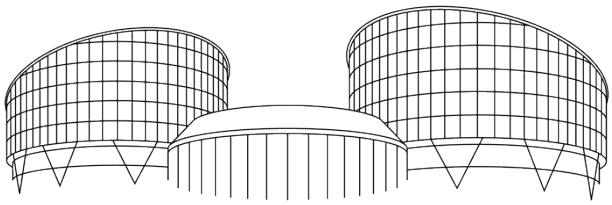

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MAKSYMENKO AND GERASYMENKO v. UKRAINE

(Application no. 49317/07)

JUDGMENT

STRASBOURG

16 May 2013

FINAL

16/08/2013

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

In the case of Maksymenko and Gerasymenko v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Helena Jäderblom,
Aleš Pejchal, *judges,*
Myroslava Antonovych, ad hoc *judge,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 9 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 49317/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Mykola Vasylyovych Maksymenko and Mr Volodymyr Borysovych Gerasymenko ("the applicants"), on 6 November 2007. Following the second applicant's death on 27 November 2009, his widow, Mrs Lyudmyla Petrivna Gerasymenko, expressed the wish to pursue the application on his behalf.

2. The applicants were represented by Mr A. Gryshchenko and Mr O. Matyushenko, lawyers practising in the towns of Malyn and Radomyshl respectively. The Ukrainian Government ("the Government") were most recently represented by their Agent, Mr N. Kulchytskyy, of the Ministry of Justice of Ukraine.

3. The applicants alleged, in particular, that by invalidating in 2006 a decision taken in 1995 to privatise a hostel which they had bought in 2004 as *bona fide* purchasers, and all subsequent transfers of ownership, the State had breached their right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention.

4. On 28 March 2011 the application was communicated to the Government. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Ms Myroslava Antonovych to sit as an ad hoc judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1958 and lives in Malyn. The second applicant was born in 1963 and died in 2009.

6. By decision no. 492 of 16 November 1995, the Zhytomyr Regional Department of the State Property Fund (*регіональне відділення Фонду державного майна України в Житомирській області*) transformed a State enterprise, M., into a joint-stock company, which resulted in its privatisation. An audit of M.'s assets carried out on 1 October 1995 revealed that the company's immovable property included several hostels.

7. On 31 January 2000 M. was reorganised into four companies including S., to which ownership of the hostels was transferred.

8. On 19 June 2003 the Zhytomyrskyy Regional Commercial Court declared S. insolvent.

9. By letter of 9 July 2003, the liquidator in the S. insolvency proceedings informed the mayor of Malyn and the Head of the Malyn District Administration that S. had been declared insolvent. As the sale of the hostels owned by S. would, according to the liquidator, create social tensions in the town, it was proposed that the town would take over their ownership.

10. By letter of 30 January 2004 the mayor informed the liquidator that the hostels were not owned by the State and it was for the board of creditors to decide what to do with them.

11. On 20 July 2004 the board of creditors agreed to sell one of the hostels to the applicants.

12. On 21 August 2004 a contract of sale was signed. The applicants paid 41,160 Ukrainian hryvnias (UAH) (at the material time around 6,127 euros (EUR)) for the hostel and became owners of a half share each.

13. On 11 January 2005 the applicants informed a local electricity supply company that they were the new owners of the hostel. They requested the company to cut off the electricity supply until a new contract had been signed with them. The applicants discovered that the power cables and electricity meters serving the property needed to be replaced, and that the hostel occupants had not been paying rent.

14. On 19 January 2005 the electricity supply company informed the hostel occupants that the electricity would be cut off on 25 January 2005.

15. On 21 January 2005 a prosecutor ordered the electricity in the hostel not to be cut off since he had been preparing to institute legal proceedings on behalf of the hostel occupants.

