



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

FIFTH SECTION

CASE OF RYSOVSKYY v. UKRAINE

(Application no. 29979/04)

JUDGMENT

STRASBOURG

20 October 2011

FINAL

20/01/2012

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

In the case of Rysovskyy v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 29979/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Ivan Grygorovych Rysovskyy (“the applicant”), on 7 August 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged that the authorities had unjustifiably failed to enforce a court judgment in his favour and interfered with his ability to enjoy possession of a plot of land and that there were no effective remedies for those complaints.

4. On 16 November 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Zubry village, Pustomytsky District, Lvivska Region.

6. On 11 May 1992 the Pustomytsky District Council (hereafter “the District Council”) withheld from “L.”, an agricultural company, a plot of

land to transfer it to individual farmers for permanent use (hereafter “the 1992 decision”). A four-hectare part of this plot in the administrative ownership of Zubry village was allocated to the applicant.

7. On 27 April 1993 the applicant was issued with a Land Use Act (*Державний акт на право користування землею*) in his name as a physical person registering his permanent right to use this plot for farming.

A. Non-enforcement of the judgment of 10 March 1994

8. On an unspecified date the applicant complained to the Lviv Regional Arbitration Court that the Zubry Village Council (hereafter “the Village Council”) had refused to allocate to his farm in kind the plot of land to which he had been entitled under the Land Use Act.

9. On 10 March 1994 the above court ordered the Village Council to allocate the plot to the applicant’s farm by 10 April 1994.

10. This judgment (hereafter “the 1994 court judgment”), which was rectified in 1996, became final and enforcement proceedings were instituted in its respect. On numerous occasions the bailiffs approached the Village Council seeking allocation of the plot. However, the latter refused, insisting that the community had no land for distribution and that all available plots were lawfully occupied by other parties.

11. On 4 October 2000 the Village Council took an official decision refusing to allocate the land to the applicant’s farm, stating that there were no available plots.

12. On 1 March 2001 the Lviv Regional Arbitration Court revoked this decision as unlawful, finding that the previous judgment confirming the applicant’s farm’s right to a plot of land had never been challenged in accordance with applicable procedures and so had remained in force and subject to execution.

13. On an unspecified date the bailiffs destroyed the enforcement order and discontinued the enforcement proceedings.

14. On 6 March 2008 the applicant, acting on behalf of his farm, instituted proceedings against the bailiffs, complaining about their failure to ensure enforcement of the 1994 court judgment and seeking a renewal of the enforcement proceedings.

15. On 27 May 2008 the Lviv Regional Commercial (former Arbitration) Court allowed his claim in part. It noted that the 1994 court judgment had never been revoked and remained in force at the material time. It further found that the failure of the bailiffs to enforce the judgment at issue and destruction of the enforcement order issued by the court was not lawful.

16. On 9 March 2010 the Lviv Commercial Court of Appeal upheld this decision, having added to its operational part that the applicant’s demand for reopening of the enforcement proceedings should be rejected.

17. The parties did not inform the Court as to whether there had been any further appeals against this decision.

B. Revocation of the 1992 decision

18. On 25 November 1998 the Pustomytsky District Prosecutor lodged a protest against the 1992 decision allocating the land to the applicant.

19. On 4 December 1998 the District Council revoked the decision at issue following this intervention and requested the prosecutor to initiate proceedings for revocation of the applicant's Land Use Act and registration as a farmer. The Council noted, in particular, that the land at issue should have been distributed among the employees of "L.", which the applicant was not. It also noted that the plot had been allocated to the applicant without a proper preliminary land survey and before he had been duly registered as a farmer.

20. The applicant appealed against this decision before the Lviv Regional Arbitration Court.

21. On 4 February 1999 the court ruled for the applicant. It found that the District Council had no authority to interfere with the applicant's use of the land, unless this use were found to be unlawful according to the procedure established by section 49 of the Property Act. It further noted that the reasons cited by the Council in justification of the revocation of the decision did not constitute a valid ground for divesting him of the possession of the plot. According to the case file materials this decision was not appealed against and became final.

22. On 14 June 1999 the President of the Lviv Regional Arbitration Court reviewed the decision by way of supervisory review following the defendant's request and found the previous decision lawful.

