



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

SECOND SECTION

CASE OF NOVOSELETSKIY v. UKRAINE

(Application no. 47148/99)

JUDGMENT
[Extracts]

STRASBOURG

22 February 2005

FINAL

22/05/2005

In the case of Novoseletskiy v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖ,

Mr V. BUTKEVYCH,

Mr M. UGREKHĖLIDZE,

Mrs E. FURA-SANDSTRÖM,

Mrs D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 March 2003 and 1 February 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 47148/99) against Ukraine lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Romuald Nikolayevich Novoseletskiy (“the applicant”), on 4 October 1998.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska, of the Ministry of Justice.

3. The applicant alleged, in particular, that, following an unlawful entry into his flat in his absence, his possessions had been stolen and that, as he had been evicted from the flat, he and his wife had been made homeless and forced to move in with members of another household in a different part of the country, under conditions that prevented normal family intimacy.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 11 March 2003, the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the

parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1938 and lives in Ussuriysk (Russia).

A. Background to the case

10. By a decision of 2 June 1995 under the Education Act, the trade union branch at the Melitopol State Teacher Training Institute ("the Institute"), which was the applicant's employer at the time, granted the applicant indefinite authorisation (*opðep*) to occupy and use a two-room, 25.1 sq. m flat in a building in Melitopol on the Institute's books.

11. In August 1995 the applicant resigned from the Institute and went to live in Vladimir (Russia) to prepare his doctoral thesis. Before leaving, he took his wife to Kotovsk (Ukraine), where she was due to receive medical treatment.

12. On 5 October 1995 the Institute annulled its decision of 2 June 1995 and granted authorisation to occupy and use the flat to T., another of its employees.

13. On 3 November 1995 T., accompanied by four witnesses, entered the flat. They noted that the flat was empty and made a statement to that effect. According to the applicant, his possessions were removed or stolen from the flat.

14. In November 1995 the applicant's wife returned to Melitopol. Unable to move back into the flat, which was now occupied by T.'s family, she had to return to Kotovsk and move in with relatives. In January 1996 the applicant returned to Melitopol, before joining his wife in Kotovsk.

B. Proceedings for recovery of the flat

15. In late February 1996 the applicant filed a civil claim against the Institute with the Melitopol City Court, claiming compensation for pecuniary and non-pecuniary damage and seeking to assert his right to free

use of the flat in question. The Institute in turn lodged an application to have that right withdrawn from the applicant.

16. On 15 May 1996, following an intervention by the procurator at the applicant's request, the Institute annulled its decision of 5 October 1995, finding that it had been unlawful, and restored the applicant's rights to the flat.

17. In a judgment of 27 June 1996, the Melitopol City Court dismissed the applicant's claim and granted the Institute's application. It found in particular that, in accordance with the legislation in force and the employment contract concluded between the Institute and the applicant, the latter had forfeited his right to use of the flat concerned after taking up permanent residence elsewhere. The court also noted that, according to the statement made on 3 November 1995, the flat in question had been empty when it was entered.

18. Following an objection under the supervisory review procedure from the Zaporijya deputy regional procurator, the Zaporijya Regional Court, in a judgment of 23 May 1997, quashed the judgment of 27 June 1996 and remitted the case to the Melitopol City Court for further consideration.

19. By a judgment of 28 April 1998, the Melitopol City Court rejected the applicant's claim, reiterating in substance the findings of the judgment of 27 June 1996.

20. Following an appeal by the applicant on points of law the Zaporijya Regional Court, in a judgment of 18 August 1998, quashed the judgment of 28 April 1998 and remitted the case once more to the court of first instance. In particular, the Regional Court noted that the issue of the lawfulness of the Institute's decision of 5 October 1998, granting T. the rights to the flat in question, had not been addressed, despite the fact that the decision had subsequently been annulled following an objection from the procurator. The court further noted that the applicant's wife, who was also authorised to occupy the flat, had been absent from the flat only temporarily, and on medical grounds. The court noted, *inter alia*, that three of the four witnesses had signed the statement of 3 November 1995 at T.'s request and had not been present when he had entered the flat.

21. By an order of 2 December 1998 giving effect to the Institute's decision, the executive committee of Melitopol municipal council transferred ownership of the flat in question to T., a private individual.

