



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

FIFTH SECTION

CASE OF ATIMA LIMITED v. UKRAINE

(Application no. 56714/11)

JUDGMENT
(Merits)

*This version was rectified on 24 August 2021
under Rule 81 of the Rules of Court.*

Art 1 P1 • Peaceful enjoyment of possessions • Unlawful interference with applicant company's property title to shares purchased in the context of a privatisation programme

STRASBOURG

20 May 2021

FINAL

20/08/2021

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

In the case of Atima Limited v. Ukraine,

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

Síofra O’Leary, *President*,

Mārtiņš Mits,

Ganna Yudkivska,

Jovan Ilievski,

Lado Chanturia,

Arnfinn Bårdsen,

Mattias Guyomar, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 56714/11) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Atima Limited (“the applicant company”), a limited liability company registered in Cyprus, on 1 September 2011;

the decision to give notice to the Ukrainian Government (“the Government”) of the applicant company’s complaints under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention raised in respect of the proceedings against company N. referred to in paragraphs 8-14 below, and to declare inadmissible the remainder of the application (including the complaints under the same provisions raised by the applicant company on 26 April 2018 in respect of the proceedings referred to in paragraphs 17 and 19 below against Kyiv City Council, which were declared inadmissible for having been introduced outside the six-month time-limit under Article 35 § 1 of the Convention given that they were only lodged in 2018);

the indication by the Cypriot Government that they did not wish to exercise their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 6 April 2021,

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

INTRODUCTION

1. The case concerns the applicant company’s complaint under Article 1 of Protocol No. 1 about interference with its property title to some of the shares in company K.

THE FACTS

2. The applicant company was represented by Mr V. Bobryk and Mr A. Ohanesian, lawyers practising in Kyiv.

3. The Government (“the Government”) were represented by their Agent, Mr I. Lishchyna.

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

A. Background of the case

5. On 8 February 2007 the Kyiv City Council (“the Council”) adopted a privatisation programme for 2007-2010 in respect of property belonging to the Kyiv municipality (“the municipality”). On 12 July 2007 it amended that programme to include, among others, company K. on a list of companies to be sold. The municipality, as represented by the Council, owned 80% of the shares in that company.

6. On 29 July 2009, following a public sale organised by company U. on 21 July 2009, company N. bought from the Council above 80% of the shares in company K.

7. On 2 July 2010 company N. sold some of those shares to several companies, including the applicant company. Pursuant to the sale and purchase contract, the applicant company was to become the owner of the purchased shares at the moment when they were credited to a securities account belonging to it which had been opened with a company acting as a depository, company F.S.U.; a statement from the applicant company’s securities account would be the document confirming the transfer of the property rights to the shares to the applicant company. On the same day a notary certified that contract and entered information about it in the relevant registry. On the same day company F.S.U. issued the applicant company with a statement confirming that the shares it had purchased from company N. had been credited to its account. On 10 August 2010 the applicant company paid 12,100,000 Ukrainian hryvnias (UAH – around 1,157,164 euros (EUR)) to company N. for the value of the purchased shares.

B. Proceedings instituted by the prosecutor against company N.

8. In August 2010 the Deputy Prosecutor General (“the prosecutor”), acting in the interests of the State as represented by the Council, lodged a claim with the Kyiv City Commercial Court (“the Commercial Court”) against company N., seeking to have the contract of 29 July 2009 invalidated, the municipality recognised as the owner of the shares sold to company N., and those shares returned to the municipality.

9. The applicant company asked the court to allow it to join the proceedings as a third party, given that it was the owner of some of the disputed shares. The court rejected the application, holding that the applicant company had not provided evidence that it was the owner of the shares.

