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

FIFTH SECTION

DECISION

Application no. 57960/19
Dina Volodymyrivna ZASTAVSKA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 23 March 2023 as a Committee composed of:

Mārtiņš Mits*, President*,
María Elósegui,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 57960/19) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 28 October 2019 by a Ukrainian national, Ms Dina Volodymyrivna Zastavska, who was born in 1940 and lives in Kherson ("the applicant"), and who was represented by Mr O.V. Levytskyy, a lawyer practising in Kyiv;

the decision to give notice of the complaint under Article 1 of Protocol No. 1 concerning the annulment of the applicant's title to a flat to the Ukrainian Government ("the Government"), who were represented by their then acting Agent, Ms O. Davydchuk, of the Ministry of Justice; to declare inadmissible her complaints under Article 6 of the Convention; and to strike out the remainder of the application;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns a complaint under Article 1 of Protocol No.1 to the Convention about the annulment of a title to a flat as a result of

rei vindicatio proceedings (for recovery of property from a bona fide purchaser).

2. By a judgment of 28 March 2017, the Kherson City Court (Judge D.) allowed a claim lodged by Mr G. against Ms S.A., a sister of Ms S.L. (who had rented a municipal flat since 1978 and who died on 4 March 2015). The court established that Mr G. had lived with Ms S.L. in a family relationship from 2007 to 2015 and recognised his title to that flat by way of inheritance.

3. Mr G. then registered his title to the flat based on the above-mentioned judgment and on 27 April 2017 transferred it to Mr Y. by way of a gift.

4. On 5 May 2017 the applicant sold her own flat and bought the flat from Mr Y. On the same day she registered her title to the flat in the public register of real property transactions and on 14 June 2017 registered her and her husband's residence in the flat.

I. *REI VINDICATIO* CLAIM AND APPEAL AGAINST THE JUDGMENT OF 28 MARCH 2017

5. On 17 July 2017 the Kherson City Council ("the Council") lodged a *rei vindicatio* claim against the applicant and her husband, seeking recovery of the title to the above-mentioned flat and the eviction and deregistration of the occupants. The Council submitted that it had not been aware of the judgment of 28 March 2017 and had not been involved as a defendant in the proceedings instituted by Mr G. even though the flat had belonged to the municipality and had not been privatised. According to the public register of court decisions, Mr G. had repeatedly lodged claims for the recognition of his title to the flat in issue and in his last claim of 14 December 2016 he had designated the Council as a defendant, of which it had been informed. On 13 February 2017 the City Court had returned that claim unexamined (upon Mr G.'s request). However, on 28 March 2017 that court had allowed a similar new claim by Mr G., this time lodged against Ms S.A., without the involvement of the Council. The Council lastly noted that Ms S.A. had died in 1995. On 18 July 2017 the City Court allowed the Council's application and suspended possession of the flat pending the outcome of the proceedings.

6. In parallel, the Council appealed against the judgment of 28 March 2017. On 21 September 2017 the Kherson Regional Court of Appeal ("the Court of Appeal") quashed that judgment and discontinued the proceedings. It held that the disputed flat had belonged to the municipality, and could not thus have been inherited. Moreover, Ms S.A. had died in 1995 so she could not have been a defendant in the proceedings instituted by Mr G.

7. In a judgment of 20 March 2018, the City Court allowed the Council's claim, annulled the applicant's title to the flat, required her to return it to the Council, and ordered the eviction of her and her husband without providing alternative housing and their deregistration. Referring to Article 388 of the

Civil Code (which provides for the right of the owner of property to recover it from a bona fide purchaser if the owner was deprived of possession of the property against his or her will), the court found that the Council had lost possession of the disputed flat against its will, that is to say, on the basis of the judgment of 28 March 2017 which had subsequently been quashed.

8. On 19 June 2018 the Court of Appeal upheld the judgment of 20 March 2018 on a subsequent appeal. It stated that the competing interests of the community and of the applicant had been balanced by the City Court, as the applicant could have lodged a claim against the seller, Mr Y., seeking to be reimbursed.

9. On 17 July 2019 the Supreme Court upheld the judgments of 20 March and 19 June 2018 on a subsequent appeal. The Supreme Court followed the domestic case-law and held that property of which the owner had lost possession pursuant to a court decision which had subsequently been quashed was considered to be property of which that owner had lost possession against his or her will.

II. RENT PROCEEDINGS

10. On 20 May 2019 the applicant commenced proceedings against the Council in the Kherson City Court in which she sought recognition of her right to use the flat and an order obliging the Council to enter into a rental contract with her. The Council contested the claim, arguing, with reference to the above-mentioned court decisions of 20 March and 19 June 2018, that the applicant had moved in and occupied the flat unlawfully.

11. According to a letter from the Council to the local department of the Ombudsman of Ukraine dated 14 May 2021 and submitted by the Government, on 25 November 2019 the Council adopted a decision declining to evict the applicant and her late husband from the flat pending the court proceedings and declaring it to be appropriate to enter into a rental contract with them.

12. According to an excerpt from the Conclusions and Recommendations of the Permanent Commission at the Council dated 14 August 2020, submitted by the applicant, the Commission examined the applicant's application for leave to privatise her flat and invited her to lodge a claim before the national courts on or after 5 May 2027 seeking a declaration of her title to the flat through adverse possession.

