



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

FIFTH SECTION

CASE OF BILYAVSKA v. UKRAINE

(Application no. 84568/17)

JUDGMENT

Art 1 P1 • Positive obligations • Peaceful enjoyment of possessions • Dismissal of applicant's eviction action against her adult children and their families, whose behaviour made it impossible for her to live in a house she owned • Domestic courts' failure to adjudicate private property dispute in manner that was not arbitrary or manifestly unreasonable

Art 8 • Positive obligations • Home • Art 8 applicable • In specific case-circumstances, house in question constituted applicant's "home" • Domestic adjudication of the applicant's action did not ensure an effective and fair resolution of the dispute or take into account her vulnerability as an elderly woman

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 March 2025

FINAL

27/06/2025

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

In the case of Bilyavska v. Ukraine,

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

Mattias Guyomar, *President*,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Andreas Zünd,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 84568/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Mariya Vasylivna Bilyavska (“the applicant”), on 14 December 2017;

the decision to give notice to the Ukrainian Government (“the Government”) of the applicant’s complaints under Articles 6 and 8 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention;

the parties’ observations;

Having deliberated in private on 4 March 2025,

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

INTRODUCTION

1. The application concerns unsuccessful eviction proceedings brought by the applicant, the owner of a house, against her adult children and their families, whose behaviour allegedly made it impossible for the applicant to live in that house. The applicant referred to Articles 6 and 8 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1948 and lives in Kyiv. She was granted legal aid and was represented by Mr M.O. Tarakhkalo, Ms N.V. Voinova and Ms A.G. Kozmenko, lawyers practising in Kyiv.

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

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

5. In 1997 the applicant inherited from her late mother an individual house (“the house”) in the town of Bucha in the Kyiv Region. The building comprises two separate premises and the other part of it belongs to a person who is not related to the applicant or her family. According to the applicant, she had been living in that house from the time it was built in 1976. In support of that claim the applicant submitted a certificate from the Bucha Village

Council dated 1 April 1976 stating that the applicant had been “temporarily registered in the [house]” as it had been “under construction”. In 1982 the applicant moved to Kyiv. It appears that the applicant’s mother continued to live in the house, and that between 1992 and 1995 the applicant had been caring for her before she died. In 2010 the applicant allegedly moved back into the house.

6. In Kyiv the applicant owns a flat together with her adult daughter and son. Each of them possesses a 1/3 share of the indivisible flat.

7. According to the applicant, in 2004 she allowed her daughter and son to move into the house in Bucha together with their spouses and minor children. The applicant stated that that was supposed to have been a temporary measure until her son and daughter had “resolved their housing issues”. The applicant’s family members have never been officially registered as living in her house.

8. According to the applicant’s submissions, living together since she moved into the house in 2010 had proved to be complicated. There were constant quarrels; her children had allocated her a small room of 9 sq. m and did not allow her to move freely around the house, or to freely use the kitchen or bathroom. They had allegedly made some unauthorised structural changes in the house and around it, and had installed locks on all the doors. The applicant also stated that the utility bills were not being paid and that debts had thus accumulated in her name as the owner of the house.

9. In 2011 and 2014 a member of the Bucha Town Council, A., conducted an inspection of the material conditions in the house on unclear grounds. It was established that the applicant was the owner of the house and that she and eight other persons were living in it. The applicant had access to only one room in the house, which was “unfit for living”, and the other inhabitants did not allow her access to other parts of the premises. The respective conclusions were signed by the council member and sealed with the town council’s seal.

10. In 2011 the applicant was allegedly forced to move back to the Kyiv flat. According to the applicant, she was not able to live peacefully in that flat either, as her son owed money to a bank under a loan agreement and his share in the flat had been attached and could be sold to cover that debt at any time. The relevant enforcement proceedings have been pending since 2010.

11. Between 2010 and 2016 the applicant lodged a total of twelve complaints with the local police, alleging a violation of her rights by her children and their families. It appears that she complained mainly that they were preventing her from entering the house, including by changing the locks, and that they had threatened her. The police did not open criminal proceedings in relation to those complaints, having found no elements of a crime, but, as can be seen from the documents available, they issued “warnings” to the applicant’s daughter and son and their spouses. In September 2015, following another complaint by the applicant, administrative-offence reports for domestic violence were drawn up in

respect of the applicant's daughter and son (Article 173-2 of the Code of Administrative Offences). The parties have not provided copies of the relevant documents, but it appears from other available material that the administrative-offence proceedings in question were terminated for lack of elements of an offence. According to the applicant, she is still unable to access her house. Her complaints to the police lodged in 2019 and 2020 were futile.

