

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 55804/07
by Semen Yakovych IZBYANSKYY
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 8 March 2011 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 15 November 2007,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Semen Yakovych Izbyanskyy, is a Ukrainian national who was born in 1942 and lives in the village of Velyki Gayi, in the Ternopil region of Ukraine. He was represented before the Court by Ms N. Stus, a lawyer practising in the same village.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

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

On 9 September 1944 the Polish Committee of National Liberation and the former Soviet Socialist Republic of Ukraine concluded an agreement on the mutual resettlement of Ukrainians from Poland and Poles from Ukraine.

In 1945 the applicant's family was moved from Poland to Ukraine. In Poland they left behind property, namely a house, a garden and a ten hectare plot of land.

In March 2007 the applicant lodged a claim with the Ternopil Local Court against the Department of the State Treasury, the Ministry of Finance, the Ternopil Department of Finance, and the Ternopil State Notary's Office seeking recovery of the property which had belonged to his father and mother who had died in 1982 and 1992 respectively.

On 1 June 2007 the court found against the applicant. It established that he was one of the heirs of his deceased parents and on this basis he had claimed compensation for the property left behind by them in Poland in 1945. According to information obtained by the court from the Ministry of Justice, payments to resettled people had been conducted through local governments prior to 1975 and special funds had been allocated for the implementation of the Agreement of 9 September 1944. The court further noted that since 1975 no funds had been allocated for implementation of the above-mentioned Agreement and current Ukrainian legislation did not provide for compensation for property left behind in Poland. On this basis, the court rejected the applicant's claim as unsubstantiated.

On 2 August 2007 the Ternopil Regional Court of Appeal upheld the decision of the first-instance court. Having agreed with its reasoning, the court of appeal noted that the applicant had not proved that his father had not received any compensation for the property in question or that his father had made any claims for such compensation whilst he had still been alive and during the period that such compensation had been paid.

On 2 October 2007 the Supreme Court rejected the applicant's appeal in cassation as unsubstantiated.

B. Relevant international and domestic law

1. International agreements

The Agreement between the Polish Committee of National Liberation and the Government of the Ukrainian Soviet Socialist Republic on the evacuation of Polish citizens from the territory of the Ukrainian Soviet Socialist Republic and of the Ukrainian population from the territory of Poland (*Układ pomiędzy Polskim Komitetem Wyzwolenia Narodowego a Rządem Ukraińskiej Socjalistycznej Republiki Rad dotyczący ewakuacji*

obywateli polskich z terytorium U.S.R.R. i ludności ukraińskiej z terytorium Polski / Угода між Урядом Української Радянської Соціалістичної Республіки і Польським Комітетом Національного визволення про евакуацію українського населення з території Польщі і польських громадян з території УРСР – "the Agreement") was signed on 9 September 1944 and entered into force the same day. It was officially published in the Official Gazette of Ukraine more than sixty years later, on 24 May 2006.

The Agreement provided, in so far as relevant, as follows:

Article 1

"...The Government of the Ukrainian Soviet Socialist Republic declares that [persons] evacuated to the territory of the Ukrainian Soviet Socialist Republic shall be settled according to their wishes either on a collective farm or on a plot of land to be used as an individual farm, such plot to be no smaller than that used prior to the evacuation up to a maximum of 15 hectares per farm..."

Article 3

1. The following benefits shall be established for persons evacuated from the Ukrainian RSR to Poland and from Poland to the territory of the Ukrainian RSR:

(a) the writing off of all arrears accumulated by such persons in respect of deliveries in kind, pecuniary taxes and insurance premiums;...

...

(c) exemption from all State pecuniary taxes and insurance premiums due in 1944 and 1945 in respect of all the evacuated households, both on the territory of Poland and on the territory of Ukraine;

(d) the grant of a five-year pecuniary loan of 5,000 roubles or zlotys per household to evacuees at the place of their resettlement for their financial and other needs;...

2. Evacuees shall be allowed to take with them clothing, footwear, linen, bedding, foodstuffs, household goods, farming inventory stock, harnesses and other articles for household and agricultural use, up to a total weight of 2 metric tons per family, as well as any cattle and poultry belonging to the evacuated farm.

3. Persons with specialised professions, such as workmen, craftsmen, doctors, artists and scholars, shall be accorded the right to take with them objects needed in the exercise of their professions.