23. On 1 December 1999 the Higher Arbitration Court revoked these decisions and remitted the case for fresh consideration.

24. On 20 April 2000 the Lviv Regional Arbitration Court found that the defendant had acted contrary to section 59 of the Self-Governance Act in revoking its 1992 decision and found that revocation unlawful. It appears from the case file materials that this decision was not appealed against and became final.

25. On 12 July 2000 the Deputy President of the Lviv Regional Arbitration Court reviewed the decision by way of supervisory review at the defendant's request and upheld the previous decision.

26. On an unspecified date the above decisions were revoked and the proceedings reopened.

27. On 19 December 2002 the Lviv Regional Commercial (former Arbitration) Court rejected the applicant's claim. It noted that on 28 January 1992 the Pustomytsky District Council had decided that the land withheld from "L." for distribution to individual farmers would be allocated to its

(former) employees in accordance with Article 7 of the Farming Act and Article 5 of the Land Code in force at the material time. As the applicant had not been employed by “L.”, he had not been eligible to obtain a plot from the land at issue. The court further noted that the extra-judicial procedure by which the Council’s decision had been revoked was lawful, as the Prosecutors’ Office Act entitled prosecutors to lodge objections to unlawful decisions of various entities, obliging them to review them and remove their shortcomings where necessary. As regards the Council’s request for the prosecutor to initiate proceedings for revocation of the Land Use Act and the applicant’s registration as a farmer, these were recommendations only and did not as such have any bearing on the applicant’s rights. On 15 May 2003 the Lviv Regional Commercial Court of Appeal upheld this decision.

28. The applicant appealed in cassation, alleging that revocation of the decision of 11 May 1992 was contrary to the applicable provisions of substantive and procedural law. In particular, this revocation had resulted in the applicant’s being *de facto* deprived of a plot of land on grounds not foreseen in the applicable legislation and in violation of due process provisions, requiring judicial proceedings for a decision on that deprivation.

29. On 14 January 2004 the Higher Commercial Court upheld the previous judgments, noting that the applicant had never submitted a proper application for allocation of the land and that as he had never worked for “L.” there had been no grounds to add him to the list of persons entitled to obtain its former land in the first place. In the light of the above there was no reason to conclude either that the prosecutor had wrongfully objected to the 1992 decision or that the District Council had wrongfully revoked it in response to this objection.

30. On 15 April 2004 the Supreme Court of Ukraine refused the applicant leave to make a further appeal in cassation.

31. Subsequently the applicant attempted unsuccessfully to have the proceedings reopened and the judgment of 19 December 2002 reviewed.

32. It is not clear from the case file materials whether the validity of the applicant’s Land Use Act was ever reviewed by the domestic judicial authorities.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine of 1996

33. Article 144 of the Constitution of Ukraine reads as follows:

Article 144

“Bodies of local self-government, within the limits of authority determined by law, adopt decisions that are mandatory for execution throughout the respective territory.

Decisions of bodies of local self-government which do not conform with the Constitution or the laws of Ukraine are suspended by the procedure established by law with a simultaneous appeal to a court.”

B. Land Code of Ukraine of 18 December 1990 (repealed on 1 January 2002 following the entry into force of the Land Code of Ukraine of 25 October 2001)

34. Relevant provision of the Code read as follows:

Article 23. Documents certifying rights to a plot of land

“Right of ownership or right of permanent use of land shall be certified by State acts, which shall be issued and registered by village, town, city or district councils of people’s deputies ...”

C. Property Act (no. 697-XII of 7 February 1991, repealed on 20 June 2007)

35. Relevant provisions of the Act read as follows:

Section 48

“ ...

3. Protection of property rights shall be effected by a court, arbitration court or mediation court. ...

5. Provisions concerning protection of property right shall also pertain to a person, who, although not an owner, possesses a property as ... a permanent heritable possession or on other grounds, listed in a law or a contract. This person shall be entitled to protection of her right of possession from the owner as well.”

Section 49. Lawfulness of possession

“Possession shall be deemed lawful unless established otherwise by the court, the arbitration court or the mediation court.”

Section 51. Protection of land ownership

“1. A citizen may not be deprived of ownership of a plot of land against his will otherwise than on the basis of a court decision on grounds established by legal acts of Ukraine. ...”

