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

# FIFTH SECTION

# DECISION

Application no. 41362/13
Lyubov Grygorivna NECHAYENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 10 October 2024 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. 41362/13) lodged with the Court against Ukraine under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 June 2013 by a Ukrainian national, Ms Lyubov Grygorivna Nechayenko ("the applicant"), who was born in 1933, lives in Kherson and was represented by Mr R. Stavrost, a lawyer practising in Odesa;

the decision to give notice of the applicant's complaint under Article 6 of the Convention regarding allegedly inconsistent domestic court decisions to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant's complaint under Article 6 § 1 of the Convention that decisions of the Higher Specialised Court in Civil and Criminal Matters ("the Higher Court") in identical cases were allegedly inconsistent.

2. The applicant and her brother leased plots of land to a private company. In 2011 the company failed to pay the annual lump-sum rent. The applicant

and her brother brought separate claims against the company, seeking the recovery of rent arrears and the termination of the leases, identical in all relevant respects. By a final decision of 5 December 2012, the Higher Court granted both parts of the applicant's brother's claim, holding, *inter alia*, that non-payment of rent was a serious breach of contract and thus a ground for its termination. By a final decision of 16 January 2013 in the applicant's case, the same court allowed only part of her claim, namely in relation to rent arrears, and dismissed the part in relation to termination of the lease. It held that a single failure to make the annual rent payment did not amount to a systemic breach of the relevant undertakings and could not therefore be a ground for the termination sought by the applicant of the company's rights under Article 141 of the Land Code to use the land.

3. According to the Government's submissions, which the applicant did not contest, the Higher Court's decision of 16 January 2013 had been based on the interpretation of the relevant legal provisions by the Supreme Court in its decision of 12 December 2012 in a separate case, according to which such type of leases could be terminated if non-payment of rent was systemic. This interpretation was subsequently endorsed by the same court's decision of 28 September 2016 in another case.

## THE COURT'S ASSESSMENT

4. The applicant complained under Article 6 of the Convention that the Higher Court's decisions in the two cases regarding her and her brother's civil claims had allegedly been inconsistent (see paragraph 2 above).

5. The Government contended that the complaint was inadmissible, in that the applicant had failed to lodge an appeal – on the grounds of the alleged inconsistency – with the Supreme Court against the Higher Court's decision of 16 January 2013. They also submitted that the decision in question was consistent with the interpretation of the relevant legal provisions by the Supreme Court (see paragraph 3 above).

6. The Court reiterates that Article 6 of the Convention does not guarantee an acquired right to consistency in case-law. Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 116, 29 November 2016, with further references).

7. In the present case, while the applicant's and her brother's claims for termination of their leases were largely similar, the Government's submissions, uncontested by the applicant, demonstrate that the difference in outcome was due to adherence to the Supreme Court's decision of 12 December 2012, which was adopted after the Higher Court's decision of 5 December 2012 in the applicant's brother's case. According to the Supreme Court, in cases of this type, the courts were required to consider Article 141

of the Land Code setting out the "systemic breach" condition for the termination of land rent contracts. This condition was omitted in the Higher Court's decision of 5 December 2012 (see paragraphs 2 and 3 above).

8. Furthermore, it is not in principle the Court's function to compare different decisions of national courts, even if given in apparently similar proceedings; it must respect the independence of those courts (ibid., § 116). In the instant case, the Higher Court's decision of 16 January 2013 does not appear to have been arbitrary or manifestly unreasonable. Nor is there any indication of "profound and long-standing differences" in the relevant domestic case-law (contrast *Lupeni Greek Catholic Parish and Others*, cited above, §§ 119-28).

9. It is therefore unnecessary to examine whether the domestic law provides for a mechanism for overcoming these inconsistencies and whether that mechanism has been applied and, if appropriate, to what effect (contrast *Lupeni Greek Catholic Parish and Others*, cited above, §§ 116-33).

10. Accordingly, the application must be rejected as 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 7 November 2024.

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| Martina Keller<br>Deputy Registrar | Lado Chanturia<br>President |