



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

FIFTH SECTION

Application no. 27096/08
Ivan Oleksiyovych VERNYK
against Ukraine
lodged on 30 May 2008

STATEMENT OF FACTS

The applicant, Mr Ivan Oleksiyovych Vernyk, is a Ukrainian national, who was born in 1942 and lives in Chernivtsi.

A. The circumstances of the case

In 1989 the applicant was provided with a bed in one of the hostels managed by “SU-15” State construction company, his employer at the material time.

According to the applicant, he has lived in the company hostels ever since that time on the basis of renewable lease contracts and has had no other residence.

On unspecified dates other newly created construction companies succeeded “SU-15” as the hostel owners.

In 1997 the applicant retired and since that time has lived off his old-age pension.

In 1998 “Ch.”, the hostel owner at the material time, decided to terminate the applicant’s lease contract and instituted proceedings seeking his eviction.

On 13 August 1998 the Leninsky District Court of Chernivtsi rejected this claim, having found that the provisions of the Housing Code of Ukraine prohibited eviction of retired employees from the hostels provided by their former employers, unless they had been provided with other adequate housing.

In May 2002 the hostel where the applicant lived, was sold to M., a private entrepreneur.

In August 2002 the Chernivtsi City Council gave M. a permit to reconstruct the hostel into a multi-apartment residential building. The applicant and several other inhabitants unsuccessfully brought several sets of proceedings seeking to have the reconstruction project aborted as encroaching upon their occupancy rights.

In December 2002 the applicant’s lease contract expired.

In November 2004 the reconstructed hostel was accepted by a State commission as a “residential building with office space and hotel rooms”.

On 6 November 2004 M. ordered the applicant to vacate the former hostel, which he refused to do.

On an unspecified date the applicant complained to the Pershotravnevyy District Prosecutor's Office that his housing rights were being breached by the new building owner.

On 14 September 2005 the Prosecutor's Office responded to the applicant that it saw no basis for instituting criminal proceedings and that the applicant, being a retired pensioner, could be evicted only on the basis of a court order and only if other housing was made available to him.

In December 2006 M. instituted proceedings in the Pershotravnevyy District Court of Chernivtsi seeking to evict the applicant.

On 1 March 2007 the court ruled in M.'s favour, having found that the applicant was arbitrarily occupying the premises owned by M. after the expiry of his lease contract.

The applicant appealed, referring to the provisions of the Housing Code, which prohibited eviction of retired employees not provided with other housing. He submitted that eviction would render him homeless and that the State had never offered him any other accommodation, although he had been on the housing waiting list for many years, had worked his entire life for the State companies and had been a rehabilitated victim of political repression by the Soviet authorities.

On 8 August 2007 the Chernivtsi Regional Court of Appeal rejected the applicant's appeal. It confirmed that following expiry of the lease contract, there was no legal basis for the applicant to occupy the disputed premises. It also found that the provisions of the Housing Code referred to by the applicant could not be interpreted so as to oblige a private landlord to provide housing to a former tenant upon expiry of the lease contract.

On 18 December 2007 the Supreme Court of Ukraine rejected the applicant's request for leave to appeal in cassation.

On an unspecified date the applicant was evicted.

According to him, following his eviction, he became homeless. His old-age pension was insufficient to rent housing at the market price and he was bound to request various acquaintances for shelter or to seek other *ad hoc* accommodation.

B. Relevant domestic law

1. Constitution of Ukraine

The relevant provisions of the Constitution of Ukraine read as follows:

Article 47

“Everyone shall have the right to housing. The State shall create conditions enabling every citizen to build, purchase, or rent housing.

Citizens in need of social protection shall be provided with housing by the bodies of State power and local self-government, free of charge or at a price affordable for them in accordance with law.

No one shall be arbitrarily deprived of housing other than on the basis of the law pursuant to a court decision.”

2. *Housing Code of Ukraine of 1983*

The relevant provisions of the Code as worded at the material time read as follows:

Article 116. Eviction without provision of other accommodation

“... Persons who arbitrarily occupy residential premises shall be evicted without provision of other accommodation.”

Article 124. Eviction from corporate residential premises without provision of other accommodation

“Workers and employees, who have terminated their employment ... shall be subject to eviction from corporate residential premises together with all their household members without provision with other residential premises.”

Article 125. Persons, who may not be evicted from corporate residential premises without provision of other accommodation

“...Without provision of other accommodation in the situations envisaged by Article 124 of the present Code, it shall not be possible to evict:

... persons retired in connection with their old age ...”

Article 132. Eviction from hostels

“... persons listed in Article 125 of the present Code may be evicted only upon provision of other accommodation thereto...”

COMPLAINTS

The applicant complains under Article 8 of the Convention that he was evicted unfairly and in breach of the applicable law.

He further complains under Article 6 of the Convention that the courts incorrectly resolved his housing dispute.

QUESTION TO THE PARTIES

Has there been a violation of the applicant’s right to respect for his home as guaranteed by Article 8 of the Convention on account of his eviction? In particular:

(a) was it foreseeable in law that guarantees against eviction contained in Articles 125 and 132 of the Housing Code would not apply in the applicant’s case after the hostel building had been acquired by M.?

The Government are requested to provide references to domestic legal provisions governing transferability or otherwise of tenants’ guarantees to persons or entities succeeding their landlords and relevant judicial practice.

(b) did the applicant’s eviction strike a fair balance between his interests and those of the building owner (see, for example, *Kryvitska and Kryvitsky v. Ukraine*, no. 30856/03, § 44, 2 December 2010)?