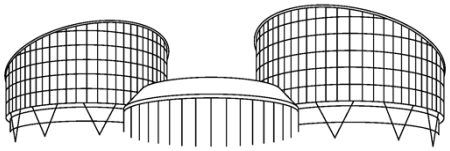

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 5407/06
Mykola Spyrydonovych KASHCHUK
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 10 May 2016 as a Chamber composed of:

Angelika Nußberger, *President,*
Ganna Yudkivska,
Erik Møse,
Faris Vehabović,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 23 January 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mykola Spyrydonovych Kashchuk, is a Ukrainian national who was born in 1955. His present place of residence is unknown. He was represented before the Court by Mr V.A. Struts, a lawyer practising in Mykolayiv.

2. The Ukrainian Government ("the Government") were represented, most recently, by their Acting Agent Ms Olga Davydchuk.

A. The circumstances of the case

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

1. Background facts prior to the entry into force of the Convention for Ukraine (11 September 1997)

4. The events relate to a house owned by the applicant in Zaliznychne village in the Mykolayiv region, where he lived with his wife and their two daughters (born in 1978 and 1985).

5. In February 1996 the village suffered extensive groundwater flooding.

6. In April 1996 (the exact date is illegible in the available documents) a technical survey of the applicant's house was carried out. As stated in the survey report, the building was made of beaten earth walls and was constructed shortly after 1945. It had no foundations and measured twenty-three square metres, of which nineteen square metres were living area. The building lacked basic amenities such as a lavatory, water supply, sewage system, gas supply or telecommunications. While the maximum habitable life of such buildings was up to thirty years, the applicant's house had been in use for more than fifty years. Following the flood, its floors were covered with water (about forty-five centimetres deep) and the walls were damp. It was not deemed feasible to carry out repairs and demolition was deemed to be the only option.

7. On 26 April 1996 the Executive Committee of the Mykolayiv City Council ("the Mykolayiv Council") issued an order "On measures for eliminating the consequences of the natural disaster in Zaliznychne village". It noted that thirty-seven residential buildings had remained flooded with groundwater since February 1996. Twenty-seven of them were at risk of collapsing. A commission of experts was appointed to assess the situation and draw up recommendations for further measures.

8. On 18 June 1996 the commission issued its report. The applicant's house was among those assessed as "having practically exhausted their capacity for use as a result of the groundwater flooding". The commission noted that measures for lowering the level of the groundwater had been unsuccessful, that the condition of the houses was deteriorating and that they could collapse at any moment. Its conclusion was that the houses were dilapidated, uninhabitable and should be demolished.

9. On 28 June 1996 the Mykolayiv Council approved the above report, as well as a list of dilapidated and uninhabitable houses, including the one belonging to the applicant. It recommended that the local authorities dealing with housing issues, together with local companies, resettle the people concerned to hostels on a temporary basis.

10. The local authorities further recommended to the applicant that he turn to his employer, the Equator plant, for help in solving his housing problem.

11. On 30 August 1996 the Mykolayiv Council delivered a decision on the resettlement of the residents of the flooded houses, including the applicant's family, to hostels. It guaranteed that within three years they would receive new accommodation, subject to applicable benefits and the available funding. The Equator plant was directed to resettle the applicant's family.

12. On 16 September 1996 Equator's administration and its trade unions proposed that the applicant's family move temporarily to a flat at either 44a or 46a V. Street. The applicant declined the offer on the grounds of the poor condition of the buildings in question.

13. On 17 June and 31 October 1997 the Mykolayiv Council and the mayor's office, respectively, wrote to the applicant in reply to his complaints about the failure to provide him with free accommodation, saying that he had declined the proposal of temporary resettlement to a flat at 46a V. Street for no good reason. Furthermore, the local authorities had provided the applicant's daughter with a two-room flat, with partial amenities, for temporary resettlement.