10. On 20 October 2010 the court allowed the prosecutor’s claim in part, having recognised the municipality as the owner of the shares in company K. which had been sold to company N. In particular, it referred to a decision of the Kyiv Commercial Court of Appeal (“the Court of Appeal”) of 14 October 2010 (a copy of which was not provided by the parties), whereby that court had declared the decision of 12 July 2007 (see paragraph 5 above) unlawful as far as it concerned the privatisation of company K. As to the claim to invalidate the contract of 29 July 2009, the court stated that, given that the decision of 12 July 2007 had been unlawful, that contract did not entail any legal consequences and could therefore not be invalidated by a court.

11. The applicant company appealed against the above judgment, stating that it was the owner of some of company K.’s shares, as confirmed by a statement issued by company F.S.U. Therefore, that judgment had breached its property rights. Furthermore, at the moment when the contract of 29 July 2009 had been concluded, there had been no court decision invalidating the decision of 12 July 2007. It thus asked the courts to reject the prosecutor’s claim.

12. On 16 December 2010 the Court of Appeal allowed the applicant company to join the proceedings as a third party. On 18 January 2011 it upheld the above judgment in relation to allowing the prosecutor’s claim. In addition, it invalidated the contract of 29 July 2009. The court found that company K. had belonged to a category of companies which could be privatised subject to certain conditions set out in the domestic law. It held that, in breach of those conditions, no assessment of the value of company K.’s shares had been made prior to the company being privatised, and no conclusion about the value of those shares had been prepared and approved by the local authorities. Furthermore, the public sale of 21 July 2009 had been organised by company U., which had not been a licensed stock exchange company as required by law. Lastly, the court held that the applicant company “had not provided adequate evidence to rebut the prosecutor’s claim.”

13. The applicant company appealed in cassation, stating that it was the owner of some of the disputed shares and that the public sale of 21 July 2009 had been held in accordance with the law. It also argued that the lower courts’ recognition of the municipality as the owner of the disputed shares had led to it having been deprived of its property title to some of the shares it had bought from company N. Lastly, with reference to Article 1 of Protocol No. 1, it submitted that there could be no deprivation of property unless compensation was provided.

14. On 2 March 2011 the Higher Commercial Court of Ukraine (“the HCCU”) rejected the applicant company’s appeal. In upholding the decision of 18 January 2011, it agreed that the public sale had been organised by a company which had not been a licensed stock exchange company. It thus

concluded that the contract of 29 July 2009 had breached public order, since it had aimed to take possession of property belonging to the municipality unlawfully, in breach of the established privatisation procedure.

C. Proceedings instituted by the applicant company against the Council for compensation

15. In October 2013 the applicant company lodged a claim against the Council to recover the amount it had paid to acquire some of company K.'s shares. It stated that it was suing the Council because, *inter alia*, in the proceedings instituted by the prosecutor, the courts, having invalidated the contract of 29 July 2009, had not applied restitution in respect of the parties to that contract, and had not ordered the amounts which company N. had paid to the Council to be returned to that company. Moreover, the contract of 2 July 2010 had not been invalidated by the courts, and there were therefore no legal grounds for the applicant company to lodge a claim for compensation against company N. Nor had company N. committed any breaches in concluding the contracts of 29 July 2009 and 2 July 2010 which would give grounds for it bearing any civil liability in respect of the applicant company.

16. The courts rejected the claim, with a final decision being given by the HCCU on 20 May 2015. They found that: under the contract of 29 July 2009, the Council had received money from company N., and not from the applicant company; the applicant company had not been a party to that contract, and therefore could not claim damages from the Council; the applicant company had concluded a contract with company N. and had paid money to it, therefore company N. was responsible for the applicant company's inability to become the owner of some of company K.'s shares; and the fact that the courts, in the proceedings instituted by the prosecutor, had not applied restitution in respect of the parties to the contract of 29 July 2009 did not mean that the applicant company had been "released from [the obligation]" to claim damages from company N.

