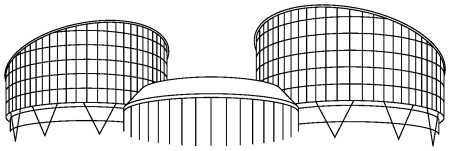

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SADOVYAK v. UKRAINE

(Application no. 17365/14)

JUDGMENT

STRASBOURG

17 May 2018

This judgment is final but it may be subject to editorial revision.

In the case of Sadovyak v. Ukraine,

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

André Potocki, *President,*
Mārtiņš Mits,
Lado Chanturia, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 17 April 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 17365/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Ukrainian nationals, Mrs Olha Mykhaylivna Sadovyak ("the first applicant"), Mr Volodymyr Valeriyovych Sadovyak ("the second applicant"), Mr Mykola Volodymyrovych Sadovyak ("the third applicant") and Ms Anastasiia Volodymyrivna Sadovyak ("the fourth applicant") (collectively "the applicants"), on 27 March 2014.

2. The Ukrainian Government ("the Government") were represented by their Agents, most recently, Mr I. Lishchyna of the Ministry of Justice.

3. On 10 February 2015 the application was communicated to the Government. It was also decided that the application should be given priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1966, 1971, 1993 and 1996 respectively. The second applicant is the former spouse of the first applicant and the third and the fourth applicants are their children. The first, the third and the fourth applicants live in Lviv. The second applicant had his registered residence in Lviv as at the time when the application was lodged; his current whereabouts are not known.

5. In August 2001 the second applicant, a military officer at the material time, was provided with a two-room flat for himself and his family in an accommodation hall owned by the Lviv Military Academy. Subsequently all four applicants obtained residence registration with the local authority as

tenants of that flat. Since 2001 (and as at the time of the observations exchanges between the parties), the household was paying the relevant maintenance charges and other tenancy-related fees, which were calculated on the premise that the flat was occupied by four persons.

6. On 28 November 2003 the second applicant was dismissed from military service on grounds of redundancy. The dismissal order stipulated that he was eligible for priority allocation of social housing from the waiting list managed by the Ministry of Defence.

7. In 2005 the first and the second applicant divorced and the first applicant and her children were placed on the waiting list for social housing managed by the municipal authority.

8. In August 2011 the Lviv garrison military prosecutor instituted eviction proceedings against the applicants. He referred, essentially, to the fact that the accommodation hall belonged to the Military Academy and was designed for the temporary housing of military personnel. Meanwhile, none of the applicants had any connection to the military or the Military Academy, which owned the building.

9. On 15 November 2012 the Frankivskyy District Court in Lviv dismissed the prosecutor's claim. It found that the applicants had lawfully obtained the tenancy in connection with the second applicant's previous military service. Regard being had to the applicable legal provisions concerning the social protection of former military officers and their families, they could not be evicted from the accommodation hall without first being provided with other housing. In addition to that, the fourth applicant had still been a minor at the material time, and further legislation applicable to the protection of minors warranted the protection of her housing rights.

10. Following an appeal by the prosecutor, on 17 September 2013 the Lviv Regional Court of Appeal quashed this judgment and ordered the applicants' eviction. It found that they had settled in the disputed premises without the building owner having taken a formal decision authorising their occupancy and without an occupancy order ("*ордер*"), having been issued in their favour. Accordingly, the applicants' occupancy was unlawful *ab initio*. This fact extinguished the applicability of the legal provisions cited by the first-instance court concerning the social protection of retired military officers, their families and minors.

11. The applicants lodged a cassation appeal against this judgment. They noted, in particular, that the disputed housing had been their only home for more than ten years and that their eviction would render them homeless. They also submitted that their income level was not sufficient for them to acquire housing at their own expense and that they did not have any family members in Lviv who could offer shelter to them. Their residence was duly registered and they had been dutifully paying all the applicable fees connected with their occupancy of the flat. The fact that the building owner

had failed to comply with certain formalities connected with regularising their occupancy was not their fault. In addition, evicting them on this basis should have become time-barred in 2004 (three years after they had moved into the flat). Lastly, the applicants referred to the judgment of the European Court of Human Rights in the case of *Kryvitska and Kryvitskyy v. Ukraine* (no. 30856/03, judgment of 2 December 2010), and alleged that their eviction would be in breach of the principles established in that judgment, according to which the courts had to assess whether the eviction was necessary in a democratic society.

12. On 20 November 2013 the Higher Specialised Court of Ukraine dismissed the applicants' cassation appeal.

13. Subsequently, enforcement proceedings were instituted with a view to evicting the applicants. The parties have not informed the Court whether the eviction order has been enforced.

