAH 11,646 obtained from the sale and ordered the bailiffs to compensate him the UAH 4,054 retained as commission.

5. The applicants appealed on points of law, alleging that the Court of Appeal had erred in reversing the District Court's judgment, which in their view had been fair. They submitted, in particular, that the *bona fide* purchaser protection clause[3] meant that their family could only be forced to give up possession if it were established that P.P. had lost possession against his will. The house in question had been the *de facto* marital property of M.P. and P.P. M.P., who had taken out the loan to pay for medical treatment for S.M. (the couple's daughter), had had a power of attorney confirming P.P.'s consent for her to pledge it as collateral. The applicants further argued that depriving them of possession of their only home and evicting them from it would place them in a precarious situation.

6. On 6 June 2012 the applicants' appeal was rejected by the Higher Specialised Civil and Criminal Court, which upheld the Court of Appeal's reasoning, and by January 2013 the applicants had been evicted.

7. In 2014 the State Treasury returned the enforcement writ against the bailiffs without enforcement.

8. The applicants subsequently brought proceedings against S.M. and the bailiffs for the difference between the compensation awarded by the courts and the 2012 market value of the house. They obtained an expert report

[2] Around EUR 2,500 at the material time.

[3] Article 145 of the Civil Code of 1963, in force at the time of the disputed transaction.

assessing the 2012 market value at UAH 233,870[4]. Those proceedings culminated in an award of UAH 27,355[5] against S.M. for the part of the renovation costs which had been supported by receipts of payment. The claim against the bailiffs was dismissed as unfounded at first instance. An appeal by the applicants was not examined because the first applicant refused to pay the required court fee of UAH 4,175.[6]

9. Subsequently, three of the applicants relocated to Belarus and the first applicant obtained Belarusian nationality.

THE COURT'S ASSESSMENT

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

10. The applicants complained that they had been unlawfully and unfairly deprived of their house.

11. The Court takes note of the Government's objection concerning incompatibility of the second, third and fourth applicants' complaints *ratione materiae* with that provision. While recognising that all four applicants might have had some vested pecuniary interest in continuing to live in the house at issue (see *Tuleshov and Others v. Russia*, no. 32718/02, § 40, 24 May 2007) the Court notes that according to its current settled case-law the right to live in a particular property which one does not own, does not, as a general rule, constitute a "possession" (see, among other authorities, *Ponyayeva and Others v. Russia*, no. 63508/11, § 36, 17 November 2016). It notes that the domestic judgment regarding annulment of the title to the disputed house concerned the first applicant only. It does not find it warranted in the present case to act as a first-instance court in respect of analysing any proprietary interests of the other applicants, whose complaints concerning the loss of occupancy will be best addressed under Article 8 of the Convention.

12. The Court therefore finds the present complaint admissible in respect of the first applicant and dismisses it in respect of the other applicants as incompatible *ratione materiae* with Article 1 of Protocol No. 1 (see *Ponyayeva and Others, cited above,* §§ 32-37).

13. The relevant general principles are set out, in particular, in *Beyeler v. Italy* ([GC], no. 33202/96, §§ 107-11 and 114, ECHR 2000-I); *Maksymenko and Gerasymenko v. Ukraine* (no. 49317/07, §§ 49-56 and 60-64, 16 May 2013); *Pyrantienė v. Lithuania* (no. 45092/07, §§ 49-73, 12 November 2013); and, more recently, *Kryvenkyy v. Ukraine* (no. 43768/07, §§ 42-43 and 45, 16 February 2017).

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[4] Approximately EUR 22,000 in January 2013.
[5] Approximately EUR 1,700 in June 2014, when the award was made.
[6] Approximately EUR 150 at the material time.

14. In the light of those principles, the Court concludes that the annulment of the first applicant's title amounted to a "deprivation of possessions". It accepts that this deprivation had a basis in the provisions of domestic law cited by the Court of Appeal and pursued a legitimate aim, in particular the protection of S.M.'s property rights.

15. In determining whether the measure complained of also struck a fair balance between the competing interests, the Court notes that the first applicant was deprived of his title to the house because the courts found that the private and State actors involved in a combination of transactions culminating in its sale had committed a series of wrongful acts and omissions. It appears that the first applicant had bought the house in good faith and was not responsible for those defects. It follows that the amount of compensation for his loss should have correlated with the actual value of the house at the time of the deprivation (see *Pyrantienė*, cited above, § 67).

16. While the first applicant was awarded a sum equal to the purchase price of the house, the Court notes, firstly, that nearly one-third of that award, due from the bailiffs, has not been paid since 2012. This fact alone justifies a finding that the fair balance has been upset (see *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 54, 15 October 2009).

