



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

FIFTH SECTION

CASE OF DROZDYK AND MIKULA v. UKRAINE

(Applications nos. 27849/15 and 33358/15)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Invalidation of applicants' titles to plots of land, which they used and owned for years, as lands fell within railway exclusion zones, without any compensation • Serious doubts as to lawfulness and legitimate aim of interference • Absence of clear domestic regulation allowing for monetary or any other form of compensation for any damage in applicants' situation • Disproportionate burden imposed Art 46 • Execution of judgment • Individual measures • Respondent State to ensure-full restitution of applicants' titles to reclaimed land, or provision of monetary compensation or of comparable property

Prepared by the Registry. Does not bind the Court.

STRASBOURG

24 October 2024

FINAL

24/01/2025

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

In the case of Drozdyk and Mikula v. Ukraine,

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

Mattias Guyomar, *President*,

María Elósegui,

Kateřina Šimáčková,

Mykola Gnatovskyy,

Stéphane Pisani,

Úna Ní Raifeartaigh,

Artūrs Kučs, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 27849/15 and 33358/15) 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, Ms Mariya Petrivna Drozdyk (“the first applicant”) and Ms Olga Pavlivna Mikula (“the second applicant”; together – “the applicants”), on 27 May 2015 and 1 July 2015 respectively;

the decision to give notice to the Ukrainian Government (“the Government”) of the applicants’ complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, and to declare the remainder of the applications inadmissible;

the parties’ observations;

Having deliberated in private on 8 October 2024,

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

INTRODUCTION

1. The cases concern the invalidation of the applicants’ titles to plots of land, which they had used and owned for years, on the basis that the lands fell within railway exclusion zones and thus should never have been transferred into private property. The applicants referred to Article 6 of the Convention and Article 1 of Protocol No.1 to the Convention.

THE FACTS

2. The first applicant was born in 1946 and lives in Chudei, Chernivtsi Region; the second applicant was born in 1949 and lives in Bryukhovychi, Lviv Region. They were represented, respectively, by Mr O.P. Bernyk, a lawyer practising in Storozhynets, Chernivtsi Region, and Ms K.O. Bilevych, a lawyer practising in Lviv.

3. The Government were represented by their Agent, Ms M. Sokorenko.

4. The facts of the cases may be summarised as follows.

I. APPLICATION NO. 27849/15

5. In 1965 the applicant's husband had obtained permission to build a house on a plot of land belonging to the local collective farm; apparently, he never formalised his title either to the house or to the land. The applicant and her husband had been living in that house since at least the 1970s. In 2005, after the death of her husband, the applicant sought to obtain title to the house and the land. By a court judgment of 17 August 2005 her claims to inherit the property were granted. The court ruled to "acknowledge the property right [of the applicant] over the ... hereditary estate consisting of the [house and land]".

6. By a decision of the Chudei Village Council of 7 December 2009 the applicant's technical documentation for the transfer of two plots of land (one for the house and one for gardening, forming together the land initially allocated to the applicant's late husband) into private property was approved.

7. In 2010 the applicant obtained ownership certificate (*державний акт*) to two plots of land measuring 0.25 ha and 0.0575 ha. It appears that the bigger plot, on which the applicant's house is located, faces the railway track.

8. In January 2014 the State enterprise Lviv Railways ("the Railways") initiated civil proceedings against the applicant and the Chudei Village Council seeking to have the latter's decision of 7 December 2009 set aside and the applicant's title invalidated. The Railways argued that, according to the results of a documentary inspection conducted in October 2013, it had been established that the applicant's plots of land were partly within the railway protection zone. In reaching that conclusion the inspector relied on technical documents, namely railway construction plans, dating from 1949, according to which the protection zone in that location was sixty meters on each side, whereas the applicant's land was located twenty-eight meters away from the axis of the track. The Railways also relied on several Soviet-era documents regarding the use of land by railways as well as on the Land Code of Ukraine and the Law of Ukraine on Transport which stipulate that land forming part of railway protection zones is part of the lands of railway transport and is State property. The Village Council and the applicant objected to those claims, stating that the allocation of land to the applicant had been lawful as the Railways had no formalised title to the plots of land at issue.

9. By a judgment of 3 April 2014, the Storozhynets Local Court allowed the Railways' claims, essentially repeating their arguments. It set aside the decision of the Chudei Village Council of 7 December 2009 and invalidated the applicant's ownership certificate in those parts in which her plots of land overlapped with the lands of the Railways (0.2441 ha and 0.0089 ha respectively). In doing so it relied on Articles 152 and 155 of the Land Code (see paragraph 21 below), in accordance with which the rights of persons over a plot of land can be protected by setting aside acts of local authorities if they

breach those rights. For the court that also entailed the invalidation of title documents issued on the basis of those acts.

