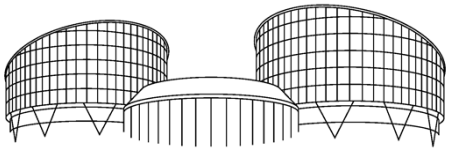

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MITSOPOULOS v. UKRAINE

(Application no. 62006/09)

JUDGMENT
(*Merits*)

STRASBOURG

9 December 2021

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

In the case of Mitsopoulos v. Ukraine,

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

Mārtiņš Mits, *President,*
Jovan Ilievski,
Ivana Jelić, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 62006/09) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Atanasios Georgios Mitsopoulos ("the applicant"), on 15 November 2009;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 regarding the reopening of the proceedings in the applicant's case and the quashing of the binding and enforceable judgment favourable to him and to declare the remainder of the applications inadmissible;

the parties' observations;

the fact that the Government of Greece did not express the wish to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

Having deliberated in private on 18 November 2021,

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

INTRODUCTION

1. In this case the applicant complained that the review "in the light of newly discovered circumstances" and the eventual quashing of a final and enforceable judgment in his favour in civil proceedings that had been completed were unjustified and thus contrary to Article 6 § 1 of the Convention. He also alleged a violation of Article 1 of Protocol No. 1 on account of the quashing of the judgment, since he had lost his established title to the disputed property.

THE FACTS

2. The applicant was born in 1959 and lives in Kyiv. The applicant was represented by Mr V. Teterskyy, a lawyer practising in Kyiv.

3. The Government were represented by their Agent, most recently Mr I. Lishchyna of the Ministry of Justice.

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

5. On 23 September 2002 the applicant bought a house from a private individual.

6. In January 2003 that individual instituted civil proceedings before the Obolonskyy District Court in Kyiv, challenging the validity of the contract of sale.

7. In March 2003 the applicant lodged a counterclaim with the same court, essentially claiming title to the disputed house.

8. Subsequently, several other individuals joined the proceedings, including M., who was in possession of the house until at least 7 November 2007 (see paragraph 9 below).

9. Following several reconsiderations of the case, on 22 January 2007 the Obolonskyy District Court found in part for the applicant, having acknowledged his title to the house together with its outbuildings and associated constructions. On 7 November 2007 the Supreme Court upheld that judgment and, accordingly, it became binding and enforceable on that date.

10. In April 2009 M. lodged an application with the Obolonskyy District Court for review of the judgment of 22 January 2007 "in the light of newly discovered circumstances" (see paragraph 14 below). M. alleged that, while the original court proceedings had been pending, she had not been aware that the house had been renovated to the extent that it could no longer be regarded as the object of the disputed contract of sale. She added that the renovation had been conducted under the supervision of her representative.

11. The applicant challenged that application, arguing that during the proceedings the house had been in the possession and under the control of M., who, consequently, had been aware of the renovation. Moreover, her application for review of the judgment of 22 January 2007 had been lodged out of time.

12. On 20 May 2009 the Obolonskyy District Court allowed M.'s application, quashed the judgment of 22 January 2007 and reopened the proceedings on the merits. The court held that "having examined the material of the case and having heard the parties, it considered that the application could be allowed". The court provided no further explanation in that regard.

13. The reopened proceedings involved several reconsiderations on the merits and, eventually, were terminated by a final decision of the Higher Specialised Court in Civil and Criminal Matters on 27 April 2016, upholding the judgment of the Kyiv Court of Appeal of 3 November 2015, by which the applicant's claims were partly allowed. In particular, his title to the house was acknowledged, whereas no such acknowledgment was made as regards the adjacent and associated constructions and any improvements made to the entire estate after 23 September 2002. Moreover, his opponents were ordered not to hinder the exercise of his right of ownership over the house.

RELEVANT LEGAL FRAMEWORK

14. Under the relevant procedural regulations (Articles 361-62 of the Code of Civil Procedure of 2004), as worded at the material time, judgments and rulings of courts of first instance, appeal courts and cassation courts could be reviewed "in the light of newly discovered circumstances". Four grounds for such a review were set out, namely: (i) significant circumstances which were not and could not have been known, at the time when the case was being considered, to the person applying for such reconsideration; (ii) the intentionally false testimony of a witness, intentionally incorrect expert conclusions, intentionally incorrect translations, or forged documentary or material evidence leading to the adoption of an unlawful or unsubstantiated judgment, as established by a final judgment in a criminal case; (iii) the quashing of a judicial decision on which the judgment or ruling in issue was based; and (iv) a decision of the Constitutional Court declaring unconstitutional a law or another normative act or a part thereof, which had been applied by the court when deciding on the case, if its judgment had not already been enforced. Applications for reconsideration of a case in the light of newly discovered circumstances had to be lodged with the courts within three months of the day when the appellant became or should have become aware of the circumstances forming the grounds for such reconsideration.

THE LAW

I. SCOPE OF THE CASE

15. After notice of the application had been given to the respondent Government in October 2018, the applicant raised new complaints, relying essentially on Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1, concerning the non-enforcement of the judgment of the Kyiv Court of Appeal of 3 November 2015 (see paragraph 13 above), the alleged lack of access to the property in question and the conduct of other related proceedings, some of which were ongoing.

