

[TRANSLATION - EXTRACT]

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## THE FACTS

The facts of the case, as submitted by the parties, may be summarised as follows.

### A. The particular circumstances of the case

#### *1. Background to the case and facts common to all the applicants*

All the applicants are Ukrainian nationals and residents who opened savings accounts with the Ukraine Savings Bank, which until 1992 was an integral part of the USSR Savings Bank. With the exception of the cases expressly referred to below, all the accounts were opened in the 1980s. Under the terms of the agreements: “The State guarantee[d] that deposits [would] be repaid in full on demand by the account holder”. The rule was not stated to be subject to any restrictions.

In 1996 the Ukrainian authorities implemented a monetary reform intended to replace the former monetary unit, the karbovanets coupon, with a new currency, the Ukrainian hryvna (*українська гривна*, UAH), at an exchange rate of 100,000 karbovanets coupons for 1 hryvna. The conversion also had an impact on the applicants’ deposits, which had already considerably depreciated as a result of inflation.

On 21 November 1996 the Ukrainian Parliament enacted the Ukrainian Citizens’ Deposits (State Guarantee of Reimbursement) Act (Law no. 537/96). Pursuant to section 3 of that Act, the applicants’ deposits were indexed at a ratio of 1 karbovanets coupon to 1.05 hryvnas. Section 7 established a system for the indexed savings to be repaid progressively, taking into account the account holder’s age, the amount on deposit and other criteria. Each year the Government brings in regulations specifying the categories of account holders entitled to receive compensation in the

coming year. Under the regulations, only account holders aged 80 or over are entitled to recover a part of their savings (UAH 48, equivalent to approximately 10 euros (EUR) per person). In addition, on an account holder's death, his or her heirs are entitled to UAH 150 to pay for the burial.

In the late 1990s each of the applicants issued proceedings against the Ukraine Savings Bank in the relevant courts seeking payment of all or part of their indexed deposits in hryvnas. Their claims were dismissed both at first instance and on appeal on points of law. In most of the decisions, the courts held that the claimants concerned were not entitled to compensation under Law no. 537/96 for the fall in value of their deposits, as they were under 80 and thus had no valid legal claim granted by the Government under the Act. As regards the fifth, twelfth, thirteenth and fourteenth applicants, who had attained the qualifying age, the courts found that they were entitled to compensation limited to UAH 48, as the legislation in force did not provide for the repayment of the full value of their deposits.

Subsequently, some of the applicants made one or more unsuccessful applications for supervisory review of the final decision to the President of the Ukrainian Supreme Court or the president of the relevant regional court.

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## **B. Relevant domestic law and practice**

### *1. Provisions relating to the repayment and indexation of deposits*

The first paragraph of Article 41 of the Constitution (Конституція України) reads as follows:

“Everyone has the right to own, use and dispose of his or her property...”

The relevant parts of Article 384 of the Civil Code (Цивільний кодекс) read as follows:

“Private persons may deposit sums of money in State savings banks and other financial institutions, have access to their deposits...”

The State guarantees the confidentiality and safekeeping of deposits and their repayment on demand by the account holder...”

The third paragraph of section 39 of the Banking Activities Act (Закон “Про банки і банківську діяльність” – Law no. 872-XII of 20 March 1991), which was in force until January 2001, provided:

“... Ukraine shall guarantee the safekeeping of deposits ... lodged by private persons with the Ukraine Savings Bank and their repayment to account holders on demand.”

The relevant provisions of the State Guarantees of the Reimbursement of Ukrainian Citizens' Deposits Act (Закон “Про державні гарантії

відновлення заощаджень громадян України” – Law no. 537/96 of 21 November 1996) provide:

#### **Section 1**

“This Act sets out the State’s obligations to Ukrainian citizens who, following the devaluation, have lost money which they deposited before 2 January 1992 in branches of the USSR Savings Bank ... carrying on business on Ukrainian territory...

Similarly, Ukrainian citizens who deposited money with a branch of the USSR Savings Bank ... between 1992 and 1994 which remained in the accounts of the Ukraine Savings Bank for at least one full year between 1992 and 1995 shall be entitled to compensation...”

#### **Section 2**

“The State undertakes to maintain and update the real value of individual savers’ deposits and to pay them compensation in accordance with the relevant provisions.”

