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

FIFTH SECTION

Application no. 5407/06
Mykola Spyrydonovych KASHCHUK against Ukraine
lodged on 23 January 2006

STATEMENT OF FACTS

The applicant, Mr Mykola Spyrydonovych Kashchuk, is a Ukrainian national, who was born in 1955. His current place of residence is unknown.

A. The circumstances of the case

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

At the time of the events the applicant owned a house in Zaliznychne village in Mykolayiv region, where he lived with his wife and their two daughters (born in 1978 and 1985).

In February 1996 the village suffered considerable groundwater flooding.

On 26 April 1996 the Executive Committee of the Mykolayiv City Council (further referred to as "the Mykolayiv Council") issued an order "On measures for elimination of consequences of the natural disaster in Zaliznychne village". It noted that thirty-seven residential houses in the village remained flooded with groundwater since February 1996. Twenty-seven of those houses were at risk of collapsing. A commission of experts was appointed for evaluation of the situation and elaboration of further measures.

On 18 June 1996 the commission issued a report on the examination of technical condition of thirty-one private residential houses in Zaliznychne village affected by the flooding. It concluded that two houses could still be considered inhabitable if the groundwater level was lowered and if they were repaired. The remaining twenty-nine houses, including that of the applicant, were assessed as "having exhausted their exploitation capacity as a result of the groundwater flooding". The commission noted that the measures for lowering the level of the groundwater had been without success, that the condition of the houses was deteriorating and that they

could collapse at any moment. Its conclusion was that those houses were dilapidated, uninhabitable and should be demolished.

On 28 June 1996 the Mykolayiv Council delivered a decision, by which it approved the aforementioned commission report. It also approved a list of the dilapidated and uninhabitable residential houses, which included that belonging to the applicant. The council recommended that the local authorities dealing with housing issues, together with local enterprises, resettle the persons concerned to dormitories on a temporary basis.

The local authorities further recommended the applicant to address his employer, the plant "Equator", to resolve his housing problem.

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

On 1 June 1999 the "Equator" administration wrote to the applicant, in reply to his request for accommodation, that in January 1998 the housing fund of the plant had been transferred to the Mykolayiv city municipal property, apart from two houses (one of which was in a very poor condition). It was noted in the letter that the applicant had twice refused a flat proposed by his employer.

On 23 June 1999 the applicant replied that the so-called flat, which had been proposed to him, consisted of one room measuring about ten square metres and not having any facilities. He therefore urged the plant administration to confirm it in writing that they were not able to provide his family with appropriate accommodation.

On 14 May 2001 the applicant found out that he was included in the plant's general waiting list at no. 147.

On 27 August 2001 the "Equator" administration moved the applicant from the general to a special waiting list, in which he was placed under no. 36.

On 22 February 2002 the Mykolayiv Council wrote to the applicant that he was no. 35 on its housing waiting list. All the families on that list before him continued to live in uninhabitable conditions, and the applicant had to wait his turn.

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

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

On 9 January 2003 the Zavodskyy District Court of Mykolayiv (further referred to as "the Zavodskyy Court") found against the applicant. It noted that he had inherited some real estate (namely a 16/100 share of a house) in 1990 and that he had not duly informed the authorities about that fact. As a result, the "Equator" administration and the Mykolayiv Council deleted him from their housing waiting lists.

The applicant appealed. He submitted, in particular, that his property in question consisted of 5.6 square metres and could not therefore be regarded as alternative accommodation for his family. In substantiation, he provided a forensic technical expert examination report in that regard. He further emphasised that the court should have based its judgment on the law rather than the decisions of the defendants in his case.

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 in the first instance.

On 24 November 2003 the Zavodskyy Court allowed the applicant's claim in part. It noted that, as it had been established, his house had become uninhabitable as a result of a natural disaster. Accordingly, the court held that the applicant was entitled to free accommodation as a matter of priority, pursuant to Article 46 of the Housing Code. The applicant was also awarded compensation in respect of non-pecuniary damage.

On 5 February 2004 the Court of Appeal quashed the aforementioned judgment following the defendants' appeals and adopted a new one mainly rejecting the applicant's claim. With reference to the decisions of the Mykolayiv Council of 28 June and 30 August 1996, the Court of Appeal noted that the applicant's house had been among those inspected by a technical commission following the flood and that the "Equator" administration had been responsible for resettling his family. Accordingly, the court held that the applicant should be restored to the housing waiting lists, from which he had been removed on 19 September and 20 December 2002. However, 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. It was therefore concluded that Article 46 of the Housing Code was not applicable. Lastly, the court held that restoring the applicant to the waiting list constituted sufficient compensation for his "shallow and insignificant moral sufferings".

The applicant challenged the judgment on points of law. He submitted, in particular, that there were numerous documents in the file establishing in an unambiguous manner that, firstly, there had been a natural disaster, and, secondly, his house had become uninhabitable as a direct consequence of that disaster.

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

B. Relevant domestic law

Article 46 of the Housing Code of Ukraine *(Житловий кодекс України)* provides for categories of persons entitled to free accommodation in an order of priority *(позачергове надання жилих приміщень)*, including "citizens whose dwelling has become uninhabitable as a result of a natural disaster". The Article further stipulates that the persons concerned shall be included in a priority housing list. The Code does not set down any time-limits for the allocation of such dwellings. Its Article 48 stipulates, in particular, that the minimal size of residential premises should comply with applicable standards developed by the Cabinet of Ministers and the Trade

Union Federation. According to Article 50, residential premises should comply with sanitary and technical norms.

COMPLAINTS

The applicant complains under Article 6 of the Convention of unfairness of the civil proceedings brought by him. He alleges, in particular, that the reasoning of the judgment of the Court of Appeal of 5 February 2004 was deficient, denying the well-established facts of the case. He further complains that the Supreme Court ignored his argument in respect of the aforementioned in its ruling of 11 April 2006.

The applicant also complains under Article 8 that the failure of the authorities, for over sixteen years, to provide his family with free accommodation constituted a breach of his right to respect for his home.

Lastly, he complains under Article 13 of the Convention about the lack of effective domestic remedies in respect of his above complaints.

QUESTIONS TO THE PARTIES

1. 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 Mykolayiv Regional Court of Appeal and the Supreme Court give adequate reasons for their decisions of 5 February 2004 and 11 April 2006?

2. Did the State comply with its positive obligations under Article 8 of the Convention as regards the applicant's right to respect for his home?

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