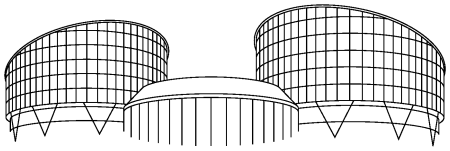

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 54904/08
Petro Yakovych PETLYOVANYY
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 30 September 2014 as a Chamber composed of:

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 31 October 2008,

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

The applicant, Mr Petro Yakovych Petlyovanyy, is a Ukrainian national who was born in 1960 and lives in Kolodribka. He was represented before the Court by Ms I. Petrunko, a lawyer practising in Chernivtsi.

The Ukrainian Government ("the Government") were represented by their then acting Agent, Mr M. Bem, from the Ministry of Justice.

A. The circumstances of the case

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

In December 2006 the applicant made a deposit with a private entity, the Sidney Plus Credit Union ("the Credit Union"), and was subsequently unable to receive his money back.

On 20 April 2007 criminal proceedings were instituted against officials of the above entity for financial fraud and the applicant was recognised in June 2007 as an aggrieved party in those proceedings, being entitled to claim an amount of UAH 55,476.99 (equivalent to EUR 9,124.60).

On 5 May 2008 the Ternopil Regional Commercial Court declared the Credit Union bankrupt.

The founder of the Credit Union, Ms L., was placed on the list of wanted persons.

In February 2008 the applicant lodged a claim with the Zalishchytskyy District Court against the Ministry of Finance and the State Treasury, seeking to recover the losses sustained as a result of the crime under Article 1177 of the Civil Code.

By decision of 25 March 2008 the court rejected the applicant's claim on the ground that a special law laying down the conditions and mechanism for enforcing the provisions of Article 1177 of the Civil Code had not yet been enacted. Furthermore, the court noted that the identity of the person who caused the damage to the applicant had been established but that her whereabouts were unknown, and that the insolvency of the accused person had not been established.

On 22 May and 23 July 2008 respectively the Ternopil Regional Court of Appeal and the Supreme Court upheld the decision of the first-instance court.

B. Relevant domestic law

Civil Code

The Civil Code, which came into force in 2004, lays down different obligations as to compensation in respect of damage. Among others, two articles, namely Article 1177, relied on by the applicant in the domestic proceedings, and Article 1207, provide for the State to compensate the victims of a crime if the offender is not identified or is insolvent. Article 1177 provides as follows:

Article 1177

Compensation for pecuniary damage to natural persons who were victims of a crime

"1. Pecuniary damage caused to the property of a natural person as the result of a crime shall be compensated for by the State if the person who committed the crime is not identified or is insolvent.

2. The conditions and procedure governing compensation for pecuniary damage caused to the property of a natural person who was the victim of a crime shall be established by law."

COMPLAINTS

The applicant complained under Article 13 that the domestic proceedings had been unfair and that the domestic courts had refused his claim for compensation. He further complained under Article 1 of Protocol No. 1 that he had been unable to receive his money back and that the State had not compensated him for the amount in question.

THE LAW

1. The applicant complained that he had not received any compensation for the damage sustained as guaranteed by Article 1177 of the Civil Code. He relied on Article 1 of Protocol No. 1, which read as follows:

> "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.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government maintained that the proprietary interest relied on by the applicant was in the nature of a claim and could not be characterised as an "existing possession". Furthermore, State compensation for damage, as envisaged by Article 1177 of the Civil Code, could be provided exclusively out of State funds; therefore, there was no question of the applicant having an "existing possession".

The Government also noted that the applicant could not have any "legitimate expectation" of receiving compensation in the course of the domestic proceedings. They submitted that a proprietary interest in the nature of a claim could be regarded as an "asset" only where it had a sufficient basis in national law. In that connection they noted that Article 1177 of the Civil Code laid down several conditions which the applicant had not met, given that the alleged perpetrator had been identified and her insolvency had never been established. They concluded that the applicant's complaint under Article 1 of Protocol No. 1 was incompatible *ratione materiae*. They further submitted in the alternative that this complaint was incompatible *ratione personae*, as the applicant's property rights were not involved and therefore he could not claim to be a victim of the alleged violation.

The applicant made no observations in reply.

The Court reiterates that Article 1 of Protocol No. 1 protects "possessions", which can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least

a "legitimate expectation" of obtaining effective enjoyment of a property right. In particular, this provision does not guarantee the right to acquire property (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 61, ECHR 2007-I, and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). Where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I, and *Kopecký*, cited above, § 52). No legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50).

Further, in order to create a legitimate expectation, the legal provision relied upon must determine the necessary rules for a claim. If the legal conditions to be met and the other parameters of a claim are not clearly defined, the legal provision in question cannot be said to serve as a basis for a legitimate expectation (see *Klaus and Iouri Kiladze v. Georgia*, no. 7975/06, §§ 58-60, 2 February 2010). At the same time, in a situation where the lack of a procedure governing the payment of compensation was the only obstacle to a person's otherwise clear entitlement to a particular type of compensation under the law, the Court considered that such person could be said to have a claim sufficiently established to be enforceable and could validly claim its recovery against the State (ibid., §§ 64-68; see also *Budchenko v. Ukraine*, no. 38677/06, §§ 37-46, 24 April 2014).

The Court notes that under the Civil Code the issue of State compensation for the victims of crime is provided in such a way that any claim for such compensation is conditional, those conditions being partly set forth in the first paragraph of Article 1177, which contains the words "if the person who committed the crime is not identified or is insolvent". Further conditions are to be established by a separate law which has not been enacted to date. That law should also introduce a procedure for awarding and paying such compensation. It is clearly apparent from these provisions that entitlement to compensation from the State to victims of crime under the above article of the Code was never intended to be unconditional. Furthermore, the domestic courts have confirmed that in the absence of a law setting forth such conditions no right to compensation can arise under Article 1177 taken alone (compare *Klaus and Iouri Kiladze*, cited above, §§ 58-60). In addition to this in the present case, as the domestic courts observed, the conditions set forth in the first paragraph of Article 1177 were not met by the applicant either.

As the applicant did not have a sufficiently established claim to compensation for the purposes of Article 1 of Protocol No. 1, he cannot argue that he had a "legitimate expectation" of obtaining any specific sums. It

follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. The applicant complained under Article 13 of the Convention about the outcome of the domestic proceedings. This complaint, in substance, falls under Article 6 § 1 of the Convention. As regards this complaint the Court notes that it is not its task to act as a court of appeal or, as is sometimes stated, as a court of fourth instance, in respect of the decisions taken by the domestic courts (see *Melnychuk v. Ukraine* (dec.), no. 28743/03, ECHR 2005-IX).

In the light of the material in its possession and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must be declared inadmissible 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.

Claudia Westerdiek
Registrar

Mark Villiger
President