D. Peasant Husbandry (Farming) Act (no. 2009-XII of 20 December 1991, repealed on 1 August 2003 following the entry into force of the Farming Act of 19 June 2003)

36. According to section 2 of the Act, a ‘farm’ could consist of a single founder or of a family (including extended family) farming the land together. The State Land Ownership or Land Use Act was to be issued in the name of the head of the farm.

37. According to section 5 of the Act, plots of land for farming use were to be allocated to the citizens from reserve lands or lands withheld from agricultural companies and transferred to farmers for permanent heritable use, leased, or transferred as private property.

38. According to section 7, members of collective farms and other agricultural cooperatives and employees of agricultural companies wishing to become farmers were entitled to obtain plots equivalent to the size of their share in the collective farm (cooperative, company) upon a decision of the relevant local council. These lands were to be allocated from the lands withheld from the relevant farm (cooperative, company) or from reserve lands.

39. According to section 17, members of the farm managed its property by mutual consent.

E. Local Self-governance Act (no. 280/97-BP of 21 May 1997)

40. Relevant provisions of the Act read as follows:

Section 59

“ ...

10. Acts of bodies and officials of local self-governance which are incompatible with the Constitution or laws of Ukraine shall be declared unlawful by means of judicial proceedings. ...”

F. The Prosecutors’ Office Act (no. 1789-XII of 5 November 1991)

41. According to Articles 20 § 2 and 21 of the Act, the prosecutors are authorised to object (lodge “*protests*”) to acts of local councils which in their opinion are unlawful. Introduction of a *protest* suspends the act at issue

and obliges the council to examine it within ten days and report to the prosecutor. The council may refuse the *protest*, in which case the prosecutor may seek revocation of the act by way of judicial proceedings.

G. Ruling of the Constitutional Court of Ukraine no. 7-пн/2009 of 16 April 2009 (case concerning revocation of acts of bodies of local self-governance)

42. The relevant part of the Ruling reads as follows:

“... The Constitutional Court of Ukraine notes that the Constitution of Ukraine includes a principle pursuant to which human rights and freedoms and their guarantees shall determine the content and direction of activity of the State, which is answerable to humans for its actions (Article 3). Bodies of local self-governance shall be answerable for their actions to legal and physical persons (Article 74 of the [Local Self-Governance Act]). Consequently, bodies of local self-governance may not revoke their previous decisions or amend them if, according to the prescriptions of these decisions, legal relations have emerged which are connected with the realisation of certain subjective rights and lawful interests and where the subjects of those legal relations are against their modification or termination. This is a “guarantee of stability of social interaction” between bodies of local self-governance and citizens, fostering the citizens’ certainty that their situation will not be negatively affected by adoption of a later decision...”

Non-normative legal acts of a body of local self-governance shall be acts of single use; they shall exhaust their force by the fact that they have once been enforced; they may therefore not be revoked or amended by the body of local self-governance upon their enforcement...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

43. The applicant complained that the prolonged non-enforcement of the 1994 court judgment obliging the Village Council to allocate in kind a plot of land for his farm had been in breach of Article 6 § 1 of the Convention. This provision, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

A. Admissibility

44. The Government submitted that this complaint was incompatible *ratione personae* with the above provision, since it was the applicant's farm and not himself personally who had acted as a party to the proceedings at issue. These proceedings had therefore not concerned the determination of the applicant's civil rights and obligations.

45. The applicant generally disagreed.

46. The Court notes that the term "victim" in Article 34 of the Convention denotes a person directly affected by the act or omission which is at issue (see, for example, *Savenko v. Russia*, no. 28639/03, § 25, 14 June 2007). The Court next reiterates that personalities of a shareholder, who did not formally participate in the proceedings, and the company concerned which did, have been generally recognised as dissociable from one another for the purposes of determining the applicant's victim status under Article 6 of the Convention (*ibid*). On the other hand, where the company which participated in domestic proceedings had a sole owner, the Court has recognised this owner's standing to bring a complaint under Article 6 in his or her personal capacity, having acknowledged a close connection between the applicant's personality as an individual and a company owner (see, for example, *Furman v. Russia*, no. 5945/04, § 19, 5 April 2007; *Graberska v. "the former Yugoslav Republic of Macedonia"*, no. 6924/03, § 41, 14 June 2007; and *Humbatov v. Azerbaijan*, no. 13652/06, § 21, 3 December 2009). A similar conclusion was made where the application was brought in their individual names by all purported members of a cooperative which was a party to domestic proceedings (see *Jafarli and Others v. Azerbaijan*, no. 36079/06, §§ 40-41, 29 July 2010).