10. The applicant appealed against that judgment and on 12 June 2014 the Chernivtsi Region Court of Appeal allowed her appeal. It quashed the above-mentioned judgment and found that the Railways had failed to prove that their right to the disputed land had been duly formalised, although that had been required both by the Soviet legislation in force when the railway track at issue was built, and by the modern Ukrainian legislation. It also stated that none of the grounds for the termination of property rights as provided for in Article 140 of the Land Code (see paragraph 21 below) applied in the applicant's case.

11. The Railways appealed against that decision and, by a final judgment of 3 December 2014, the Higher Specialized Court for Civil and Criminal Cases quashed the judgment of the Court of Appeal and upheld the Local Court's judgment and its reasoning.

12. The applicant sought to have her case reviewed by the Supreme Court on the ground that there was a divergence in the application of substantive law, but her request was refused as unsubstantiated. In support of her request, she provided references to three judgments, one given by the Higher Specialized Court for Civil and Criminal Cases and two by the Higher Commercial Court, in which those courts had rejected similar claims by the Railways relating to different plots of land in various locations based on the fact that the claimant had no formally registered rights to the disputed lands and the technical documentation for the construction of the railway it referred to was not enough to prove those rights.

II. APPLICATION NO. 33358/15

13. According to the applicant, in 1946 her grandfather had obtained a right of use over a plot of land in the village of Bryukhovychi for gardening, and the applicant's family had been working on that land ever since. The Government contested that assertion stating that the applicant provided no evidence in support.

14. In 2005 the applicant initiated a procedure to obtain ownership of that land.

15. By a decision of 20 July 2006, the Bryukhovychi Village Council approved the technical documentation that the applicant had had drawn up for the plot of land at issue. On 14 December 2006 the applicant obtained an ownership certificate for the plot of land, which measured 0.1366 ha.

16. In March 2014 the local prosecutor, together with the Railways and the Ministry of Infrastructure, initiated proceedings to set aside the above-mentioned decision of the local council and invalidate the applicant's title. The prosecutor referred to a technical plan of the railway's construction dating from 1962, according to which a part of the land belonging to the

applicant overlapped with the land allegedly allocated to the railway as the railway protection zone in that location was forty meters. The prosecutor submitted that any allocation of land affecting the Railways' lands had to be conducted with its agreement, which had not been done in the applicant's case. The prosecutor further referred to a number of Soviet-era documents regarding the use of land by railways as well as to the Land Code of Ukraine and the Law of Ukraine on Transport, which stipulate that land forming part of railway protection zones is part of the lands of railway transport and is State property. The applicant disagreed, stating that all of the Railways' arguments that were premised on the forty-meter protection zone were ill-founded as the standard protection zone for local railways was twenty-three meters and her plot of land was located some twenty meters from the track.

17. On 12 September 2014 the Shevchenkivskyi District Court of Lviv rejected the prosecutor's claims, finding that the Railways had no title documents to the plot of land at issue and that the 1962 technical plan could not testify to the existence of such rights. The court also found that it had not been necessary to obtain the agreement of the Railways during the initial procedure with the Village Council concerning the disputed land because on the side facing the railway track the plot of land in question bordered a passageway belonging to the "lands of common use" so it did not directly border the railway track.

18. Subsequent to an appeal against that decision, the Lviv Region Court of Appeal reversed it and found for the prosecutor on 8 December 2014. It essentially repeated the arguments advanced by the prosecutor in his claim; it also noted that in 2012-2013 the Railways had paid land tax for a consolidated plot of land which allegedly included the disputed land. The court concluded that the Village Council had had no powers to dispose of the plot of land at issue without first obtaining the agreement of the Railways, and that therefore its decision had to be invalidated. While the court noted that only 0.0212 ha of the applicant's plot overlapped with the lands claimed by the Railways, it invalidated her title in full.

19. The applicant lodged an appeal against that decision with the Higher Specialized Court for Civil and Criminal Cases, but on 14 January 2015 it refused to open cassation proceedings, having found that the appellate court's judgment was lawful and well-founded and that the applicant's arguments in her cassation appeal did not evidence any deficiencies in the appellate court's conclusions.

