

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

FIFTH SECTION

DECISION

Application no. 12450/06
Olena Viktorivna GERGALO and Yaroslav Eduardovych GERGALO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 3 November 2016 as a Committee composed of:

Khanlar Hajiyev, *President,*
Faris Vehabović,
Carlo Ranzoni, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 17 March 2006,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The first applicant, Ms Olena Viktorivna Gergalo, was born on 19 December 1966.

The second applicant Mr. Yaroslav Eduardovych Gergalo, was born on 20 August 1986.

Both applicants are Ukrainian nationals and live in the city of Cherkasy, Ukraine.

The Ukrainian Government ("the Government") were represented by their Agent, Mr. I. Lishchyna, from the Ministry of Justice.

The circumstances of the cases

The facts of the case, as submitted by the parties, may be summarised as follows.

On an unspecified date the first applicant (the applicant) lodged a claim with the Sosnivskyy District Court of Cherkasy (the District Court), seeking to acknowledge her ownership of a car she had bought in 2003 from a private person and to order the State Automobile Inspectorate to register the car. The applicant motivated her claim by the fact that the State Automobile Inspectorate had refused to register her car for the reason that it was absent in the relevant registration database. On 24 March 2004 the District Court allowed the applicant's claim, having acknowledged her ownership of the car, and ordered the State Automobile Inspectorate to register the vehicle.

The judgment was sent for enforcement to the Cherkasy State Bailiffs' Service (the Bailiffs' Service).

The defendant on numerous occasions requested the applicant to submit the documents confirming payment of customs duties needed for the car's customs clearance, referring to the Rules on the State Registration of Motor Vehicles approved by the Resolution of the Cabinet of Ministers of Ukraine no. 1388 on 7 September 1998 (the State Registration Rules), which envisaged that for the vehicle's registration the car's owner should provide a number of documents, including the customs clearance certificate.

The defendant referred to the fact that the applicant's car, after having been imported to Ukraine, had not been appropriately customs-cleared, and that under domestic law this was for the applicant to pay the relevant duties, even though she was not the person who had imported the car, but the one who had acknowledged the ownership of the car upon the domestic judgment.

The applicant failed to provide the aforementioned documents. On 21 August 2009 and on 27 July 2010 the Bailiffs' Service made two submissions to the District Court seeking clarification of the method of enforcement of the judgment of 24 March 2004. On 8 April and 17 December 2010 the District Court ruled that registration of the applicant's car would be possible only under condition of the applicant's submission of the documents proving the car's customs clearance. The applicant was requested to provide the customs clearance certificate. In her letter of 2 August 2012 addressed to the Bailiffs' Service, the applicant refused to pay customs duties arguing that she had not imported the car to Ukraine.

The judgment of 24 March 2004 in the applicant's favour remains unenforced.

COMPLAINTS

The applicants complain about the non-enforcement of the judgment of 24 March 2004 given in favour of the first applicant, invoking in substance Articles 6 § 1 and 13 of the Convention, and Article 1 of Protocol No. 1.

THE LAW

1. The Court observes that the second applicant has never been party to the judicial and enforcement proceedings under examination, and the judgment in question was rendered only in favour of the first applicant. Therefore, the Court concludes that his complaints are inadmissible as being incompatible *ratione personae* with the provisions of the Convention.

2. The first applicant (the applicant) complained that the judgment of 24 March 2004 remained unenforced for more than 12 years.

The respondent Government informed the Court that according to the State Registration Rules, the registration of the applicant's car was possible, provided that she had submitted documents on payment of customs and other taxes prescribed by the domestic law. The applicant was duly informed about this by the defendant, as well as by the Bailiffs' Service, but still failed to comply with the requirements. The Government also stated that the applicant had not provided such documents even after the domestic court had issued two rulings on 8 April and 17 December 2010, requesting her to comply with the procedure envisaged by law. The Government finally noted that as a result of the applicant's inactivity, on 8 April 2011 the State Bailiffs had returned the writ of execution to the applicant without enforcement, and the applicant had not repeatedly submitted it to the Bailiffs. They requested the Court to declare the application inadmissible as the applicant's conduct impeded the judgment's enforcement and should be considered as abuse of the right of application to the Court.

The applicant maintained that, having bought the car in Ukraine, she had paid the tax on vehicle and other relevant charges in accordance with the domestic law. However, in the applicant's view, as she did not import the car to Ukraine, she should not pay the customs duties.

In so far as the Government maintained that the non-enforcement of the judgment in the applicant's favour was due to her own inactivity, the Court reiterates that on numerous occasions it has pointed out that having obtained a judgment and an execution order against a particular State authority the applicant should not be reproached for not using further remedies to make the judgment enforced (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Ishchenko and Others v. Ukraine*, nos. 23390/02, 11594/03, 11604/03 and 32027/03, §22, 8 November 2005; *Kolosenko*

v. Ukraine, no. 40200/02, §§ 12-15, 26 April 2007). The present case, however, is different, given that the defendant, the State Automobile Inspectorate, informed the applicant about its readiness to enforce the judgment in question if she submitted customs clearance certificate. The Court notes that under the judgment of 24 March 2004 the defendant was obliged to register the vehicle, however, that did not preclude an obligation for the applicant to fulfil in accordance with the national legislation. In its rulings of 8 April and 17 December 2010, the domestic court further confirmed the obligation of the applicant to submit customs clearance certificate.

It appears that the only obstacle for the judgment's enforcement was the applicant's unwillingness to pay the customs duties. At the same time she has never challenged this requirement of the defendant before the domestic authorities, even though she disagreed with it. It was for the applicant either to challenge that requirement or to comply with it. Acting in neither way, she created the situation for which the State authorities could not be held responsible (see, *mutatis mutandis*, *Zoon v. the Netherlands*, no. 29202/95, § 38, ECHR 2000‑XII; *Trukh v. Ukraine* (dec.), no. 50966/99 of 14 October 2003).

The Court concludes that the first applicants' complaints concerning non-enforcement of the judgment of 24 March 2004 must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 November 2016.

Hasan Bakırcı
Deputy Registrar

Khanlar Hajiyev
President