D. Proceedings instituted by the applicant company against the Council for a declaration in respect of its title to shares

17. In April 2014 the applicant company lodged another claim against the Council, seeking a court declaration in respect of its title to the shares it had bought from company N. With reference to Articles 330, 388 and 658 of the 2003 Civil Code and the Resolution of 29 May 2013 (see paragraphs 23-25 and 27 below), it argued that it had been a bona fide purchaser under the contract of 2 July 2010, that the contract had not been invalidated by the courts, that the Council had not sought to recover the shares from the applicant company, and that there had been no court

decision on such recovery, as the decisions adopted in the proceedings instituted by the prosecutor had only concerned company N. If the Council had considered that it was the legitimate owner of the shares purchased by the applicant company, it could have lodged a *rei vindicatio* claim against it to recover them. As there was no court decision on this matter, the applicant company was the legitimate owner of the shares in question.

18. Lastly, the applicant company submitted that: on 22 November 2010 the State Commission on Securities and the Stock Market (“the Commission”) had revoked company F.S.U.’s licence to act as a depository; on 25 January 2011 the Commission had also revoked the licence of company A., which had been the registrar (the company in charge of keeping official records on share ownership in a company) in respect of company K.’s system of shareholders and depositories; on 2 March 2011 the Commission had declared the relevant records of the above system lost; on 6 April 2011 the Kyiv City Commercial Court had rescinded a contract between companies K. and A. and had recognised company F. as the new registrar; on 10 May 2011 companies K. and F. had signed a legal document whereby the former had transferred to the latter the last copy of the register for the purposes of restoring the system whereby company K.’s shareholders were recorded; on 13 May 2011 the Commission had published information about the restoring of the above system; on an unspecified date company F.S.U. had been reorganised to form company FSU, and on 12 November 2013 the Commission had issued it with a licence to act as a depository; and on an unspecified date the applicant company had asked company FSU to provide it with a statement from its securities account, and the latter had provided it with a statement indicating that as of 20 March 2014 it had had the disputed shares in its account. The applicant company then submitted that, according to the depository, the disputed shares were registered as its shares. On the other hand, it also submitted that it had lost possession of those shares owing to the revocation of company F.S.U.’s licence and the restoration of the register of shareholders by another registrar, and that consequently those shares had been registered as the Council’s shares.

19. The courts rejected the claim, with a final decision being given by the HCCU on 21 January 2015. With reference to the decisions adopted in the proceedings instituted by the prosecutor, they found that since the contract of 29 July 2009 had been declared invalid *ab initio*, company N. had not been the owner of the shares in company K. which it had bought from the Council, and therefore had not been entitled to sell some of them to the applicant company under the contract of 2 July 2010; accordingly, no transfer to the applicant company of the property title to the disputed shares had taken place. As to the applicant company’s argument that it had been a bona fide purchaser of the shares, the courts referred to Articles 330 and 388 of the Civil Code and concluded that since the courts had invalidated the

contract of 29 July 2009 in the decisions adopted in the proceedings instituted by the prosecutor, that contract had not entailed any legal consequences and company N. had unlawfully registered its title to the shares, thereby depriving the Council, the legitimate owner of those shares, of possession. Moreover, under Article 658 of the Civil Code, the applicant company could obtain property title to the shares only if the owner of those shares was not entitled to have them returned. However, the above-mentioned decisions had allegedly recognised the right of the Council, as a legitimate owner of the shares, to have the shares returned. The courts lastly noted that it had not been established that the applicant company had asked the new registrar to make changes in the restored system of shareholders, that the latter had refused to do so, and that the applicant company had challenged the Commission's decisions

E. Proceedings instituted by company N. against the Council

20. In December 2014 company N. lodged a claim against the Council for the recovery of money it had paid under the contract of 29 July 2009, plus certain amounts in interest. In its claim, it stated that in the decisions given in the proceedings instituted against it, the courts had not applied restitution in respect of the parties to that contract.

21. The courts allowed the claim in part, with a final decision being given by the HCCU on 14 June 2017. With reference to this Court's case-law, they held that a person who received property from the State by mistake and was subsequently deprived of it was entitled to compensation. The courts thus ordered the Council to pay to company N. the amounts which the latter had paid to it under the contract of 29 July 2009, plus certain amounts in interest.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

1. The Civil Code 2003

22. Article 216 § 1 of the Code provides that an invalid contract does not create any legal consequences, except for those related to its invalidity.