RELEVANT LEGAL FRAMEWORK

I. CIVIL CODE OF UKRAINE OF 2003

20. The relevant provisions of the Civil Code of Ukraine of 2003, as in force at the material time, read as follows:

Article 216. Legal consequences of the invalidity of a transaction

“1. An invalid transaction does not entail legal consequences other than those related to its invalidity.

2. In the event of the invalidity of a transaction, each party shall return in kind to the other party everything that it has acquired by way of the transaction, or, if that is impossible because, for instance, the acquisition consists in the use of property, the performance of works or the provision of services, to reimburse the value of the acquired benefit at the market rate at the time of reimbursement ...”

Article 390. Settlement of financial claims in relation to reclaiming property from illegal possession

“...

3. A *bona fide* or a *mala fide* beneficiary shall have the right to claim from the owner the reimbursement of expenses necessary for the maintenance and preservation of the property [while it was in his or her possession], as of the moment the owner acquired the right to return the property or transfer of the profits.

4. A *bona fide* beneficiary shall have the right to retain the improvements made by him or her to the property if they can be separated from the property without damaging it. If the improvements cannot be separated from the property, a *bona fide* beneficiary shall have a right to reimbursement of the relevant expenses in the amount by which the value of the property increased.”

Article 1166. General grounds of liability for damages inflicted on property

“1. Any pecuniary damage resulting from unlawful decisions, acts or [failures to act] related to personal rights of a physical or legal entity as well as any damage inflicted on the property of a physical or legal entity shall be indemnified in full by the person that inflicted it.

...

4. Damage resulting from lawful actions shall be indemnified in cases established by this Code and by other laws.”

Article 1173. Compensation of damage caused by a state authority, an authority of the Autonomous Republic of Crimea or a local self-government authority

“1. Damage caused to an individual or a legal entity by unlawful decisions, actions or omission of State authorities, authorities of the Autonomous Republic of Crimea or local self-government authorities in the exercise of their powers shall be compensated by the [relevant] State, Autonomous Republic of Crimea or local self-government body irrespective of whether the body was at fault.”

II. LAND CODE OF UKRAINE OF 2002

21. The relevant parts of the Land Code of Ukraine of 2002, as in force at the material time, read as follows:

Article 68. Lands of the railway transport

“The lands of railway transport include: the lands allocated to the railway for the railway tracks and related infrastructure as their exclusion zones; stations with their buildings and energy infrastructure, and locomotive, carriage, track, freight and passenger facilities, and lands occupied by signalling and communication facilities, by water supply and sewerage facilities; lands occupied by protective and strengthening plantations, service, cultural and household buildings, and other facilities necessary to ensure the operation of rail transport.”

Article 84. State ownership of land

“1. All land in Ukraine is in state ownership, except for land in municipal and private ownership.

...

4. State-owned land that cannot be transferred to private ownership includes:

...

b) lands occupied by State railways ...”

Article 125. Emergence of the right to a plot of land

“The right of ownership over a plot of land, as well as the right of permanent use and the right to lease a plot of land, arise from the moment of the State registration of these rights.”

Article 126. Registration of property rights to a plot of land

“The right of ownership and use of a plot of land shall be formalised in accordance with the Law of Ukraine ‘On State Registration of Property Rights to Immovable Property and Encumbrances Thereon’.”

Article 140. Grounds for termination of ownership of a plot of land

“Ownership over a plot of land can be terminated on the following grounds:

- a) a voluntary waiver by the owner of the right to the plot of land;
- b) the death of the owner of the plot of land in the absence of an heir;
- c) the alienation of the plot of land by a decision of the owner;
- d) foreclosure on a plot of land at the request of a creditor;
- e) the alienation of a plot of land for reasons of public necessity or for public needs;
- f) confiscation ordered by a decision of a court;
- g) the non-alienation of the plot of land by foreigners and stateless persons within the prescribed period in cases specified by this Code.”

Article 152. Ways to protect rights to land

“ ...

3. Protection of the rights of citizens and legal entities to land shall be carried out by way of:

...

d) recognition of the decisions of executive authorities or local self-government authorities as null and void.”

Article 155. Responsibility of executive authorities and local self-government authorities for issuing acts that violate the rights of landowners

“1. If an executive body or a body of local self-government issues an act violating the rights of a person to own, use or dispose of a plot of land belonging to him or her, such an act shall be declared invalid.

...”

III. LAW OF UKRAINE “ON TRANSPORT”

22. The relevant part of the Law of Ukraine “On Transport” reads as follows:

Section 11 Transport land

“Transport land is the land provided for use to transport companies and organisations in accordance with the Land Code of Ukraine to perform the tasks assigned to them for the operation, repair, improvement and development of transport facilities. ...”