16. By letter of 21 January 2005, the applicants informed the Malyn District Prosecutor's Office, the mayor, the company S., at that time

allegedly in liquidation, and the hostel occupants, that they had bought the hostel in order to live there themselves. The applicants stated that when the hostel was being sold, the occupants had refused to participate in the sale process. Despite the hostel's change of ownership and need for refurbishment, its occupants had not been paying rent or communal charges for six months. The applicants requested S. to provide new housing to those occupants, who were requested to vacate the hostel by 30 March 2005.

17. On 26 January 2005, G., a nineteen-year-old hostel occupant, sought the assistance of the Malyn District Prosecutor's Office as she had a young child and had been requested to leave the hostel.

18. On 18 February 2005 a prosecutor instituted proceedings at the Malynsky District Court on behalf of G., requesting that the decision of 16 November 1995 and all subsequent transfers of ownership be declared invalid. The prosecutor noted that in January 2005 the hostel occupants had lodged previous complaints with his office. After examining the case the prosecutor concluded that the hostel's privatisation in 1995 had been unlawful. He argued that section 2(2) of the State Housing Stock Privatisation Act (*Закон «Про приватизацію державного житлового фонду»*) prohibited the privatisation of rooms in hostels. The transfer of ownership of the hostel and its subsequent sale breached the Act, other legal provisions and the "moral principles of society", since the occupants' constitutional rights to housing had been violated. It also adversely affected the economic interests of the State and the housing rights of G., who was a single mother with a young child and was therefore unable to lodge a claim herself. Lastly, the prosecutor requested that ownership of the hostel be transferred to Malyn Town Council ("the Council").

19. On 1 April 2005 the applicants lodged a counterclaim. They reiterated that the hostel occupants had refused to participate in the hostel sale process and had not been paying rent and communal charges which had resulted in S.'s insolvency. The applicants submitted that they had informed the prosecutor's office of the matter and requested S. to provide housing to the hostel occupants. The prosecutor's office had failed to protect the rights of the new owners despite the fact that the hostel was in an alarming state, the drainage and water supply systems were not functioning and the rooms were being heated by stoves. Moreover, the premises could no longer be classed as a hostel as it had become a normal multi-family apartment building. Its occupants were no longer employed by the company which had provided them with housing. Lastly, the applicants requested the court, in the event of finding against them, to award them UAH 52,748 in compensation, to be paid by the Council, representing the hostel's value and the administrative costs relating to the contract of sale.

20. On 11 April 2005 the Malyn District Court returned the counterclaim to the applicants and provided them with a deadline of 1 May 2005 to correct errors in their application. In particular, the court noted that the

counterclaim "lacked logical consistency", in that there was no clear evidence of causation and loss. The decision was posted to the applicants on 23 April 2005. It is unclear when they received it. It appears that the applicants did not re-lodge their claim.

21. On 20 December 2005 the second applicant sent the Malyn District Court a copy of a decision of 26 May 2005 taken by the Zhytomyr Regional Court of Appeal in which it had rejected a prosecutor's application to declare as invalid decisions taken in 1994 and 1999 by the Zhytomyr Regional State Property Fund to privatise a certain hostel. The court found that there were no legal provisions prohibiting the privatisation of hostels, as section 2(2) of the State Housing Stock Privatisation Act prohibited the privatisation of rooms within hostels but not hostels *per se*. The court did not refer to section 3 of the State Property Privatisation Act, which prohibited the privatisation of State housing stock.

22. On 23 January 2006, in the applicants' case, the court rejected the prosecutor's request as unsubstantiated. Again, the court did not refer to section 3 of the State Property Privatisation Act. In reply to the applicants' objection that the prosecutor had missed the three-year time-limit for lodging his claim, the court noted that the prosecutor had only learned about the situation in question following G.'s complaint.

23. On 8 June 2006 the Zhytomyr Regional Court of Appeal quashed that decision and declared the decision of 16 November 1995 and all subsequent transfers of ownership invalid. The court held that section 3 of the State Property Privatisation Act provided that State housing stock, including hostels, was not amenable to privatisation. Since, at the material time, the hostel in question was owned by the State, it had been privatised unlawfully. Referring to Article 216 of the Civil Code of Ukraine, the court awarded the applicants UAH 41,160, to be paid by S. It further held that ownership of the hostel should be transferred to the Council.