2. Further measures for resettling the applicant's family

14. On 27 November 1997 the applicant made a written statement to his employer that he was refusing the proposed accommodation at 44a V. Street owing to its poor condition.

15. On 1 June 1999 the Equator's administration replied to his repeated requests for accommodation by writing to him that in January 1998 the housing fund of the plant had been transferred to the Mykolayiv city municipal property agency, apart from two buildings (44a and 46a V. Street). The building at 46a V. Street was indeed in a very poor, even critically bad, condition. As regards the building at 44a V. Street, the applicant had twice been offered a flat there, but had declined the offer. According to the information provided by the Government, the flat in question measured about fifty-five square metres, of which the living area was thirty-four square metres. However, according to the applicant, the only accommodation he was offered had been a small room without any amenities (see below).

16. On 23 June 1999 the applicant wrote to the Equator's administration that the only offer he had actually received concerned a room measuring about ten square metres, without any amenities, at 46a V. Street. He emphasised, however, that he would have also declined any offer to be resettled in the building at 44a V. Street, where the conditions were equally poor.

17. On 20 September 2000 a technical survey of the buildings at 44a and 46a V. Street was carried out. Since their construction in 1947, they had not been refurbished and their general condition was considered as being very poor.

18. In May 2001 the applicant found out that he was number 147 on the plant's general waiting list for accommodation. He complained about that to the Mykolayiv Council, which replied on 6 July 2001 that that was an error, that it should be corrected and that he was indeed entitled to be on the priority waiting list, pursuant to the decision of 28 June 1996.

19. On 27 August 2001 Equator's administration moved the applicant from the general waiting list to the priority list, where he was at number 36.

20. On 22 February 2002 Mykolayiv Council wrote to the applicant that he was number 35 on its housing waiting list. All the families on the list before him continued to live in uninhabitable conditions and the applicant had to wait his turn.

3. Civil proceedings brought by the applicant

21. On 22 May 2002 the applicant brought a civil claim against the Equator plant and the Mykolayiv Council, seeking the allocation of free accommodation for his family (by that time consisting of six people as the applicant's elder daughter had married and given birth to a girl in 2001), as well as compensation in respect of non-pecuniary damage.

22. On 19 September and 20 December 2002 the Equator's administration and the Mykolayiv Council removed the applicant from their housing waiting lists.

23. On 9 January 2003 the Zavodskyy District Court of Mykolayiv ("the Zavodskyy Court") found against the applicant. It noted that he had declined two offers of resettlement. Furthermore, he had inherited some real estate in 1990, of which he had not informed the authorities. As a result, Equator's administration and the Mykolayiv Council had rightly taken him off their housing waiting lists.

24. The applicant appealed. He submitted, in particular, that the property he had inherited consisted of less than six square metres and could not be regarded as alternative accommodation for his family. To corroborate his statement, he provided an expert's technical survey.

25. On 1 April 2003 the Mykolayiv Regional Court of Appeal ("the Court of Appeal") quashed the judgment of 9 January 2003 and remitted the case for fresh examination at first instance. It noted that the applicant's claim concerned the allocation of free accommodation, rather than his exclusion from the housing waiting lists.

26. On 24 November 2003 the Zavodskyy Court allowed the applicant's claim in part. It considered it established that his house had become uninhabitable as a result of a natural disaster. Accordingly, the court held that the applicant was entitled to free accommodation, pursuant to Article 46

of the Housing Code (see paragraph 32 below). The applicant was also awarded compensation in respect of non-pecuniary damage (1,000 Ukrainian hryvnias, which was then equivalent to about 150 euros, from each of the two defendants).