22. In a judgment of 6 January 1999, the Melitopol City Court allowed the applicant's claim in part. That judgment was upheld by the Zaporijya Regional Court in a judgment of 16 February 1999. The court noted in particular that the applicant's move to Vladimir had been only temporary, and that Melitopol had remained his permanent place of residence. Accordingly, it found that the applicant had the right to free use of the flat in question in Melitopol. However, the court rejected the applicant's claim for damages, observing that the criminal investigation into the disappearance of

his possessions had been closed by an order of 15 February 1996 (see paragraph 36 below). In that connection, the court took the view that neither the amount of the claim nor the existence of the pecuniary damage allegedly caused by the Institute had been borne out by the evidence provided. It also noted that the law made no provision for compensation in respect of non-pecuniary damage in landlord-tenant disputes.

23. On 17 May 1999 the Melitopol City Court forwarded the writ of execution in respect of the judgment of 6 January 1999 to the Melitopol department of the Ukrainian Ministry of Justice.

24. On 21 May 1999 the court bailiff noted that the flat in question was occupied by T.'s family. Accordingly, he lodged a request with the Melitopol City Court for an interpretation of the judgment of 6 January 1999.

25. In a decision of 14 September 1999, the Melitopol City Court dismissed the request on the ground that it was aimed at having the judgment in question varied rather than interpreted. Furthermore, it noted:

“In examining the aforementioned civil case, the court was not aware that ownership of the flat in question ... had been transferred to a private individual, as T. had not informed the court of this fact when he gave evidence as a witness at the hearing. Only after the judgment had been delivered did this come to light. That being the case, neither the court nor the applicant R.N. Novoseletskiy was aware that the flat had passed into private ownership. It was for that reason that Mr Novoseletskiy lodged an application simply to be allowed to occupy the flat in question rather than to have [T.] evicted.”

The Zaporijya Regional Court upheld that decision in a judgment of 9 December 1999.

26. In November 1999 the Melitopol procurator applied to the Melitopol City Court on the applicant's behalf, seeking to have the transfer of ownership of the flat to T. on 2 December 1998 declared unlawful, and to have T. evicted from the flat.

27. At the hearing, the executive committee of Melitopol municipal council argued that the construction of the flats belonging to the Institute had been funded by the Ministry of Education, and that any decision concerning the flat in issue would have been taken entirely by the Institute management.

28. In a judgment of 25 May 2000, the Melitopol City Court granted the procurator's application, ordering T. to vacate the flat and the Institute to provide T.'s family with alternative accommodation. In addition, the court concluded that the Institute had acted unlawfully in relation to the disputed flat, in particular in approving the transfer of ownership to T., a private individual, in 1998, while the applicant's civil claim was still pending before the court. This judgment became final on 18 August 2000.

29. In a decision of 28 December 2000, the Melitopol City Court granted T. and his family a stay of execution of the judgment of 25 May 2000 until

1 April 2001, owing to the chronic illness of one of the family members. The applicant alleges that he was not informed of the court hearing on that issue.

30. In December 2000 and January 2001, the court bailiff imposed a fine on the director of the Institute for the delays in complying with the judgment in question.

31. By orders of 13 March and 28 March 2001, the court bailiff discontinued the execution proceedings in respect of the judgments of the Melitopol City Court of 6 January 1999 and 25 May 2000, after certifying that the flat in question was unfit for human habitation. On 28 March 2001, in a measure designed to secure possession of the flat by the applicant, a committee made up of the applicant and seven witnesses, in the presence of the court bailiff, certified that the flat in question was empty and unfit for human habitation and needed substantial repairs before it could be used. Among many other things, the committee noted that the sanitary fittings and electrical wiring had been seriously damaged, that the sink and surrounding pipes had been removed, making it impossible to use any running water, and that the contents of the sewage pipes emptied into the flat, creating a powerful stench. They also recorded the refusal of T. and an official of the Institute to hand over the keys to the flat to the court bailiff.

32. On 20 January 2004 six witnesses, of whom five were engineers, accompanied by the applicant, inspected the flat and noted that, as a result of the damage recorded on 28 March 2001, the sewage pipes emptied into the kitchen and toilets, as had been the case at their inspections in 2002 and 2003, and that the applicant was unable to use the sanitary facilities or running water. A statement to that effect was drawn up for the attention of the Institute.

