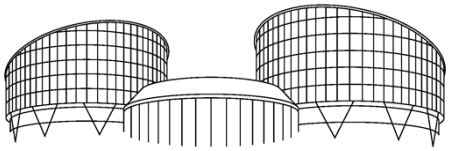

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF LUPASHKU v. UKRAINE

(Application no. 57149/14)

JUDGMENT

STRASBOURG

24 April 2025

This judgment is final but it may be subject to editorial revision.

In the case of Lupashku v. Ukraine,

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

Andreas Zünd*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 57149/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 11 August 2014 by a Ukrainian national, Ms Irina Leonidovna Lupashku ("the applicant"), who was born in 1956, and lives in the town of Berezivka in the Odesa Region, and was represented by Ms D. Ostapenko, a lawyer practising in Odesa;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko;

the parties' observations;

Having deliberated in private on 20 March 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's deprivation of her property – a flat which she had privatised and in which she had been living for several years – in favour of another person.

2. The applicant had been working for a local agricultural enterprise which owned a residential building. According to the applicant, she had been registered as a person in need of housing.

3. Under the Law on the Privatisation of the State Housing Stock, as in force at the material time, the right to privatise flats was granted to citizens of Ukraine who permanently lived in those flats (houses) or who were registered as persons in need of an improvement in housing conditions. Privatisation could be carried out by way of (i) a transfer free of charge based on the sanitary standard of 21 sq. m of total surface area per tenant and each member of his or her family, with an additional 10 sq. m. per family; or (ii) where the total surface area exceeded that standard, sale to the citizens who lived in the flat or were on the waiting list of persons in need of an improvement in housing conditions. A person could benefit from privatisation of housing only once in a lifetime. Privatisation was carried out on the basis of decisions by the relevant privatisation bodies, such as the local authorities (sections 3, 5 and 8 of the above-mentioned Law).

4. On 1 December 2004 the applicant applied to the privatisation body of the Berezivka Town Council for the privatisation of flat no. 2 at 23, Haharina Street, Berezivka, Odesa Region.

5. On 18 January 2005 the Executive Committee of the Berezivka Town Council ("the Executive Committee") approved that application and ordered the privatisation of the said flat and the issuance to the applicant of an ownership certificate. According to a copy of the latter, the applicant was the owner of the two-room flat, which had a total surface area of 43 sq. m including a living area of 27.3 sq. m. As transpires from subsequent court judgments, at the time of privatisation the applicant paid "for the purchase of the flat" 4,200 Ukrainian hryvnias (UAH – around 600 euros (EUR)) at the material time).

6. On an unspecified date the prosecutor's office of the Berezivka District received a complaint from a certain P., who claimed that the applicant had unlawfully entered and occupied his flat. During the enquiry, the prosecutor established that the applicant had not been living (or registered) in the flat at the time of its privatisation and had not been registered as a person in need of housing or an improvement in living conditions. It was noted that a certain V., who had been the head of the Berezivka Department of Housing and Utilities, had issued the applicant with a certificate according to which the applicant had been the tenant of the flat no. 2, while in fact it had been P. who had been registered in the flat with the members of his family. The above-mentioned certificate was one of the documents required for the applicant's privatisation application. According to the prosecutor, those actions raised suspicions of forgery by a public official. However, no criminal proceedings were initiated as V. had since died.

7. The prosecutor also established that in July 2000 the applicant had privatised and obtained an ownership certificate for a different flat in the same building – namely, flat no. 3. As transpires from the copy of her ownership certificate provided by the Government, the applicant and a certain L.N. were owners of the flat no. 3, which measured 34 sq. m.

8. Based on those findings, on 9 December 2009 the prosecutor issued a *protest* to the Executive Committee requesting the annulment of its decision of 18 January 2005 regarding the privatisation by the applicant of flat no. 2, and of her ownership certificate.

9. The next day, on 10 December 2009, the Executive Committee allowed the *protest* and annulled its decision and the applicant's ownership certificate.

10. As transpires from the documents available, on 22 February 2010 P. privatised the disputed flat, obtained a certificate of ownership and registered himself and his family members in flat no. 2.

