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

FIFTH SECTION

DECISION

Applications nos. 43018/17 and 50459/18
Petro Dmytrovych GUYVAN against Ukraine
and Sergiy Vasylyovych KOS against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 28 November 2024 as a Committee composed of:

Armen Harutyunyan*, President*,
Andreas Zünd,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals whose details are listed in the appended table ("the applicants"), on the various dates indicated therein;

the decision to give notice of the applications to the Ukrainian Government ("the Government"), represented by their Agent, Ms Marharyta Sokorenko;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case mainly concerns the applicants' complaints under Article 6 § 1 of the Convention that the domestic courts had not provided sufficient reasons for their decisions in the applicants' cases. The applicants also invoked Article 1 of Protocol No. 1 to the Convention.

A. Application no. 43018/17 *Guyvan v. Ukraine*

2. The applicant owns an apartment in a multi-storey building in Poltava city centre.

3. On 22 July 2016 Poltava City Council ("the Council") granted Mr V.S. a permit ("the initial permit") to use, for commercial purposes, the passage leading from the street to the inner courtyard of the building. The Council treated the passage as municipal land.

4. In August 2016 the applicant lodged an appeal with the administrative courts against the Council's decision to issue the initial permit. He argued, in particular, that the passage formed part of the building's common areas and, as such, the Council should have obtained the consent of the apartment owners, who had joint ownership of the passage, before authorising its use by a third party.

5. According to the applicant's submissions, which were not contested by the Government, V.S. built a structure in the passage that was removed in September 2016 by the building's residents and other individuals in protest.

6. On 13 October 2016 the Oktyabrskyy District Court of Poltava ("the District Court") examined the applicant's appeal on the merits and dismissed it, holding that the Council had acted *intra vires* in granting V.S. preliminary consent to use the land on the basis of a land easement. However, the court clarified that the relevant decision had not authorised V.S. to build any structures, for which he would have needed further permission from the municipal authorities by way of a separate decision. The court found that V.S. was not occupying the passage at that time; accordingly, there had been no breach of the applicant's rights.

7. The applicant appealed against the decision, arguing that the passage was the joint property of the apartment owners and that the Council had had no power to grant a right of use to a third party. He referred to the Court's judgment in *Seryavin and Others v. Ukraine* (no. 4909/04, 10 February 2011)[1].

8. The first-instance decision was upheld by the Poltava Administrative Court of Appeal on 13 December 2016 and by the Higher Administrative Court on 17 January 2017. The Court of Appeal stated, in particular, that the applicant's reference to *Seryavin and Others* had been erroneous as that decision had concerned circumstances different from those in the applicant's case.

9. In March 2017 the applicant brought proceedings against the Council requesting a declaration that he was a joint owner of the building's common areas. On 14 December 2017 the District Court dismissed his request. While acknowledging that, under domestic law, all apartment owners in a multi-storey building were considered joint owners of its common areas, it

[1] In *Seryavin and Others* the Court found a violation of Article 1 of Protocol No. 1 on account of municipal authorities' decisions authorising the reconstruction of attic premises in a multi-apartment building without the consent of the applicants, who were joint owners of the building, and thus depriving them of their joint ownership of their shares in the attic. The Court also found a violation of Article 6 on account of the domestic courts' failure to adduce adequate reasons for their decisions in that regard.

emphasised that these rights had to be exercised jointly, with decisions being taken jointly through an owners' association. Although such an association had been created in September 2016, the applicant had not submitted any decisions taken by it authorising him to represent the co-owners. The applicant did not appeal against the District Court's judgment.

10. On 16 June 2017 the Council revoked the initial permit issued to V.S.

11. The Government submitted, and the applicant did not contest, that the passage in question had subsequently remained free from any type of structure.

B. Application no. 50459/18 *Kos v. Ukraine*

12. In April 2014 the applicant's son died after being run over by a car driven by Mr M.S. There was one other victim.

13. In July 2014 the Fastiv Court, having examined the case in the presence of the applicant, who had the status of a victim, convicted M.S. of causing death by driving under the influence of alcohol. The court sentenced him to five years' imprisonment but suspended the sentence on the grounds that he had no previous convictions, had cooperated with the investigation and "had fully compensated the victims for the damage caused", which was confirmed by the victims at the hearing. The court also noted that the victims had urged it not to deprive M.S. of his liberty.

14. The applicant did not appeal against that judgment and it became final.

15. In October 2016 the applicant made a civil liability claim to M.S.'s insurance company, requesting compensation for M.S.'s actions. The insurance company refused on the grounds that M.S. had already fully compensated the applicant, as had been confirmed by the court in the judgment convicting him.

16. The applicant brought a claim against the insurance company. During the proceedings he and M.S. stated that, in fact, no compensation had been paid to him and that the above-mentioned statement referred to by the criminal court in its judgment had been false and made only in order to ensure that M.S. received a more lenient sentence.

17. On the basis of that evidence, the Fastiv District Court and the Kyiv Regional Court of Appeal allowed the applicant's claim. Agreeing with the applicant's arguments in that regard, the courts interpreted Article 61 of the Code of Civil Procedure[2] to mean that the findings of a criminal court on whether damage had been compensated were not binding on civil courts. They held that the facts established by a criminal court were only binding on a civil court when they concerned matters which were in dispute in the

[2] That provision provides, in paragraph 4, that a final judicial decision in a criminal case concerning a particular person is binding on the court examining the civil-law consequences of that person's actions only on the question of whether or not such actions have been committed and whether or not they were committed by that person.

criminal proceedings. However, the question of damage had not been in dispute in the criminal proceedings and had only been mentioned in the context of sentencing.