23. Article 330 provides that if property has been alienated by a person not entitled to do so, a bona fide purchaser of that property obtains property title to it, unless that property can be recovered from him or her under Article 388.

24. Article 388 § 1 deals with a *rei vindicatio* claim (*віндикаційний позов*) – a claim for the recovery of property by its owner from a bona fide purchaser. It 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 it had

been lost by or stolen from the owner, or the owner had ceased to be in its possession in any other way, in the absence of intention on her or his part to divest her or himself of it.

25. Article 658 provides that the right to sell goods belongs to the owner of the goods. If a seller of goods is not the owner of those goods, the purchaser of the goods obtains property title to them unless their owner has a right to have them returned.

2. Domestic case-law

26. On 6 November 2009 the Plenary Supreme Court of Ukraine (“the SCU”) adopted Resolution no. 9 on court practice in civil cases concerning the invalidation of contracts. In paragraph 10 of the Resolution it stated that Article 216 § 1 of the Civil Code could not be applied as a basis of a claim for the return of property which had been transferred in the execution of invalid contract and subsequently alienated to a third party. Claims by the owners of property for the invalidation of further contracts which were concluded after the invalid contract and by which that property was further alienated could not therefore be allowed. In such a case, the property could be recovered from a person who was not a party to the invalid contract by way of lodging a *rei vindicatio* claim against him or her and, from the bona fide purchaser, under Article 388 § 1 of the Civil Code.

27. On 29 May 2013 the Plenary HCCU adopted Resolution no. 11 on certain questions concerning the invalidation of contracts (commercial contracts). In paragraph 2.15 of the Resolution it stated that the consequences of invalidity of a contract should only be applied in respect of the parties to it; a person who was not a party to it could not therefore be obliged to return the property purchased under it. Claims by owners of property for the invalidation of further contracts concluded after the invalid contract could not therefore be allowed. In relevant cases, property could be recovered from a person who was not a party to the invalid contract, notably from a bona fide purchaser under Article 388 § 1 of the Civil Code.

THE LAW

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

28. Referring to Article 1 of Protocol No. 1, the applicant company complained that as the result of the court proceedings instituted by the prosecutor against company N., it had been deprived of the shares in company K. which it had bought from company N. and had not received compensation. The relevant 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. The parties’ submissions

1. The Government

29. The Government submitted that since the contract of 29 July 2009 had been invalid, there had been no grounds for selling the disputed shares to the applicant company. They further considered that the above complaint was inadmissible for non-exhaustion of domestic remedies, because the applicant company had not lodged a compensation claim against company N., with which it had concluded the contract of 2 July 2010 (see paragraph 7 above). They argued that lodging such a claim would have been an effective remedy for the applicant company, given that company N. had recovered from the Council the amounts it had paid to the latter under the contract of 29 July 2009 (see paragraphs 6 and 21 above). They also submitted that this case should be distinguished from the case of *Maksymenko and Gerasymenko v. Ukraine* (no. 49317/07, § 68, 16 May 2013), in which the Court had found that the applicants in question had not had an effective domestic remedy, as the company against which they had lodged a claim for compensation had been insolvent. The Government further considered that the present case concerned a dispute between private parties: the applicant company and company N. This being the case, the State’s positive obligation was to provide an appropriate legal mechanism allowing the aggrieved party to protect its rights effectively. The applicant company had been afforded such a mechanism (an opportunity to lodge a compensation claim against company N.), but had failed to use it. Therefore, the State had complied with its positive obligations and the complaint was manifestly ill-founded.