12. In March 2015 the applicant and her children intended to enter into an agreement to exchange the Bucha house for ownership of the Kyiv flat, but the notary allegedly refused to certify that agreement, referring to the fact that the applicant's son's share in the flat had been attached on account of the debt he owed.

13. In March 2016 the applicant initiated proceedings against her daughter and son and their spouses, seeking their eviction from the house and an order for them to move into the flat in Kyiv. The applicant argued that she had allowed her son and daughter to live in her house temporarily, and that because of their behaviour it had become impossible to live together. In that connection she referred to her complaints submitted to the police. She also stressed that she was an elderly woman with frail health and needed protection. The applicant also stated that she no longer had a familial relationship with her children and their families. In that regard she referred to the decision by the police to terminate the administrative-offence proceedings concerning her daughter and son (see paragraph 11 above), arguing that it was precisely for that reason – the absence of family life – that no offence of domestic violence had been established in those cases. The applicant also submitted that her daughter and son had ownership rights to a different dwelling, namely the Kyiv flat, which the applicant had been ready to vacate, and that her daughter-in-law had ownership rights to a dwelling in her home village in the Poltava Region. Overall, the applicant relied on Articles 116 and 157 of the Housing Code of 1983, which allow the eviction of family members in certain cases, and a number of Articles of the Civil Code regarding the rights of a property owner and the means of their protection, including Articles 386 and 405. In her further submissions to the courts, including at appeal and cassation levels, the applicant also referred to Article 391 of the Civil Code (see paragraph 18 below).

14. On 6 June 2016 the Irpin Local Court of the Kyiv Region dismissed the applicant's action. The court's conclusions were upheld by the Kyiv Regional Court of Appeal and the Higher Specialised Civil and Criminal Court on 15 September 2016 and 21 June 2017 respectively.

15. The courts established that, on the basis of Articles 64, 116 and 156 of the Housing Code (see paragraph 17 below), persons who, like the families of the applicant's children, settled in a dwelling as members of the owner's family acquired occupancy rights equal to those of the owner, irrespective of whether the family unit continued to exist. They could be evicted at the owner's request only in exceptional cases requiring evidence both of the

following (i) that there had been systematic misuse of or damage to the property, or a breach of the rules of “socialist coexistence”, and (ii) that preventive measures or measures involving public pressure had proved to be ineffective. In accordance with the Resolution of the Plenary Supreme Court of 12 April 1985 on certain issues relating to the application of the Housing Code (see paragraph 19 below), the measures that could be applied in such cases included preventive measures by the courts, prosecutors and law-enforcement authorities, as well as measures involving public pressure at the place of the person’s work or residence.

The courts mentioned both the applicant’s complaints to the police and the inspections by the local council member A. in 2011 and 2014 but concluded that the applicant had failed to prove that the alleged actions were “systematic” or that any preventive or other measures had been applied and had been ineffective.

16. In December 2020 the applicant initiated another set of proceedings against her son and daughter and their families. She relied on Article 391 of the Civil Code relating to the removal of obstacles to the use of property. As is apparent from the documents available, the case is still pending examination before the local court.

RELEVANT LEGAL FRAMEWORK AND DOMESTIC PRACTICE

I. THE HOUSING CODE OF 1983

17. The relevant provisions of the Housing Code of 1983, as in force at the material time, read as follows:

Article 64 – Rights and obligations of the tenant’s family members

“The tenant’s family members who live with him or her shall enjoy all rights and bear all obligations arising from the residential lease agreement on an equal footing with the tenant. ...

The tenant’s family members shall include the tenant’s spouse, children and parents. ...

If the persons referred to in the second paragraph of this Article cease to be members of the tenant’s family but continue to reside in the occupied residential premises, they shall have the same rights and obligations as the tenant ...”

Article 116 – Eviction without provision of another dwelling

“If the tenant, members of his or her family or other persons living with the tenant systematically destroy or damage the residential premises, or use them for a purpose other than the one initially intended, or systematically break the rules of socialist coexistence, making it impossible for other [people living in the dwelling] to live with them in the same flat or house, and if preventive measures or measures involving public pressure have not produced any positive result, those responsible shall be evicted at the

request of the tenant or other interested persons, without another dwelling being provided for them.

Persons subject to eviction without an alternative dwelling being provided, owing to the impossibility of living together, may be obliged by the court to exchange the occupied premises for other residential premises specified by the party interested in exchange instead of eviction.”

Article 150 – Use of a dwelling owned by a citizen

“A citizen who owns a house (or part of a house) or a flat may use it as his or her personal residence or to house his or her family members and shall have the right to dispose of the property at his or her discretion: to sell, bestow, bequeath, lease, exchange or mortgage it or enter into any other agreements not prohibited by law.”