13. According to the State Register of Court Judgments, on 28 September 2021 the Kherson City Court rejected the applicant's claim as unsubstantiated. That court referred, among other things, to the position of the Council, which had contested the claim in its reply of 4 June 2019 and during the court hearing, and to the decision of 20 March 2018 (see paragraph 7 above), which had been upheld by the higher courts (see paragraphs 8-9 above). The Kherson City Court held that it had not

established any valid reason for obliging the Council to enter into a rental contract with the applicant.

III. CRIMINAL PROCEEDINGS AGAINST MR G.

14. According to the Government, on an unspecified date criminal proceedings had been commenced against Mr G., following which possession of the flat had been suspended and the registration of the Council's title to the flat postponed. The criminal proceedings are currently pending.

IV. COMPLAINT AGAINST JUDGE D.

15. The applicant also lodged a complaint against Judge D. with the Disciplinary Chamber of the Higher Council of Justice ("the HCJ"). On 27 March 2019 the Chamber found that when adopting the judgment of 28 March 2017, Judge D. had been aware of Ms S.A.'s death in 1995, because in Mr G.'s earlier claim, also allocated to that judge and returned unexamined on 13 February 2017, he had attached a copy of Ms S.A.'s death certificate. The Chamber decided to discipline Judge D. by proposing to the HCJ that she be dismissed. On 28 January 2020 the HCJ adopted a decision dismissing Judge D.

16. On 19 November 2020, on a subsequent appeal, the Supreme Court set aside the decision to dismiss Judge D.

17. On 16 February 2021 the HCJ imposed a disciplinary sanction on Judge D. in the form of a severe reprimand together with the suspension of the payment of allowances for three months.

THE COURT'S ASSESSMENT

18. The applicant complained under Article 1 of Protocol No.1 to the Convention that she had been deprived of her flat without compensation as a result of the *rei vindicatio* proceedings instituted against her by the Council.

19. The Government argued that the applicant had not exhausted domestic remedies, as she had failed to bring court proceedings seeking compensation for the sum she had paid for the flat. They agreed that there had been an interference with the applicant's property rights, which had been lawful, as the flat had belonged to the Council and had been alienated without its consent.

20. The Court does not consider it necessary to examine the issue of exhaustion of domestic remedies, given that the complaint is manifestly ill-founded for the reasons stated below.

21. The general principles regarding the State's positive obligation to protect the right to the peaceful enjoyment of possessions were summarised

in *Kanevska v. Ukraine* (no. 73944/11, § 45, 17 November 2020) and *Mindek v. Croatia* (no. 6169/13, § 77, 30 August 2016).

22. The Court observes first that the material in the case file indicates, and the parties agreed, that the flat the applicant bought from Mr Y. constituted her "possessions" within the meaning of Article 1 of Protocol No. 1 and that the court decisions allowing the Council's claim for recovery of title had led to an interference with the applicant's property rights.

23. In this connection, the Court must assess whether the interference was lawful and effected in the public interest, and whether it pursued a legitimate aim by means reasonably proportionate to the aim sought to be realised (see *Kryvenkyy v. Ukraine*, no. 43768/07, § 42, 16 February 2017).

24. The Court notes that the City Court referred to the judgment of 28 March 2017, which had subsequently been quashed, and found that the flat had been alienated from the Council against its will. The City Court applied Article 388 of the Civil Code, which allows recovery of property by its owner from a bona fide purchaser if the property has been alienated against the owner's will, as the basis for the annulment of the applicant's title to the flat (see paragraph 7 above). The application of that Article in the present case does not appear to have been arbitrary. It remains to be determined whether the interference was in the public interest and was proportionate.

25. The present case differs from cases in which the municipalities lost their property owing to the fraudulent actions of private persons. In those cases the Court placed the burden on the State on account, among other things, of the failure of the State registration authorities to detect the fraud (see, for instance, *Gladysheva v. Russia*, no. 7097/10, §§ 57 and 78-79, 6 December 2011, and *Titova and Others v. Russia* [Committee], nos. 4919/16 and 2 others, § 34, 15 May 2018). In the present case, the title to the disputed flat was registered on the basis of a judgment which was subsequently quashed as unlawful (see paragraph 6 above). It would have been unreasonable to expect the State registration authorities to question the legality of actions performed by Mr G. in relation to the title to the flat at a time when the unlawful decision remained in force.

26. The Court notes that the applicant had the possibility to bring a claim against Mr Y., seeking recovery of the sum she paid for the flat, as advised by the Court of Appeal in its judgment of 19 June 2018 (see paragraph 8 above). However, she decided to bring a claim against the Council, seeking to oblige the latter to enter into a rental contract with her (see paragraph 10 above). The Court notes that during the domestic court proceedings the applicant was represented by a lawyer. She did not explain the reason why she did not use the available compensation remedy, nor did she argue that she had not had the opportunity to bring such a claim (see *Kanevska*, cited above, § 49).

27. In the light of the above and given, in particular, the opportunities which existed for the applicant under domestic law, the Court considers that

the authorities cannot be held responsible for arbitrary or unlawful acts or for failing to discharge their positive obligation under Article 1 of Protocol No. 1. It is true that the applicant found herself in a difficult situation in the circumstances of the present case; however, she had at her disposal legal remedies to protect her rights at the domestic level, with the appropriate legal advice if necessary.

28. Accordingly, the complaint is manifestly ill-founded and must be rejected 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 13 April 2023.

Martina Keller Deputy Registrar	Mārtiņš Mits President