11. In March 2010 the applicant brought administrative proceedings with the Berezivka District Court of the Odesa Region, requesting that the Executive Committee's decision of 10 December 2009 be annulled. She argued that she had not been informed of the examination by the Executive

Committee of the prosecutor's *protest* and that the Committee had had no powers to annul the decision on privatisation and her ownership certificate for the flat. The applicant subsequently added to her initial claims a claim to annul the ownership certificates of P. and his family members concerning the flat and to declare them as "having lost their right to use the flat". They thus joined the proceedings as co-respondents.

12. On 1 April 2011 the district court quashed the decision of the Executive Committee of 10 December 2009 granting the prosecutor's *protest*. It also annulled P.'s ownership certificate for flat no. 2 and ordered that he and his family members be taken off the registration in the flat. In its ruling it established that P.'s housing voucher (*ордер на житлове приміщення*) of 1992 had not been in conformity with the requirements of the relevant legislation. It further noted that when privatising the flat in 2005 the applicant had paid a debt that P. had run up for the flat's utilities. The court also rejected P.'s argument that the applicant had used her right of privatisation twice, which was not allowed, as the applicant "had refused from flat no. 3 and returned its technical passport ... and never registered it with the technical inventory authorities". Lastly, the court noted that during the hearing the representatives of the Executive Committee had submitted that they considered that P. had been issued with the ownership certificate erroneously.

13. P. appealed against that decision and on 16 October 2012 the Odesa Administrative Court of Appeal quashed the above judgment and rejected the applicant's claims seeking the annulment of the Executive Committee's decision and of P.'s ownership certificate. The appellate court established that in 1992 P. had obtained the tenancy of flat no. 2 and moved into it with his family; ever since then they had been registered in it. The appellate court did not analyse whether P.'s housing voucher was in conformity with the law. The court further found that in 2005 the flat had been privatised by the applicant "despite (i) P.'s entitlement to it; (ii) the fact that [the applicant] had not lived in it and had not been registered as a person in need of housing and that (iii) she had already privatised, together with [L.N.], a flat measuring 80 sq. m". The court did not mention on which evidence it had relied in reaching those conclusions. It further noted that the Executive Committee had the power to annul its decision granting the applicant's privatisation application. Lastly, the appellate court ruled that the applicant's claims seeking a declaration that P. and his family members had "lost the right to use the flat" could not be examined in administrative proceedings, and that, therefore, in this part the proceedings were terminated.

14. Both the applicant and the defendants appealed in cassation against that decision. The applicant repeated her argument that the Executive Committee had not had the power to annul her title and claimed that P.'s housing voucher had not been in conformity with the requirements of law so he could not claim any rights to the flat.

15. On 19 February 2014 the Higher Administrative Court of Ukraine rejected the cassation appeals of both the applicant and the defendants. It essentially endorsed the reasoning advanced by the appellate court.

16. In her submissions to the Court the applicant acknowledged that she had privatised flat no. 3 but claimed that she had "refused" from it and that it had been transferred to other persons who had themselves, in turn, privatised it. As to flat no. 2, she claimed that P. had never worked for the enterprise which owned the residential building and had not lived in the flat for years, having moved to another city in 1999. He had had a utilities debt which the applicant had settled when privatising that flat. The applicant also submitted that she was not prohibited from privatising another flat if during the first privatisation she had not used the entire living area standard (see paragraph 3 above). The applicant currently resides at a different address in Berezivka. She did not provide any information as to whether she had instituted any proceedings against P. after her claims were left without consideration by the appellate court (see paragraph 13 above).

THE COURT'S ASSESSMENT

I. ADMISSIBILITY

A. Applicability of Article 1 of Protocol No. 1

17. The Government argued that the applicant had received the flat in a privatisation process that had been compromised by gross violations of the law, as confirmed by the decisions of the national courts based on the prosecutor's findings. In that connection, they noted that the finding of a violation of Article 1 of the Protocol 1 is directly related to the legality of the acquisition of property, the behaviour of the acquirer during its acquisition, and the presence of a public interest for which an interference is carried out. Therefore, in their view the applicant had no legitimate right regarding the "disputed flats" as she had obtained the right of ownership on the basis of an illegal deed, and she had not acted in good faith.

18. The applicant disagreed, submitting that she had privatised the flat in full compliance with the applicable procedures and had been living in it for years, and that her deprivation of it had been unlawful.