27. On 5 February 2004 the Court of Appeal quashed the first-instance court's judgment following appeals by the defendants and adopted a new judgment which in the main dismissed the applicant's claim. With reference to the decisions of Mykolayiv Council of 28 June and 30 August 1996 (see paragraphs 9 and 11 above), the Court of Appeal noted that the applicant's house had been among those inspected by a technical commission following the flood and that Equator's administration had been responsible for resettling his family. It considered that the case file did not contain any evidence proving that the applicant's house had become uninhabitable as a result of a natural disaster and therefore concluded that Article 46 of the Housing Code was not applicable. However, the applicant was to be restored to the priority housing list, in accordance with Article 45 of the code, given that his house was uninhabitable. This restoration, according to the Court of Appeal, constituted sufficient compensation in respect of non-pecuniary damage.

28. The applicant appealed against the judgment on points of law. He insisted that his house had become uninhabitable as a consequence of the flood.

29. On 11 April 2006 the Supreme Court rejected the applicant's cassation appeal, giving a concise reasoning that it had not discerned any violations of the law.

B. Relevant domestic law and practice

1. *Housing Code of Ukraine (Житловий кодекс України) 1983, with further amendments*

30. Article 5 stipulates that the State's housing stock comprises that of local councils of people's deputies (*житловий фонд місцевих Рад*) and that of ministries, state committees and institutions (*відомчий житловий фонд*).

31. Article 45 contains a non-exhaustive list of categories of people whose living conditions need to be improved and who are therefore entitled to free accommodation being placed on a priority housing list *(першочергове надання жилих приміщень)*. As further set out in Article 60, approval of the rules of keeping records about people belonging to those categories was the responsibility of the Council of Ministers of the Ukrainian SSR and the Ukrainian Republican Council of Trade Unions.

32. Article 46 provides for categories of people entitled to free accommodation without being on a housing list *(позачергове надання*

жилих приміщень), including "citizens whose dwelling has become uninhabitable as a result of a natural disaster". The Article further states that such people shall be included on a separate waiting list. No time-limits are set down for the allocation of dwellings to such people.

33. Article 48 of the Housing Code states, in particular, that the minimum size of residential premises should comply with standards laid down by the Cabinet of Ministers and the Trade Union Federation.

34. According to Article 50, residential premises should comply with the relevant sanitary and technical standards.

35. Article 52 governs the allocation of flats from the institutional housing stock (*відомчий житловий фонд*). In particular, flats are allocated by a joint decision of the authorities and the trade union branches of the companies, institutions and establishments concerned, which either submit their decision to the relevant municipal council for approval or, in some cases, simply inform the council. On the basis of that decision, the executive committee of the municipal council issues the person concerned with an authorisation to occupy the flat (*ордер*), which constitutes the sole legal basis for taking possession of the allocated dwelling (Article 58).

2. Rules of keeping records about people in need of improved living conditions

36. "Rules of keeping records about people in need of improved living conditions and the allocation of free accommodation for them ..." (*Правила обліку громадян, які потребують поліпшення житлових умов, і надання їм жилих приміщень ...*), which were approved by Resolution of the Council of Ministers of the Ukrainian SSR and the Ukrainian Republican Council of Trade Unions no. 470 of 11 December 1984 (with further amendments), also contain several provisions of relevance.

37. More specifically, point 44 contains a list of categories of people on housing waiting lists who must be provided with free accommodation as a matter of priority. One such category concerns "people living in dilapidated buildings not subject to major repairs" (§ 14). Furthermore, point 46 (§ 1) reiterates the provisions of Article 46 of the Housing Code (see above).

COMPLAINTS

38. The applicant complained under Article 6 § 1 that the domestic proceedings had been unfair. He also complained under Article 8 of the Convention of a breach of his right to respect for his home. Lastly, the applicant complained under Article 13 of the Convention of a lack of an effective domestic remedy in respect of the above complaints.