33. According to a statement of 16 February 2004 addressed to the Institute and the procurator's office by the applicant and four engineers who had acted as witnesses, the sewage pipes were blocked and the water pipes and sanitary fittings were out of order. The statement referred to similar findings that had been made by the Institute on 13 February 2004. The signatories contended that the situation had not changed since 28 March 2001, when the applicant had taken possession of the flat.

34. In his letter of 10 February 2004 to the Court, the applicant complained that since 28 March 2001 he had been unable to live in the flat owing to its deplorable state; however, he had visited the flat regularly in order to monitor the situation.

C. Investigation into the disappearance of the applicant's possessions

35. On 6 February 1996 the applicant lodged a complaint with the Melitopol department of the Ministry of the Interior, alleging that his belongings had been removed from the flat. He requested that criminal

proceedings be brought against the management of the Institute and against T. for unlawful entry into his flat. In support of his complaint, the applicant submitted two statements, one from his sister, G.G.S., and the other from his niece, G.I.V., to the effect that they had seen in the flat in question several pieces of furniture, a large number of books, a television, a radio, household appliances, two mammoth tusks and gold and silver jewellery, together with 5,000 United States dollars hidden in the stove and in the basement. The applicant also submitted a statement from T.G.M., a police officer, confirming that he had assisted the applicant in July 1995 in moving his personal effects from the hall of residence where he had lived previously to the flat in question.

36. According to the Government, the investigating authorities had responded to this complaint by conducting a detailed investigation into the alleged theft. The investigation established that, after being informed of the applicant's resignation and his departure for Russia, the director of the Institute had instructed T. to enter the flat and check that the heating was in order for the winter. In an order dated 15 February 1996, the Melitopol department of the Ministry of the Interior closed the criminal proceedings, finding that no offence had been committed (*за відсутністю події злочину*). The order made reference to the statement of 3 November 1995, drawn up by T. and signed by four witnesses, to the effect that the flat had been empty when it was opened up.

37. Between 1996 and 1999, the applicant lodged several complaints with the Melitopol procurator's office and the Zaporijya regional procurator's office seeking to have the order of 15 February 1996 quashed.

38. In a letter of 30 October 1999, the Zaporijya regional procurator's office informed the applicant that the Melitopol procurator's office had issued an order on 29 October 1999 quashing the order of 15 February 1996, and had reopened the criminal proceedings in response to his complaints concerning the disappearance of his possessions from the flat.

39. By a letter of 18 May 2001, the Zaporijya regional procurator's office informed the applicant that the investigation set up in response to his complaints had still not been completed.

40. On 27 August 2001 the Zaporijya regional procurator's office wrote to the applicant informing him that, by an order of 3 August 2001, the Melitopol department of the Ministry of the Interior had closed the criminal proceedings relating to the disappearance of his possessions on the ground that no offence had been committed, but that the proceedings to establish the lawfulness of that order were still in progress.

41. In two letters dated 28 December 2002 and 13 January 2003, the Melitopol procurator's office informed the applicant that the criminal proceedings relating to the disappearance of his possessions were still pending.

42. On 5 February 2003 the Zaporijya regional procurator's office examined the file relating to the investigation, quashed all the earlier decisions and ordered further investigations to be carried out.

43. By a decision of 22 March 2003, the Melitopol department of the Ministry of the Interior closed the criminal proceedings, finding that no offence had been committed. On 3 April 2003 the Melitopol deputy procurator quashed that decision and reopened the investigation.

44. In an order of 27 May 2003, the Melitopol department of the Ministry of the Interior, after summarising the main findings of the investigation, closed the criminal proceedings on the ground that no offence had been committed.

45. In particular, it was observed that G.G.S. and G.I.V., on whose statements the applicant had relied, had declined to attend in person in order to provide further information to the investigating officer. In that connection it was also pointed out that the Melitopol City Court had refused to take G.I.V.'s statement into account because she was related to the applicant.