#### **Section 3**

“The deposits by the private individuals referred to in the first paragraph of section 1 of this Act shall be revalued using the ratio of 1.05 hryvnas for 1 karbovanets coupon lodged, corresponding to the position at 1 October 1996.”

#### **Section 6**

*(as amended by Law no. 8/97 of 17 January 1997)*

“The payment of compensation to Ukrainian citizens for damage resulting from the depreciation of their deposits shall be made ... by the Treasury ... from 1997 onwards.

The funds set aside to finance this compensation scheme ... shall constitute a special item in the budget of the Ukrainian State...”

#### **Section 7**

“Deposits shall be reimbursed progressively taking into account the account holder’s age, the amount of the deposit and other criteria and the amount of funds allocated for that purpose in the Ukrainian State budget for the forthcoming year.

*[Paragraph amended by Law no. 201/98 of 24 March 1998]* The list of the categories of account holders, the order of reimbursement of the indexed pecuniary deposits and the amount of the payments referred to in section 8 of this Act shall be determined by the Ukrainian Cabinet to the extent the funds allocated for that purpose in the budget of the Ukrainian State allow.”

### Section 8

“*[Paragraph amended by Law no. 201/98 of 24 March 1998]* On an account holder’s death, the heirs ... may withdraw parts of the indexed deposit ... for the purposes of arranging the funeral, the amount being calculated by reference to the amount of the funeral grant...”

The categories of persons eligible for repayment of their deposits are defined in regulations (постанова) approved each year by the Cabinet for the forthcoming year (see regulations nos. 1210 of 31 October 1997, 825 of 8 June 1998, 457 of 25 March 1999, 817 of 17 May 2000, and 275 of 26 March 2001). Under these regulations, the right to partial reimbursement of the deposits is reserved to account holders who attained the age of 80 by 1 January 1997 and heirs of deceased account holders, for the purposes of making burial arrangements. Account holders from the first category are entitled to reimbursement of UAH 48 (approximately EUR 10), whereas the heirs of deceased account holders are entitled to an amount equivalent to the funeral grant, that is to say UAH 150 (approximately EUR 30). Since 1999 disabled ex-servicemen have also been able to claim reimbursement of part of their deposits. Regulation no. 275, which covers the year 2001, added to these categories account holders who had reached the ages of 100 or 80 respectively by 1 January 2001. Account holders in the latter category are entitled to the sum of UAH 50. All the aforementioned payments may only be made “to the extent the sum allocated in the State budget for the year concerned allows”.

According to a practice direction (no. 1-5/117) issued by the Ukraine Supreme Court on 15 March 1999 on the implementation of Law no. 537/96, complaints concerning the repayment of indexed deposits to private individuals under the statutory guarantee provisions in force are to be dealt with under the contentious-business procedure. The practice direction is binding on all Ukrainian courts. When deciding such cases, the courts must remember that they are not dealing with liability for breach of contract between the account holder and the Savings Bank, but with the repayment of revalued deposits under the relevant provisions. The Supreme Court also directed that payments of compensation for indexed deposits must be made solely through branches of the Savings Bank. Consequently, in the event of litigation, the regional branch of the Savings Bank and the Ukraine Treasury must be joined to the proceedings as defendants. The Savings Banking reimburses the indexed deposits to the extent the sums allocated for that purpose in the budget of the Ukrainian State have been paid over to it in accordance with the ranking provisions established by the Cabinet. Thus, if a court finds that the sums concerned have not been paid to the Savings Bank or that the claimant is not a person entitled to reimbursement of the deposits for the year concerned, that person’s claim must be dismissed. If the claim exceeds the prescribed sum, the court shall grant it to the extent laid down in the State Guarantees of the Reimbursement of Ukrainian Citizens’ Deposits Act.

On 5 April 2002 the Cabinet passed a resolution concerning the reimbursement in 2002 of the value of deposits made by Ukrainian citizens before 2 January 1992 in branches of the former USSR Savings Bank situated on Ukrainian territory (Про виплату в 2002 році грошових заощаджень громадян України, вкладених до 2 січня 1992 р. в установи колишнього Ощадного банку СРСР, що діяли на території України). By that resolution, the Government allocated UAH 500,000,000 from the national budget to enable individual deposits to be indexed. Of that amount, UAH 65,000,000 was allocated to the heirs of account holders who had died between 1997 and 2002, on condition that they had not yet received the grant available under section 8 of Law no. 537/96. The remaining UAH 435,000,000 was to be divided between the other account holders. The amount payable to each beneficiary was, in principle, limited to UAH 150 for people from the first category and UAH 50 for people from the second.

