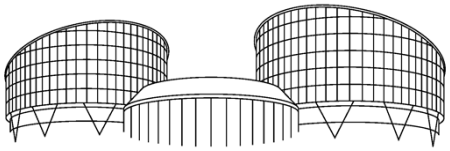

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF SAFONOV AND SAFONOVA v. UKRAINE

*(Application no. 24391/10)*

JUDGMENT

| Art 6 § 1 (civil) • Non-enforcement of final judgments concerning property rights over a flat • Enforcement of a non-pecuniary order possibly requiring more time than pecuniary awards • Non-enforcement for over four years not justified • Art 13 (+ 6 § 1) • Lack of effective remedy for non-enforcement complaint |
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STRASBOURG

18 June 2020

**FINAL**

18/09/2020

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Safonov and Safonova v. Ukraine,**

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Lətif Hüseynov,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having regard to:

the application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Eduard Yuryevich Safonov and Ms Natalya Olegovna Safonova ("the applicants"), on 19 April 2010;

the decision of 8 October 2018 to give notice to the Ukrainian Government ("the Government") of the applicants' complaints concerning non-enforcement of the final decisions in their favour, the length of proceedings and the lack of effective remedies in this respect, as well as of a breach of their property rights over a flat and a building, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 26 May 2020;

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

# INTRODUCTION

The present case concerns the applicants' property dispute with the local authorities and private companies over a flat and a building and the non-enforcement of final court decisions given in the applicants' favour. The applicants invoke Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1.

# THE FACTS

1. The applicants were born in 1973 and 1976 respectively. They currently live in Moscow.

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

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

## I. FIRST SET OF PROCEEDINGS

4. In June 2001 the applicants instituted proceedings in the Yalta Court against the Yalta Town Council ("the Council"), seeking to declare as "suitable for living" a building (a former dormitory) at 39 "г" Kirova Street in Yalta ("the building") in which they had been residing since 1982 and which, according to them, was owned by no one. They also invited the court to order the Council to transfer the building to municipal ownership and to issue them with a document permitting them to dwell in it (*ордер на квартиру*).

5. On 19 September 2001 the court allowed that claim. On 18 February 2002 the Court of Appeal of the Autonomous Republic of Crimea ("the ARC Court of Appeal") upheld the judgment.

6. On 24 January 2003 the Yalta Town Executive Committee ("the Committee") gave a decision authorising the applicants to reside in flat no. 2 ("the flat") in the aforementioned building.

7. On 5 October 2004, in accordance with a decision given by the same Committee, the applicants and their son became the owners of the flat and they were issued with the relevant privatisation certificates.

8. On 6 October 2004 the Yalta Technical Inventory Bureau ("the Inventory Bureau") registered the applicants' property rights over the flat.

9. On 7 September 2005 the Council excluded the building from municipal ownership as the flats had been privatised by their residents. It also transferred the building to the joint private ownership of the applicants and of the owners of the building's other flats.

10. On an unspecified date the Company "Sanatoriy im. Kirova Ltd" ("Company 1") requested the Yalta Court to reopen the proceedings and review the judgment of 19 September 2001 under newly-discovered circumstances. It claimed to be the owner of the building.

11. On 18 November 2005 the court allowed the request, quashed the judgment of 19 September 2001 and reopened the proceedings. In the course of the proceedings Company 1 submitted a counter-claim seeking to annul the decisions of 24 January 2003 and 7 September 2005, invalidate the applicants' property certificates over the flat and evict them.

12. On 15 May 2007 the court rejected the applicants' and Company 1's claims. It found that the applicants had valid property title to the flat and their claim of June 2001 against the Council was therefore groundless. It further found no evidence to conclude that the building had belonged to Company 1.

13. On 15 October 2007 the ARC Court of Appeal quashed the above-mentioned judgment, rejected the applicants' claim and partly allowed that of Company 1. It annulled the decisions of 24 January 2003 and 7 September 2005, invalidated the applicants' documents of title to the flat

and ordered the Inventory Bureau to register Company 1 as the owner of the building. Company 1's claim for the applicants' eviction was rejected.

14. The applicants appealed on points of law. In the meantime, Company 1 had registered its property rights over the building, and on 17 January 2008 had sold it to the Company "Topaz-K Ltd" ("Company 2"), but had failed to have the sale contract certified by a notary.

15. On 9 April 2008 the Supreme Court quashed the judgment of 15 October 2007 and sent the case for re-examination to the ARC Court of Appeal, which on 10 November 2008 upheld the judgment of 15 May 2007.

16. On 29 January 2009 the applicants applied to the Yalta Court to reverse execution of the judgment of 15 October 2007.

17. On 17 June 2009 the Supreme Court upheld the judgments of 15 May 2007 and 10 November 2008. Shortly thereafter, on 16 September 2009, Company 2 sold the building to the Company "Selbilliar Ltd" ("Company 3").