Article 156 – Rights and obligations of the family members of the owner of a dwelling

“Family members of the owner of a house (or flat) who live with him or her in that dwelling shall use those premises on an equal basis with the owner unless otherwise agreed ...

Family members of the owner of a house (or flat) shall take care of [it]. Adult members of the owner’s family shall contribute towards the costs of maintenance and repairs to the house (or flat) and the adjacent land. Disputes between the owner and his or her family members over the contribution towards those costs shall be resolved in court.

[The owner’s] family members include the persons specified in paragraph 2 of Article 64 of this Code. Termination of family relations with the owner shall not deprive them of the right to use the occupied premises. In the absence of an agreement between the owner of the house (or flat) and a former member of his or her family on the free use of the residential premises, the rules established by Article 162 of this Code shall apply to those relations.”

Article 157 – Eviction of family members of the owner of a dwelling

“Family members of the owner of a residential house (or flat) may be evicted in the cases specified in paragraph 1 of Article 116 of this Code. The eviction shall be carried out following a court judgment and without provision of an alternative dwelling.”

II. THE CIVIL CODE OF 2004

18. The relevant provisions of the Civil Code of 2004, as in force at the material time, read as follows:

Article 386 – Principles of protection of property rights

“...

2. An owner who has reasons to foresee the possibility of a violation of his or her property rights by another person may apply to the court with a request to prohibit that person from taking actions that may violate [the owner’s] rights, or with a request to take certain actions to prevent such a violation.”

Article 391 – Protection of property rights against violations not relating to deprivation of ownership

“1. The owner of a property may request the removal of obstacles to the use and disposal of his or her property.

...”

Article 405 – The right of family members of the owner of a dwelling to use it

“1. Family members of the owner of a dwelling who live with him or her shall have the right to use the dwelling in accordance with the law.

The owner shall decide which residential premises [the family members] have the right to occupy.

2. A family member of the owner of a dwelling shall lose the right to use that property in the event that he or she is absent without valid reasons for more than one year unless otherwise agreed by the family member and the owner of the dwelling or provided for by law.”

III. DOMESTIC PRACTICE

19. Resolution no. 2 of 12 April 1985 of the Plenary Supreme Court of Ukraine on issues arising in the courts’ implementation of the Housing Code reads, in so far as relevant, as follows:

“17. When resolving cases [brought] under Article 116 [of the Housing Code] concerning the eviction of persons who systematically breach the rules on living together and make it impossible for others to live with them in the same flat or house, it should be taken into account that where the person in question is guilty of persistent antisocial conduct, the eviction may take place already after a repeated breach, if preventive measures or measures involving public pressure have not brought about a positive result. Preventive measures applied by the courts, prosecutors, law-enforcement bodies [or] administrative commissions of local executive committees shall be considered in particular, as well as measures involving public pressure applied at meetings of residents of the apartment block or members of the housing cooperative, work collectives, community courts and [those applied] by other public organisations at the place of employment or residence of the person concerned....”

20. Resolution no. 5 of 7 February 2014 of the Plenary Higher Specialised Civil and Criminal Court of Ukraine on judicial practice in cases concerning the protection of property rights and other proprietary rights reads, in so far as relevant, as follows:

“1. ... Under Article 41 of the Constitution of Ukraine and ... Article 321 of the Civil Code, no one may be deprived of property rights or be restricted in their exercise, except in cases provided for by the Constitution and the law. Given that, under Article 92 of the Constitution of Ukraine, the legal regime for property is determined exclusively by the laws of Ukraine, other regulatory legal acts that restrict the rights of the owner and do not have the attributes of law are not applicable.

The owner owns, uses, and disposes of his or her property at his or her discretion and may perform any actions regarding his or her property that do not contradict the law. However, in exercising his or her rights and duties, the owner may not infringe the

rights and freedoms of other persons as well as public interests and is obliged to comply with the moral principles of society.

...

3. ... When making a decision, the court, by virtue of Article 214 § 1 of the Code of Civil Procedure, must determine, taking into account the established circumstances, what legal relations between the parties arise and what legal provision applies to those legal relations. At the same time, the court should state in its decision the reasons for not applying the legal provisions referred to by the parties to the case. A claimant's reference in his or her claim to the provisions of a law that are not applicable in that case is therefore not a ground for dismissing the claim since, when resolving a case, the court takes into account the basis (justification) and content of the claims (Article 119 of the Code of Civil Procedure).

...