47. Turning to the facts of the present case, the Court notes that the 1994 court judgment award was formally given in the name of the applicant's farm and not that of the applicant in his individual capacity. It further observes that, according to the Farming Act in force at the material time, the applicant could have owned his farm either individually or jointly with his family members (see paragraph 36 above). It is, however, unclear from the case file materials whether members of his family were engaged in his farm as its official members. On the other hand, even assuming that the applicant was not the sole owner of his farm, according to applicable law the farm property was to be managed by all the members' mutual consent (see paragraph 39 above). Further, it is notable that the applicant alone acted on behalf of the farm in all interactions with the authorities, while the other farm members (if any) never disputed his position. Finally, he was granted the disputed land in 1992 in his own name as an individual and he also obtained the Land Use Act in his own name.

48. In these circumstances it would be artificial to conclude that the proceedings as a result of which the applicant's farm's right to obtain a plot

of land was confirmed were not determinative of the applicant's civil rights and obligations. The applicant can accordingly claim to be a victim of the non-enforcement of the 1994 court judgment. The Government's objection should therefore be dismissed.

49. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

50. The Government have not provided any comments on the merits of the applicant's complaint.

51. The applicant alleged that the non-enforcement of the 1994 court judgment breached his rights under Article 6 § 1 of the Convention.

52. The Court reiterates at the outset that according to its extensive case-law, execution of a final judgment given by a court is regarded as an integral part of the "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 *Humbatov*, cited above, § 28) and that a prolonged failure of the domestic authorities to enforce a judgment given against them constitutes, as a general rule, a breach of this provision (see, among many other authorities, *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 53-54, ECHR 2009-... (extracts)).

53. Turning to the facts of the present case, the Court reiterates that the judgment of 10 March 1994, which was not appealed against and became final, has not been enforced. While on 4 December 1998 the District Council's 1992 decision, which granted the disputed plot of land to the applicant and served as a basis for the taking of the court judgment at issue, was revoked as adopted in error, it appears that this revocation did not have a formal bearing on the binding force of the judgment. On the contrary, its validity after the above date appears to have been indirectly confirmed by the court judgment of 1 March 2001 invalidating as unlawful the Village Council's decision not to enforce it (see paragraph 12 above). In addition, in 2008 and 2010 the courts recognised as well-founded the applicant's complaints concerning the failure of the bailiffs to enforce the above judgment in good time (see paragraphs 15-16 above).

54. Consequently, the period of non-enforcement of the court judgment at stake in the present case has exceeded seventeen years. The period falling within the Court's temporal jurisdiction, which started on 11 September 1997, has been some fourteen years. No reasonable justification was advanced by the Government for this delay.

55. By failing to take the necessary measures to comply with the final court judgment in the instant case, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

56. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

57. The applicant further complained that the impossibility for him to obtain in kind the plot of land granted to him for farming in accordance with the 1992 decision constituted unlawful and disproportionate interference with his rights guaranteed by Article 1 of Protocol no. 1. The relevant Convention provision reads 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.”

A. Admissibility

58. The Government submitted that this complaint concerned in substance the non-enforcement of the 1994 court judgment and, as such, was incompatible *ratione personae* with the provisions of the Convention, as, similarly to what was stated by them in respect of admissibility of Article 6, the land plot was granted to the applicant’s farm, rather than to him personally.

59. The applicant generally supported his claim.

60. The Court reiterates that, similarly to what is stated above with respect to the rules concerning victim status for the purposes of Article 6 of the Convention, a company’s sole owner can claim to be a victim of interference with his individual rights under Article 1 of Protocol no. 1 directed against his or her company (see, among other authorities, *Ankarcrona v. Sweden* (dec.), no. 35178/97, 27 June 2000; *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005; and *Humbatov*, cited above, § 21). In the recent case of *Khamidov v. Russia*, the Court found Article 1 of Protocol no. 1 applicable to a complaint about interference with a family business, lodged on his own behalf by one of the two brothers engaged in it. In this case the Court had regard to the fact that these brothers acted in agreement in domestic proceedings and the applicant’s application before

the Court generated general support of his brother (no. 72118/01, § 125, ECHR 2007-XII (extracts)).