24. The applicants appealed on the grounds that the court's decision of 8 June 2006 contradicted another decision taken in an analogous case by the Zhytomyr Court of Appeal, that the court had disregarded the time-limits for lodging claims and that S. had been declared insolvent.

25. On 21 May 2007 the Vinnytsya Regional Court of Appeal, acting as a court of cassation, rejected the applicants' appeal on points of law by finding, without any further explanation, that there had been no breaches of law.

26. On 19 July 2007 the Council agreed to take over ownership of the hostel.

27. On 25 September 2007, in the case of *T. and G. v. State Property Fund of Ukraine*, *S., and Malyn Town Council*, the Zhytomyr Regional Court of Appeal found, referring to decision no. 891 of 6 November 1995 of the Cabinet of Ministers of Ukraine, that a transfer of ownership of another

hostel in 1995 had been lawful, since hostels did not form part of State housing stock.

28. The applicants submitted that S. had failed to comply with the court decision of 8 June 2006 requiring it to pay them compensation.

29. Between November and December 2008, twelve out of the fourteen apartments at the hostel were privatised by their occupants pursuant to the amended State Housing Stock Privatisation Act (see paragraph 34 below).

II. RELEVANT DOMESTIC LAW

A. Civil Code of Ukraine 2004

30. Article 216 of the Code provided, in so far as relevant, as following:

> "... In the event of a transaction being declared null and void, each party shall return to the other party the proceeds received for the transaction in question. In the event of such restitution being impossible, ... it shall return to the other party its current value.
>
> If a party or a third party has suffered pecuniary or non-pecuniary damage as a result of a transaction being declared null and void, the liable party shall pay compensation."

31. Articles 257 and 261 of the Code provide that the time-limit for lodging a civil claim is three years. The calculation of the relevant time-limit starts from the day a person learns, or could have learned, of a breach of his or her rights.

B. State Property Privatisation Act 1992

32. Section 3 of the State Property Privatisation Act provides that State housing stock cannot be privatised.

C. Housing Code of Ukraine 1983

33. Article 4 of the Code provides that the State housing stock includes dwelling houses and residences in other buildings belonging to the State.

D. State Housing Stock Privatisation Act 1992

34. Sections 2 and 3 of the Act provide that, as regards privatisation of apartments (or houses), at least 21 square metres of living space per person and an additional 10 square metres per household should be transferred to tenants free of charge. The remaining living space should be available for purchase.

In September 2008 the Act was amended so as to allow the privatisation of rooms within hostels.

E. Decision no. 891 of 6 November 1995 of the Cabinet of Ministers of Ukraine

35. The decision, which entered into force on 7 December 1995, provided that, in the event of insolvency, liquidation or the transfer of ownership of a company, any properties belonging to State housing stock but being managed by the said company were to be given to a municipality. Before being amended in 2004, the provision did not apply to hostels.

F. Prosecutor's Act 1991

36. Section 35 provides that the prosecutor can join proceedings at any given time if it is in the interests of the State or for the protection of citizens' constitutional rights.

THE LAW

I. *LOCUS STANDI* OF THE SECOND APPLICANT'S WIDOW

37. The second applicant died on 27 November 2009. On 14 October 2010 his widow informed the Court that she wished to pursue the application.

38. The respondent Government submitted that by 22 July 2011, besides his widow, the second applicant's mother, son and daughter had all claimed to be his heirs. The Government noted that the second applicant had died intestate and that there had been a dispute between his heirs about the division of the inherited property. The Government agreed that the second applicant's widow should be able to maintain the application before this Court on her late husband's behalf; however, they requested the Court to take into account the above-mentioned information.