46. T.G.M. was questioned several times on the subject of his statement, on 7 December 1999, 10 July 2001 and 21 May 2003. In his submissions, T.G.M. said that he had moved the following items into the flat in question: a washing machine, a refrigerator, some chairs, a guitar, some spare parts for cars and some home-made jams. However, the investigation noted that these items had not been mentioned by the applicant in his complaints. T.G.M. also maintained that he had seen a piece of mammoth tusk in the applicant's room in the hall of residence where he had lived previously.

47. It was established that, prior to his move into the disputed flat, the applicant had rented fully furnished accommodation with a surface area of 30 sq. m in a hall of residence. However, neither T.G.M., during an attempted reconstruction, nor the applicant, was able to say precisely where so many bulky items of furniture, of the kind described in the applicant's complaints, might have been fitted into a furnished dwelling with a surface area of 30 sq. m.

48. In addition, statements were taken in the course of the investigation from six persons, including T., who lived in the same building or adjoining buildings. They all asserted that they had seen no heavy or bulky items of furniture being moved into the flat in question between August and November 1995. Taking the view that items of that nature could not have been moved in without being noticed, and on the basis of the preceding statements, the investigating officer concluded that the applicant had never moved the items into the flat, and that the alleged theft had not taken place.

49. Furthermore, the order of 27 May 2003 accused the applicant of taking insufficient interest in the investigation, having failed to attend his appointments with the investigating officer.

50. Lastly, having observed some inconsistencies in the applicant's statements concerning the date of his return to Melitopol, the investigation

concluded that the applicant had lodged his complaint concerning the alleged theft on fictitious grounds and with a view to material gain. In support of this argument, the order cited some criticisms made of the applicant by previous employers.

II. RELEVANT DOMESTIC LAW

51. Article 4 of the Ukrainian Housing Code (*Житловий кодекс України* – “the Code”) of 30 June 1983 (as amended) stipulates that the State's housing stock comprises State-owned houses and dwellings in other buildings.

52. Section 1 of Law no. 2482-XII of 19 June 1992 on the privatisation of the State housing stock (*Закон України “Про приватизацію державного житлового фонду”*) defines the State housing stock as the housing stock of the municipal councils, together with the housing managed by State-owned companies, institutions and establishments (“the institutional housing stock”).

53. Under Article 18 of the Code, the housing stock is managed by the owner or by an establishment, to the extent that powers have been delegated to it by the owner.

54. Under the terms of the second paragraph of Article 184 of the Code, work carried out on buildings that form part of the institutional housing stock (*відомчий житловий фонд*) is funded by the budget of the companies, institutions and establishments concerned.

55. Article 52 of the Code governs the allocation of flats from the institutional housing stock. In particular, flats are allocated by a joint decision of the authorities and the trade union branches of the companies, institutions and establishments concerned, which either submit their decision to the relevant municipal council for approval or, in some cases, simply inform the council. On the basis of that decision, the executive committee of the municipal council issues the person concerned with an authorisation to occupy the flat (*ордер*), which constitutes the sole legal basis for taking possession of the allocated dwelling (see Article 58 of the Code).

56. Article 29 of the Code provides that the housing stock is subject to State supervision. This consists in ensuring that all the organisations and persons concerned observe the rules on the use and maintenance of the housing stock and that the distribution of living space and allocation of flats occur in the correct order.

57. The list of functions of the executive committees of the municipal councils set out in Article 15 of the Code includes State supervision of the use and maintenance of the housing stock, monitoring of the state of repair and use of the institutional housing stock, and monitoring of the waiting list

of persons in need of better housing kept by the companies, institutions and establishments concerned.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

58. The applicant considered that there had been a disproportionate interference with his right to respect for his private and family life and his home. He complained in particular that, for more than five years following the allegedly unlawful entry into his flat, he had been unable to occupy it and that he and his wife had been forced to live with members of another household under conditions that prevented normal family intimacy. The applicant further complained that his flat had been returned to him in an uninhabitable state and that the authorities had so far taken no steps to remedy the situation and punish those responsible. He relied on Article 8 of the Convention, which provides:

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

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 ... for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

1. The Government

59. The Government submitted that the fact that the applicant had, for four years, been denied the opportunity to make free use of the flat in question was due firstly to unlawful acts on the part of the Institute and, secondly, to the attitude of the applicant, who had taken no steps to safeguard his possessions before leaving for Russia.

