

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

FIFTH SECTION

CASE OF GOROPASHYN v. UKRAINE

(Application no. 67127/16)

JUDGMENT

STRASBOURG

24 April 2025

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



In the case of Goropashyn 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. 67127/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 November 2016 by a Ukrainian national, Mr Sergiy Grygorovych Goropashyn ("the applicant"), who was born in 1963, lives in Zhytomyr and was represented by Mr S.S. Goropashyn, a lawyer practising in Zhytomyr;

the decision to give notice of the complaints under Article 1 of Protocol No. 1 to the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, and to declare the remainder of the application inadmissible;

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 application concerns the invalidation of the applicant's title to a plot of land some twenty years after its allocation.

2. The applicant, being a liquidator of the Chernobyl disaster, was entitled by law to obtain a plot of land for construction of an individual house. In 1993 the Executive Committee of the City Council allocated a plot of land to the applicant and its boundaries were demarcated on site.

3. In 1996 the applicant obtained ownership documents to that plot of land. It appears that he had not started any construction on the land but had been using it for recreation with his family. From other documents in the case file it appears that the land was in a dilapidated condition and that the neighbours were using it for grazing.

4. In 2013 the applicant discovered that construction work was being carried out on his land. He then found out that in 2011, his plot of land had been allocated by the neighbouring Ivanivka Village Council ("the Village Council") to O., who had later sold it to H. The latter had obtained title to it and started building a house. The applicant initiated three sets of proceedings.

5. In the first set of proceedings the applicant's claims against the decision of Village Council to allocate the land to O. were granted by the local and appellate courts on 19 January and 1 April 2015, respectively. The courts found that Village Council had not provided any documents confirming its

boundaries at the time of the events. At the same time, in 1990-1991 Zhytomyr City Council ("the City Council") and Village Council had agreed on the transfer of certain plots of land, which had previously belonged to a local collective farm, to the city with the aim of creating a new zone for the construction of individual houses. The relevant decisions were still in force and had not been repealed. Later, the city had assigned a name to the streets that had been created after the distribution of the plots of land to individuals. The courts concluded that the Village Council had had no right to dispose of the plot of land in question as it had belonged to the city. On 14 July 2016, however, the above-mentioned judgments were quashed by a court of cassation and the proceedings were terminated on the grounds that a dispute of that kind should have been examined in civil and not administrative proceedings.

6. In the second set of proceedings the applicant's claims to have O.'s title invalidated were granted by a final judgment of the local court on 19 May 2015. Its findings were based on the local and appellate courts' judgments in the first set of proceedings mentioned above.

7. In the third set of proceedings, initiated in November 2013, the applicant brought a claim against H. in the civil courts, seeking to have the contract of sale between H. and O. declared null and void. The applicant relied on the findings made by the courts in the two previous sets of proceedings. H. lodged a counterclaim to have the applicant's title invalidated.

8. By a judgment of 11 November 2015, the Zhytomyr District Court granted H.'s claims and invalidated the applicant's title. It found, firstly, that pursuant to the land legislation in force at the material time, an executive committee of a city council was not entitled to make decisions on allocation of land, that power being a prerogative of the city council. It further found that the redistribution of land between the city of Zhytomyr and the village of Ivanivka had never been duly formalised (in particular, because in order to change the boundaries of a city, a special submission had to be made to the Parliament of Ukraine) and the disputed plot of land had still been treated as belonging to the territory of the village of Ivanivka. In that connection the court referred to documents provided by the State Land Resources Agency and the State postal services provider confirming that all houses in the respective district belonged to the village of Ivanivka. Lastly, the court stated that it could not take into account the findings in the judgments delivered in the first set of proceedings that had been referred to by the applicant, because they had been made in administrative proceedings.

9. On 26 January 2016 the above-mentioned judgment was upheld by the Zhytomyr Regional Court of Appeal which noted that the representative of the City Council had acknowledged that the disputed plot of land had been located outside the territory of the city as defined in 1973 and that its transfer had not been formalised. The city, therefore, had had no right to dispose of it.