2. The applicant company

30. The applicant company contested the Government’s non-exhaustion argument by making reference to the Court’s case-law to the effect that when one remedy has been pursued, use of another remedy which has essentially the same objective is not required (see, for instance, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009). It further alleged that it had been deprived of the shares as a result of the “organised and coordinated actions” of the prosecutor, the Council and the Commission, among others, and as a result of arbitrary court decisions adopted on the prosecutor’s claim. Lastly, the applicant company considered that the

respondent State had breached Article 1 of Protocol No. 1, because the domestic courts had awarded compensation to company N. (see paragraph 21 above), which had thereby been unjustly enriched and “protected” against its claims, allegedly owing to the lack of legal grounds for lodging a claim against that company, and the expiry of the limitation period on an unspecified date. In particular, the applicant company cited Article 1212 of the Civil Code, in accordance with which a person who received property at the expense of another person in the absence of a legal basis was obliged to return it to that other person. However, the applicant company noted that, in the present case, the relevant legal basis had still been valid, as the contract of 2 July 2010 had not been invalidated by the courts.

B. The Court’s assessment

1. Admissibility

31. As to the Government’s inadmissibility objections, the Court observes that the Government point to the existence in domestic law of a compensatory remedy against company N., the company from which the applicant company purchased the disputed shares. The Court acknowledges that in disputes between private parties the relevant provisions of domestic law appear to provide an appropriate and effective remedy (see, for instance, *Kotov v. Russia* [GC], no. 54522/00, § 113, 3 April 2012, and *Kanevska v. Ukraine* (dec.), no. 73944/11, § 45, 17 November 2020). However, given the subject of the applicant company’s complaint and the manner in which the domestic proceedings were conducted and evolved in the present case, the issue is not as such a dispute between private parties. In particular, the Court notes that the applicant company’s complaint is, in essence, directed against the prosecutor and the Council, for whose actions the State may be held responsible.

32. Notably, it was the action lodged by the prosecutor, who acted in the interests of the State as represented by the Council, in the proceedings in which the applicant company’s initial request to be allowed to participate as a third party was rejected, which led to the *de facto* loss of the applicant company’s property title over the shares. The fact that the municipality had lost possession earlier as a result of the sale of company K.’s shares to company N., which then sold some of those shares to the applicant company, does not make the present case one that concerns purely a dispute between private parties (see, *mutatis mutandis*, *Dzirnis v. Latvia*, no. 25082/05, § 55, 26 January 2017, and *Titova and Others v. Russia* [Committee], nos. 4919/16 and 2 others, § 22, 15 May 2018). The Government’s arguments that the applicant company has not exhausted domestic remedies having not claimed compensation from company N. should therefore, in the particular circumstances of this case, be dismissed.

The Court would however note, as far as such a possible claim is concerned, that any damages an applicant may recover may be taken into account for the purposes of the calculation of pecuniary damage under Article 41 (see, for instance, *Gladysheva v. Russia*, no. 7097/10, §§ 60-62, 6 December 2011, and *Batkivska Turbota Foundation v. Ukraine*, no. 5876/15, § 47, 9 October 2018).

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

2. Merits

34. At the outset, the Court considers that the shares which the applicant company bought from company N. constituted its “possessions” within the meaning of Article 1 of Protocol No. 1; the Government did not argue otherwise. Indeed, it was not stated by the domestic courts, nor is it otherwise apparent, that the applicant company was not a bona fide purchaser of those shares. It had bought them from company N., which in turn bought them – apparently also as a bona fide purchaser – from the Council on the basis of the latter’s decision to privatise company K. No court decision declaring the privatisation unlawful existed at the moment when the shares were purchased by the applicant company. Furthermore, the contract of 2 July 2010, which was certified and entered into the relevant registry by a notary on the same day, stipulated that the title to the shares would be transferred to the applicant company when the shares were credited to an account belonging to it which had been opened with a company acting as a depository. That was done on the same day, and the depository issued the applicant company with a statement of account which, under the above contract, was a document confirming its title to the shares.