IV. LAW OF UKRAINE OF 2009 ON THE ALIENATION OF LAND OR OTHER PROPERTY LOCATED ON LAND FOR REASONS OF PUBLIC NECESSITY OR FOR PUBLIC NEEDS

23. The law sets out detailed procedures and conditions for such alienation which can take the form of voluntary redemption (*випуш*) or forced alienation (*примусове відчуження*) by court order, if the owner objects; and which entails compensation both for the land itself, and for any property, such as private housing, located on that land. The compensation can take the form of monetary compensation to the value of the land, which is to be established in accordance with land valuation procedures, and compensation of any damage caused by the alienation, or the form of provision of comparable land and/or housing.

THE LAW

I. JOINDER OF THE APPLICATIONS

24. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

25. The applicants complained that the invalidation of their titles to land had been unlawful and disproportionate, in breach of the provisions of Article 1 of Protocol No. 1 to the Convention, which 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

1. Exhaustion of domestic remedies

26. The Government argued that both applicants had failed to exhaust domestic remedies. In that respect they referred to Articles 216, 390, 1166 and 1173 of the Civil Code of Ukraine (see paragraph 20 above) regulating, in particular, the compensation of damage caused by unlawful decisions of local authorities and, in cases where property is to be returned to its owner, the reimbursement of expenses necessary for the maintenance and preservation of property or of any expenses leading to an increase in the value of the property.

27. In support of their submissions, they provided examples of two judgments at the domestic level, namely in cases nos. 439/1127/18 and 488/6211/14-ІІ. In the first case the plaintiff had claimed non-pecuniary damages from a village council owing to the impossibility of his accessing his property for eight years; his claims had been granted by the court of appeal, and non-pecuniary damages had been awarded to him. In the second case, in which a prosecutor had sought to reclaim certain plots of land back into State property as forestry lands, the Government pointed to the domestic court’s conclusions that the defendant had not been deprived of the opportunity to lodge a claim against the owner of the plot of land seeking, under Article 390 of the Civil Code, reimbursement of the costs associated with the maintenance and preservation of the land.

28. In the light of the above, the Government considered that the applicants had had opportunities at the domestic level to remedy the situation, which they had failed to use.

29. The first applicant provided no submissions as to admissibility. The second applicant noted that the remedies proposed by the Government had not addressed the issue of compensation for the reclaimed land itself and were, therefore, not relevant for the case. She further argued that Articles 1166 and 1173 of the Civil Code were not applicable to her case, as they regulated situations where a person's rights had been violated by the decisions or actions of the local authorities, whereas in her case such decisions (that is, the Village Council's decisions on the allocation of the land in question) had violated the rights of the Railways, as established by the domestic courts, and not her rights as the owner of the land. Thus, she concluded that there existed no effective domestic remedies. The second applicant also noted that the appellate court's judgment in the case no. 439/1127/18 had been quashed by the Supreme Court on 24 May 2023, and that the judgment in the other case (no. 488/6211/14-П) contained no conclusion on the issue of compensation of damage.

30. The Court notes at the outset that the existence of a remedy that might allow an applicant to obtain damages but does not lead to a reinstatement of title shall be taken into account not in the context of exhaustion of domestic remedies, but for the purposes of assessing the proportionality of the interference and the calculation of pecuniary damage if a violation of Article 1 of Protocol No. 1 to the Convention is found (see, for example, *Batkivska Turbota Foundation v. Ukraine*, no. 5876/15, § 47, 9 October 2018). Nevertheless, the Court will address the Government's arguments here.

31. Referring to the general principles regarding the effectiveness and availability of the domestic remedies (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 88, 9 July 2015 with further references), the Court notes that the judgments relied upon by the Government were delivered in 2018 and 2021, that is a number of years after the applicants lodged their applications. Furthermore, they are only few examples of domestic case law, which makes it difficult for the Court to establish whether there was indeed a settled practice at the domestic level on this particular issue; additionally, the factual circumstances in both cases were different to those in the present cases. Moreover, as pointed out by the second applicant, the first judgment referred to by the Government was quashed by the Supreme Court and the plaintiff's claims were rejected in full, and in the second judgment, although the domestic court noted the possibility of compensation, it made no ruling on that matter because that issue was not the subject matter of the case.