19. The Court reiterates, as a matter of principle, that the fact that a right to property is revocable in certain circumstances does not prevent it from being considered as a "possession" protected by Article 1 of Protocol No. 1 to the Convention, at least until its revocation (see, *mutatis mutandis*, *Beyeler v. Italy* [GC], no. 33202/96, §§ 104-05, ECHR 2000-I, and *Moskal v. Poland*, no. 10373/05, § 40, 15 September 2009). The Court observes that the applicant in the present case had been in possession of the flat in question and was considered its owner for all legal purposes prior to the events complained

of. It therefore considers that she had had "possession" within the meaning of Article 1 of Protocol No. 1, even if her title was later nullified (compare *Vukušić v. Croatia*, no. 69735/11, § 48, 31 May 2016).

B. Exhaustion of domestic remedies

20. The Government argued that the applicant had failed to exhaust domestic remedies. Relying on Article 1173 of the Civil Code of Ukraine (compensation of damage caused by the unlawful decisions, actions or omissions of a state authority), they claimed that the applicant could lodge a claim against the Berezivka City Council for compensation of damages caused by the unlawfulness of its decision of 18 January 2005 granting the applicant's privatisation application. The Government further submitted that the applicant could also bring an action seeking the reimbursement of her expenses in maintaining and preserving the property or for the reimbursement of her expenses in relation to the amount by which the value of the property had increased pursuant to Article 390 of the Civil Code of Ukraine. In support of their arguments, they provided examples of two judgments at the domestic level (cases nos. 560/798/16-a and 439/1127/18).

21. The applicant considered that having lost the case against the Executive Committee and P. to have her title confirmed, there was no way she could claim damages.

22. The Court has already examined similar arguments made by the Government regarding the possibility of obtaining the above-mentioned types of compensation and has rejected them (see *Drozdyk and Mikula v. Ukraine*, nos. 27849/15 and 33358/15, §§ 26-33, 24 October 2024). There is nothing in the present case to lead the Court to reach a different conclusion. Therefore, this Government's preliminary objection must be dismissed.

C. Conclusion

23. The Court finds that 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.

II. MERITS

24. The applicant argued that her right to property was inviolable and no one was entitled to deprive her of her property in an unlawful manner, let alone by annulling a local authority's decision on privatisation. She also submitted that the flat's subsequent privatisation by P. had been unlawful.

25. The Government argued that there had been no arbitrariness in the way the national courts had applied the domestic law and that the resulting deprivation of property had been lawful. They stated, in particular, that "the

right of the State to take away a flat in connection with the proven illegality and groundlessness of its alienation in favour of a person", had been provided for in the legislation of Ukraine in force at the material time. Without clarifying which legal norms they referred to in that connection, the Government submitted that they were accessible, clear and predictable. They further argued that since the applicant had acquired the property as a result of a gross violation of the law which breached the interests of P. and his family, the annulment of her ownership certificate had been in the "public interest", as the State had to ensure the protection of the "rights of all owners and economic entities and the social orientation of the economy". They concluded that in the present case there had been "a violation of the interests of the state [and of] the ownership rights of citizens". Lastly, the Government stated that as the applicant had not been a *bona fide* acquirer of property, had abused her right to free housing privatisation and had breached the rights of P. and his family, the measures taken by the relevant national authorities had been due and proportionate.

26. The Court notes that the applicant privatised the flat following a procedure that involved the local authorities and presupposed their agreement; her ownership certificate was also issued by those authorities. She and her family members had been living, and duly registered, in the flat for five years without hindrance. The applicant was eventually deprived of her title to the flat in favour of another person whose claims were allegedly not duly substantiated.

27. In this connection, while the proceedings in the present case were administrative (being related to the annulling of the decisions of the Executive Committee), they were focused essentially on the need to protect the rights of the previous tenant of the disputed flat, P. At no stage of the proceedings was it in question that the disputed flat be transferred back into the possession of the local agricultural enterprise (which had not even been involved in the proceedings) or, for that matter, the municipality. The result of the proceedings was that the courts not only upheld the Executive Committee's decision to annul the decision awarding the applicant's title, but also refused to grant the applicant's claims seeking the invalidation of P.'s title (see paragraph 13 above). Therefore, the courts were essentially balancing two opposing private interests.