35. The Court next considers that the court decisions adopted in the proceedings instituted by the prosecutor *de facto* lead to interference with the applicant company’s possessions. Although the prosecutor directed his claim against company N. only, and the domestic courts did not rule on the applicant company’s property rights in their decisions, by the time the prosecutor lodged the claim, company N. had already sold some of the shares to the applicant company and, as found above, those shares were already the latter’s “possessions”.

36. It is true that the invalidation by the domestic courts of the contract of 29 July 2009, concluded between the Council and company N., did not automatically mean, from the point of view of the domestic law and practice (see paragraphs 22-27 above), that the applicant company *de jure* lost the disputed shares, given that no *rei vindicatio* claim had been lodged against it by the prosecutor and allowed by the courts. However, the Court considers that the way in which the domestic courts dealt with the applicant company’s case meant in substance that they apparently considered that the

annulment of the above contract also had legal and factual consequences for the applicant company's property title to the disputed shares. Indeed, the courts declared the municipality the owner of the shares sold to company N. under the above contract, implicitly including the shares which company N. had resold to the applicant company, despite the latter's arguments that it had been the owner of those shares and that the courts' recognition of the municipality as the owner of the disputed shares had led to it having been deprived of its property title to them.

37. Such an assessment of the domestic courts' dealing with the applicant company's rights to the disputed shares in the proceedings instituted by the prosecutor is further reinforced by the decisions adopted by the courts upon the applicant company's claim against the Council for the declaration of its title to the disputed shares. Thus, referring to the decisions adopted in the proceedings instituted by the prosecutor, the courts held that since the contract of 29 July 2009 had been declared invalid *ab initio*, company N. had not been the owner of the shares in company K. which it had bought from the Council, and therefore had not been entitled to sell some of them to the applicant company under the contract of 2 July 2010; accordingly, no transfer to the applicant company of the property title to the disputed shares had taken place (see paragraph 19 above). Although the Court cannot examine the decisions adopted upon the applicant company's claim against the Council, given that the applicant company's complaints about them were declared inadmissible by the Court as lodged out of time (see the preamble above), it is not precluded from having regard to those decisions for the purposes of its analysis in relation to the complaint under review (see, *mutatis mutandis*, *Shteyn (Stein) v. Russia*, no. 23691/06, § 91, 18 June 2009).

38. The Court next notes the Government's submission that since the contract of 29 July 2009 had been invalid, there had been no grounds for selling the disputed shares to the applicant company (see paragraph 29 above). In other words, the Government also appear to assume, in line with the domestic courts' assessment, that the proceedings instituted by the prosecutor and leading to the invalidation of the contract of 29 July 2009 had an immediate impact on the applicant company's property title to the shares.

39. Lastly, the Court notes that, as indicated by the applicant company's submissions in the course of the domestic proceedings against the Council (see paragraph 18 above), on 22 November 2010 the Commission revoked the licence of company F.S.U., in which the applicant company had had the securities account for the disputed shares. That happened several months after the prosecutor had instituted proceedings against company N. A number of other events then took place, notably the revocation by the Commission of the former registrar's (company A.'s) licence, the declaration of company K.'s system of shareholders and depositories lost,

and the restoration of that system with the new registrar, company F. (ibid.). Although, according to the applicant company's domestic submissions, a newly created depository company FSU provided it with a statement indicating that, as of 20 March 2014 it had had the disputed shares in its account, it is clear that the restoration of the system of company K.'s shareholders by another registrar, which registered the disputed shares as the Council's shares, meant that the applicant *de facto* lost possession of the disputed shares. It is true that, as indicated by the domestic courts (see paragraph 19 above), the applicant company had not asked the new registrar to make changes in the restored system of company K.'s shareholders and had not challenged the Commission's above decisions. However, in the Court's view, after the adoption of the court decisions in the proceedings instituted by the prosecutor, which recognised the Council as the only owner of shares in company K., that would have had no chances of success.

40. In view of the above considerations, the Court concludes that the domestic courts' decisions adopted upon the prosecutor's claim against company N. and in the proceedings in which the applicant company was refused third party status at first instance, constituted a *de facto* interference with the applicant company's rights to the disputed shares.