10. On 11 May 2016 the Higher Specialised Court for Civil and Criminal Cases gave a final judgment in the case, upholding the lower courts' conclusions.

THE COURT'S ASSESSMENT

I. SCOPE OF THE CASE

11. The applicant complained under Articles 6 and 13 of the Convention, as well as under Article 1 of Protocol No. 1 to the Convention, that he had been deprived of his property arbitrarily, with the domestic courts failing to assess his case properly. The interference with his rights had not been in the public interest and he had not been offered any compensation.

12. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the applicant's complaints fall to be examined under Article 1 of Protocol No. 1 only.

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

13. With regard to admissibility, the Government argued that the applicant could have claimed compensation from the City Council for its unlawful actions and decisions as provided for in Article 1173 of the Civil Code, yet he had not done so. The applicant disagreed. The Court considers that the Government's argument is closely related to the merits of the case and therefore joins it to the examination on the merits.

14. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

15. On the merits, the Government conceded that there had been an interference with the applicant's property rights, but they considered it to be lawful and pursuing a legitimate aim. In particular, the applicant's title needed to be revoked to correct a mistake in the allocation of land which had been in breach of the relevant regulations. That had also served to protect the interests of H., who had been a *bona fide* acquirer. As regards proportionality, the Government maintained their position that the applicant had had the opportunity to claim compensation; they also noted that the applicant had never started any construction on the disputed land.

16. The applicant disagreed with the Government's assertion that he had obtained his land unlawfully, as he had all the necessary documents for the land and if there had been any irregularities surrounding the allocation of land, they were in no way attributable to him. He further argued that the

domestic courts had failed to clearly indicate a provision of domestic law on which his rights to the land had been revoked. The applicant also disagreed with the Government's assertion that H. had been a *bona fide* acquirer, arguing that she must have questioned the lawfulness of O.'s title, given that the land was located several kilometres away from the village of Ivanivka and that O. had sought to sell the land immediately after acquiring it. The applicant also emphasised that at the time of the delivery of the judgments in the third set of proceedings, all judgments given in previous sets of proceedings (which had established that Village Council had had no right to dispose of the land and had invalidated O.'s title) had still been effective. Lastly, he noted that all other persons who had obtained land in the same area had not been affected in any way and had retained their property rights.

17. The Court notes at the outset that the proceedings that eventually resulted in the applicant's title to the land being invalidated were civil and involved two private parties. At the same time, the key issue before the courts concerned the establishment of the facts surrounding the distribution of land between the city of Zhytomyr and the village of Ivanivka. In other words, the invalidation of the applicant's title was a direct consequence of the domestic courts' findings of a defect in the procedure by which the authorities had originally disposed of the land. The Court therefore considers that the subject matter of the dispute comprised significant elements of public law and implicated the State in its regulatory capacity. Consequently, the present case cannot be considered a purely private dispute and the Court's review is therefore not limited only to the question whether the domestic courts' judgments can be regarded as arbitrary or otherwise manifestly unreasonable (see, *mutatis mutandis*, *Gladysheva v. Russia*, no. 7097/10, §§ 55-59, 6 December 2011 and *Vukušić v. Croatia*, no. 69735/11, § 48, 31 May 2016).

18. The general principles regarding the interference with the peaceful enjoyment of possessions have been summarised in, for example, *Kryvenkyy v. Ukraine* (no. 43768/07, § 42, 16 February 2017). In particular, the Court must assess whether the interference was lawful and effected in the public interest, and whether it pursued a legitimate aim by means reasonably proportionate to the aim sought to be realised.

19. The Court considers that the plot of land that the applicant had obtained from the city authorities constituted his "possession" within the meaning of Article 1 of Protocol No. 1 and that the domestic courts' judgments allowing the invalidation of his title to it led to an interference with his property rights.