18. On 4 November 2009 the Yalta Court reversed the execution of the judgment of 15 October 2007 and ordered the Inventory Bureau to register the applicants' property rights to the flat. This judgment became final on 12 November 2009, but remained unexecuted.

19. On 20 January 2010 the Inventory Bureau informed the applicants that it was impossible to enforce the above judgment and to register their property rights over the flat, as that flat, as well as others in the building, had already been registered as the property of Company 3 on the basis of the sale contract of 16 September 2009.

## II. SECOND SET OF PROCEEDINGS

20. On an unspecified date the applicants instituted administrative proceedings in the Yalta Court, challenging the Inventory Bureau's failure to restore their registration as the owners of the flat.

21. On 16 February 2010 the court found for the applicants and ordered the Inventory Bureau to renew the registration of their property rights over the flat. In doing so, the court noted that Company 3 was registered as the owner of the building but not of the flat, which was a separate object of immovable property belonging to the applicants.

22. On 22 November 2010 the Sevastopol Administrative Court of Appeal upheld this judgment, which thus became final but remained unexecuted.

## III. THIRD SET OF PROCEEDINGS

23. On an unspecified date Company 2 instituted court proceedings against Company 1, seeking validation of the sale contract of 17 January

2008 (see paragraph 14 above) and the acknowledgment of its property rights over the building.

24. On 21 May 2009 the ARC Commercial Court allowed Company 2's claim and declared that Company 2 was the owner of the building.

25. On 11 September 2009 the Inventory Bureau registered Company 2 as the owner of the building.

26. On 22 February 2010 the Higher Commercial Court quashed the judgment of 21 May 2009 and referred the case back for re-examination.

27. On 3 March 2010 Company 3, which had bought the building from Company 2 on 16 September 2009, sold it to the Company "High Tech Group Ltd" ("Company 4"). On 2 April 2010 Company 4 registered its title to the building in the State registry.

28. On 7 June 2010 the ARC Commercial Court terminated the proceedings as Companies 1 and 2 had ceased to exist.

## IV. FOURTH SET OF PROCEEDINGS

29. In March 2010 the applicants lodged a claim with the Yalta Court against Companies 2-4 and the Inventory Bureau, seeking the invalidation of the sale contracts of 16 September 2009 and 3 March 2010 (see paragraphs 17 and 27 above), confirmation of their property rights to the flat, restitution of the building from Company 4 and compensation for non-pecuniary damage. They stated that pursuant to the valid decision of 7 September 2005 (see paragraph 9 above), they had owned the building jointly with the other owners of flats in it. They further alleged that the building had been sold together with the flats in it, including their own (see paragraph 27 above).

30. On 14 April 2011 the court partly allowed the claim, invalidated the sale contracts at issue and ordered the defendants to pay non-pecuniary damages to the applicants. It found that the flat had been unlawfully included in those contracts. Having further noted that the applicants' property title to the flat and the building had been confirmed by the relevant certificates issued by the Council, which had been valid, and that the applicants were still "using" the building, it found no need to reconfirm their property rights and dismissed the remainder of their claims.

31. On 4 July 2011 the ARC Court of Appeal quashed this judgment. It held that since there had been no evidence that the applicants' property rights to the flat had been breached and they continued living in it, their claim for the protection of the right that had not been breached could not be allowed. In particular, it referred to the judgment of 16 February 2010 (see paragraph 21 above), which established that Company 3 had registered its property title to the building but not to the flat.

32. On 25 October 2011 the Higher Specialised Civil and Criminal Court ("the HSC") upheld the judgment of 4 July 2011.

33. On 25 April 2012 the Supreme Court quashed the judgment of 25 October 2011 and referred the case back to the HSC for re-examination. It upheld the lower courts' findings that the applicants owned their flat, lived in it and did not therefore require its restitution from Company 4. However, their claim also concerned their property rights over the building, which they had jointly owned pursuant to the decision of 7 September 2005, but the lower courts had disregarded that aspect of the claim.

34. On 14 November 2012 the HSC quashed the judgment of 4 July 2011 and sent the case to the ARC Court of Appeal for a new examination.

35. On 6 February 2013, following a request from Company 4, the latter court suspended the proceedings until a final decision was delivered in the fifth set of proceedings (see paragraphs 38-41 below).

36. The applicants appealed against the ruling of 6 February 2013 to the HSC, which on 1 March 2013 opened the cassation proceedings. They did not inform the Court of the outcome of the fourth set of proceedings.

37. With reference to the Law of 15 April 2014 on protection of the rights and freedoms of citizens and legal regime of the temporarily occupied territory of Ukraine ("the 2014 Law"), the Government stated that it was for the Kyiv Court of Appeal to determine a court to examine cases normally examined by the courts located on the temporarily occupied territories. However, the applicants had not applied to that court for the resumption of the proceedings after the final decision had been delivered in the fifth set of proceedings (see paragraph 41 below). The Government submitted the above-mentioned court's letter, which stated that it had not examined the issue of determination of the court in the applicants' case.