32. Furthermore, the Court has previously established in a number of Ukrainian cases that Article 1173 of the Civil Code concerning compensation for persons affected by unlawful decisions of State authorities is couched in

very general terms which makes its implementation dependent on further clarification of the conditions to be met and the procedure to be followed in order to quantify and obtain such compensation (see *Fortetsya, MPP v. Ukraine* [Committee], no. 68946/10, § 30, 11 June 2020, with further references). In view of its findings in the previous paragraph, the Court considers that the Government has failed to rebut those earlier conclusions.

33. Consequently, this Government's objection should be dismissed.

2. Manifestly ill-founded complaints

34. The Government also contended that the applicants' complaints were groundless because the invalidation of their titles had been lawful and had pursued a legitimate aim, namely of correcting a mistake made by the local authorities. The Court considers that that objection is closely related to the merits of the case, and therefore joins it to the merits.

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

B. Merits

1. The parties' submissions

36. The first applicant argued that she had complied with all the necessary procedures when formalising her title to the land and that she should not be made to bear the consequences of mistakes made by the authorities. She relied in that respect on the case of *Stretch v. the United Kingdom* (no. 44277/98, 24 June 2003). She also underlined the fact that instead of using the special procedure set out by Article 140 of the Land Code, that is alienation of land for reasons of public necessity or for public needs (which, under domestic legislation, presupposed obligatory compensation), the land had been reclaimed by way of a procedure which did not offer such guarantees. According to her, that procedure was a standard one in this category of cases. In that connection she provided a reference to a judgment of the Supreme Court of Ukraine of 24 June 2015 in case no. 3-305rc15 which, in her view, proved that there was a settled practice at the domestic level in similar cases. In that case the civil, commercial and administrative chambers of the Supreme Court, sitting in joint session, had examined a case brought by Lviv Railways against a local council and a private person in which it sought to have a plot of land situated in the railway protection zone returned to State property. The Supreme Court had ruled that, despite the Railways having no formalised title documents to the land, the Railways could assert its rights over the land by way of a direct application of the relevant laws, in particular the Land Code and the Law on Transport, which defined the types of land that form part of the lands of railway transport.

37. The second applicant also argued that she had obtained the disputed plot of land in accordance with the established procedures and that she could not be required to verify the lawfulness of the allocation of land by the local authorities. The domestic courts had essentially shifted that burden onto her. In that context she also noted that the entire plot of land had been reclaimed from her even though only a small part of it, 0.0212 ha, allegedly overlapped with the railway protection zone, and that the Government had failed to explain how the public interest, if it was indeed in the public interest, justified such action. As concerns “excessive burden”, the second applicant also noted that she would not be able to obtain any other plots of land via the privatisation procedure anymore, as she had already used her right when obtaining the plot at issue, and that she had not been offered any compensation (or been offered any other plot of land, for that matter). The second applicant further stated that the domestic courts’ practice on the matter was not predictable. In support of that statement, she submitted references to two judgments by the higher courts. In a judgment from 2014 claims brought by the Railways had been rejected because it had failed to prove that it had a formalised right to the land. In a judgment from 2023 in the case no. 466/1058/15-П claims brought by the Railways had been rejected as they had failed to provide sufficient evidence that the plot of land to which it claimed rights based on a technical plan did in fact overlap with the plot of land belonging to the defendant in that case. In ruling so the court noted that a forensic expert assessment would have been required to prove that fact, but it had not been provided by the claimant. Lastly, the second applicant noted that the only way to remedy her situation was through a review of the case which would allow her to restore her rights to the part of the land that does not belong to the Railways.

38. The Government did not contest that the plots of land in question constituted a “possession” for the purposes of Article 1 of Protocol No. 1 and that the invalidation of the applicants’ titles to them had thus constituted a deprivation of a possession within the meaning of that provision. As to the lawfulness of the deprivation, the Government noted that the domestic courts had provided clear references to the provisions of the Land Code and the Law on Transport applicable to the applicants’ cases as well as to railway construction plans and Soviet-era documents regarding the use of land by railways. In the Government’s view those documents were sufficiently accessible and foreseeable. The Government further argued that the interference at issue had been in the interest of society (“the rights of others”) as railways are an important element in satisfying the needs of the population. The local authorities had overstepped their powers when allocating those lands to the applicants; therefore, their mistake had to be corrected. As to proportionality, the Government argued that the State had a wider margin of appreciation in matters of regional planning and environmental conservation policies, where the general interest of the community is pre-eminent, as