60. In addition, the Government criticised the applicant for not applying to have T. evicted at the outset, arguing that he had thereby prevented the judgment of 6 January 1999 from being executed rapidly.

61. The situation complained of had in no sense been the result of the acts or omissions of the public authorities. The Government pointed out that it was the procurator's office, despite having no obligation to do so, that had brought the court proceedings on the applicant's behalf seeking to have the

decision to transfer ownership of the flat to T. set aside. Furthermore, in its judgments of 6 January 1999 and 25 May 2000, the Melitopol City Court had reaffirmed the validity of the applicant's authorisation to occupy and use the flat. The State had executed those judgments, thereby restoring the applicant's rights that had been infringed by the Institute. Moreover, the State had had to strike a fair balance between the applicant's rights and those of T. and his family.

62. With regard to the applicant's allegations concerning the unlawful nature of the entry into the flat in question and the alleged disappearance of his possessions, the Government acknowledged that the situation could be regarded as a violation of the applicant's right to respect for his home secured by Article 8 of the Convention. However, the Government argued that the authorities had conducted a thorough and effective investigation and found no irregularities. The authorities had ascertained, on the basis of the statement of 3 November 1995, that the flat had been empty when it had been opened up. In addition, the applicant had been unable to prove the existence of the alleged possessions or T.'s implication in their supposed disappearance. Hence, the State had complied with its positive obligations under Article 8 of the Convention; the complaint should therefore be rejected as being manifestly ill-founded.

2. The applicant

63. The applicant argued that the State had failed in its obligation to safeguard his right to respect for his home and his private and family life, with the result that the Institute had been able to commit unlawful acts against him. He said that, as a result of that omission on the State's part, he and his wife had been left homeless and forced to move in with members of another household in a different part of the country (Kotovsk, Odessa region), under conditions that prevented normal family intimacy.

64. Referring to the decision of the Melitopol City Court of 14 September 1999, the applicant replied that he had not requested the eviction of T. and his family because he had not considered that they had any legal right of occupation. He pointed out in that regard that neither the Institute nor T. had informed the court in good time, at a hearing, of the transfer of the flat to private ownership, which had taken place without awaiting the relevant judicial decision.

65. The applicant further submitted that the investigation carried out in response to his repeated complaints had been neither thorough nor effective; on the contrary, it had been lengthy and beset by contradictions. The State had still not identified or taken action against anyone for the interference with his right to respect for his home and his private and family life. In particular, the relevant authorities had never looked into the legality of allowing access to the flat in his absence.

66. The applicant also noted that it was the director of the Institute who had authorised T. to enter his flat and allowed him to acquire ownership of the flat while the judicial proceedings were pending. He also pointed out that it was a representative of the Institute who had refused to hand over the keys to the court bailiff after T. and his family had moved out. The applicant stressed that, in spite of that fact, the Institute still declined to accept responsibility for the uninhabitable state of the flat when he recovered possession of it.

67. The State, therefore, had failed to take any appropriate action to restore his rights. The applicant submitted that peaceful enjoyment of the flat was still denied him, given its current state of repair. Furthermore, he had received no compensation for the damage caused to his home, his private and family life, and his health.

B. The Court's assessment

1. General principles

68. The Court draws attention to its settled case-law, in accordance with which Article 8, while primarily intended to protect the individual against arbitrary interference on the part of the public authorities, may also entail the adoption by the latter of measures to secure the rights guaranteed by that Article even in the sphere of relations between individuals (see, among many other authorities, *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, pp. 54-55, § 51, and *Surugiu v. Romania*, no. 48995/99, § 59, 20 April 2004).

69. Whether the case is analysed in terms of a positive duty on the State or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance (see *Moreno Gómez v. Spain*, no. 4143/02, § 55, ECHR 2004-X).

70. Moreover, the scope of this obligation will inevitably vary in the light of the diversity of situations obtaining in Contracting States and the choices that must be made in terms of priorities and resources. Nor must such an obligation be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities (see, *mutatis mutandis*, *Özgür Gündem v. Turkey*, no. 23144/93, § 43, ECHR 2000-III).