61. Turning to the facts of the present case, the Court considers that its earlier findings with respect to the close nexus between the applicant's interest in the disputed land plot as an individual and a farm owner (see paragraphs 47-48 above) are equally pertinent in the present context. In light of the above, the Court dismisses the Government's objection.

62. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

63. The Government submitted no observations on the merits of the present complaint.

64. The applicant, for his own part, in his observations in response to those of the Government, generally supported his initial submissions, in which he had stated that the manner in which the State authorities had approached his situation had been neither lawful nor fair. In particular, without any legal basis they had refused to allocate him the plot of land in kind, even after his entitlement had been confirmed by the 1994 court judgment. Furthermore, in 1998 they had unjustifiably revoked the 1992 decision, thus divesting him of the legal basis for possession on grounds which had not been foreseen by applicable substantive law. In addition, the procedure by which this decision had been revoked had been unlawful and unconstitutional, since according to the applicable legal provisions the District Council's decision could be revoked only at the close of adversarial judicial proceedings, as confirmed in 2009 by a ruling of the Constitutional Court of Ukraine. As a result of the unlawful and prolonged interference of the authorities with the applicant's right to farm a land plot lawfully granted to him, not only had he suffered psychologically, but he had also sustained pecuniary damage. In particular, between 1992 and 1998 he had had to pay land tax on the land, which he had never used. In addition, he had uselessly bought some farm equipment and other merchandise, and forsaken considerable profits. In the meantime, there had been no public interest in precluding him from farming his land, since *de facto* it had been usurped by two founders of the "L." company, who had never transferred it to its employees.

65. The Court, in the absence of any objections from the Government, considers that the applicant's entitlement to use a four-hectare plot of land for farming, which derived from the 1992 decision, constituted "possession" falling within the scope of protection of Article 1 of Protocol no. 1 (see, *mutatis mutandis*, *Stretch v. the United Kingdom*, no. 44277/98, §§ 32-35,

24 June 2003). The above Convention provision is therefore applicable to the present case.

66. In the Court's view, the applicant's complaint in the present case includes three distinct but closely interrelated aspects, which should be examined together: the refusal of the Village Council to enforce the 1994 court judgment; the revocation by the District Council of its 1992 decision; and the overall manner in which the public authorities treated the applicant's entitlement to a land plot.

67. As regards the first aspect, it is the Court's settled case-law that, as a general rule, failure of the State authorities to provide an applicant with a property awarded to him or her by a final court judgment constitutes an interference incompatible with the guarantees set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003; and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004). The Government have not provided any explanation which would justify the non-enforcement in the present case as "lawful" and warrant departure from the above principles.

68. Further, as regards the second aspect of the complaint, namely the revocation of the 1992 decision, it appears from the case file materials that this revocation did not in itself invalidate the applicant's Land Use Act or affect the enforceability of the 1994 court judgment (see paragraphs 12, 14 and 15 above). It is therefore unclear whether this revocation constituted a "deprivation" of possessions for the purposes of Article 1 of Protocol no. 1. However, this act, which in fact extinguished the legal basis on which the applicant's initial entitlement to the land had emerged, constituted an interference with the above entitlement. In any case, whether or not the interference at issue constituted a "deprivation", in the context of the present case the same principles apply. Namely, in order to comply with the Convention, this measure should have been lawful and such as to strike a fair balance between the public interests and those of the applicant (see amongst many authorities, *Stretch*, cited above, § 36).

69. The Court reiterates that the authorities justified the revocation of the 1992 decision by the fact that it had been taken erroneously, without due regard to the previous promise of the same land to third parties.

