



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

FIFTH SECTION

Application no. 73944/11
Lyudmyla Konstyantynivna KANEVSKA
against Ukraine
lodged on 25 November 2011

STATEMENT OF FACTS

The applicant, Ms Lyudmyla Konstyantynivna Kanevska is a Ukrainian national, who was born in 1951 and lives in Odesa. She is represented before the Court by Mr V. O. Voronkov, a lawyer practising in Odesa.

A. The circumstances of the case

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

On 15 July 2003 Mr M. became the owner of a two-room flat following a gift deed. He did not live in that flat and rented it out.

On 19 December 2003 a person, who presented himself as Mr M. and produced a passport in confirmation of that, gave a power of attorney to a certain Mr Shch. authorising him to dispose of the flat in question.

Meanwhile, at the end of 2003, the applicant and her husband decided to sell their flat in the centre of the town and to buy a cheaper one in the suburb. The applicant had had two surgeries for cancer by that time and needed money to continue her treatment. Furthermore, doctors recommended her to move to a ground floor given her health condition.

On 26 January 2004 Mr Shch. sold the flat to Ms Sh.

On 5 March 2004 Ms Sh. in turn sold that flat to the applicant and her husband. According to the applicant, the flat was in a dilapidated condition and her family invested a lot in its repairs.

On 11 March 2004 Mr M. visited the flat and found out, to his surprise, about the above transactions. He complained to the police that he had never authorised anybody, and had not intended to, sell that flat. He submitted that he lived in a different city and his tenant had kept telling him that everything was fine, until a few months earlier when Mr M. had not been able to reach him. As a result, a criminal case was opened in respect of fraud in a particularly large amount.

In August 2005 Mr M. lodged a claim with the Suvorivskyy District Court of Odesa (“the Suvorivskyy Court”) seeking invalidation of the sales contracts and eviction of the applicant and her husband.

On 6 March 2007 a graphologic expert examination report was issued. It concluded that the signature on the power of attorney of 19 December 2003 did not belong to Mr M. The identity of the person who presented himself as Mr Shch. was not established either. The whereabouts of the tenant to whom Mr M. had rented the flat were unknown.

On an unspecified date the criminal investigation was stayed as it appeared impossible to identify the perpetrators.

On 25 July 2007 the Suvorivskyy Court rejected the claim of Mr M. It heard the three notaries who had certified the power of attorney to Mr Shch. and the two sales contracts, and who had not discerned any irregularities. The court considered that Mr M. had himself been negligent as regards the flat tenancy. Furthermore, given that the criminal investigation into the matter had not been completed, there was no conclusive evidence before the court that the flat had been disposed of by fraud as alleged by Mr M. At the same time, it was not disputed that Ms Sh. and the applicant and her husband were bona fide acquirers of the flat.

On 15 July 2009 the Odesa Regional Court of Appeal (“the Court of Appeal”) quashed the judgment of 25 July 2007 and adopted a new one allowing the claim of Mr M. Relying on Articles 388 and 391 of the Civil Code, it invalidated the sales contracts of 26 January and 3 March 2004 and ordered the applicant and her husband not to hinder Mr M. in his possession of the flat.

The applicant and her husband appealed on points of law. They submitted, in particular, that they had not breached the law, the disputed flat was their only accommodation and that they had no means for buying another one.

On 25 May 2011 the Supreme Court rejected their cassation appeal.

As the applicant and her husband refused to vacate the flat, Mr M. applied to the Court of Appeal for an additional decision on their eviction.

On 26 October 2011 the Court of Appeal adopted such an additional decision ordering eviction of the applicant’s family.

The applicant challenged that decision on points of law, apparently without success.

B. Relevant domestic law and practice

The relevant provisions of the Civil Code read as follows:

“Article 330

Acquisition by a bone fide acquirer of title to property alienated by a person who had no right to do so

1. If the property has been alienated by a person who had no right to do so, the bone fide acquirer shall acquire title to that property if it cannot be reclaimed from him under Article 388 of this Code. ...”

“Article 388**The owner’s right to reclaim property from a bona fide acquirer**

1. If the property has been purchased for a price from a person who had no right to alienate it, and the acquirer is unaware and could not have been aware (the bona fide acquirer), the owner shall have the right to reclaim that property from the acquirer, only if the said property:

- 1) was lost by the owner or by the person into whose possession the owner has passed the property;
- 2) was stolen from one or the other; or
- 3) was left by the owner in another way, in the absence of intention on his part to divest himself of it. ...”

COMPLAINTS

The applicant complains under Article 8 of the Convention that her “right to a home” was violated on account of the annulment of the flat purchase contract. She also complains, without reference to any provision, that her family was deprived of the possessions they had acquired in good faith. Lastly, the applicant complains under Article 13 that she did not have an effective domestic remedy in respect of the above complaints.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant’s right to respect for her home, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

2. Has the applicant been deprived of her possessions in the public interest, and in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1? If so, was that deprivation 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? In particular, did that deprivation impose an excessive individual burden on the applicant (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 59, ECHR 1999-V)?

3. Did the applicant have at her disposal an effective domestic remedy for her above complaints, as required by Article 13 of the Convention?