39. Family members of the owner of the residential premises who live with him or her have the right to use the premises in accordance with the law (easement; Article 405 § 1 of the Civil Code). The courts should remember that such a law cannot be the Housing Code of the Ukrainian SSR; instead, the rules provided for in Chapter 32 of the Civil Code should be applied.

The courts must therefore proceed on the basis that the provisions of Article 405 of the Civil Code apply to the right of family members of the owner of the residential premises to use it."

21. The judgment of the Supreme Court of 16 December 2020 in case no. 182/7347/186 reads, in so far as relevant, as follows:

"In this case, a dispute arose between the owner of a house, who is at the same time its user, and persons who are not registered in it but temporarily use the specified property under a prior agreement with the owner ... during his absence in connection with his temporary residence abroad.

...

The circumstances established by the courts indicate that [the defendants] had moved in and acquired the right to use the house owned by [the claimant] temporarily, which is confirmed by the fact that the defendants did not change their registered permanent place of residence and by the absence of any documentary evidence of the legal grounds for the permanent use of the disputed residential premises, in particular a lease or free-use agreement.

...

The defendants are not the claimant's family members and therefore the provisions of Article 156 of the Housing Code of the Ukrainian SSR, which defines the rights of family members of the owner of a residential building, do not apply to them.

Applying the provisions of Article 116 of the Housing Code of the Ukrainian SSR to the regulation of the legal relations in question, and refusing to grant the claimant's request, the [lower] courts did not pay attention to the fact that he had substantiated his claims not only by the fact that [the defendants] had systematically violated the rules of living together and had made it impossible for them to live with the claimant in the disputed house, but also by referring to the fact that he – as the owner of the property – had, in accordance with Article 391 of the Civil Code of Ukraine, the right to request the removal of obstacles to the use of his property, in particular to request the eviction

of the defendants to whom he had granted the right of use of the house in question temporarily, for the period of his residence outside Ukraine.

In view of the arguments raised in the claim, the provisions of Articles 391 and Chapter 32 ... of the Civil Code of Ukraine are applicable [to the present case], since the application of the provisions of the Housing Code of the Ukrainian SSR, adopted on 30 June 1983, to the regulation of housing relations does not correspond to the modern realities and current social relations. At the same time, the Civil Code of Ukraine is a codified act of legislation that was adopted later, and therefore the temporal conflict of legal provisions should be resolved in favour of the provisions of the Civil Code (see legal opinion of the Supreme Court in the Resolution of 13 October 2020 in case no. 447/455/17 (proceedings no. 14-64cs20)).

The right to use another person's property is provided for in Articles 401-06 of the Civil Code of Ukraine.

Article 406 of the Civil Code of Ukraine regulates the issue of the termination of an easement; in particular, subparagraph 4 of paragraph 1 of the specified Article states that an easement is to be terminated if the circumstances that were the basis for its establishment cease to exist.

Having established that [the claimant], as the owner of the house, categorically objected to the defendants' residence in it, who, with his consent, had moved into the residential premises in question for the period of his residence abroad – that is, temporarily – and considering that the circumstances that gave them the right to reside in the house in question ceased to exist with the claimant's return to his permanent place of residence in Ukraine, the courts of the lower instances came to an erroneous conclusion that there was no basis for the claimant's request for the removal of obstacles to his use of the house by way of eviction of the defendants without providing them with another dwelling."

THE LAW

I. SCOPE OF THE CASE

22. The Court notes that in her application the applicant complained that the State "had failed to discharge its positive obligations to protect her right to freely enjoy her home and her property" and that the law-enforcement authorities "had failed to acknowledge the unlawful behaviour of her children". She further noted that the State had to respect her desire to live in her own house without being hindered by any third parties. In that connection she referred to the Court's judgment in *Irina Smirnova v. Ukraine* (no. 1870/05, 13 October 2016). She further argued that the domestic courts had failed to take all necessary measures to protect her rights, having decided the case on the basis of the provisions of the Housing Code that essentially required her to house unwanted persons with whom she no longer had any family relations, which had put a disproportionate burden on her. Furthermore, the courts had failed to examine her case in the light of the provisions of the Civil Code regarding the protection of the rights of property owners. In connection with the above complaints, the applicant referred to

Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

23. Notice of the application was given to the Government under all the above-mentioned Articles.

24. As regards Article 8, the parties were invited to provide their comments on the question of whether the house in question had been the applicant's "home" and, if so, whether there had been a violation of the applicant's right to respect for her home, contrary to Article 8 of the Convention.