4. The following may not be taken upon evacuation:

(a) cash, banknotes and gold and silver coins of any type, with the exception of Polish banknotes up to a maximum of 1,000 zlotys per person, or Soviet currency up to a maximum of 1,000 roubles per person;

(b) gold and platinum in alloy, powder or scrap form;

(c) precious stones in unworked form;

(d) works of art and antiques whenever they constitute a collection, or even as individual items, unless they are the evacuated person's family property;

(e) firearms (with the exception of hunting rifles) and military equipment;

(f) photographs (other than personal photographs), charts and maps;

(g) automobiles and motorcycles;

(h) furniture, whether by rail or by motor vehicle, because of the transport problems caused by the war.

...

6. The value of movable belongings left behind upon evacuation, and also of immovable property, shall be returned to the evacuated person on the basis of insurance valuations, in accordance with the applicable laws in the State of Poland and in the Ukrainian Soviet Socialist Republic, as the case may be. In the absence of an insurance valuation, the value of movable and immovable property shall be assessed by the Plenipotentiaries and Representatives of the Parties. The Contracting Parties shall undertake to ensure that town and village houses vacated as a result of resettlement are made available to resettled persons on a priority basis."

On 21 July 1952 the Government of the Republic of Poland and the Governments of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic, the Belarus Soviet Socialist Republic and the Lithuanian Soviet Socialist Republic concluded an agreement on the mutual settlement of accounts in connection with the evacuation of population groups and the delimitation of the Polish-Soviet State border (*Umowa między Rządem Rzeczypospolitej Polskiej, z jednej strony i Rządem Związku Socjalistycznych Republik Radzieckich, Rządem Ukraińskiej Socjalistycznej Republiki Radzieckiej, Rządem Białoruskiej Socjalistycznej Republiki Radzieckiej i Rządem Litewskiej Socjalistycznej Republiki Radzieckiej, z drugiej strony, o wzajemnych rozliczeniach, wynikłych w związku z ewakuacją ludności i delimitacją polsko-radzieckiej granicy państwowej* – "the 1952 Pact"). Article 2 of the Pact provided:

"With a view to the complete and definitive mutual settlement of accounts for movable and immovable property, agricultural products and seed left on the territories of the Republic of Poland and of the USSR by persons evacuated and resettled in connection with the delimitation of the Polish-Soviet State border, the Government of the Republic of Poland undertake to pay the Government of the USSR the sum of 76 (seventy-six) million roubles."

2. Ukrainian legislation concerning resettled persons

In Ukraine no specific legislation has been adopted or commitment made to compensate former Polish residents who were resettled in Ukraine under the Agreement of 9 September 1944. However, in recent years other legislative measures have been introduced.

a. Status of War Veterans and their Social Welfare Benefits Act 1993

In July 1995 the Cabinet of Ministers of Ukraine submitted a War Veterans (Amendment) Bill to the Verkhovna Rada ("Parliament"). The bill mentioned for the first time people resettled in Ukraine. Parliament passed the bill with some amendments. In particular, they introduced a requirement

of proof of work during the war, depending on the age of the person concerned. In its final version of 22 December 1995, as enacted by Parliament, the relevant parts of section 9 of the War Veterans (Amendment) Act read as follows:

Section 9. Persons to be considered war participants

"The following persons shall be considered war participants:

...

(2)...Persons who worked during the Great Patriotic War[1] in territories which after 1944 were integrated into the former Union of Soviet Socialist Republics, and persons who were resettled after 1945 on the territory of Ukraine from the territory of other States, as well as citizens who were assigned by State bodies of the former USSR to work in countries allied to the USSR, shall also be considered war participants.

For persons who were born on or prior to 31 December 1932 and have valid reasons for failing to submit documentary evidence of their work during the war, the status of war participant may be established by a motion of a special committee under the procedure established by the Cabinet of Ministers of Ukraine.

For persons born after 31 December 1932, the status of war participant may be established only by the production of documents and other evidence that unequivocally prove that they worked during the war..."