70. In examining the conformity of this justification with the Convention, the Court reiterates particular importance of the principle of "good governance". It requires that where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as property rights, the public authorities must act in good time and in an appropriate and above all consistent manner (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 128, ECHR 2004-XII; *Megadat.com S.r.l. v. Moldova*,

no. 21151/04, § 72, 8 April 2008; and *Moskal v. Poland*, no. 10373/05, § 51, 15 September 2009). In particular, it is incumbent on the public authorities to put in place internal procedures which enhance the transparency and clarity of their operations, minimise the risk of mistakes (see, for example, *Lelas v. Croatia*, no. 55555/08, § 74, 20 May 2010, and *Toşcuță and Others v. Romania*, no. 36900/03, § 37, 25 November 2008) and foster legal certainty in civil transactions affecting property interests (see *Öneryıldız*, cited above, § 128, and *Beyeler*, cited above, § 119).

71. The ‘good governance’ principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence (see *Moskal*, cited above, § 73). Holding otherwise would, *inter alia*, amount to sanctioning an inappropriate allocation of scarce public resources, which in itself would be contrary to the public interest (*ibid.*). On the other hand, the need to correct an old “wrong” should not disproportionately interfere with a new right which has been acquired by an individual relying on the legitimacy of the public authority’s action in good faith (see, *mutatis mutandis*, *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 58, ECHR 2002-VIII). In other words, State authorities which fail to put in place or adhere to their own procedures should not be allowed to profit from their wrongdoing or to escape their obligations (see *Lelas*, cited above, § 74). The risk of any mistake made by the State authority must be borne by the State itself and the errors must not be remedied at the expense of the individuals concerned (see, among other authorities, *mutatis mutandis*, *Pincová and Pinc*, cited above, § 58; *Gashi v. Croatia*, no. 32457/05, § 40, 13 December 2007 and *Trgo v. Croatia*, no. 35298/04, § 67, 11 June 2009). In the context of revocation of a property title granted erroneously, the “good governance” principle may not only impose on the authorities an obligation to act promptly in correcting their mistake (see e.g. *Moskal*, cited above, § 69), but also necessitate the payment of adequate compensation or another type of appropriate reparation to its former good-faith holder (see *Pincová and Pinc*, cited above, § 53 and *Toşcuță and Others*, cited above, § 38).

72. In so far as the applicant in the present case complained that the 1992 decision was revoked in breach of applicable domestic substantive and procedural law, the Court reiterates that these arguments were reviewed and eventually rejected by the national courts at four levels of jurisdiction. While the applicant complains that the conclusions drawn by the courts in his case were at variance with the Constitutional Court’s 2009 ruling (see paragraph 42 above), the Court notes that this ruling was taken after the proceedings in the applicant’s case had ended. Furthermore, while the Court may review the findings of domestic courts where they appear manifestly arbitrary, the task of interpreting domestic law belongs primarily to the national judicial authorities, while the Court, giving due deference to their

findings, is charged with ensuring that they are compatible with the Convention (see, for example, *Seryavin and Others v. Ukraine*, no. 4909/04, § 40, 10 February 2011).

73. Accepting, in line with these principles, the findings of the national courts that the procedure by which the 1992 decision was revoked complied with applicable domestic-law provisions, the Court is not convinced that it contained sufficient safeguards against abuse by the public authorities. Firstly, it appears that this procedure enables the State authorities to extinguish retrospectively individual entitlements granted by mistake without any reparation to their good-faith holders. Secondly, it appears to enable the State authorities to extinguish such entitlements at their own volition, at any time and without any involvement of the affected parties. The Court notes that the ability of the interested parties to challenge such extinguishments in court admittedly reduces the possibility of arbitrary interpretation of applicable substantive law provisions by the public authorities claiming to have been mistaken. On the other hand, the fact that no time frame is attached to their power to reconsider their decisions, including after the discovery of a mistake, significantly undermines legal certainty in the realm of individual rights and civil transactions, which is detrimental to the “good governance” principle and the “lawfulness” requirement under Article 1 of Protocol no. 1.

74. Placing the above considerations in the overall context of the applicant’s particular situation, the Court considers that the question of “lawfulness” of the procedure by which the 1992 decision was annulled, regard being had to the considerable latitude it afforded the authorities, as well as their refusal to enforce the 1994 court judgment, are closely interrelated and indissociable from the analysis of whether the overall manner in which the authorities approached the applicant’s situation struck a fair balance between his interests and those of the public (see, *mutatis mutandis*, *Beyeler*, cited above, § 110).