18. On 30 May 2018 the Supreme Court allowed an appeal brought by the insurance company, overturning the lower courts' decisions and rejecting the applicant's claim. It found that the conviction had conclusively established, in a binding manner, that the applicant had received full compensation.

19. The Supreme Court explained that the rules on whether previous court judgments were legally binding in matters of evidence were guided by considerations of procedural economy. It pointed out that the law on criminal procedure listed the amount of damage caused by the offence and the aggravating or attenuating circumstances in respect of criminal responsibility and sentencing as elements which had to be established in criminal proceedings. Contrary to the lower courts' findings, the fact that M.S. had fully compensated the victims had been duly examined and assessed by the criminal court and had been acknowledged by the victims and M.S.

20. The Supreme Court found unconvincing the applicant's argument that Article 61 of the Code of Civil Procedure only made binding a criminal court's findings about the actions which caused the damage and the fact that those actions were committed by the convicted person. That was because the circumstances which had an impact on sentencing were directly connected to the circumstances under which the criminal offence had been committed and the infliction of damage. Accordingly, a criminal court's findings were binding on the civil courts under Article 61 of the Code of Civil Procedure.

THE COURT'S ASSESSMENT

A. Joinder of the applications

21. Having regard to the subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Alleged violation of Article 6 of the Convention

22. The applicants complained that the domestic courts' decisions had not been adequately reasoned, in breach of Article 6 of the Convention.

23. The relevant principles of the Court's case-law have been summarised in *Bochan v. Ukraine* (no. 2) ([GC], no. 22251/08, § 61, ECHR 2015), and *Ramos Nunes de Carvalho e Sá v. Portugal* ([GC], nos. 55391/13 and 2 others, §§ 185-86, 6 November 2018).

24. The Court will examine the specific aspects of the domestic courts' reasoning in relation to each application separately, before drawing its overall conclusions on the fairness of the proceedings.

1. Application no. 43018/17 Guyvan v. Ukraine

25. The crux of the applicant's complaint is that the domestic courts did not give sufficient consideration to his argument that the passage was not municipal land of which the Council could dispose, but was in fact part of the building's common areas and, as such, the joint property of the apartment owners.

26. The Court reiterates that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (see *Ramos Nunes de Carvalho e Sá*, cited above, § 185). However, in view of the court's conclusion that the passage remained free from any type of structure and that V.S. would have needed further permission to build one, there is no indication that the matter of principle that the applicant wished to have considered was decisive for the outcome of the dispute.

27. Moreover, there is nothing in the case file that would lead the Court to criticise the domestic court's conclusion. Indeed, the applicant submitted that by the time the case had been decided V.S.'s structure had already been demolished. Subsequent events also confirm that the initial permit was not definitive and was swiftly revoked (see paragraphs 5 and 10 above).

28. The domestic courts correctly pointed out that the circumstances of the applicant's case differed from those in *Seryavin and Others* (cited above). Unlike in the applicant's case, in *Seryavin and Others* (ibid., §§ 7-11) the municipal authorities' actions had had direct consequences for the applicants and the claim had been brought by an owners' association and not only by individual applicants. The latter point appears to have been decisive under domestic law, as indicated by the court's decision in the subsequent case brought by the applicant against the Council (see paragraph 9 above).

2. Application no. 50459/18 Kos v. Ukraine

29. The applicant's position before the domestic courts was that, since false information had been relied upon by the District Court in 2014, when it had convicted M.S. in the criminal proceedings, he should be allowed to relitigate the issue by asking the civil courts to make new findings on the same issue. Moreover, he argued that those contrary findings would have to be based exclusively on the declarations of the parties involved in the initial falsity (him and the defendant in the criminal proceedings), at the expense of a third party who had not been involved in the agreement that he had reached with the defendant in the criminal proceedings.

30. In rejecting that argument, the Supreme Court gave detailed reasons as to why the findings in the criminal judgment had to be treated as definitive (see paragraphs 18 to 20 above).

3. Overall assessment

31. The Court reiterates that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention. The Court should not act as a fourth instance and will not therefore question under Article 6 § 1 of the Convention the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 90, 29 November 2016).

32. In view of the considerations set out above, the Court considers that the applicants were given an opportunity to raise their factual and legal arguments before the domestic courts. Those arguments were duly examined by the courts which provided reasons for their decisions. Moreover, the Court does not find that the courts' decisions were arbitrary or manifestly unreasonable. Although the applicants disagreed with the outcome of the proceedings, there is no indication that there were any restrictions on their opportunity to participate in them effectively and make submissions.

33. Accordingly, this part of the applications is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. Other alleged violations of the Convention

34. The applicants complained that the domestic courts' decisions had been in breach of Article 1 of Protocol No. 1 to the Convention.

35. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

36. It follows that this part of the applications must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 19 December 2024.

Martina Keller Deputy Registrar	Armen Harutyunyan President

Appendix

List of cases:

No.	Application no.	Case name	Date lodged	Applicant's name Year of birth Place of Residence	Representative's name
1.	43018/17	Guyvan v. Ukraine	31/05/2017	**Petro Dmytrovych GUYVAN** 1958 Poltava	
2.	50459/18	Kos v. Ukraine	16/10/2018	**Sergiy Vasylyovych KOS** 1960 Palyanychentsi	Ruslan Romanovych LABYK