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## COMPLAINTS

The applicants complained under Article 1 of Protocol No. 1 to the Convention that the State, which was the guarantor of the Savings Bank's obligations, had unilaterally restricted their rights as contracting parties. Such conduct constituted a disproportionate interference that did not pursue a legitimate aim. They submitted that their rights to the peaceful enjoyment of their possessions had been violated by their inability to recover their indexed deposits.

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## THE LAW

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## B. The Government's preliminary objection

While acknowledging that the Court had jurisdiction *ratione temporis* to examine the applications, the Government raised a preliminary objection at the outset alleging that they were incompatible *ratione personae* with the provisions of the Convention. In that connection, they pointed out that in accordance with Article 34 of the Convention: "The Court may receive applications from any person, ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto". The Government noted that, in order to have standing as a victim of a breach of the right of property, applicants had to show that they had such a right or had a prospect of being found to be entitled to a right to a pecuniary benefit once the legal conditions had been satisfied. Conversely, if those conditions were not satisfied, they had no entitlement and the State could not be held responsible for the fact that they had not been granted the benefit (*C. v. France*, application no. 10443/83, Commission decision of 15 July 1988, Decisions and Reports (DR) 56, p. 20).

In that connection, the Government stressed the difference between, on the one hand, mere reimbursement of the applicants' deposits and, on the other, the scheme set up to provide them with "compensation". Each of the applicants had two parallel, but separate, accounts with the Savings Bank: a savings account in the strict sense which the applicants themselves had opened before 1992 and an indexed account opened by the State in order to provide compensation for the decrease in value of the first account through inflation. The Government pointed out that the payment being sought by the applicants was from the latter account, not the former. However, while all the applicants incontestably owned the money they had deposited in the savings account, they had no right of property in the sums paid by the State into the compensation account until such time as they satisfied the conditions set out in Law no. 537/96. Consequently, the applicants could not assert any pre-existing right of property in the sums claimed, or, accordingly, that they had standing as "victims" of the alleged violations, within the meaning of Article 34 of the Convention. That being so, the Government requested the Court to declare the applications incompatible *ratione personae* with the Convention provisions.

That argument was contested by the applicants. They pointed out that when opening the savings accounts for them the Savings Bank had undertaken to repay the sums deposited on demand. Subsequently, by declaring the State responsible for the deposits, the legislature had granted the applicants a claim against the State, which had then unilaterally defaulted on its obligations. Consequently, since the applicants held a pecuniary right which the State had infringed, they were entitled to claim that they had standing as "victims" of the alleged violations. The applicants also stated that they had exhausted the available domestic remedies and

complied with the other formal conditions precedent to an application to the Court. There was therefore no reason for their standing as “victims” to be called into question.

The Court reiterates that the reference to “victim” in Article 34 means a person directly concerned by the act or omission complained of, that is to say, a person who has a personal, direct and valid interest in seeing the act proscribed or the omission repaired (*X. and Y. v. Belgium*, application nos. 1420/62, 1477/62 and 1478/62, Commission decision, Yearbook 6, p. 591). Similarly, by “victim” Article 25 means the person directly affected by the act or omission which is in issue, a violation being conceivable even in the absence of any detriment; the latter is relevant only to the question of just satisfaction (see, among many other authorities, the *Prager and Oberschlick v. Austria* judgment of 26 April 1995, Series A no. 313, p. 19, § 6). In that connection, the Court considers that the issue whether an applicant may claim to be a “victim” within the meaning of Article 34 of the Convention does not turn on the substance or content of the right in issue, but solely on the question whether it is linked to the person who relies on it (see, *mutatis mutandis*, *Sanles Sanles v. Spain* (dec.), no. 48335/99, 26 October 2000; and *Boffa and Others v. San Marino*, application no. 26536/95, Commission decision of 15 January 1998, DR 92, p. 27).