## V. FIFTH SET OF PROCEEDINGS

38. On an unspecified date Company 4 instituted court proceedings against the Council and the Inventory Bureau, seeking to declare unlawful and invalid a decision of the Council of 16 January 2004 whereby the property of the Kirova sanatorium to which the building had allegedly belonged was transferred to the communal property of Yalta. It also requested that the Inventory Bureau refrain from making any change in the registration titles of the building. The applicants were involved as third parties in the proceedings.

39. On 26 March 2013 the ARC Administrative Court partly allowed Company 4's claim and invalidated the decision of 16 January 2004 as unlawful. It also held in the same judgment that the question of the property title to the building was not the subject of examination in this case and that it would not therefore make any legal assessment of that question.

40. On 30 May 2013, following the appeals by the Council and another third party, the Sevastopol Administrative Court of Appeal quashed the judgment of 26 March 2013 and rejected Company 4's claim.

41. According to the Government (no copy of the relevant decision was provided), on 2 April 2014 the Higher Administrative Court quashed the judgment of 30 May 2013 and upheld the judgment of 26 March 2013.

## RELEVANT LEGAL FRAMEWORK

42. Article 331 of the Civil Code (2004) provides that property rights to real estate emerge from the moment of their State registration. Section 3 and the final provisions of the State Registration of Real Property Rights Act (2004) further provided at the material time that the State registration of property rights to real estate was carried out by technical inventory bureaus.

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENTS OF 4 NOVEMBER 2009 AND 16 FEBRUARY 2010 AND THE ALLEGED LACK OF EFFECTIVE REMEDIES

43. The applicants complained under Articles 6 § 1 and 13 of the Convention and under Article 1 of Protocol No. 1 about the failure to execute the judgments of 4 November 2009 and 16 February 2010, which concerned the registration of their property rights to the flat, and the alleged lack of effective remedies in this regard.

44. The Court considers that these complaints fall to be examined under Articles 6 § 1 and 13 of the Convention, which read, in so far as relevant, as follows:

**Article 6 § 1**

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

**Article 13**

"Everyone whose rights and freedoms as set forth in this 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."

#### A. The parties' submissions

45. The applicants stated that they maintained their application.

46. The Government submitted that at the material time Company 1 had lawfully obtained its title to the building and had lawfully sold it to Company 2, which had then lawfully sold it to Company 3. Therefore, when

the above judgments had become final, the Inventory Bureau had been unable to enforce them. Their enforcement would have led to a breach of the property rights of Companies 3 or 4, depending on the time of enforcement. In the Government's view, therefore, there had been no breach of Article 6 and the complaint under Article 13 was incompatible *ratione materiae* with the provisions of the Convention.

## B. The Court's assessment

### *1. Admissibility*

47. The Court observes at the outset that the main facts, as submitted by the parties, concern the period 2001-2013 and also notes that the applicants have not informed it of any fact or made any specific complaints in relation to further developments. In these circumstances, the Court considers that the applicants' complaints are limited to the aforementioned period and finds it unnecessary to examine the question whether Ukraine continued to have jurisdiction within the meaning of Article 1 of the Convention with respect to the matters complained of following the events in Crimea in 2014.

48. The Court further notes that the above-mentioned complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

### *2. Merits*

#### (a) Article 6 § 1

49. The Court observes that under Ukrainian law, as applicable at the material time, the State registration of property rights to real estate with the inventory bureaus was a constitutive element for the emergence of such rights (see paragraph 42 above). Therefore, the proceedings leading to the final and enforceable judgments of 4 November 2009 and 16 February 2010, which ordered the Inventory Bureau to register the applicants' property rights over the flat, concerned the applicants' civil rights. Article 6 was therefore applicable.

50. The Court reiterates that according to its extensive case-law the execution of a judgment given by a court must be regarded as an integral part of a "trial" for the purposes of Article 6 (see, among many other authorities, *Hornsby v. Greece*, 19 March 1997, § 40, Reports of Judgments and Decisions 1997-II) and that an unreasonably long delay on the part of the domestic authorities in enforcing a judgment given against them constitutes, as a general rule, a breach of that provision (see, among many other authorities, *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 53-54, 15 October 2009).