II. RELEVANT DOMESTIC LAW

Housing Code of Ukraine, 1983 (as it read at the material time)

14. Article 129 of the Housing Code read as follows:

> "Having taken a decision to allocate dwelling space in [its] accommodation hall, the administration of the enterprise, establishment [or] organisation shall issue a special order (*орδер*) ... , which shall be the only basis for moving into the allocated dwelling space. ..."

THE LAW

I. APPLICATION OF ARTICLE 37 § 1 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

15. By Article 37 § 1 (a) of the Convention, the Court may decide to strike an application out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue his application.

16. The Court notes that after the communication of the present application to the respondent Government, the parties informed it that the second applicant had quit living in the disputed flat. The first applicant notified the Court that she and the children had lost contact with him and that they were unaware of his whereabouts. The second applicant himself did not provide the Court with any updates on his whereabouts.

17. In these circumstances, the Court considers that the second applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention (compare with

J. and Others v. Austria, no. 58216/12, §§ 71-74, ECHR 2017 (extracts)). Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case in his respect.

18. Accordingly, the Court decides to strike the application, inasmuch as it was lodged by the second applicant, out of its list of cases. In the following parts of the present judgment, the expression "the applicants" should be taken to refer to the first, third and fourth applicants only.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

19. The applicants complained that their eviction had been ordered unfairly and without their personal situation being taken into account. They invoked Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

20. The Government noted that the first and the second applicant had divorced in 2005. They further submitted that the second applicant had also moved out of the disputed flat in 2005. Given that the applicants had not informed the Court of these factors (material for the examination of the case), the lodging of their complaint had constituted an abuse of the right of individual application.

21. The first applicant contested this argument. She submitted that all the domestic authorities had been duly put on notice of her divorce. She further argued that the second applicant had continued to live in the flat for a number of years after the divorce. Notwithstanding the fact that he had eventually started spending a lot of time elsewhere, at the time when the present application was lodged, he maintained a sufficient connection with the flat. Notably, he remained registered with the local authority as one of the tenants and all the tenancy fees were calculated on the premise that the flat was occupied by four persons. Lastly, in her view, the whereabouts of her former husband had no bearing on the determination of the remaining applicants' rights as regards the disputed flat. The third and the fourth applicants did not provide any comments on the matter apart from stating that they maintained their initial application.

22. The Court observes that a finding of abuse of the right of individual application might be made in extraordinary circumstances – notably, when an application is clearly unsupported by evidence, or is deliberately based on false or misleading submissions, or presents a description of facts that omits events of central importance (see, in particular, *Khaylo v. Ukraine*, no. 39964/02, § 73, 13 November 2008, and *Vinniychuk v. Ukraine*, no. 34000/07, § 42, 20 October 2016, with further references). It is notable that in the present case the question of whether or not the second applicant had abandoned the flat was neither examined by the domestic courts within the framework of the relevant eviction proceedings, nor even raised by the prosecutor in his statement of claim. The grounds on which the order was made to evict the applicants – irregularity of their initial occupancy (see paragraph 10 above) - were unrelated to the circumstances indicated by the Government. Within the context of examining the complaints lodged by the first, third and fourth applicant concerning alleged unlawfulness and unfairness of the aforementioned eviction order, the Court does not therefore consider that the first applicant's divorce or the second applicant's whereabouts are of any importance. It therefore dismisses the Government's objection.

23. The Court next notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

24. In their initial application the applicants argued that the disputed eviction order was neither lawful nor necessary in a democratic society. In essence, they reiterated the same arguments as those raised in their cassation appeal against the judgment of 17 September 2013 (see paragraph 11 above). After the case was communicated, they indicated that they maintained their original position.

25. The Government noted that the accommodation hall in which the disputed flat was located was specifically designed for meeting the temporary housing needs of military servicemen in need of accommodation as a result of their service. The applicants had been provided with the flat on a temporary basis, in connection with the second applicant's military service. After he had been dismissed from the army (and, moreover, divorced the first applicant and moved out of the flat), there had been no basis whatsoever for other applicants to remain in it. The court order to evict them had therefore been lawful. It had also pursued a legitimate aim: specifically, the protection of the rights and interests of military servicemen in need of accommodation. Likewise, it had been based on relevant and sufficient reasons and was therefore "necessary in a democratic society".

26. The Court reiterates that the loss of one's home is the most extreme form of interference with the right to respect for one's home (see, among other authorities, *McCann v. the United Kingdom*, no. 19009/04, § 50, 13 May 2008). In the present case, it is not clear whether the disputed eviction order has been enforced. This circumstance does not, however, preclude the Court from examining the present complaint, as the obligation on the applicants to vacate the flat amounted to an interference with their right to respect for their home (see, for example, *Ćosić v. Croatia*, no. 28261/06, § 18, 15 January 2009).