28. Private disputes do not as such engage the responsibility of the State under Article 1 of Protocol No. 1 to the Convention (see, among other authorities, *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 250, 12 December 2013, and, *mutatis mutandis*, *Kochergin v. Russia*, no. 71462/17, §§ 29-30, 24 September 2019). Accordingly, the Court's task in the present case is to assess whether the domestic courts' adjudication of the applicant's case was in accordance with domestic law and to ascertain whether their decisions were not arbitrary or manifestly unreasonable (compare *Mindek v. Croatia*, no. 6169/13, § 78, 30 August 2016).

29. The Court observes that despite the applicant's repeated arguments that the documents confirming P.'s claims to the disputed flat were not in conformity with the law, that argument was only addressed in detail by the local court, which found for the applicant on that ground. The fact that P. had not been living in the flat for years (which, as transpires from the wording of the court judgments, was known to the courts) and the legal consequences of that fact for his rights to the flat, considering the preconditions for privatisation as set out by the relevant law (see paragraph 3 above), were likewise not addressed. The appellate court, finding against the applicant, made statements as to P.'s entitlement to the flat without providing any detailed analysis or clear reference to evidence. The same is true for the statement that the applicant had not lived in the flat at the time of privatisation and had not been registered as a person in need of housing.

30. In this connection it also appears questionable whether there were good reasons for the prosecutor to enquire into the complaints of P., who had never owned the flat but had merely been its tenant many years before he had left the town. It also cannot be overlooked that the enquiry concentrated on the possible forgery by V. of a document issued to the applicant to support her privatisation application concerning flat no. 2 but did not mention any fraudulent actions on the part of the applicant herself. Based on that enquiry and the *protest* by the prosecutor which followed it, the Executive Committee decided to annul its decision granting the applicant's privatisation application. Even assuming that the suspicion of forgery on the part of a local official could have been sufficient for the prosecutor to issue a *protest* and request the annulment of the applicant's ownership certificate (as claimed by the Government), that issue was not discussed in the domestic courts' analysis during the proceedings. Moreover, that could not have automatically led to the recognition of P.'s claim to the flat.

31. The Court notes that P.'s privatisation application was granted nearly two months after the annulment of the applicant's title upon the prosecutor's *protest*, but that in the ensuing proceedings the representatives of the Executive Committee acknowledged that they had erroneously granted P.'s privatisation request and issued him with the ownership certificate to the flat. It is striking that the higher courts provided no analysis of that matter but at the same time refused to annul P.'s certificate.

32. The Court also notes the considerable role played by the prosecutor in the present proceedings which related, as noted above, mainly to private interests. It was the prosecutor who started an enquiry into the lawfulness of the privatisation of the disputed flat and it was upon his *protest* that the Executive Committee annulled its privatisation decision in relation to the applicant. Admittedly, that happened almost immediately: the day after the *protest* had been lodged with the Committee.

33. At the same time, the Court is mindful of the applicant's own actions, in particular of the fact that she had first privatised flat no. 3 and later

"refused" from that flat before applying for the privatisation of flat no. 2. The applicant failed to explain what the legal framework for those actions had been and whether she could still claim any rights to the first flat. Although the Court is not convinced by the applicant's argument that she still had the right to privatise a dwelling because she had not received the full surface-area standard – as it does not appear from the documents available that the applicant ever clearly raised that argument in the domestic proceedings – the Court nevertheless observes that the argument relating to a possible "double" privatisation had been known to the domestic courts, at least starting with the appellate court (see paragraph 13 above), but that no analysis of that issue was provided. Nor did the courts address the payment made by the applicant when privatising flat no. 2.

34. In view of the above, the Court cannot but conclude that the domestic courts failed to ensure a thorough and comprehensive examination of the applicant's case and to provide due reasons for the annulment of her title to the flat.

35. There has, therefore, been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage which, she asserted, corresponded to the current value of the flat she had been deprived of. Under the same head she further submitted that, together with her family, she had had to rent a dwelling for a long time and that, therefore, "the compensation ... should not be limited to the value of the property illegally expropriated [but the time elapsed since the] 'seizure' ... should also be taken into account". The applicant submitted no documents or calculations in support of her claims. She also claimed EUR 2,000 in respect of non-pecuniary damage she had suffered on account of the deprivation of property.

37. The Government contested those claims and reiterated their position that the applicant's complaints were inadmissible.

38. The Court notes that the applicant failed to provide any supporting documents in respect of her claims for pecuniary damage which precludes the Court from making an award under this head. However, it awards her EUR 2,000, as claimed, in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President