In the instant cases, the Court notes that all the applicants have sought payment from the State of sums corresponding, in their view, to the money deposits owned by them at the Savings Bank. They also complained of the way in which the domestic courts had applied an Act which had given them an expectation of obtaining a pecuniary right in the future but had made the realisation of that right dependent on conditions they considered to be unjustified (see, *mutatis mutandis*, *Lazarević v. Croatia* (dec.), no. 50115/99, 7 December 2000, unreported; and *Hava v. Czech Republic*, application number 23256/94, Commission decision of 29 June 1994, DR 78, p. 139). The Court considers that that suffices to demonstrate that the applicants’ personal interests were at stake and that they have accordingly been “directly and personally affected” by the conduct of the State authorities (*A.P.C.A., L.P.C.A., Abid and 646 Others c. Romania* (dec.), no. 34746/97, 10 July 2001). The applicants may, therefore, claim to be “victims” of the alleged violations and the preliminary objection must be dismissed.

### **C. Merits of complaints**

#### *1. Complaint under Article 1 of Protocol No. 1*

The applicants complained that their inability to withdraw the amount of their indexed deposits meant that they were victims of an unjustified interference with the exercise of their right to the peaceful enjoyment of

their possessions. That right was guaranteed by Article 1 of Protocol No. 1 to the Convention, the relevant part of which provides 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...”

**(a) The parties' submissions**

*(i) The Government*

The Government said that in order to determine whether Article 1 of Protocol No. 1 was applicable in a given case, the Court had to make sure that the application did in fact concern the applicant's "possessions". In that connection, they noted that under the settled case-law of the Convention institutions, "possessions" meant either existing possessions or, at least a legitimate expectation of being granted the enjoyment of a right of property. In that regard, the Government stressed the need to draw a distinction between the deposits actually made by the applicants and the sums paid out of the State budget into compensation accounts representing indexed savings.

As regards, firstly, the applicants' initial deposits in their savings accounts, the Government said that even though they had substantially depreciated in value, they had not been expropriated or attached and there was nothing to prevent the applicants from withdrawing them with interest at any time. That right was guaranteed both by the relevant provisions of the former Banking Activities Act (see above) and the current legislation. As to the rate of statutory interest, it varied with the amount of the deposit. The method of calculating interest was laid down by two resolutions of the Ukraine National Bank made under the aforementioned Act. The Government pointed out that when the 1996 monetary reform replacing the karbovanets coupon by the hryvna was introduced, the rate of interest earned on the initial deposits was increased. The only deposits not to benefit from the increase were deposits of less than one hryvna.

The Government said that, conversely, the applicants had no right of property in the funds in the compensation account, to which annual contributions were made by the State after the capacity of the national budget and the interests of other categories of savings-account holders and society as a whole had been taken into account. They pointed out, in particular, that under the settled case-law of the Convention institutions, Article 1 of Protocol No. 1 did not impose any general obligation on States to maintain – by the systematic indexing of savings – the level of purchasing power of sums freely deposited with banking or financial institutions. It was true that by Law no. 537/96, the State had voluntarily undertaken without any quid pro quo to "maintain and update the real value of deposits ... in accordance with the relevant provisions" (section 2), on condition that the payment of the compensation was made "progressively taking into account the account holder's age, the amount of the deposit and other criteria" (section 7). However, the State had had no stage assumed an obligation to pay citizens the full value of their indexed deposits in a single instalment.

In summary, the amounts representing the indexed deposits had not existed prior to indexation and, therefore, could not be regarded as the applicants' "possessions". In that connection, the Government submitted that the mere fact of having a savings account and of being entitled to pass the right to compensation to one's estate was of no consequence in the instant case, as the right thus transferred was subject to the same conditions as the original right. In those circumstances, the Government contended that that complaint was incompatible *ratione materiae* with the provisions of the Convention.

(ii) *The applicants*

The applicants disagreed with the Government. As regards the Government's argument that Article 1 of Protocol No. 1 did not require the State to maintain the level of purchasing power of savings accounts, they pointed out that in the instant case it was the State itself that had assumed the obligation, thus becoming a party to the agreements between the Savings Bank and the applicants. The State had wrongfully used its position as legislature unilaterally to avoid its obligations and vary their scope, in breach of the provisions of the Ukrainian Civil Code and general principles of private law. In addition, the fact that a debtor was insolvent or unable to perform an agreement did not release it from liability. The applicants also noted that, since the obligations of the Savings Bank and the State had not been extinguished by any subsequent agreement or legislation, they continued to subsist and had to be performed. In that connection, the applicants said that insufficient budgetary resources could not justify a failure to comply with the rights guaranteed by the Convention and its Protocols; they added that as a result of their inability to recover their indexed deposits their financial situation had become catastrophic.