25. In her observations in reply to those of the Government, the applicant submitted that the domestic authorities had "failed to identify the systematic abusive behaviour of the applicant's relatives towards her, which *de facto* amounted to domestic violence, and had not taken effective measures to stop it" and that the domestic courts had "failed to carry out a comprehensive analysis of the situation and the threat of psychological and economic violence faced by the applicant". The applicant stated that all those factors had "affected her physical and moral integrity and, therefore, [fell] within the scope of private life within the meaning of Article 8".

26. The Court notes that the applicant's observations go further than her initial complaints under Article 8, which had been focused on the alleged restrictions on her access to and use of her house, the behaviour of her cohabitants having been mentioned as an argument about the reasons why she sought their eviction. The Court therefore considers that the applicant's new submissions cannot be seen as an elaboration her original complaints. Consequently, they fall outside the scope of the present application (see, for example, *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

27. The Court further considers, being the master of the characterisation to be given in law to the facts of the case, that the applicant's complaints regarding the restrictions on her property rights under Article 1 of Protocol No. 1 and the domestic courts' approach to her case under Article 6 fall to be examined under Article 1 of Protocol No. 1 only (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

28. Lastly, the Court notes that in her observations the applicant raised complaints under Article 6 of the Convention regarding the length of proceedings in respect of the first set of proceedings, culminating in the judgment of 21 June 2017, and the second set of proceedings, initiated in 2020 and which is still pending. The Court notes that those new complaints, raised after the parties had commented on the applicant's original complaints, cannot be considered an elaboration on those original complaints to the Court. The Court considers, therefore, that it is not appropriate to take up these matters in the context of the present case (see, *Piryanik*, cited above, § 20, and *Irina Smirnova*, cited above, §§ 60-61).

29. On the other hand, the Court considers that the applicant's arguments as to the overall period that had elapsed since she had first contacted the

authorities on account of the matters complained of – more than twelve years, according to her, – fall to be examined within the scope of the applicant’s complaint under Article 1 of Protocol No. 1.

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

30. The applicant complained that the State had failed to discharge its positive obligations to protect her right to freely enjoy her property without hindrance from any third parties, even if they were her family members.

Article 1 of Protocol No. 1 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

31. The Government argued that the national courts, in their decisions, had not created any restrictions of the applicant’s rights, but had found that there had been no grounds to evict the defendants. The courts’ judgments had been duly reasoned, and the applicant had failed to prove her case. In that connection the Government referred to a judgment of the Grand Chamber of the Supreme Court of 21 August 2019 (case no. 569/4373/16-П) in which that court had refused to evict, after the sale of a flat, the former flat owner’s relative, a person with disabilities, who had been residing in that flat for decades. The court had reasoned that the domestic legislation had not provided for the possibility of evicting a former owner’s family member without provision of another dwelling. The Government submitted that it was not for the Court to reassess the factual or legal elements of the present case which, in their view, could be considered a classic example of a “fourth-instance case”. The Government also noted that had the domestic courts ordered the eviction of the applicant’s children and their families, that might have upset the balance between the defendants’ right to respect for their home under Article 8 and the applicant’s rights.

32. The Government further stated that the proceedings initiated by the applicant in December 2020 to have obstacles in using the property removed had been the appropriate way to protect her rights. As they were still pending, the Government contended that the applicant’s complaints were premature.

33. The Court considers that the Government’s plea of inadmissibility, particularly as to the non-exhaustion of domestic remedies, is closely related

to the substance of the applicant's complaints. The Government's objection must therefore be joined to the merits of the applicant's complaint.

34. The Court further notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

35. The Government submitted no observations on the merits of the applicant's complaint.

36. The applicant argued that for more than twelve years she had been unable to regain full possession of, and freely use, her property – the house in Bucha. Her children and their family members had not only prevented her from accessing the house, but had also made some unauthorised structural changes to it, as well as on the adjacent plot of land. A considerable debt from unpaid utility bills had also accumulated in the applicant's name and could be collected from her at any time, threatening to put her in a difficult financial situation. The applicant thus contended that the domestic courts' refusal to grant her eviction claim had constituted an interference with her property rights in the form of "control of use". The applicant further stated that such interference could not be considered lawful, as the domestic courts had given preference to the outdated provisions of the Housing Code – giving an owner's family members residing in his or her dwelling more or less equal rights to those of the owner – over the Civil Code provisions, which had been adopted later and which ensured adequate protection of the owner's rights, and had provided no explanation for that approach. In that connection she referred to the Supreme Court's judgment of 2020 (see paragraph 21 above) confirming that it was the Civil Code that had to be applied in cases such as hers.

37. The applicant also argued that the issue of "general interest" for the interference complained of had never been examined by the courts and that the only beneficiaries of the courts' judgments had been the applicant's children and their families.