75. In this regard the Court observes that the manner in which the public authorities treated the applicant’s situation in the present case was incoherent, uncoordinated and marked by various delays. In particular, while the Village Council refused to execute the District Council’s 1992 decision granting land to the applicant from the very start, it was revoked as taken in error only six years later, after the judicial authorities confirmed its validity in their judgment. This judgment, in turn, was never challenged by the Village Council on appeal, although after it had become final, the Council took an official decision not to enforce it. Likewise, on several occasions the judicial rulings finding the 1998 revocation of the applicant’s entitlement unlawful, were not reviewed on appeal and subsequently quashed under extraordinary procedures. At the same time, after the courts eventually approved the revocation, no action was taken to invalidate the applicant’s Land Use Act or revoke the 1994 court judgment confirming his

entitlement. This judgment was still treated as valid by domestic courts in 2010, although the applicant's request to oblige the bailiffs to enforce it was rejected by them. Based on these conflicting documents, it is not possible to make a clear conclusion, whether or not at the present time the applicant has entitlement to the disputed plot of land under domestic law.

76. In sum, the incoherent and uncoordinated manner in which the authorities treated the applicant's situation created a continuous ambiguity with respect to his entitlement to the plot of land, lasting since 1992, which is nearly twenty years, some thirteen years of which falls within the Court's temporal jurisdiction.

77. In assessing the burden suffered by the applicant in connection with this continuing ambiguity, the Court notes the applicant's submissions concerning the alleged payment of the land tax and the futile purchase of farming equipment and merchandise. However, the general character of the applicant's submissions, which are not supported by sufficient documents, does not enable the Court to estimate the scale of the pecuniary damage allegedly suffered by him. However, in the Court's view, irrespective of any financial repercussions, the frustration which could naturally result from such a prolonged ambiguous situation constitutes in itself a disproportionate burden, which has been further aggravated by the absence of any reparation for the applicant's perpetual inability to take up his formal entitlement to the plot of land.

78. In view of all the above, there has been a violation of Article 1 of Protocol no. 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

79. The applicant also alleged that he did not have at his disposal an effective domestic remedy for his complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, as required by Article 13 of the Convention. This provision 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."

80. The parties provided no separate observations on the admissibility or merits of this complaint.

81. Regard being had to the fact that the applicant presented arguable claims under Articles 6 § 1 of the Convention and Article 1 of Protocol no. 1, the Court notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

82. The Court next points out that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The Government in the present case have not shown that the applicant had in practice an opportunity to obtain effective remedies for his complaints, that is to say, remedies, which could have prevented the violations from occurring or continuing, or could have afforded the applicant appropriate redress.

83. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 3,836,900 Ukrainian hryvnias (UAH) in respect of profit allegedly lost by him since 11 May 1992 in connection with the unavailability of the land plot formally allocated to him for farming. By way of justification, he presented a certificate issued on 1 June 2010 by the State Statistics Committee, according to which the average net profit of a farming company in the Lvivska Region was UAH 225,700 in 2009.

86. In addition, the applicant claimed UAH 200,000 for psychological suffering allegedly caused him by breaches of his Convention rights.

87. The Government submitted that the above claims were exorbitant and unsubstantiated.

88. The Court considers that the applicant might have suffered some pecuniary damage by reason of the failure of the public authorities to allot him the plot of land for his farming activities. The Court however is not ready to accept his calculations, which it considers rather speculative and prohibitively simplified. Lacking adequate documentation, the Court finds it impossible to determine pecuniary damage and gives no award under this head (see *Rakitin v. Ukraine*, no. 7675/04, § 30, 11 January 2007).

89. On the other hand, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

90. The applicant also claimed UAH 1,000 for every month of his legal self-representation of his own interests in domestic and Convention proceedings since 10 March 1994.

91. The Government maintained that this claim was without merit.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the fact that the applicant was self-represented in both domestic and Convention proceedings, there is no call to award him any legal fees. In so far as his claim can be understood as related to miscellaneous expenses incurred by him in connection with defending his interests, it has not been substantiated by supporting documents.

93. Regard being had to all the above, the Court makes no award.

C. Default interest

94. The Court considers it appropriate that the default interest 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of Ukraine at the rate applicable on 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President