By the Amendment Act of 2 October 2003, section 9 was changed and the categories of resettled persons, including individuals resettled prior to and in 1945, were listed separately in a new paragraph of the Article with no other conditions attached. This provision reads as follows:

"...(11) persons resettled after 9 September 1944 on the territory of Ukraine from the territory of other States."

b. Presidential decree of 5 April 2007 on actions to [celebrate] the 60th anniversary of the 'Visla' operation

The decree provides for a number of events to commemorate the forced resettlement but is silent on the question of compensation for pecuniary and non-pecuniary damage for those who were resettled.

c. Parliamentary Bill on determining the status of Ukrainians from the territory of Poland forcibly resettled to Ukraine in 1944-1946

This bill was submitted to Parliament in November 2003 but was not adopted. Article 3 of the bill proposed compensating resettled people for pecuniary and non-pecuniary damage by granting them war-participant status and facilitating their travel to Poland to visit the areas where they had previously resided. The bill further stated that provision could be made in

1. Part of the Second World War between 22 June 1941 and 9 May 1945.

domestic legislation for other benefits and forms of compensation to be furnished to resettled people.

3. Ukrainian legislation concerning the international treaties of Ukraine

a. Constitution of Ukraine 1996

Article 9

"International treaties that are in force and have been agreed to be binding by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine."

b. Validity of International Treaties on the Territory of Ukraine Act 1991 (repealed by the International Treaties Act of 29 June 2004)

"... [I]nternational treaties concluded and duly ratified by Ukraine shall constitute an inalienable part of the national legislation of Ukraine and shall be applied according to the rank prescribed for norms of national legislation."

c. International Treaties Act 2004

Section 19 - Validity of International Treaties of Ukraine on the Territory of Ukraine

"1. International treaties that are in force and agreed to be binding by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine and are applied in the order foreseen for the norms of national legislation..."

COMPLAINT

The applicant complained under Article 1 of Protocol No. 1 to the Convention of the refusal of the Ukrainian authorities to grant him compensation for the property left behind by his family in Poland in 1945.

THE LAW

The applicant complained that the Ukrainian authorities had refused to compensate him for the property abandoned by his family in Poland. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of material goods and is independent from any formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. This includes claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. It does not, however, guarantee the right to acquire property (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 61, ECHR 2007-... *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). Where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-...; and *Kopecký*, cited above, § 52). No legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (*Anheuser-Busch Inc*., cited above, ibidem; *Kopecký*, cited above, § 50). Where there is a dispute as to whether an applicant has a property interest which is eligible for protection under Article 1 of Protocol No. 1, the Court is required to determine the legal position of the applicant (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd*, cited above, ibidem; *Beyeler v. Italy* [GC], no. 33202/96, § 99, ECHR 2000-I).

The Court refers to its reasoning with respect to the Agreement of 9 September 1944 in the *Broniowski* case (*Broniowski v. Poland*, cited above, §§ 124-125):

> "While the historical background of the case, including the post-war delimitations of State borders, the resultant migration of persons affected by those events and the Republican Agreements, in which the applicant's entitlement to compensation originated ..., is certainly important for the understanding of the complex legal and factual situation obtaining today, the Court will not consider any legal, moral, social, financial or other obligations of the Polish State arising from the fact that owners of property beyond the Bug River were dispossessed and forced to migrate by the Soviet Union after the Second World War. In particular, it will not deal with the issue whether Poland's obligation under the Republican Agreements to return to those persons the value of the property abandoned in the former Soviet republics might have any bearing on the scope of the applicant's right under domestic legislation and under the Convention and whether Poland honoured the obligations it had taken upon itself by virtue of those Agreements.

> The sole issue before the Court is whether Article 1 of Protocol No. 1 was violated by reason of the Polish State's acts and omissions in relation to the implementation of the applicant's entitlement to compensatory property, which was vested in him by Polish legislation on the date of the Protocol's entry into force and which subsisted on 12 March 1996, the date on which he lodged his application with the Commission."

The Court notes that, as established by the domestic courts, in 1975 the Soviet authorities stopped giving any compensation to those resettled from Poland to Ukraine in 1944-1945. Afterwards, the Soviet and then Ukrainian authorities made no steps to provide for any compensation to people resettled in Ukraine for their property abandoned in Poland, let alone steps comparable to those made by the Polish authorities. The Court therefore cannot conclude, as it did in the *Broniowski* case, that the applicant had an entitlement to compensation which had been continuously vested in him under Ukrainian law. Recent legislation concerning resettled people does not show that Ukraine recognised existence of such entitlement or that it has any intention to grant it now. Therefore, the applicant has not proved that at the material time he had a right or, at least, a legitimate expectation to obtain any compensation for the property abandoned by his parents in Poland some sixty years previously.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a).

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President