38. Lastly, the applicant argued that the interference had not been proportionate, as the domestic courts had failed to duly examine all the interests involved, in particular the fact that the applicant had allowed her children to move into the house temporarily until they resolved their housing issues, and that by the time a decision had been given concerning the applicant's eviction claim, they owned other residential property. The applicant herself had been forced to live in a state of fear and uncertainty regarding both her house and the Kyiv flat, encumbered by her son's debt. According to the applicant, the situation had put an excessive burden on her.

2. *The Court's assessment*

39. The Court notes that the proceedings initiated by the applicant were civil in nature and concerned a dispute between private parties: her daughter and son and their spouses as defendants (compare *Kasmi v. Albania*, no. 1175/06, § 71, 23 June 2020). In this connection, it reiterates that the State has a positive obligation to take necessary measures to protect property rights, particularly where there is a direct link between the measures an applicant might legitimately expect from the authorities and his or her effective enjoyment of possessions, even in cases involving litigation between private parties (see *Plechanow v. Poland*, no. 22279/04, § 100, 7 July 2009). This positive obligation aims to ensure that, in a State's legal system, property rights are sufficiently protected by law and adequate remedies are provided whereby the aggrieved party can seek to vindicate his or her rights, including, where appropriate, by claiming damages in respect of any loss sustained. The required measures can therefore be preventive or remedial (see *Blumberga v. Latvia*, no. 70930/01, § 67, 14 October 2008, and *Kotov v. Russia* [GC], no. 54522/00, § 113, 3 April 2012). As to possible preventive measures, the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, especially in a situation where the State has to have regard to competing private interests (see *Kotov*, cited above, § 131). As regards remedial measures, States are under an obligation to afford judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private persons (see, *Kanevska v. Ukraine* (dec.), no. 73944/11, § 45, 17 November 2020, with further references). The Court's task is then to assess whether the domestic courts' adjudication of a property dispute between private parties was in accordance with domestic law and to ascertain whether or not their decisions were arbitrary or manifestly unreasonable (see, for instance, *Kushoglu v. Bulgaria*, no. 48191/99, §§ 47 and 48, 10 May 2007, and *Mindek v. Croatia*, no. 6169/13, § 78, 30 August 2016). While it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation, the role of the Court is to verify whether the effects of such interpretation are compatible with the Convention. Therefore, even though it has only limited power to review compliance with domestic law, the Court may draw appropriate conclusions under the Convention where it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions (see *Kushoglu*, cited above, § 50).

40. Turning to the present case, the Court observes that when initiating the eviction proceedings, the applicant relied on the provisions of both the Housing Code and the Civil Code (see paragraph 13 above). The domestic courts concentrated only on the provisions of the Housing Code and ruled against the applicant. No explanation was provided in the judgments as to

why the courts did not examine the applicant's claim in the light of the provisions of the Civil Code, which were explicitly and consistently referred to by the applicant. There was no mention of whether one of those Codes was to be regarded as *lex specialis* to the other or inapplicable for some reason.

41. In that connection the Court observes that according to the Resolution of the Plenary Higher Specialised Civil and Criminal Court of 2014 (see paragraph 20 above), the courts must look into the legal nature of the case before them and cannot dismiss a claim on the ground that the claimant references the provisions of a law that are not applicable in that case. The same Resolution also mentioned that the legal relations stemming from a property owner living together with his or her family members were to be regarded as an easement and therefore to be regulated by the Civil Code and not the Housing Code. Considering that in the Ukrainian legal system the Resolutions of the Plenary Supreme Court offer authoritative guidance for the lower courts and that the above-mentioned Resolution had been in force when the applicant's claim was examined, it appears that the domestic courts should have given due regard to the Civil Code, whether referenced by the applicant or not. However, no explanation has been provided either by the domestic courts (or by the Government in their observations) to clarify why that approach had not been followed. The Court observes in this connection that, as evidenced by the recent practice of the Supreme Court referred to by the applicant (see paragraph 21 above), the approach set out in the 2014 Resolution remains pertinent. That has not been disputed by the Government either.

42. The Court further notes that another set of proceedings, this time exclusively under the provisions of the Civil Code, was initiated by the applicant in December 2020. Those proceedings are currently pending before the local court and no judgment on the merits has been given so far.