2. *The instant case*

(a) Preliminary remarks

71. The Court observes first of all that this application originates in the issuing and subsequent withdrawal by the State Teacher Training Institute (the applicant's employer) of an authorisation to occupy a State-owned flat on the Institute's books.

72. The Court points out that it cannot review the withdrawal of the authorisation to occupy the flat in question and the fact that access to the flat was allowed in the applicant's absence, as these events occurred in October and November 1995 and therefore fall outside its jurisdiction *ratione temporis* (see the decision of 11 March 2003 on the admissibility of this application). It draws attention, however, to the way in which the Government described the situation complained of (see paragraph 62 above), and will take account of this in assessing the measures taken by the relevant public authorities to restore the applicant's right to respect for his home and his private and family life.

(b) The role of the Ukrainian courts

73. The Court notes that the applicant was deprived of his flat from January 1996 until March 2001, during which time he and his wife were forced to live with members of another household. The Court further notes that the civil case brought by the applicant was examined on three occasions by the Ukrainian courts and that the judicial proceedings ended with a judgment of 6 January 1999 recognising the rights of the applicant to the flat in issue.

74. At first sight, the Court does not consider that the legal complexity of this case was such as to warrant proceedings comprising three hearings and lasting three years, particularly in view of what was at stake in terms of the applicant's private and family life. Even supposing it was, the Court observes that the attitude of the courts towards the applicant's situation during the proceedings contrasted starkly with their attitude towards the situation of T. and his family.

75. In that connection, the Court notes that the situation of T. and his family was taken fully into account by the Ukrainian courts which, among other things, ordered the Institute to provide them with another flat and stayed execution of the judgment ordering their eviction, owing to the health problems of a member of the family (see paragraphs 28-29 above). By contrast, the Court is not satisfied that the courts in question used all the means available to them to protect the private and family life of the applicant during the proceedings.

76. In this context, the Court is particularly struck by the fact that, in its judgment of 6 January 1999, the Melitopol City Court rejected the applicant's claim for damages, on the ground that the law made no provision for compensation in respect of non-pecuniary damage in landlord-tenant disputes (see paragraph 22 above). The Court notes that the applicant raised before the courts the issue of the damage caused by the entry into his flat and his prolonged inability to use the flat, and that his request therefore went beyond the confines of a simple landlord-tenant dispute.

77. In addition, the Court observes that in the same judgment the Melitopol City Court did not examine the legality of allowing access to the flat in the absence of the applicant, in spite of the fact that the Regional Court had indicated in its judgment of 18 August 1998 that three of the witnesses who had signed the statement of 3 November 1995 had retracted their testimony (see paragraph 20 above). In the Court's view, however, that question was clearly and indisputably relevant to the assessment of the applicant's claim for damages. The Court notes that the procurator's office also failed to take any interest in the matter (see also *López Ostra*, cited above, p. 55, § 55).

78. Consequently, the Court takes the view that the Ukrainian courts did not acquit themselves fully of the tasks incumbent upon them as part of the positive duty of the State under Article 8 of the Convention. It is true that, thanks in part to the procurator's office, the courts restored the applicant's right to the use of the flat in question, albeit after an undue delay. However, regard being had to all the circumstances of the case, this does not amount to restoring the applicant's right to respect for his home and his private and family life.

(c) The role of the Melitopol State Teacher Training Institute

79. The Court observes further that the judgment of 6 January 1999 was unable to be executed rapidly owing to the fact that, in the meantime, T., with the authorisation of the Institute, had acquired ownership of the flat in question from the municipal council (see paragraph 21 above). That being so, the Court deems it necessary to elucidate further the status and role of the Institute with regard to the applicant's rights as a tenant. In this connection, the Court reiterates that its task is not to take the place of the domestic authorities in determining the most appropriate way of proceeding in this case, but rather to review under the Convention the decisions that the authorities have taken in the exercise of their powers of appreciation (see *Cvijetić v. Croatia*, no. 71549/01, § 49, 26 February 2004).

80. The Court notes that the Institute is a State-owned higher-education establishment that comes under the direct supervision of the Ukrainian Ministry of Education. In that capacity the Institute has available to it, to meet the needs of its employees, part of the State's institutional housing

stock (see paragraph 52 above), in the form of a building constructed using Ministry of Education funds (see paragraph 27 above).

