



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

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FIFTH SECTION

Application no. 33164/20
Valeriy Olegovych RYMSHA
against Ukraine
lodged on 8 July 2020
communicated on 24 August 2026

STATEMENT OF FACTS

The applicant bought a flat from a private party. Domestic courts later found that the flat had been alienated from a previous owner through a fictitious transaction and ordered its return to the previous owner's alleged heir. The applicant considers that the courts' findings and the order requiring the return of the flat breached his rights under Article 6 of the Convention and Article 1 of Protocol No. 1.

A. Background

Originally, the disputed flat was jointly owned by three individuals, including Ms T.G. Following the deaths of all three co-owners between 2012 and 2014, with T.G. being the last to pass away on 7 November 2014, Ms O.G., who claimed to be T.G.'s aunt, applied to a notary to accept T.G.'s estate as her presumptive heir. According to the applicant, the notary refused to recognize O.G. as T.G.'s heir because she failed to provide sufficient evidence establishing their common ancestry. O.G. subsequently discovered that in 2006, the former co-owners had allegedly transferred ownership of the flat to Mr M., through a notarised deed of gift.

O.G. initiated court proceedings concerning the flat, in the course of which a freezing order was imposed on the flat. Those proceedings were later

discontinued, and the freezing order was lifted on 8 April 2015. There is no detailed information in the file concerning those proceedings.

Shortly after the lifting of the freezing order, on 28 April 2015, M. sold the flat to Mr A.T., who on 16 June 2015 in turn sold it to the applicant, at a price lower than the amount he had himself had paid for it.

B. Main proceedings

In October 2015 O.G. brought court proceedings against the applicant seeking restitution of the flat. Under domestic law, this type of claim, commonly referred as a “*rei vindicatio*” claim, is available to an owner seeking to recover property from the unlawful possession of a third party.¹

O.G. claimed that the deed of gift was fraudulent, pointing out that all three original co-owners had continued to live in the flat until their deaths despite having allegedly transferred ownership of it to M. She further contended that the applicant cannot be regarded as a *bona fide* purchaser of the flat since he had acquired the flat from A.T., who had resold it only a few weeks after purchasing it and at a financial loss.

On 21 October 2016 the Odesa Prymorskyi District Court granted O.G.’s claim. In reaching its decision, the court relied on the fact that the deed of gift had never been recorded in any public registers. It also referred to a report from the Ministry of Justice, which supervises notaries, stating that the notarial office that had supposedly certified the deed had been closed in 2007 and examination of its archived records had revealed that no deed of gift had been certified on a relevant day in 2006 and that the transaction number indicated on the deed was, in the notary’s records, used for a different, unrelated, transaction. As to O.G.’s standing, the first-instance court relied on the fact that a probate file opened by a notary in 2014 indicated that in November 2014, Mr P. had applied to inherit T.G.’s estate as her cousin and that in January 2015, O.G. had applied to inherit the estate as her aunt.

The applicant appealed, arguing, in particular, that the alleged fraudulent nature of the deed of gift had never been established. He further contended that O.G. had never been the owner of the flat and therefore lacked standing to lodge a claim for the recovery of the property, such a claim being available under domestic law to the owner.

On 20 June 2017 the Odesa Regional Court of Appeal ruled in the applicant’s favour. It held that there was insufficient evidence to establish that O.G. was T.G.’s aunt, noting that it had not been possible to verify that T.G.’s

¹ Article 388 § 1 (3) of the Civil Code of Ukraine deals with *rei vindicatio* claims (віндикаційний позов) and provides that if the property has been purchased for a price from a person who had no right to alienate it, and the purchaser was unaware and could not have been aware of that (a *bona fide* purchaser), the owner is entitled to recover that property from the purchaser only if the property left the owner’s possession in the absence of intention on her or his part to divest her or himself of it.

father was O.G.’s brother. For that reason, O.G. had been unable to finalise the inheritance procedure. The court considered that the mere reference in the notarial probate file to O.G.’s application to accept the estate, on which the first-instance court had relied, was insufficient. The Court of Appeal also found that it had not been established that the deed of gift was fictitious. On the contrary, the evidence showed that the deed had been executed on genuine specially protected notarial paper.

G.O. lodged an appeal in cassation. On 9 August 2017 the High Specialised Court for Civil and Criminal Matters decided to admit the appeal, initiate cassation proceedings and set a time-limit for the defendants in the proceedings to submit their observations in reply. There is no indication in the file as to whether that decision was served on the applicant. The High Court was subsequently dissolved, and the pending cassation proceedings were transferred to the newly established Supreme Court.

On 26 June 2019 the Supreme Court, sitting *in camera* without summoning the parties, examined and allowed the appeal, quashed the Court of Appeal’s decision and upheld the first-instance judgment. In reaching this conclusion the Supreme Court proceeded from the implicit assumption that O.G. was the deceased owner’s relative and heir, apparently without giving any specific explanation for that finding.

The Supreme Court sent the applicant a copy of its decision on 30 July 2019; however, it was never delivered to him and was returned to the Supreme Court marked “addressee absent”. According to information available in the public Unified Register of Court Decisions, the Supreme Court’s decision was published on 4 July 2019.

The applicant claims that he remained unaware of both the cassation proceedings and the Supreme Court’s decision until “the winter of 2020”, when he was evicted from the flat in question. On 16 March 2020 he requested a copy of the Supreme Court’s decision. However, owing to the COVID-19 quarantine measures, he allegedly did not receive it until 4 June 2020.

C. Other proceedings

In September 2017 O.G. instituted separate proceedings seeking a declaration that she was T.G.’s aunt. Following the Supreme Court’s decision in her favour in the main proceedings, she withdrew that claim.

It appears that a criminal investigation was initiated in relation to the allegedly fictitious transactions concerning the flat. However, there is no further information in the case file regarding those proceedings.

QUESTIONS TO THE PARTIES

1. Has the applicant complied with the time-limit laid down in Article 35 § 1 of the Convention? In particular, did he display appropriate diligence in apprising himself of the text of the Supreme Court's decision (see, for example and *mutatis mutandis*, *Akif Hasanov v. Azerbaijan*, no. 7268/10, § 28, 19 September 2019, *Cassar v. Malta* (dec.), no. 14179/21, § 40, 18 June 2024, *Girginova v. Bulgaria*, no. 4326/18, §§ 77-78, 4 March 2025)?

2. Did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, did the Supreme Court give adequate reasons for its decision, notably for reaching conclusions that differed from those of the Court of Appeal concerning the plaintiff being the diseased owner's aunt and heir and having standing to bring a *rei vindicatio* claim (see *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, §§ 61-64, ECHR 2015, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§ 185 and 187-92, 6 November 2018, with further references)?

3. Did the respondent State comply with its positive obligations under Article 1 of Protocol No. 1 (see, for example and *mutatis mutandis*, *Kanevska v. Ukraine* (dec.), no. 73944/11, § 49, 17 November 2020, *Bilyavska v. Ukraine*, no. 84568/17, § 39, 48, 27 March 2025)?