THE LAW

A. Article 6 § 1 of the Convention

39. The applicant complained that the civil proceedings brought by him in respect of his entitlement to free accommodation had been unfair. He argued, in particular, that the factual conclusion reached by the Mykolayiv Regional Court of Appeal in its judgment of 5 February 2004 ran contrary to the documentary evidence in the file. More specifically, the applicant maintained that the domestic authorities' decisions of 26 April and 28 June 1996 had established in an unambiguous manner that his house had become uninhabitable as a result of a natural disaster. Accordingly, he went on to state that he was entitled to free accommodation without having to wait on a housing list, pursuant to Article 46 of the Housing Code. The applicant relied on Article 6 § 1 of the Convention, which reads as follows, in so far as relevant:

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

40. The Government contended that the above complaint was to be rejected as being manifestly ill-founded.

41. The applicant contested the Government's submission and maintained his complaint.

42. The Court reiterates that, in principle, it is not its task to substitute itself for the domestic courts. Its duty, in accordance with Article 19 of the Convention, is to ensure observance of the engagements undertaken by the Contracting Parties to the Convention. Given the subsidiary nature of the Convention system, it is not the Court's function to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention and unless that domestic assessment is manifestly arbitrary (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 49, ECHR 2001-II; *Jorgic v. Germany*, no. 74613/01, § 102, ECHR 2007-III; and *Kononov v. Latvia* [GC], no. 36376/04, § 189, ECHR 2010).

43. The Court finds no indication of arbitrariness or bad faith in the domestic courts' factual and legal assessment of the applicant's case. While the applicant maintained that his house had become uninhabitable as a direct consequence of the flood in February 1996, it is clear from the technical survey report of April 1996 (see paragraph 6 above), the veracity of which the applicant has never contested, that his house had been in a very poor condition, and had been in use well over its habitable life prior to the flood. Accordingly, the court's conclusion that the applicant could only claim free accommodation as being on a priority housing list as a person living in an

uninhabitable house, rather than as a victim of a natural disaster entitled to further privileges, was not unreasonable.

44. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Article 8 of the Convention

45. The applicant further complained that the State had failed, for over nineteen years, to provide his family with free accommodation after their house had become uninhabitable as a result of a flood. He submitted that this constituted a breach of his right to respect for his home under Article 8 of the Convention, which reads as follows, in so far as relevant:

> "1. Everyone has the right to respect for ... his home ..."

46. The Government raised several objections as regards the admissibility of this complaint. Firstly, they submitted that the applicant had failed to exhaust domestic remedies, as he had not challenged the documents of 18 and 28 June 1996 (see paragraphs 8 and 9 above), on the basis of which the domestic courts had eventually found against him. Secondly, the Government pointed out that the applicant had unjustifiably relied on the fact that his family had increased in size as an argument in support of his claim for more spacious accommodation. The Government contended that, by doing so, the applicant had abused his right of individual petition and asked the Court to dismiss his Article 8 complaint on that ground. Lastly, the Government maintained that this complaint was to be rejected as manifestly ill-founded given that the applicant had declined two reasonable offers of accommodation.

47. The applicant contested the Government's assertions. He emphasised that, as confirmed by the findings of the domestic authorities, his house had become uninhabitable as a result of a natural disaster. He therefore maintained that Article 46 of the Housing Code was applicable to his situation and that it obliged the State to provide his family with free accommodation without having to wait on any housing lists.

48. The Court notes at the outset that the flood which gave rise to the applicant's claim for free accommodation took place in February 1996, whereas the Convention entered into force for Ukraine on 11 September 1997. Accordingly, even in the absence of any objection in this regard from the Government, the Court considers it necessary to clarify the issue of its temporal jurisdiction in respect of this complaint (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

49. The Court observes that the applicant neither attributed the damage caused to his home by the groundwater flooding to the State nor blamed the authorities for their failure to prevent that damage (see *Kolyadenko and Others v. Russia*, nos. 17423/05 et seq., § 205, 28 February 2012). His

complaint concerns the authorities' continued failure to provide his family with free accommodation thereafter.

50. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the date of ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction, even where they are merely extensions of an already existing situation (see, for example, *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I).

51. Accordingly, the Court is competent to examine the facts of the present case for their compatibility with the Convention only in so far as they occurred after 11 September 1997, the date of entry of the Convention into force for Ukraine. The Court may, however, take account of facts existing prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 147-153, ECHR 2006-VIII).