41. The Court next notes that, as stated above, in the above-mentioned decisions the courts did not rule on the applicant company's property title. It is therefore unclear whether there was an interference with the applicant company's possessions in a form of *de facto* "deprivation" or control of property for the purposes of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Rysovskyy v. Ukraine*, no. 29979/04, § 68, 20 October 2011). In any case, regardless of whether the interference at issue constituted "deprivation" or control of property, in the present context the same principles apply, as the second and third rules contained in Article 1 of Protocol No. 1 are to be construed in the light of the principle laid down in the first rule contained in that provision (see, for instance, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 78, ECHR 2006-V). Namely, in order to comply with the Convention, that measure should have been lawful, effected in the public interest, and such as to strike a fair balance between the public interest and the interest of the applicant (ibid.; see also *Kryvenkyy v. Ukraine*, no. 43768/07, § 42, 16 February 2017).

42. On the question of lawfulness, the Court notes that, with reference to domestic law, the courts provided grounds for the invalidation of company N.'s title to the shares (notably, company K. having been privatised and its shares having then been sold in breach of the domestic law). While those grounds could be relevant for the interference with company N.'s property title, no reasons were provided in respect of the interference with the property title of the applicant company, a third party and bona fide purchaser to which company N. had resold some of the shares. In particular, in its decision of 18 January 2011 the Court of Appeal confined itself to a

short and vague comment that the applicant company “had not provided adequate evidence to rebut the prosecutor’s claim” (see paragraph 12 above). It appears that this comment concerned the merits of the prosecutor’s claim against company N. for the invalidation of the sale of company K.’s shares to company N., rather than the applicant company’s own property title to some of those shares, regarding which the prosecutor made no claim at all. Indeed, the Court of Appeal did not directly rule on any consequences for the applicant company’s property title. In the Court’s view, such a situation was able to occur because the prosecutor directed his claim solely against company N., and not also against the applicant company (a *rei vindicatio* claim), which had already bought some of the shares.

43. In this respect, the Court notes that, as it follows from the domestic law as interpreted by the domestic highest courts (see paragraphs 22-27 and 36 above), recovery of the shares from the applicant company, a bona fide purchaser to which those shares were resold, could have been possible only by way of lodging against it a *rei vindicatio* claim under Article 388 § 1 of the Civil Code. Accordingly, the only legal basis under domestic law for depriving the applicant company of its property could have been the latter legal provision. However, no such claim was lodged against it in the present case. As a result, the courts could apparently not rule on the applicant company’s property rights and apply the above provision *proprio motu*, that is, without such a claim by the prosecutor being made against the applicant company. In such a case, the Court fails to see how the courts – being faced with the fact that the applicant company had already bought some of the disputed shares by the time the prosecutor’s claim was examined, and having allowed the applicant company to join the proceedings as a third party, albeit belatedly, – could fully disregard that fact and the applicant company’s consistent reference to it and proceed with the examination of the claim on the merits as if the applicant company’s rights had not been affected at all. In the Court’s view, the above-mentioned comment made by the Court of Appeal in respect of the applicant company did not provide any clear legal grounds for the indirect but clear interference with the latter’s own property rights. The HCCU did not provide any clarifications in respect of the applicant company’s rights either.

44. In view of the above, and considering in particular that the domestic court decisions affecting the applicant company’s property title contained no legal grounds for the interference with that title, the Court considers that such interference was not lawful within the meaning of Article 1 of Protocol No. 1.

45. These considerations are sufficient for the Court to conclude that there has been a violation of the above provision in the particular circumstances of the present case.

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

46. The applicant company also complained under Article 6 § 1 of the Convention in respect of the proceedings instituted by the prosecutor. The relevant provision reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

47. With reference to their submissions under Article 1 of Protocol No. 1, the Government considered the complaint to be manifestly ill-founded.