43. In that connection, and with regard to the Government's objection as to the non-exhaustion of domestic remedies by the applicant, the Court reiterates that the rationale for the exhaustion rule is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention (see the summary of the principles in *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 84-89, 9 July 2015), and that the exhaustion rule has to be applied with some degree of flexibility and without excessive formalism, given the context of protecting human rights (*ibid.*, § 87). In particular, if more than one potentially effective remedy is available, the applicant is only required to have used one of them (see, for example, *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III). Indeed, when one remedy has been attempted, use of another remedy which has essentially the same purpose is not required (see, for example, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

44. Having regard to the fact that the applicant's initial eviction claim was submitted under the provisions of both the Housing Code and the Civil Code but was dismissed without any explanation as to why the Civil Code was not applied, and seeing that the applicant's second attempt to obtain eviction has not resulted in a decision for more than four years, the applicant cannot be said to have failed to exhaust domestic remedies as argued by the Government. The Government's preliminary objection in respect of this issue must therefore be dismissed.

45. Turning to the applicant's claim that the courts' decisions were untenable, the Court notes that, having decided to apply the provisions of the Housing Code, namely Article 116, the domestic courts proceeded on the basis that two conditions had to be fulfilled simultaneously in order for eviction to take place: a systematic violation of the rules of living together and the application of preventive or other measures that had proved to be ineffective. In that connection the courts referred to the applicant's complaints to the police and the unsuccessful administrative-offence proceedings, but found that the applicant had not proved that the circumstances complied with the above-mentioned conditions for eviction.

46. The Court observes that in accordance with the Resolution of the Plenary Supreme Court of 1985 "systematic" could mean even a "repeated" violation – that is, on two occasions – of the rules of living together and that various forms of preventive measures and measures involving public pressure could be taken into account when examining this category of cases (see paragraph 19 above). While the domestic courts referred to that Resolution in their judgments, it is unclear from the reasoning provided by them why the applicant's numerous complaints to the police could not be regarded as a sign of a "systematic" violation. Likewise, there is no explanation as to why the warnings issued by the police could not be considered evidence of the application of preventive or other measures, or why the very fact that administrative offence-proceedings were eventually initiated – even if later terminated – could not be considered as evidence that those preventive measures had been ineffective. While it is not the Court's task to deal with isolated errors of fact or law in the domestic courts' decisions, in the present case they appear manifestly unreasonable in the absence of even succinct reasoning on the above points.

47. Lastly, the Court cannot but note that the provisions of the Housing Code applied in the applicant's case were introduced – and remained virtually unchanged afterwards – in 1983, when Ukraine had been part of the Soviet Union and was under a political and social regime, which did not recognise the right to peaceful enjoyment of possessions as protected by the Convention. During most of the history of the Soviet Union, housing was attributed to individuals by public bodies with little regard to private ownership rights. In this connection the Court notes the opinion of the Supreme Court of Ukraine in its judgment of 2020 (see paragraph 21 above)

that the application of the provisions of the 1983 Housing Code to the regulation of housing relations “does not correspond to modern realities and current social relations” and that the Civil Code of Ukraine, as a more modern, codified piece of legislation should be applicable. It is further noteworthy that by their decisions the domestic courts essentially validated a very heavy burden on the applicant despite her undisputed ownership rights and the evidence she submitted regarding her housing needs and the behaviour of the defendants and did so without any attempt to assess the balance to be found between the interests at stake.

48. Having regard to the above, the Court finds it difficult to accept that in the present case the domestic courts complied with their positive duty under Article 1 of Protocol no. 1 to the Convention to adjudicate private property disputes in a manner that is not arbitrary or manifestly unreasonable.

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

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

50. The applicant also complained under Article 8 of the Convention that the inability to access and live peacefully in her house constituted an interference with her right to respect for her home and private life. Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

51. The Government argued that the house in question did not constitute the applicant’s “home” within the meaning of Article 8 as she had been living there for short periods of time. They also raised the same arguments, including those concerning non-exhaustion, as described above in paragraphs 31-32.

52. The applicant disagreed. She stated that the house in question constituted her home, in which she had “invested [her] money and heart”, and that she had lived in it “from time to time since 1976”. Since 2010 she had been trying to return to live in the house but had not been able to because of her children’s behaviour.

53. The Court notes at the outset that its conclusions under Article 1 of Protocol No. 1 as regards the Government’s non-exhaustion plea (see paragraph 44 above) are equally pertinent to the present complaint. The

Government's preliminary objection in respect of this issue must therefore be dismissed.