81. The Court further notes that the allocation and occupation of flats forming part of the State housing stock are governed by the Ukrainian Housing Code. Any decision or action relating to the housing stock is subject to State supervision, with some important tasks assigned to the executive committees of the municipal councils (see paragraphs 56-57 above).

82. The Court concludes, therefore, that the Institute performs “public duties” assigned to it by law and under the supervision of the authorities, namely the management and distribution of its part of the State housing stock, with the result that it can be considered as a “governmental organisation” within the meaning of the Court's case-law (see *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, p. 28, § 49; *Radio France and Others v. France* (dec.), no. 53984/00, § 26, ECHR 2003-X; *RENFE v. Spain*, no. 35216/97, Commission decision of 8 September 1997, Decisions and Reports 90-B; and *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 45, ECHR 2004-XII). Hence, the Court does not accept the arguments of the Government (see paragraphs 59 and 61 above) seeking to deny any State liability for the acts and omissions of the Institute.

83. To return to the judicial proceedings, the Court takes the view that, while these were in progress, the Institute could have examined the applicant's situation with greater care, particularly in view of the decision of 15 May 1996 of the trade union branch restoring his rights to the flat in question. In particular, the Institute could have taken note of the fact that since January 1996 the applicant and his wife had been living, not in Vladimir, in Russia, but with relatives in Kotovsk.

84. In the Court's view the Institute, as the owner and manager of part of the State housing stock, could have reacted more appropriately, for instance by providing the applicant with temporary accommodation, without waiting for a court order. Even if it had no flats available, the Institute could have sought assistance from the municipal council, which also had part of the State housing stock at its disposal and was meant to exercise State supervision in that sphere (see paragraphs 52 and 56-57 above). This applies all the more to the period following the delivery of the final, enforceable judgment of 6 January 1999. On the basis of all the evidence before it, the Court can detect no sign of any such initiative on the part of the Institute (see also *López Ostra*, cited above, p. 47, § 21, p. 55, § 53, and p. 56, § 57).

85. The Court observes that, on the contrary, the Institute allowed T. to acquire ownership of the disputed flat while the judicial proceedings were in progress, without informing the court. The Court notes that this caused a considerable delay in the execution of the judgment of 6 January 1999 (see

also *López Ostra*, cited above, p. 56, § 56). In particular, it meant that a separate set of proceedings had to be opened seeking to set aside the decision granting T. private ownership of the flat and to have him evicted (see paragraphs 25 and 28 above). The Court notes that the Melitopol City Court found the Institute's decision to transfer the flat into private ownership to be unlawful. That being so, the Court is surprised that the Government should have criticised the applicant for not requesting the eviction at the outset (see paragraph 60 above).

86. It is true that the Institute was obliged also to respect the rights of T. and his family, as the Government submitted. The Court reiterates in this regard that the notion of a “fair balance” implies measures in favour of both parties. The Government, however, did not provide details of any measures taken by the Institute in favour of the applicant.

87. The Court further notes that the flat in question was not made available to the applicant until 28 March 2001 and that, by then, it had become unfit for human habitation. However, the Institute, in its capacity as the owner and manager of the State housing stock, failed to carry out the work needed to repair the damage as speedily as possible or to identify and prosecute those responsible for the serious damage caused to part of that stock. As a result, the Court admits that it has difficulty discerning in this case any evidence of the State supervision of housing stock provided for in the Ukrainian Housing Code (see paragraphs 56-57 above).

88. The Court notes the evidence submitted by the applicant dated 20 January and 16 February 2004, stating that the damage to the flat remained and that nothing had been done since 28 March 2001 to remedy it. It notes that there is nothing in the documents provided by the Government to cast doubt upon that evidence. In particular, the Government provided no information whatsoever relating to the period after 28 March 2001 with regard to the state of repair of the flat.

(d) Conclusion

89. In view of the judicial decisions delivered in this case and the conduct of the relevant authorities, the Court considers that the State has not discharged itself of its positive obligation to restore and protect the applicant's effective enjoyment of his right to respect for his home and his private and family life. Accordingly, there has been a violation of Article 8 of the Convention.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

...

Done in French, and notified in writing on 22 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President