opposed to instances where exclusively civil rights are at stake. In that connection they referred to the cases *Gorraiz Lizarraga and Others v. Spain* (no. 62543/00, § 70, ECHR 2004-III); *Alatulkkila and Others v. Finland* (no. 33538/96, § 67, 28 July 2005); *Valico S.r.l. v. Italy* (dec.) (no. 70074/01, ECHR 2006-III); and *Fägerskiöld v. Sweden* (dec.) (no. 37664/04, 26 February 2008). They also noted that the applicants had used their plots of land as “owners” for only several years (between the allocation of the plots to them and the invalidation of their titles) and that in the similar case of *Orel-Jednota Hranice v. the Czech Republic* (dec.) (no. 1002/09, 10 September 2013) the Court had declared the application inadmissible. Overall, they considered that the interference in question was proportionate. Lastly, as regards the first applicant, the Government provided statements from the land registration authorities from which it transpired that the first applicant was still named as the owner of the plots of land at issue. As to the second applicant, she was no longer registered as the owner of the disputed plot of land in the relevant State Register.

39. In reply to the Government’s last argument that the first applicant remained the owner of the disputed land in the State Register, she noted that the judgment in her case was final and binding, and that it could be implemented at any time by way of amending the Register and taking the land away from her. In that context she noted that it was not only her rights to the land that were at stake, but also her rights to the house built on one of the plots.

2. The Court’s assessment

40. The Court considers that there was, in the present case, an interference with the applicants’ possessions. Whether it is seen as deprivation or control of the use property, the applicable principles remain the same (see *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, no. 3503/08, § 39-40, 13 October 2015 and, for example, *Kryvenkyy v. Ukraine*, no. 43768/07, §§ 41-42 and § 45, 16 February 2017). The Court will therefore consider whether that interference was lawful, pursued a general interest and was proportionate.

41. On the issue of lawfulness, the Court observes that while the domestic courts referred to a number of legislative provisions in their judgments, it appears that one and the same set of provisions allowed them to reach different conclusions. The courts that ruled against the applicants focused on the fact that the plots of land at issue were directly adjacent to the railway tracks and were therefore located within the railway protection zone, and that that, in and of itself, was enough for the Railways to assert its rights over that land (see paragraphs 9 and 18 above). The courts that ruled in the applicants’ favour concentrated on the fact that the Railways had no formalised right over the plots of land at issue so they therefore could not be reclaimed from the applicants (see paragraphs 10 and 17 above). The Court further observes in this context that the existence of divergent approaches to such cases at the

domestic level was also pointed out by the first applicant's request for review of her case (see paragraph 12 above). Such divergent approaches seem to have stemmed from the lack of clarity and precision in the respective domestic legislation.

42. Although with the handing down by the Supreme Court of its judgment of 24 June 2015, referenced by the first applicant (see paragraph 36 above), the issue could be considered to have been settled at the domestic level, that had not been the case when the final judgment was adopted either in her case (3 December 2014), or in the second applicant's case (14 January 2015). The Court considers that the situation created uncertainty for the applicants.

43. In this context the Court also notes the second applicant's reference to a judgment of 2023 in an essentially analogous case (see paragraph 37 above), in which the Supreme Court rejected the Railways' claims because it had failed to prove that the land claimed did in fact overlap with that of the defendant in that case. The Supreme Court found that the Railways' reliance on the technical plan was insufficient to prove its rights to the land. Admittedly, it was the very same plan of 1962 as relied upon by the Railways in the second applicant's case (see paragraph 16 above). In the Court's view, that could suggest the existence of yet another approach to such cases at the domestic level, and that the problem of how domestic law should be applied in this category of cases exists to this day.

44. The Court also notes the first applicant's argument that had the Railways wanted to take over the land relying on public need they should have used the special procedure for the alienation of land for reasons of public necessity, which would have been a lawful ground to terminate ownership of the land. The Court, however, cannot assess that argument in full detail as it was not addressed by the domestic courts and, in the absence of the first applicant's submissions to the courts, it is unclear whether she raised it before them. At the same time, the Court cannot overlook the findings of the appellate court in the first applicant's case that none of the grounds for termination of a property right over land, as provided for, in an exhaustive manner, in Article 140 of the Land Code, applied in the case (see paragraphs 10 and 21 above). The Government has not provided any specific explanations in that respect.

45. As to the legitimate aim, the Court recognises, in principle, that there is a general interest in maintaining protected zones along railway tracks in so far as they are a security measure that is aimed at ensuring the safe and effective operation of rail transport and the protection of the population. Nevertheless, the disputed plots of land have been located in the immediate vicinity of the railway tracks for decades. Moreover, in the first applicant's case the land was allocated to her husband *after* the railway track was built. Apparently, the first applicant and her husband had never been hindered in the use of that land before 2014.