17. The Court further notes that the aforementioned sum was awarded nearly ten years after the date on which that amount had been paid to purchase the house in question. It does not appear that the restitution mechanism applied by the national courts allowed for any meaningful examination of arguments related to possible losses due to inflation, fluctuating property market prices or other time-sensitive factors. The Court notes that the applicants' family succeeded, in separate proceedings, in recovering part of their renovation costs from S.M. Nevertheless, it appears that the total award, in addition to having been paid only in part, constituted, at the material time, only about one-fifth of the market value of the house, as estimated by a property expert, whose conclusions the Government did not dispute.

18. In so far as the Government argued that the first applicant had acquired the house at a discounted price, the file contains no conclusive evidence in that regard. The first applicant was the highest bidder at a public auction administered by State officials and cannot therefore be held responsible for the conditions of sale (compare *Pyrantienė*, cited above, §§ 54 and 59). It is also apparent from the file that in 2003 the first applicant sold the family's flat for approximately the same price as that invested in buying the house. It has not been shown that in 2013 he could likewise have funded the acquisition of new housing out of the compensation award. The Government's argument that the applicants could obtain a further award by pursuing proceedings against the bailiffs is unconvincing, as the relevant claim was dismissed at first instance and no evidence has been presented that any settled case-law gave them reasonable prospects of success on appeal.

19. Overall, it appears that, as a result of the decisions made by the domestic courts with a view to protecting the rights of S.M., the former

owner's heir, the expense of correcting the wrongs attributed to third parties, including S.M.'s mother and the State bailiffs, was passed on to the first applicant, who was not responsible for those wrongs.

20. These findings, together with the findings concerning the non-payment of the court award due from the State bailiffs, show that the first applicant has suffered an individual and excessive burden on account of the deprivation.

21. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The Court further finds that the applicants' complaints under Article 8 of the Convention concerning their eviction are admissible and disclose a violation of that provision in the light of the principles developed in its well-established case-law (see, among other authorities, *Kryvitska and Kryvitskyy v. Ukraine*, no. 30856/03, §§ 51-52, 2 December 2010).

III. OTHER COMPLAINTS

23. Regard being had to the above findings, the Court considers that it has addressed the main legal questions in the present case, and that it is not necessary to address further complaints raised under Article 6 § 1 and Article 13 of the Convention (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

24. The first two applicants claimed 20,010 euros (EUR) in respect of pecuniary damage. They submitted that that sum corresponded to the 2012 market value of the first applicant's house, which was, by implication, their conjugal property, excluding the sums awarded by the domestic courts against S.M. and the bank and multiplied by the official property valuation index. Each of the four applicants further claimed EUR 12,000 in respect of non-pecuniary damage. They also claimed jointly EUR 980 for costs and expenses incurred before the domestic courts.

25. The Government argued that the first applicant had been awarded fair compensation at domestic level and that all the other claims were unsubstantiated and irrelevant.

26. Ruling on an equitable basis (see *Kryvenkyy*, cited above, §§ 52-53), the Court finds it appropriate to award the applicants jointly EUR 26,000 under all heads, plus any tax that may be chargeable on that amount.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 1 of Protocol No. 1 to the Convention lodged by the first applicant and the complaints Article 8 of the Convention lodged by all applicants admissible and the complaints lodged under Article 1 of Protocol No. 1 by the second, third, and fourth applicants inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the first applicant;

3. *Holds* that there has been a violation of Article 8 of the Convention in respect of all applicants;

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

5. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, an aggregate sum of EUR 26,000 (twenty-six thousand euros), to be converted, if necessary, into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable in respect of that amount;
   (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Lado Chanturia
Deputy Registrar	President

APPENDIX

List of applicants:

Application no. 77736/12

No.	Applicant's Name and Year of birth	Relationship to other applicants	Nationality	Place of residence
1.	Lev Lvovych YAKOBSON 1962 (first applicant)	Spouse of the second applicant and father of the third and fourth applicants	Ukrainian on the date of lodging the application; subsequently changed to Belarusian	Baranovichi, Belarus
2.	Inna Fedorivna YAKOBSON 1963 (second applicant)	Spouse of the first applicant and mother of the third and fourth applicants	Ukrainian on the date of lodging the application	Baranovichi, Belarus
3.	Yevgeniy Lvovych YAKOBSON 1986 (third applicant)	Son of the first and second applicants and brother of the fourth applicant	Ukrainian on the date of lodging the application	Baranovichi, Belarus
4.	Artur Lvovych YAKOBSON 1993 (fourth applicant)	Son of the first and second applicants and brother of the third applicant	Ukrainian on the date of lodging the application	Ukraine, no permanent residence currently registered