20. The parties disagreed on the questions of lawfulness and the existence of a legitimate aim in the present case, but the Court does not consider it necessary to rule on those issues as the interference in question did not, in any case, comply with the requirement of proportionality.

21. The Court reiterates that in cases where the correction of errors caused by State authorities results in an interference with the right to the peaceful

enjoyment of the property of a *bona fide* holder, the principles of good governance impose on the authorities an obligation not only to act promptly in correcting their mistake, but may also necessitate the payment of adequate compensation or another type of appropriate reparation to the former *bona fide* holder (see *Maksymenko and Gerasymenko v. Ukraine*, no. 49317/07, § 64, 16 May 2013, with the case-law cited therein) so that the risk of any mistakes made by the State authority must be borne by the State and the errors are not remedied at the expense of the individual concerned (see *Gladysheva*, cited above, § 80, and the case-law cited therein).

22. The Court notes that the applicant had a preferential right to acquire land as a liquidator of the Chernobyl disaster. In the realisation of that right, City Council first allocated him a plot of land and later issued him with ownership documents. He had possessed that land without hindrance for around twenty years, when another person started to build a house on it. In this connection, the Court does not consider it decisive whether the applicant had started any construction himself or had been using the land for any other lawful purpose; what matters is that he was the land's lawful owner. The applicant's title was eventually invalidated, in favour of another person, because of irregularities in the distribution of territories between the two administrative entities – the city and the village, – a procedure in which the applicant had not been involved and on which he had no influence. There is nothing to show that he was in any way a *mala fide* owner. Moreover, it appears that the authorities themselves agreed that that procedure had been flawed (see paragraph 9 above).

23. That being so, the domestic courts were faced with the need to correct the authorities' own mistakes and the Court does not consider that their ruling in favour of H. was manifestly unreasonable. The situation nevertheless called for compensation or another form of reparation for the applicant. The Government argued that it had been open to the applicant to claim compensation for the unlawful actions and decisions of the authorities. The Court notes that it has already found that the Government had failed to show that there existed any clear domestic regulation that would allow for a monetary or any other form of compensation for any damage in such situations (see, *Drozdyk and Mikula v. Ukraine*, nos. 27849/15 and 33358/15, §§ 31-33 and 49, 24 October 2024). There is nothing in the present case that could lead the Court to a different conclusion. The Government's preliminary objection must, accordingly, be dismissed.

24. The Court further notes that since the invalidation of the applicant's title there have been no attempts to offer him any other form of reparation, for example, by allocating him a comparable plot of land. This is especially striking considering the fact that according to the domestic legislation the applicant has a guaranteed preferential right to obtain a plot of land. The applicant was thus made to bear a disproportionate burden.

25. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed 211,600 Ukrainian hryvnias (UAH – approximately 7,880 euros (EUR)) in respect of pecuniary damage, this being the value of the plot of land on the date his title to it had been invalidated. In support of his claims, he submitted a detailed expert report dated 25 December 2023. The applicant also claimed EUR 7,000 in respect of non-pecuniary damage and EUR 100 in respect of costs and expenses. The applicant did not present any supporting evidence in respect of the latter amount.

27. The Government objected to those claims. In particular, they submitted that an expert report prepared in 2023 could not have correctly established the value of land back in 2016.

28. The Court, in view of the circumstances of the case and its findings above, considers that the award in respect of pecuniary damage should correspond to the value of the plot of land of which the applicant had been deprived. Having no basis to question the accuracy of the valuation report provided by the applicant and in the absence of an alternative report by the Government, the Court awards the applicant EUR 7,880 as claimed.

29. The Court also awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

30. Lastly, the Court rejects the applicant's claim for costs and expenses as unsubstantiated.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the Government's preliminary objection to the merits of the case and, having examined it, *dismisses* it;

2. *Declares* the application admissible;

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 applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,880 (seven thousand eight hundred and eighty euros), plus any tax that may be chargeable, in respect of pecuniary damage; and

(ii) EUR 1,500 (one thousand five hundred euros), 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 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