46. The Court also notes the information from the land registration authorities provided by the Government which appears to show that the first applicant was still registered as the owner of the plots of land at issue. While for the Government this might have been intended to show that the invalidation of the first applicant's title had not had any actual impact on her, for the Court it might rather indicate that there was in fact no pressing need for the invalidation of her title. But it considers that it would be more appropriate to examine this issue in the framework of its proportionality analysis below.

47. To sum up at this point, the Court has doubts as to the lawfulness of the interference at issue, in terms of the foreseeability of the applicable law, and the existence of an actual public interest capable of justifying the interference. Nevertheless, it considers it unnecessary to rule on those matters as the interference is in any case disproportionate for the reasons stated below (see, *mutatis mutandis*, *Batkivska Turbota Foundation v. Ukraine*, cited above, §§ 57 and 62).

48. The Court reiterates that an interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52). Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants (see *The Holy Monasteries v. Greece*, 9 December 1994, Series A no. 301-A, p. 35, § 71). The Court has previously found that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see, among other authorities, *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 94, ECHR 2005-VI). Furthermore, in the context of the revocation of a property title granted erroneously, the "good governance" principle as developed by the Court may not only impose on the authorities an obligation to act promptly in correcting their mistake, but also necessitate the payment of adequate compensation or another type of appropriate reparation to its former good-faith holder (see, for example, *Rysovskyy v. Ukraine*, no. 29979/04, § 71, 20 October 2011, with further references).

49. In the present case, the Railways themselves, or the prosecutor on their behalf, brought civil proceedings seeking to set aside the local councils' decisions on the allocation of the plots of land to the applicants and the invalidation of their titles, arguing that such an allocation had been unlawful in the first place because the land belonged to a railway exclusion zone. This situation should be seen in the light of the aforementioned "good governance

principle”. In this connection the Court observes that at the domestic level, had the land been taken from the applicants, voluntarily or not, within the framework of alienation of land for reasons of public necessity, the payment of compensation would have been obligatory under national law (see paragraphs 23 and 36 above). Conversely, in the type of proceedings initiated in the present cases (*rei vindicatio* proceedings) no compulsory compensation for the loss of the land was envisaged. As noted under the admissibility head (see paragraphs 31-33 above), no convincing arguments were presented to the Court to show that there existed any clear domestic regulation that would allow for a monetary or any other form of compensation for any damage in the applicants’ situation. The applicants were thus deprived of property without any compensation.

50. The Court further notes that since the invalidation of the first applicant’s title to the land in 2014, the Railways apparently undertook no action in relation to the registration of their title to it or any other actions related to the land, for example, the delimitation of the reclaimed parts. Nor did they limit its use by the first applicant in any way, which raises the question whether measures other than deprivation of title could have been applied in the present case (see, *mutatis mutandis*, *Batkivska Turbota Foundation*, cited above, § 62). At the same time, the fact that no measures have been taken for such a long period of time puts the first applicant in a state of uncertainty as she knows that action could be taken by the Railways at any time – or might never be taken – but in any event she cannot freely dispose of either the land or the house.

51. As to the second applicant, the Court notes that her title to the entire plot of land was invalidated even though only a small portion of it overlapped with the railway protection zone, a fact which was recognised by the domestic courts themselves (see paragraph 18 above).

52. Considering the above, the Court concludes that the interference with the applicants’ property rights, in addition to raising serious doubts as to its lawfulness and it being in the general interest, imposed a disproportionate burden on them in that the applicants were not offered any compensation for the land reclaimed from them.

53. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicants also raised various complaints under Article 6 of the Convention. Having regard to the facts of the cases, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the applicants and that there is no need to examine the admissibility and merits of the remaining complaints (see *Centre*

for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

55. 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.”

56. Article 46 of the Convention, in so far as relevant, provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

A. Pecuniary damage and indications under Article 46

57. The first applicant claimed the value of the plot of land she had been deprived of and of the house built on it, which, according to a property valuation report of 1 August 2023, constituted 876,494 hryvnias (UAH; approximately 21,700 euros (EUR) at the material time) out of which the value of the land was UAH 229,150 (approximately EUR 5,680). It transpires from that valuation that it only concerned one of the applicant’s plots of land, specifically the one measuring 0.25 ha.

58. The Government contested those claims, reiterating that there had been no violation of the applicants’ rights and arguing that the amount claimed was excessive.

59. The second applicant raised no clearly stated claim in respect of pecuniary damage, although in her observations she submitted that the only way to remedy her situation was to review her case which would allow her to restore her rights to the part of the land that does not belong to the Railways (see paragraph 37 above).