16. The Court considers that these new complaints do not constitute an elaboration on the applicant's original complaints to the Court, on which the parties have already commented. The Court considers, therefore, that it is not appropriate to take up this matter in the context of the present case (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

17. The applicant complained that the review and the quashing of the binding and enforceable judgment of the Obolonskyy District Court of 22 January 2007 had not been based on "circumstances of a substantial and compelling character" and did not concern a "conscientious effort to make good a miscarriage of justice". He further complained that the quashing complained of had led to the unlawful deprivation of his property. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

..."

A. Admissibility

18. The Court notes that the original proceedings (completed in 2007) and the renewed proceedings (completed in 2016) led to a favourable outcome for the applicant: his title to the house was acknowledged in both cases. However, contrary to what the Government argued, the judgment of the Obolonskyy District Court of 22 January 2007, the quashing of which he complained of, also acknowledged his title to the house's outbuildings and associated constructions, whereas no such acknowledgment was made in the judgment of the Kyiv Court of Appeal of 3 November 2015, eventually upheld by the final decision of the Higher Specialised Court in Civil and Criminal Matters of 27 April 2016 which terminated the proceedings in the present case (see paragraphs 9 and 13 above). Moreover, the latter judicial decisions provided no reparation for any negative consequences of the quashing of the judgment of 22 January 2007, including, in the main, the applicant's consequent inability to exercise his ownership rights over the house, as acknowledged by that judgment, for more than six years. Thus, the Government's objection to the applicant's victim status regarding his complaint under Article 1 of Protocol No. 1 should be dismissed.

19. The Court notes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 are neither manifestly

ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

20. The relevant general principles were summarised in, among other authorities, *Pravednaya v. Russia* (no. 69529/01, §§ 24-25 and 38-40, 18 November 2004) and *Lizanets v. Ukraine* (no. 6725/03, §§ 31-32, 31 May 2007).

21. In the present case, the final and enforceable judgment of the Obolonskyy District Court of 22 January 2007, acknowledging the applicant's title to the disputed property, was reviewed and quashed because of "newly discovered circumstances". This was done upon an extraordinary appeal lodged by a party to the original proceedings, M., under the relevant procedure provided for in the Code of Civil Procedure of 2004, which does not appear to be in itself incompatible with the requirements of a fair hearing (see, *mutatis mutandis*, *Pravednaya*, cited above, § 28). However, the extraordinary appeal in question contained no indication that the judgment against which it had been directed had been marred by a serious judicial mistake or a miscarriage of justice. Moreover, that appeal was based on contradictory arguments: allegedly, M. had not been aware of the outcome of the house's renovation even though she had commissioned it and it had been carried out when the house had been in her possession (see paragraphs 8 and 10 above). Although, in his comments on that application, the applicant specifically pointed to that contradiction and generally to the absence of any valid grounds for the requested review, the Obolonskyy District Court merely endorsed M.'s arguments without providing any further explanation in that regard (see paragraphs 11 and 12 above).

22. Accordingly, the Court concludes that the review and the quashing of the final and enforceable judgment of the Obolonskyy District Court of 22 January 2007 were not based on "circumstances of a substantial and compelling character" and were thus contrary to the principle of legal certainty embodied in Article 6 § 1 of the Convention (see *Pravednaya*, §§ 32-34, and *Lizanets*, §§ 33-35, both cited above).

23. That conclusion cannot be altered by the Government's arguments that the extraordinary appeal was lodged by a private person and not by a State body, and that during the review proceedings the applicant had the opportunity to present his case and to challenge the opposing party's submissions, and that subsequently the courts found for the applicant.

24. Furthermore, because of the quashing of the judgment in issue, the applicant was deprived of his title to the house, which was restored by a final decision on 27 April 2016 (see paragraph 13 above), and to the outbuildings and associated constructions, without any acceptable justification being provided or any compensation being available. This

placed an excessive burden on him (see *Brumărescu v. Romania* [GC], no. 28342/95, §§ 77-80, ECHR 1999-VII, and *Pravednaya*, cited above, §§ 39-42).

25. The foregoing considerations are sufficient for the Court to find that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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."

Damage, costs and expenses

27. As regards pecuniary damage, the applicant claimed 3,182,106 euros (EUR) for lost income which, according to his detailed calculations, he would have obtained had he been able to lease the house and to deposit part of the money thus earned with a bank during the period between September 2002 and July 2019; he also claimed EUR 45,688 for money and precious objects which allegedly had been stolen from his house.

28. The applicant also claimed EUR 30,000 in respect of non-pecuniary damage.

29. The applicant lastly claimed 56,886.16 United States dollars (approximately EUR 50,000) in respect of costs and expenses in the domestic proceedings and before the Court.

30. The Government, referring mainly to their objections regarding the admissibility of the applicant's complaint under Article 1 of Protocol No. 1 and the merits of his complaint under Article 6 § 1 of the Convention (see paragraphs 18 and 23 above), stated that the applicant's claims regarding pecuniary and non-pecuniary damage were unsubstantiated. They also stated that most of his claims for costs and expenses were either not supported by the required documentary evidence or excessive.

31. The Court considers that, in the circumstances of the present case, the question of the application of Article 41 of the Convention is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the Government and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision and, accordingly,
   (a) reserves that question in whole;
   (b) invites the Government and the applicant to submit, within three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach; and
   (c) reserves the further procedure and delegates to the President of the Committee the power to fix the same if need be.

Done in English, and notified in writing on 9 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Martina Keller Deputy Registrar	Mārtiņš Mits President