54. The Court further reiterates that the notion of "home" under Article 8 is an autonomous concept. Whether or not a particular property constitutes a "home" will depend on the factual circumstances of each particular case, in particular, the existence of sufficient and continuous links with a specific place (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 206, ECHR 2015 and *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts)). Furthermore, the length of temporary or permanent stays in it, frequent absence from it or its use on a temporary basis, for the purposes of short-term stays or even keeping belongings in it, do not preclude retention of sufficient continuous links with a particular residential place, which can still be considered "home" for the purposes of Article 8 of the Convention (see *McKay-Kopecka v. Poland* (dec.), no. 45320/99, 19 September 2006). In that connection, even secondary residences have been found by the Court to fall under the scope of the concept of "home", even though the link between the applicants and the dwelling concerned might have been weaker than in the case of applicants who remain in a dwelling (see, for example, *Lazarenko and Others v. Ukraine* (dec.), no. 27427/02, , §§ 54-55, 11 December 2012, and *Sagan v. Ukraine*, no. 60010/08, §§ 51-54, 23 October 2018).

55. In the present case, the applicant is a registered owner of the house in question. She lived in it from its construction in 1976 up until 1982 when she moved to Kyiv. She later resided in it between 1992 and 1995 when caring for her mother. Since 2010 she has been trying to regain access to and full possession of the house in order to use it as her main residence, but has been unable to do so as her children and their families, who settled in it the meantime, have prevented her from living there peacefully. Furthermore, the applicant has continued to receive utility bills which have been accumulating in her name as the official owner (see paragraphs 8 and 36 above). In these circumstances, it would be paradoxical to accept that the very situation complained of – the alleged violation of the applicant's rights in that the authorities failed to act to enable her to move permanently back into the house she considered her home – should result in denying that the house was her "home" within the meaning of Article 8.

56. In the light of the above, and even though the link between the applicant and the house in question might be considered weaker because of the events complained of, the Court finds that, in the specific circumstances of the present case, the Bucha house can be regarded as the applicant's "home" for the purposes of Article 8 of the Convention. The Government's objection in that respect must therefore be dismissed.

57. The Court further notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

58. The applicant argued that her children's actions and the authorities' passivity prevented her from being able to definitively move back into the Bucha house, which was her "home". She further contended that the domestic courts had not carried out a comprehensive analysis of her eviction claim.

59. The Government submitted no observations on the merits of this complaint.

60. The Court reiterates that the guarantees afforded by Article 8, and, in particular, the right to respect for home, are of central importance to an individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community. A home is usually the place where an individual is supposed to feel safe and sheltered from unwanted attention and intrusions. This concerns not only physical intrusions, such as unauthorised entries, but various nuisances, such as noise or smells and other forms of interference which preclude the inhabitants from quiet, undisturbed enjoyment of the amenities of their abode. Sharing one's home with uninvited persons creates very important implications for the individual's privacy and other interests protected by Article 8. Accordingly, where a member State adopts a legal framework obliging a private individual, for one reason or another, to share his or her home with persons foreign to his or her household, it must put in place thorough regulations and necessary procedural safeguards to enable all the parties concerned to protect their Convention interests (see, *Irina Smirnova*, cited above, §§ 93-94, with further references).

61. In that connection the Court refers to its findings in paragraphs 40-41 and 45-49 above, in particular that the domestic adjudication of the applicant's case did not ensure an effective and fair resolution of the dispute in question, and notes that they are equally pertinent to the applicant's present complaints under Article 8. The Court also notes that during the domestic proceedings the courts did not take into account the vulnerability of the applicant – an elderly woman trying to regain access to her home.

62. The Court concludes, therefore, that there has been a violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government contested that claim, maintaining their position that the application was inadmissible.

66. The Court considers that the applicant must have suffered anxiety and distress on account of the violations found in the present case and therefore awards her EUR 5,900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

67. The applicant also claimed EUR 4,350 for the costs and expenses incurred before the Court. Those comprised her lawyer's fees for the preparation of her application to the Court (twelve hours) and of her observations in reply to those of the Government (seventeen hours) at the rate of EUR 150 per hour. The relevant legal aid contract stipulated that the payment of the above-mentioned amount was to be deferred until the delivery of the Court's judgment. The applicant requested that the above amount be paid directly into her lawyer's account.

68. The Government considered that claim excessive and unsubstantiated.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and bearing in mind that the applicant has already been paid EUR 850 under the Court's legal-aid scheme, the Court considers it reasonable to award EUR 2,600 for costs and expenses, plus any tax that may be chargeable to the applicant. At the request of the applicant, the amount awarded under this head should be paid directly into the bank account of Mr M. Tarakhkalo (see, for example, *Belousov v. Ukraine*, no. 4494/07, §§ 116-17, 7 November 2013).

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits, and *dismisses*, the Government's objection concerning the non-exhaustion of domestic remedies;
2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, 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 5,900 (five thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative, Mr Tarakhkalo;
 - (b) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Registrar

Mattias Guyomar
President