60. The Court considers that the violation found in the present case caused damage to the applicants. It also refers to its findings above that the applicants were deprived of their property without any compensation and that the existence at the domestic level of a possibility to obtain compensation, in any form, has not been convincingly demonstrated (see paragraph 49 above).

61. In that connection the Court reiterates that under Article 46 §§ 1 and 2 of the Convention, a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a duty to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be taken in its domestic legal order to end the violation and make all feasible reparation for its consequences by restoring as far as

possible the situation which would have obtained if it had not taken place. Furthermore, it follows from the Convention, and from its Article 1 in particular, that in ratifying the Convention and its Protocols the Contracting States undertake to ensure that their domestic law is compatible with them (see, among other authorities, Centre for *Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 158-59, ECHR 2014; *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 78, 15 October 2009; and *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V). However, in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measure – individual and/or general – that might be taken to put an end to the situation which has given rise to the finding of a violation (see, for example, *Broniowski*, § 194, cited above).

62. Having due regard to its findings in the instant case, the Court considers that the applicants shall be put as far as possible in a situation equivalent to the one in which they would have been had there not been a breach of Article 1 of Protocol No. 1 to the Convention. Therefore, the respondent State shall ensure, by appropriate means and within a reasonable time, full restitution of the applicants' titles to the reclaimed land (including by way of reopening the domestic proceedings, where applicable), or provision of monetary compensation (calculated in accordance with the domestic requirements on the valuation of property and the Court's practice), or of comparable property (see *Gladysheva v. Russia*, no. 7097/10, § 106, 6 December 2011, and *Zadorozhnyy and Others v. Russia* (Committee), nos. 55025/18 and 12185/19, § 29, 6 April 2021).

B. Non-pecuniary damage and costs and expenses

63. The first applicant raised no claims in respect of non-pecuniary damage or costs and expenses.

64. The second applicant claimed EUR 5,000 in respect of non-pecuniary damage she had suffered on account of the invalidation of her title. She further claimed EUR 1,800 for legal costs due to her representative, to be paid after the termination of the proceedings before the Court. In support she provided a copy of the contract between her and the lawyer with a detailed explanation of services provided and time spent (20 hours in total at an hourly rate of EUR 90). The second applicant asked that the latter amount be paid directly to her lawyer's account.

65. The Government contested those claims.

66. As to non-pecuniary damage, the Court notes that only the second applicant submitted a claim under this head. In view of its conclusions above, the Court considers that the second applicant suffered non-pecuniary damage on account of the violation found, and therefore awards her EUR 1,500. As regards the first applicant, considering the nature of the case and in the absence of any claim for non-pecuniary damages, either in her application

form, in her observations or in any other of her submissions to the Court, it considers that there is no call to make any award under this head (contrast *Nagmetov v. Russia* [GC], no. 35589/08, § 59 and 77-82, 30 March 2017).

67. As regards the second applicant's claims for the reimbursement of costs and expenses, the Court reiterates that, according to its case-law, an applicant is entitled to such reimbursement only in so far as it has been shown that those costs were actually and necessarily incurred and are reasonable as to quantum. While it appears that the second applicant has not yet paid the fees claimed, she is bound to do so pursuant to a contractual obligation. Accordingly, the Court considers that the fees have been "actually incurred" (see *Belousov v. Ukraine*, no. 4494/07, § 115, 7 November 2013, with further references). The Court also notes that it has ruled in previous cases that awards in relation to costs and expenses can be paid directly into the accounts of the applicants' representatives (*ibid.*, § 116 with further references).

68. Regard being had to the documents in its possession and the above-mentioned criteria, the Court considers it reasonable to award the sum of EUR 500 in legal fees for the proceedings before the Court, to be paid into the bank account of the second applicant's lawyer, Ms Bilevych, as requested by the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applicants' complaints under Article 1 of Protocol No. 1 to the Convention admissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine the admissibility and merits of the applicants' complaints under Article 6 of the Convention;
5. *Holds*
 - (a) that the respondent State shall ensure, by appropriate means and within a reasonable time, full restitution of the applicants' titles to the reclaimed land, or provision of monetary compensation or of comparable property to the applicants;
 - (b) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 1,500 (one thousand five hundred euros), to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 500 (five hundred euros), to the second applicant, plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to the account of Ms Bilevych;
- (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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' claims for just satisfaction.

Done in English, and notified in writing on 24 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Mattias Guyomar
President