



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

FIFTH SECTION

Application no. 34000/07
Valentyna Petrivna VINNIYCHUK
against Ukraine
lodged on 27 June 2007

STATEMENT OF FACTS

The applicant, Ms Valentyna Petrivna Vinniychuk, is a Ukrainian national, who was born in 1955 and lives in Stryy.

A. The circumstances of the case

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

On 25 December 1997 the Stryy Prosecutor lodged civil proceedings on behalf of the Stryy City Council seeking to declare that the applicant had lost her right of occupancy of the flat rented from it under the protected tenancy scheme, as she had abandoned it for a period exceeding six months.

On 2 February 1998 the Stryy Court allowed this claim.

The applicant appealed in cassation. She argued, in particular, that she had not abandoned the flat, but had been absent from it because she had been serving a prison sentence. By the time of the court hearing she had returned to the flat and had paid the charges due. She also noted that she had two dependent children and no other residence.

On 16 March 1998 the Lviv Regional Court rejected the applicant's cassation appeal and the judgment of 2 February 1998 became final.

On the same date the court also addressed a separate ruling (*окрема ухвала*) to the City Council, inviting it to consider the applicant's personal situation and the need for her re-integration into the society in deciding on how to re-distribute her former flat.

On 1 April 1998 the Stryy Mayor informed the Lviv Regional Court that the Stryy Prosecutor had instituted the proceedings without consulting the City Council, which had no interest in evicting the applicant.

On 18 June 1998 the Stryy Court ordered the applicant's eviction. This judgment became final and was enforced on 13 October 1998. According to the applicant, the bailiffs acted carelessly in removing her personal belongings from the flat and damaged them.

Following the applicant's numerous complaints, on 30 May 2001 the Presidium of the Lviv Regional Court quashed the judgments of 2 February and 16 March 1998 by way of extraordinary procedure and remitted the applicant's case to the Stryi Court for a fresh examination. The Presidium instructed the court, in particular, to give legal assessment of the arguments that the City Council had had no interest in evicting the applicant, who had no other residence and two dependent children and had resumed occupancy of the disputed flat by January 1998.

After several rounds of proceedings, on 7 October 2002 the Lviv Regional Court of Appeal upheld the applicant's right to occupy the disputed flat. It noted, in particular, that having returned to it after having served her prison sentence and having paid the charges in arrears before the case had been examined by the first-instance court, the applicant had restored her right to occupy the disputed flat.

On 27 May 2003 the Supreme Court of Ukraine upheld the above judgment and it became final.

In the meantime, the disputed flat had been privatised by A.N., who had occupied it after the applicant's eviction, and sold by him to O.M.

On an unspecified date the applicant instituted civil proceedings seeking extraordinary annulment of the judgment of 18 June 1998 ordering her eviction and invalidation of all further transactions in the disputed flat.

On 6 July 2005 the Stryi Court found that there was no ground to divest O. M. of her title, as she had acquired the flat in good faith at the time, when it had lawfully belonged to A. N. At the same time it obliged the City Council to provide the applicant with other housing equivalent to the flat at issue.

This judgment became final and in October 2005 the bailiffs instituted enforcement proceedings in its respect.

On 20 October 2005 the City Council informed the applicant that it was unable to execute the judgment at the material time, since it had no available housing and no funds to build new housing. On various occasions the applicant unsuccessfully complained to various authorities of the non-enforcement of the judgment of 6 July 2005.

In 2010 the applicant was provided with a house. According to her, this house was in a dilapidated state and required substantial funds for renovation, including installation of plumbing and sewage.

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 71. Reservation of residential premises for temporarily absent citizens

“In the event of temporary absence of a tenant or members of his/her family the residential premises shall be reserved for them for six months.

Should the tenant or members of his/her family be absent for serious reasons for the term exceeding six months, upon request of the absent person this term may be extended by the lessor, or, in case of a dispute, by the court.

Residential premises shall be reserved for the temporarily absent tenant or members of his/her family for the period exceeding six months in the following circumstances:

...

7). [where he/she] is remanded in custody – during the entire term of being under investigation and trial.

...”

COMPLAINTS

The applicant complains under Article 8 of the Convention that she was unlawfully and unfairly deprived of a flat in 1998.

She further complains under the same provision that the authorities have failed to act in good time in correcting their mistake.

The applicant next complains under Article 13 of the Convention that she has had no effective avenue of complaining about non-enforcement of the court judgment of 6 July 2005 ordering the municipality to provide her with housing.

Finally, the applicant complains under Article 1 of Protocol no. 1 that the bailiffs damaged her belongings when evicting her.

QUESTIONS TO THE PARTIES

1. Was protracted failure of the authorities to house the applicant following her eviction and enforce the judgment of 6 July 2005 compatible with Article 8 of the Convention?

2. Did the applicant have at her disposal an effective domestic remedy for her complaint under Article 8 of the Convention, as required by Article 13 of the Convention?