In principle, the applicants did not dispute the Government's assertion that they were entitled to recover the money they had initially deposited with the Savings Bank. However, they pointed out that, following severe devaluation as a result of inflation, all the deposits were now derisory in amount, even when statutory interest was taken into account. In that connection, they stated that the main purpose of their applications had been to obtain payment of the compensation, not to withdraw the underlying deposits, which were no longer of any interest to them.

Besides, some of the applicants did not accept that a distinction could be made between the sums on deposit and the sums paid by the State under the indexation scheme. They considered that they were one and the same sum. Opening parallel compensation accounts was merely a technical means of ensuring that the deposits retained their value. Consequently, irrespective of the legal classification of the payments to which they considered they had title – whether as compensation paid entirely by the Treasury, or restitution of the underlying deposits revalued at the rate set by law – the applicants considered that those pecuniary sums were their property. In that

connection, they pointed out that they each had a savings book which constituted a valid title to property. Likewise, in their submission, the fact that the right to compensation could under Ukrainian law be transmitted by deceased savings-account holders to their estates clearly showed that it constituted their “property”.

**(b) The Court’s assessment**

The Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right to property, comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest (see, among many other authorities, the *Matos e Silva, Lda., and Others v. Portugal* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1113, § 81; and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V). The three rules are not, however, “distinct” in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property; accordingly, they must be construed in the light of the general principle laid down in the first rule (see *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

The Court reiterates that, according to the established case-law of the Convention organs, “possessions” within the meaning of Article 1 of Protocol No. 1 can be “existing possessions” (see *Van der Musselle v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48) or assets, including claims, in respect of which the applicant can argue that he has at least a “legitimate expectation” of obtaining effective enjoyment of a property right (see *Pine Valley Developments Ltd. and Others v. Ireland*, judgment of 29 November 1991, Series A no. 222, p. 23, § 51; and *Pressos Compania Naviera S.A. v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31). However, Article 1 of Protocol No. 1 does not guarantee any right to acquire the ownership of property (*Linde v. Sweden*, application no. 11628/85, Commission decision of 9 May 1986, DR 47, p. 270). Consequently, it does not impose any general obligation on States to maintain the purchasing power of sums deposited through the systematic indexation of savings (*Rudzińska v. Poland* (dec.), no. 45223/99, ECHR 1999-VI; and *X. v. Germany*, application no. 8724/79, Commission decision of 6 March 1980, DR 20, p. 226).

The Court notes that the applicants’ complaint concerns two separate sums to which they lay claim: firstly, the savings account itself, that is to say the sums they actually deposited with the Savings Bank, whatever their real current value, and, secondly, the sums financed by the State budget and

paid by the State under the indexation-of-deposits scheme established by Law no. 537/96. It notes, however, that the main purpose of their applications is to seek recovery of the indexed amounts.

As regards, firstly, the applicants' initial deposits, the Court finds that they undoubtedly constitute their "possessions" within the meaning of Article 1 of Protocol No. 1. In that connection, the Court notes that it is common ground that the applicants are entitled to withdraw the sums together with statutory interest if they so wish. However, it does not appear from the material in the case file that any of them have sought to exercise that right. On the contrary, some of the applicants have stated that they have no need of the initial deposits and have emphasised that the main purpose of their applications is to recover the indexed amounts. In these circumstances and in so far as the applications concern repayment of the deposits themselves, the Court finds that the applicants cannot claim to have standing as "victims" within the meaning of Article 34 of the Convention. This part of their applications must therefore be dismissed pursuant to Article 35 § 4.

As to the amounts referred to in Law no. 537/96 representing the indexed value of the deposits, the Court notes that their availability depends on the amounts which the State allocates to the Treasury subject to certain conditions. The proceedings issued by each of the applicants in the domestic courts did not, therefore, concern "existing possessions" that belonged to the applicants. In that connection, the Court reiterates that the right to the indexation of savings as such is not guaranteed by Article 1 of Protocol No. 1, (see the *Rudzińska* decisions cited above, and *Trajkovski v. Former Yugoslav Republic of Macedonia* (dec.), no. 53320/99, ECHR 2002-...), which provision is therefore inapplicable in the instant case. This part of the application is accordingly incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

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For these reasons, the Court, unanimously,

*Decides* to join the applications;

*Declares* the applications inadmissible.