39. The Court notes that the present application concerns a property right which is, in principle, transferable to the heirs of the deceased, and that the second applicant's widow was his next of kin. In these circumstances the Court considers that she has standing to continue the present proceedings in his stead (see *Sharenok v. Ukraine*, no. 35087/02, § 12, 22 February 2005). However, reference will still be made to the second applicant throughout the remainder of the judgment.

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

40. The applicants complained that their right to peaceful enjoyment of their possessions had been breached, and that they had been deprived of their property. The applicants relied on Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

41. The Government submitted that the applicants should have claimed damages under Article 216 § 2 of the Civil Code of Ukraine on account of the invalidation of the contract of sale. Under Article 22 of that Code, damages included losses a person had sustained owing to the destruction of an item of property, costs incurred as a result of a breach of duty (actual damages), and loss of income. The Government submitted copies of court decisions in two commercial law cases concerning what appeared to be private companies, one of which was awarded damages by the courts pursuant to Article 216 of the Civil Code of Ukraine. Therefore, the national law provided the applicants with an avenue to receive not only reimbursement of their costs, but also compensation for losses incurred as a result of being deprived of their property, including loss of income. The applicants did not submit any evidence that they had claimed such damages through the national courts. In the Government's view, that proved that the applicants had regarded as sufficient the amount of compensation awarded to them on 8 June 2006. Lastly, the Government noted that the existence of mere doubts as to the prospects of success of a particular remedy which was not obviously futile was not a valid reason for failing to exhaust domestic remedies (see *Dzizin v. Ukraine* (dec.), no. 1086/02, 24 June 2003). The Government thus contended that the applicants had not exhausted the effective remedies available to them at national level.

42. The applicants submitted that on 1 April 2005 they had lodged a counterclaim for damages. On 11 April 2005 the Malyn District Court dismissed their claim without considering it. That decision was only sent to the applicants on 23 April 2005; therefore, they had been unable to comply with the time-limit given by the court. The applicants further noted that the court decisions arising from the cases cited by the Government had been

adopted in different circumstances, and that they mainly concerned transactions involving the Commercial Procedure Code of Ukraine.

43. The Court notes that the Government did not specify against whom the applicants were supposed to have lodged their claim for damages. The court decisions submitted by the Government concerned disputes between two private companies; however, it does not appear that the applicants could have lodged such a claim against S. since the company had been already declared insolvent. Moreover, it is doubtful whether S. could have been treated as a defendant for the purposes of Article 216 of the Civil Code. Assuming that the Government had submitted examples of successful litigation between two companies to demonstrate that the applicants should have claimed damages from the State, the Court considers that the Government's objection is closely linked to the merits of the applicants' complaint under Article 1 of Protocol No. 1 and joins it thereto.

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

B. Merits

1. The parties' submissions

45. The Government indicated that fourteen families had lived in the hostel. They had all belonged to socially unprotected groups of the population, for example, G., a single mother. The Government noted that Article 8 of the Convention imposed positive obligations on the State, that is to say to take measures to protect an individual's rights to respect for private life and in particular housing (the Government cited *mutatis mutandis*, *Marckx v. Belgium*, 13 June 1979, Series A no. 31, and *Menteş and Others v. Turkey*, 28 November 1997, *Reports of Judgments and Decisions* 1997-VIII). The applicants had tried to create unsuitable living conditions in the hostel (for example, by cutting off the electricity) in order to evict the occupants. The prosecutor's office had concluded that the applicants had breached the occupants' right to respect for their homes, as indicated in its complaint to the court and its appeal against the decision of 23 January 2006. By having awarded the applicants adequate compensation, the courts had balanced their rights against the public interest. The Government further noted that the applicants had been deprived of their property in accordance with the law.

46. The Government further contended that the applicants had owned the hostel in question between 21 August 2004 (the date on which the contract of sale was registered at the State property registry (*Державний реєстр правочинів*)) and 8 June 2006. They had not claimed compensation

for the costs of maintaining and improving the property during that period. The applicants had been awarded compensation equal to the value of the hostel, to be paid by S., but they had not instituted enforcement proceedings against the company. Therefore, the Government contended that depriving the applicants of their property had not imposed an excessive individual burden on them.