27. The Court further notes that an eviction order would constitute a violation of Article 8 of the Convention unless it is issued "in accordance with the law", pursues one of the legitimate aims enumerated in Article 8 § 2, and can be regarded as "necessary in a democratic society". The expression "in accordance with the law" does not merely require that the impugned measure should have a basis in domestic law but also refers to the quality of the law in question. In particular, the law must be sufficiently clear in its terms and afford a measure of legal protection against arbitrary application (see, among other authorities, *Kryvitska and Kryvitskyy*, cited above, §§ 42-43). In addition to that, any person at risk of being subject to eviction should in principle be able to have the proportionality of the measure in question determined by a court. In particular, where relevant arguments concerning the proportionality of the interference have been raised, the domestic courts should examine them in detail and provide adequate reasons (see, among other authorities, *Kryvitska and Kryvitskyy*, cited above, § 44 and *Winterstein and Others v. France*, no. 27013/07, §§ 148 (δ) and 155, 17 October 2013).

28. In the present case, the disputed eviction was ordered by the Lviv Regional Court of Appeal on the sole ground that the occupancy was devoid of legal basis *ab initio* in view of the fact that the State entity that owned the building had failed to document it properly (see paragraph 10 above).

29. The Court accepts in this regard that the eviction order was taken by a competent court at the close of adversary proceedings and had some basis in domestic law (see paragraph 14 above).

30. The Court also accepts the Government's argument that this measure pursued a legitimate aim within the meaning of Article 8 § 2 of the Convention – specifically, the protection of the interests of military servicemen in need of temporary service-related accommodation.

31. At the same time, the Court considers that the disputed order was not based on adequate reasons and was therefore not necessary in a democratic society.

32. The Court notes in this respect that once the domestic judicial authorities decided that the occupation did not comply with the applicable legal regulations, they gave that aspect paramount importance, without weighing it up in any way against the applicants' arguments to the effect

that this measure would place on them an excessive burden. Moreover, there has been no consideration given whatsoever to such questions as the time period of twelve years that had elapsed since the applicants had settled in the disputed flat together with the second applicant; the fact that the applicants had done everything that was required of them to have their tenancy duly registered with the competent authority and that during the entire period in question they had paid all the tenancy fees in good faith.

33. The Court finds that the approach taken by the domestic courts is in itself problematic, as it amounts to a failure by them to assess the proportionality of the applicants' eviction (see, for instance, *Yordanova and Others v. Bulgaria*, no. 25446/06, § 123, 24 April 2012, and *Winterstein and Others*, cited above, § 156).

The Court notes in this respect the Government's argument (see paragraph 25 above) that any entitlement to temporary occupation of the accommodation in question had been closely linked with the second applicant's status as a serviceman and that that entitlement had been lost due to his discharge from the armed forces. The Court is prepared to accept in principle that that argument could have been important for the assessment of the matter of proportionality. However, it made no part of the reasoning of the domestic court which ordered the eviction (see paragraph 10 above). Therefore, the Government's arguments in this respect should be dismissed.

34. The Court has already found violations of Article 8 of the Convention in other cases where the applicants did not have the benefit, in the context of eviction proceedings, of an examination of the proportionality of the interference in question (see, among other authorities, *McCann*, cited above, § 55; *Kryvitska and Kryvitskyy*, cited above, §§ 51-52; and *Winterstein and Others*, cited above, §§ 158 and 167). It finds no reason to arrive at a different conclusion in the present case.

35. The Court therefore concludes that there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicants also complained that the courts had failed to analyse their central arguments – in particular, that they had been officially registered as tenants in the disputed flat for more than twelve years and that their eviction would seriously affect their private and family life. They relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

37. The Government contested these arguments.

38. The Court notes that this complaint is linked to the applicants' complaint under Article 8 and must therefore likewise be declared admissible.

39. It further reiterates that, notwithstanding the difference in the nature of the interests protected by Articles 6 and 8 of the Convention, which may require separate examination of the claims lodged under these provisions, in the instant case the lack of respect for the applicants' home is at the heart of their application. Regard being had to the reasons which served as a basis for finding a violation of Article 8 (see paragraphs 31-33 above), the Court considers that it is not necessary to also examine the same facts under Article 6 (see *Kryvitska and Kryvitskyy*, cited above, § 56).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

41. The applicants did not submit any claim for just satisfaction. Accordingly, the Court considers that there is no call for it to make any award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike out of the list the application inasmuch as it was lodged by the second applicant;

2. *Declares* the complaints lodged by the first, third and fourth applicants admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that it is not necessary to examine separately the complaints lodged under Article 6 § 1 of the Convention.

Done in English, and notified in writing on 17 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

André Potocki
President