52. The Court reiterates that while the essential object of Article 8 of the Convention is to protect the individual against arbitrary action by public authorities, there may in addition be positive obligations inherent in effective "respect" for private and family life and these obligations may involve the adoption of measures in the sphere of the relations between individuals (see, for example, *Strzelecka v. Poland* (dec.), no. 14217/10, 2 December 2014).

53. The Court has also held that Article 8 does not guarantee the right to have one's housing problem solved by the authorities nor does it give anyone the right to be provided with a home (see, for example, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 99, 18 January 2001). While it is clearly desirable that every human being should have a place where he or she can live in dignity and which he or she can call home, there are unfortunately many people in the Contracting States who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision (*ibid*). In socio-economic matters such as housing, the margin of appreciation available to the State is necessarily a wide one (see *Strzelecka*, cited above, with further references).

54. Turning to the circumstances of the present case, the Court notes that, according to the applicant, the State was under an obligation to solve his housing problems following the flood which damaged his house in February 1996. Although he provided no description of his living conditions prior to that event, the case file material suggests that they were quite poor. Thus, as indicated in the technical survey report issued in April 1996, the applicant's family had lived in a small house of twenty-three square metres without any amenities (see paragraph 6 above). Furthermore, by the time the

house was flooded, it had been in use for more than fifty years, despite the fact that buildings of that type were supposed to serve as a dwelling for no longer than thirty years.

55. The Court observes that the applicant declined offers of temporary resettlement made to his family on the ground of the poor state of that alternative accommodation. He never submitted that his family was obliged to stay in the flooded house, nor did he provide any information as regards the place of their actual residence or refer to any hardship they might have suffered. His grievance before this Court is about the failure of the State to provide him with free accommodation that was in accordance with his expectations and ahead of others on any waiting lists.

56. The Court further observes that, in addition to offering the applicant at least some housing for temporary resettlement, the authorities included him on a priority housing list. Thus, as of February 2002 he was number 35 on the Mykolayiv Council's housing list. It also appears that he was also included on the general housing list kept by his employer, Equator. Although he had at one time been excluded from those lists, he was put back on them following the judgment of the Court of Appeal of 5 February 2004, upheld by the Supreme Court on 11 April 2006 (see paragraphs 27 and 29 above).

57. The Court has already held that it discerns no indication of arbitrariness in the judicial decisions in question (see paragraph 43 above). Nor does the Court find any indication, in broader terms, that the domestic authorities acted arbitrarily or otherwise exceeded the margin of appreciation afforded to them in the field of State housing regulation (see and compare with *Gayevskiy v. Ukraine* (dec.), no. 60725/00, 11 January 2005).

58. The Court reiterates its previous findings that in issues involving an assessment of priorities in the context of the allocation of limited State resources, the national authorities are in a better position to carry out such an assessment than an international Court (see *O'Reilly and Others v. Ireland* (dec.), no. 54725/00, 28 February 2002; *Sentges v. the Netherlands*, no. 27677/02, 8 July 2003; and *McDonald v. the United Kingdom*, no. 4241/12, § 54, 20 May 2014).

59. Having regard to all the material in its possession, the Court finds that the circumstances of the present case do not disclose any appearance of a failure on the part of the State to comply with its positive obligations under Article 8 of the Convention.

60. It follows that this complaint must also be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. Article 13 of the Convention

61. The applicant also complained under Article 13 that he had had no effective remedy in respect of the above complaints. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

62. The Court reiterates that, according to its case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

63. Having regard to its findings regarding the applicant's complaints under Article 6 § 1 and Article 8 of the Convention (see paragraphs 44 and 60 above), the Court considers that his related complaint under Article 13 of the Convention is without merit for the same reasons and must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 June 2016.

Claudia Westerdiek
Registrar

Angelika Nußberger
President