51. The Court further notes that in the case of *Burmych and Others v. Ukraine* ((striking out) [GC], nos. 46852/13 and others, § 215, 12 October 2017 (extracts)) it struck a category of non-enforcement cases against Ukraine out of its list of cases and transmitted them for processing to the Committee of Ministers of the Council of Europe. Those cases concerned pecuniary debts which remained unenforced due to a number of factors disclosing structural problems persisting in Ukraine (see *Yuriy Nikolayevich Ivanov*, cited above, § 84). However, unlike those cases, the present case concerns the non-enforcement by a State body of judgments ordering it to undertake administrative registrations, that is not related to the above systemic problems and thus requires a continued examination. The Court is mindful of the fact that the enforcement of judgments which incorporate rulings of a non-pecuniary nature may sometimes take more time than is the case for the payment of money awarded under a court judgment (see, for instance, *Tonyuk v. Ukraine*, no. 6948/07, §§ 38 and 40, 1 June 2017, and the references therein). However, in the present case it does not find any fact or argument that would justify the failure to enforce the final judgments of 4 November 2009 and 16 February 2010 for a period of over four years (until the last relevant events communicated to the Court by the parties).

52. As regards the Government's arguments that the enforcement of the judgments of 4 November 2009 and 16 February 2010 would have led to a breach of the property rights of Companies 3 or 4, the Court rejects them for the following reasons. It notes that on 20 January 2010 (see paragraph 19 above) the Inventory Bureau informed the applicants that it could not enforce the judgment of 4 November 2009 and register their property rights over the flat because it had already been registered as the property of Company 3. However, in the subsequent final judgment of 16 February 2010 the Yalta Court repeatedly ordered the Inventory Bureau to register the applicants' property rights over the flat. It stated that Company 3 was registered as the owner of the building but not of the flat, which was a separate object of immovable property and belonged to the applicants (see paragraph 21 above). Lastly, the case file does not contain any document from the Inventory Bureau informing the applicants that it had been unable to enforce the judgments at issue owing to the alleged breach of Company 4's rights. Nor does it contain any valid court decision confirming Company 4's title to the flat. On the contrary, on 25 April 2012 the Supreme Court confirmed the lower courts' findings that the applicants – and not Company 4 – owned their flat (see paragraph 33 above). The Court thus fails to see how the enforcement of the judgments of 4 November 2009 and 16 February 2010 would have breached the rights of Company 4.

53. In view of the above considerations and having regard to its case-law on the matter (see paragraph 50 above), the Court concludes that there has been a breach of Article 6 § 1 of the Convention on account of the non-enforcement of the judgments at issue.

**(b) Article 13**

54. The Court first notes that it found a breach of Article 6 § 1 of the Convention on account of the non-enforcement of the judgments of 4 November 2009 and 16 February 2010 (see paragraphs 49-53 above). The applicants' complaint under Article 13 raised in this respect is therefore "arguable" for the purposes of the Convention and must therefore likewise be declared admissible.

55. It further notes that neither its well-established case law (see, among many other authorities, *Voytenko v. Ukraine,* no. 18966/02, § 48, 29 June 2004; *Sylenok and Tekhnoservis-Plyus v. Ukraine*, no. 20988/02, § 89, 9 December 2010; and *Mikhno v. Ukraine*, no. 32514/12, 1 September 2016) nor any fact or argument suggest that the applicants had any effective remedies for their non-enforcement complaints. The Court thus concludes that the applicants did not have such remedies, in breach of Article 13 of the Convention, taken in conjunction with Article 6 § 1 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

56. The applicants also complained of violations of Articles 6 § 1 and 13 of the Convention and of Article 1 of Protocol No. 1 regarding the length of the fourth set of proceedings, the alleged lack of effective remedies in that regard and the alleged general breach of their property rights.

57. The Court considers that the main issue at the heart of the applicants' complaint, specifically the non-enforcement of the judgments of 4 November 2009 and 16 February 2010 and the lack of effective remedies in this respect (see paragraphs 49-55 above), have been examined by the Court and that it is not necessary to give a separate ruling on the admissibility and merits of the allegations mentioned in the preceding paragraph (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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."

### A. Damage

59. The applicants claimed 46,426 euros (EUR) in respect of non-pecuniary damage.

60. The Government contested that claim.

61. The Court considers it reasonable and equitable to award the applicants jointly EUR 2,000 in non-pecuniary damage for the non-enforcement of the final judgments in their favour and the lack of effective domestic remedies in that regard.

### B. Costs and expenses

62. The applicants made no claim under this head.

63. Accordingly, there is no call for an award in this respect.

### C. Default interest

64. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 § 1 of the Convention about the non-enforcement of the judgments of 4 November 2009 and 16 February 2010, and under Article 13 of the Convention about the lack of effective domestic remedies in this regard, admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-enforcement of the aforementioned judgments;

3. *Holds* that there has been a violation of Article 13 of the Convention, taken in conjunction with the above-mentioned complaint under Article 6 § 1;

4. *Holds* that there is no need to examine the admissibility and merits of the remainder of the applicants' complaints;

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Victor Soloveytchik | Síofra O'Leary |
| Deputy Registrar | President |