48. Having regard to its findings under Article 1 of Protocol No. 1, the Court considers that it has examined the main legal question raised in the present application, and that there is no need to give a separate ruling on the admissibility and merits of the complaint under Article 6 § 1 (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. As regards pecuniary damage, the applicant company claimed 12,100,000 Ukrainian hryvnias (UAH), which was the value of the shares it had bought under the contract of 2 July 2010. According to the applicant company, that amount had been equal to 1,187,439 euros (EUR) at the time the said contract had been concluded. It also claimed interest on that amount for the period going from 18 January 2011 (the date of the judgment of 18 January 2011; see paragraph 12 above) to August 2019, amounting to EUR 40,602.79 in total. It calculated the interest based on the average monthly London Interbank Offered Rate (LIBOR) in 2011-2019, and provided information about the monthly interest rates during the above period and the corresponding amounts. Lastly, it claimed EUR 2,374,878 “for the violation of its rights guaranteed by Article 6 § 1 of the Convention”.

51. The Government reiterated that the applicant company had acquired company K.’s shares from company N. under the contract of 2 July 2010 and had paid money to that latter company. It had not applied to the domestic courts with a claim against company N. for recovery of the money

it had paid under the said contract. As to the interest claimed, the Government submitted that there was no causal link between the alleged violation and the claimed amount. Lastly, they submitted that the claim in respect of the alleged violation of Article 6 was fully unsubstantiated. The Government thus invited the Court to reject the applicant company's claims.

52. The Court notes that, in the present case, it has found a breach of Article 1 of Protocol No. 1 on the grounds that the interference with the applicant company's property rights had been unlawful. Although it rejected the Government's non-exhaustion submission about a possibility for the applicant company to lodge a claim against company N., such an action at the domestic level would be relevant for the evaluation of its losses for the purposes of Article 41 of the Convention (see paragraph 31 above). In other words, the fact that the non-exhaustion objection was dismissed in the very particular circumstances of this case does not mean that a compensation remedy in relation to the pecuniary loss sustained did not exist at domestic level.

53. The Court further notes that in their submissions concerning exhaustion of domestic remedies for the purposes of the applicant company's complaint under Article 1 of Protocol No. 1 the parties differed as to whether the applicant company had had an opportunity to lodge a compensation claim against company N. (see paragraphs 29 and 30 above). It also notes that in the proceedings instituted by the applicant company against the Council the domestic courts noted such an opportunity, without however indicating legal grounds on which the applicant company could do so (see paragraph 16 above). Furthermore, it is not clear from the parties' submissions whether the applicant company still has such an opportunity, also in view of this Court's judgment on the merits, and, if not, whether the fact that it existed previously but was not used by the applicant company should be taken into account for the purposes of Article 41 of the Convention. This being so, the Court considers that the question of pecuniary damage, if any, resulting from the violation found in very particular circumstances of the case is not yet ready for decision (compare and contrast *BUSHBM-PLYUS, TOV v. Ukraine* [Committee], no. 20880/07, § 45, 6 June 2019, in which the Court found that the applicant company in question did not have an opportunity to obtain compensation at domestic level, and therefore awarded it compensation for pecuniary damage). It should therefore be reserved to enable the parties to elaborate on this matter in their written observations and inform the Court of any agreement reached between them (Rule 75 §§ 1 and 4 of the Rules of Court).

54. As to the applicant company's claim for damages related to Article 6 of the Convention, the Court notes that it has found that there is no need to examine the relevant complaint. It therefore makes no award in this regard.

B. Costs and expenses

55. No claim was made under this head, therefore no award is made.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention;
4. *Holds* that, as regards pecuniary damage resulting from the violation found, the question of just satisfaction is not ready for decision and accordingly:
 - (a) reserves the said question;
 - (b) invites the Government and the applicant company to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention¹, their written observations on this question and, in particular, to notify the Court of any agreement that they may reach;
 - (c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be;
5. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Victor Soloveytkhik
Registrar

Síofra O'Leary
President

¹ Rectified on 24 August 2021: "from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention" has been added.