47. In reply, the applicants submitted that they had been deprived of their property by the State without any compensation. Moreover, the hostel in question had later been privatised by its occupants. There was no evidence that the hostel occupants had belonged to socially unprotected groups of the population. For example, one of the occupants who had privatised his apartment was a school headteacher. The applicants rejected the allegation that they had evicted people from the hostel and had cut off the electricity. Therefore, the State had failed to demonstrate in what "public interest" the applicants had been deprived of their property.

48. The applicants further submitted that S. had been insolvent and at the material time had been in liquidation. The insolvency proceedings had been run by a board of creditors headed by a representative of the Malyn Regional State Tax Inspectorate. Therefore the bailiffs' service had not been empowered to enforce the judgment in question (see *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, ECHR 2004-XII). The applicants had tried to intervene in the insolvency proceedings against S. but to no avail.

2. The Court's analysis

49. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not, however, unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of possessions and are therefore to be construed in the light of the principle laid down in the first rule (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 78, ECHR 2006-V).

50. In the present case, the Court considers that there has been a "deprivation of property" within the meaning of the second sentence of Article 1 of Protocol No. 1 which amounted to an interference with the applicants' right to the peaceful enjoyment of such. It must therefore be ascertained whether the interference is justified under that provision.

51. To be compatible with Article 1 of Protocol No. 1, a measure of interference must fulfil three basic conditions: it must be carried out "subject to the conditions provided for by law", which excludes any arbitrary action on the part of the national authorities, it must be "in the public interest", and it must strike a fair balance between the owner's rights and the interests of the community (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012).

(a) Compliance with the principle of lawfulness

52. The Court reiterates that an essential condition for an interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful. However, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness; it is rather the quality of the applicable provisions that matters.

53. Firstly, the legal norms upon which the deprivation of property is based should be in accordance with the domestic law of the Contracting State, including the relevant provisions of the Constitution (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII; and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 81, ECHR 2005-VI). Secondly, the provisions of domestic law must be sufficiently accessible, precise and foreseeable in their application (see *Shchokin v. Ukraine*, nos. 23759/03 and 37943/06, § 51, 14 October 2010).

54. The Court, however, has limited power to review compliance with domestic law, especially when there is nothing from which it can conclude that the authorities applied the legal provisions in question manifestly, erroneously or so as to reach arbitrary conclusions (see *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I).

55. In the present case, the national court based its decision of 8 June 2006 to invalidate the decision to privatise taken in 1995 on a provision of national law which prohibited the privatisation of State housing stock. It seems to be unclear in how far "hostels" were included in the "housing stock" in the sense of the State Property Privatisation Act.

56. The Court notes that from the court decisions cited by the applicants, it does not follow that there existed one unique approach at national level as regards the lawfulness of privatising hostels in the 1990s (see paragraphs 21 and 27 above). From that standpoint, the element of uncertainty in the courts' practice, despite the clear character of the legal provision in question, is to be taken into account in determining whether the measure complained of struck a fair balance (ibid., *mutatis mutandis*, § 108).

(b) "In the public interest"

57. In the present case, the prosecutor instituted court proceedings challenging the privatisation and all subsequent transfers of ownership of

the hostel in the name of the "economic interests of the State and the housing rights of G." (see paragraph 18 above). No explanation was given as to what particular economic interests of the State were at stake or how they served the "public interest".

58. As for G.'s and other hostel occupants' housing rights, the Court notes that the applicants had intended to evict them from the hostel as they had been planning to renovate it and to live there themselves (see paragraph 16 above).

59. Therefore, the Court accepts that the deprivation of the applicants' possessions was carried out in the public interest, that is to say, to ensure the protection of the housing rights of others.

(c) Proportionality

60. Even if it is lawful and carried out in the public interest, a measure of interference with the right to the peaceful enjoyment of possessions must always strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Scordino*, cited above, § 93).

61. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 109 25 October 2012). Nevertheless, the Court cannot abdicate its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of ProtocolNo. 1 (see *Jahn and Others v. Germany* [GC], cited above, § 93).

62. In the present case the State authorities, with a view to protecting the housing rights of others, corrected, what they considered to be, an erroneous interpretation of the law in force which occurred more than ten years earlier.

63. In this connection the Court reiterates the particular importance of the principle of "good governance". It requires that where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as those involving property, the public authorities must act in good time and in an appropriate and above all consistent manner (see *Rysovskyy v. Ukraine*, no. 29979/04, §§ 70-71, 20 October 2011).

64. The good governance principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence (see *Moskal v. Poland*, no. 10373/05, § 73,

15 September 2009). However, the need to correct an old "wrong" should not disproportionately interfere with a new right which has been acquired by an individual relying on the legitimacy of the public authority's action in good faith (see, *mutatis mutandis*, *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 58, ECHR 2002-VIII). In other words, State authorities which fail to put in place or adhere to their own procedures should not be allowed to profit from their wrongdoing or to escape their obligations (see *Lelas v. Croatia*, no. 55555/08, § 74, 20 May 2010). The risk of any mistake made by the State authority must be borne by the State itself and the errors must not be remedied at the expense of the individuals concerned (see, among other authorities, *mutatis mutandis*, *Pincová and Pinc*, cited above, § 58; *Gashi v. Croatia*, no. 32457/05, § 40, 13 December 2007; and *Trgo v. Croatia*, no. 35298/04, § 67, 11 June 2009). In the context of revoking ownership of a property transferred erroneously, the good governance principle may not only impose on the authorities an obligation to act promptly in correcting their mistake (see, for example, *Moskal v. Poland*, cited above, § 69), but may also necessitate the payment of adequate compensation or another type of appropriate reparation to its former *bona fide* holder (see *Pincová and Pinc*, cited above, § 53, and *Toşcuţă and Others v. Romania*, no. 36900/03, § 38, 25 November 2008).

65. The Court notes that before taking the decision to sell the hostel to the applicants, S.'s board of creditors had informed the State authorities about possible complications but in January 2004 the town mayor had explicitly refused to take over ownership of the hostels, including the one later sold to the applicants.

66. A year later the prosecutor instituted court proceedings seeking to invalidate the contract of sale as the hostel should not have been privatised in the first place. However, a year after the decision satisfying the prosecutor's claim was upheld by a higher court, 85% of the hostel apartments became privately owned by their occupants.

67. The Court further notes that there is no evidence that all the hostel occupants belonged to socially unprotected groups of the population, whose housing rights required reinforced protection. In particular, it is unclear whether the hostel occupants had bought the apartments or whether ownership had been transferred to them free of charge in accordance with the State Housing Stock Privatisation Act. In any event, the subsequent privatisation of the hostel rooms confirmed that the State did not intend to keep the building in question to use as social housing.

68. Lastly, the Court cannot disregard the fact that the applicants did not receive any compensation for being deprived of their property. Although the court had indeed awarded them compensation, to be paid by S., it could not have ignored the fact that by that time the company was already insolvent, which was in itself the reason for the sale of the hostel. In such circumstances, the Court is not convinced that the applicants should have

instituted further proceedings to claim damages from the State. The Court therefore dismisses the Government's objection in this regard.

69. In the Court's view, even assuming that the interference in question was based on clear and foreseeable provisions of the national law and was aimed at protecting the housing rights of others, the fact that the applicants, who were *bona fide* purchasers, were unable to be compensated for their losses, which had been inflicted on them by the inconsistent and erroneous decisions of the State authorities, constitutes a disproportionate burden on the applicants.

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

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

70. The applicants complained that the court had disregarded the three-year time-limit for lodging a claim, since the decision to privatise the hostel had been taken in 1995. They relied on Article 6 of the Convention, which reads as follows:

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

71. The Government submitted that the relevant time-limit began from the moment when G. had submitted her complaint to the prosecutor's office.

72. The applicants stated that Article 261 of the Civil Code of Ukraine did not apply to the prosecutor, since the public prosecutor's office was a State body which carried out permanent "supervision of the observance of human and civil rights and freedoms and of the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers", as stipulated in Article 121 of the Constitution of Ukraine. The applicants submitted that the prosecutor represented the interests of third parties and could not be regarded as a claimant.

73. The Court notes that, in the present case, the prosecutor's application to invalidate the decision of 16 November 1995 was lodged more than nine years later, on 18 February 2005, and was triggered by the complaint lodged by G. on 26 January 2005. There is no evidence that the prosecutor was aware of the transactions in question before this complaint was submitted.

74. Although no evidence of G.'s complaint was presented by the parties, it appears from the case materials available that G. complained about being required to move out of the hostel in question. The prosecutor, having concluded that the potential eviction originated from the transfer of ownership of the hostel, lodged a claim not only in the interests of G., but also in the interests of the State (see paragraph 18 above).

75. The Court notes that the first-instance court addressed the applicants' argument against their failure to comply with three-year time-limit for lodging a claim and rejected it as unsubstantiated. Although neither the second-instance, nor third-instance courts answered the applicants' objection in this regard, the Court notes that Article 6 § 1 obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). In the present case it may be concluded that by not answering the applicants' plea of limitation the higher courts adhered to the interpretation given by the first-instance court. In particular, the Vinnytsya Regional Court of Appeal, acting as a court of cassation, noted that there were no breaches of law.

76. The Court further reiterates that it is not its task to examine whether the plea of limitation was well-founded, as it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of national law (see *Ruiz Torija v. Spain*, 9 December 1994, § 30, Series A no. 303-A).

77. The Court concludes that, in the present case, the interpretation of the relevant provision of domestic law by the national court does not appear to be in breach of Article 6 § 1 of the Convention. The Court thus considers that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. Lastly, the applicants complained under Article 6 § 1 of the Convention that the national courts had disregarded the previous decision of the commercial court to sell the hostel to them and that the court of cassation had held a hearing in their absence.

79. The applicants also relied on Articles 13, 14, 17 and 34 of the Convention. In particular, they stated that the unlawful deprivation of their property and the inability to recognise that the prosecutor had acted unlawfully had been aimed at preventing them from lodging an application with the Court.

80. The applicants lastly submitted that, by disclosing information about the second applicant's heirs, the Government had breached Article 8 of the Convention.

81. Having considered the applicants' submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

82. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicants claimed EUR 12,583 in respect of pecuniary damage and EUR 12,000 in respect of non-pecuniary damage.

85. The Government stated that the applicants had been already awarded compensation, to be paid by S., and had failed to claim further damages. The Government further submitted that the applicants' claim for compensation in respect of non-pecuniary damage was unsubstantiated.

86. The Court awards the applicants EUR 6,127 (representing the value of their interest in the seized hostel) in respect of pecuniary damage.

87. The Court, deciding on an equitable basis, further awards the applicants EUR 3,000 each in respect of non-pecuniary damage.

B. Costs and expenses

88. The applicants also claimed EUR 1,300 for the costs and expenses incurred before the domestic courts and before the Court.

89. The Government submitted that the applicants had failed to specify the amount of time spent by their lawyers on the case and to submit evidence in support of their other expenses.

90. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had that no documents in substantiation of the above expenses had been submitted by the applicants, the Court rejects the claim for costs and expenses.

C. Default interest

91. The Court 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. *Decides* to join to the merits the Government's objection as to inadmissibility of the applicants' complaint under Article 1 of Protocol No. 1 for non-exhaustion of effective domestic remedies and *dismisses* it;

2. *Declares* the complaint under Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicants, 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 6,127 (six thousand one hundred and twenty-seven euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President