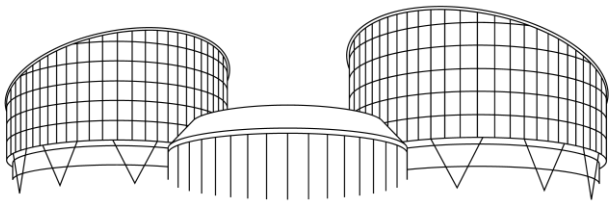

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 27427/02
Pavlo Ivanovich LAZARENKO and others
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 11 December 2012 as a Chamber composed of:

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 12 July 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are three Ukrainian nationals, Mr Pavlo Ivanovych Lazarenko, born in 1953 (the first applicant), Mrs Tamara Ivanivna Lazarenko, born in 1954 (the second applicant) and Mr Oleksandr Pavlovych Lazarenko, born in 1979 (the third applicant). The first applicant has been in detention in California, the United States of America, since 1999, and the second and third applicants have been living in Ukraine since 2005.

2. The applicants were represented by Ms M. Dolgopola and Mr S. Dunikowski, lawyers practising in Kyiv and Nanterre respectively. The Ukrainian Government ("the Government") were represented by their Agent, Mr N. Kulchytskyy.

I. THE CIRCUMSTANCES OF THE CASE

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

A. Background to the case

3. From 5 September 1995 to 28 May 1996 the first applicant was First Deputy Prime Minister. He was Prime Minister from 28 May 1996 to 2 July 1997. In March 1998 he was elected to Parliament. On 17 February 1999 his parliamentary immunity was lifted in view of criminal proceedings against him which had been instituted on 14 September 1998.

4. He left Ukraine for Athens on 14 February 1999 and later went to the United States, where he requested political asylum. In 2000 he was also tried *in absentia* in Switzerland and convicted of money laundering. On 3 June 2004 he was convicted by a jury in California, and on 25 August 2006 sentenced by a federal district court, on several charges, including money laundering. On 10 April 2009 a federal court of appeals overturned all convictions except those related to money laundering, and remanded the case for resentencing. On 18 November 2009 the federal district court sentenced him to 97 months in prison. His prison term expired on 1 November 2012.

5. The second applicant left Ukraine for France on 18 January 1999 with her two minor daughters. She returned home on 24 November 1999 while her daughters were pursuing their studies in the United States.

6. The third applicant left Ukraine for Moldova on 17 February 1999 and then went to the United States where he started his university studies in June 1999.

B. Seizure of the applicants' belongings and the flats occupied by them

7. On 5 September 1996 the first applicant was granted an occupancy voucher (*ордер на житлове приміщення*) for a flat, by the Shevchenkivsky District Executive Committee in Kyiv. The family moved into the flat, entered into a rent agreement in the first applicant's name, and were registered as permanently residing there. The first applicant paid the communal charges in 1999 and then in 2003-04.

8. On 3 March 1999 the General Prosecutor's Office ("the GPO") issued an order to secure the first applicant's property under Article 86 § 1 of the Criminal Code and Articles 125-126 of the Code of Criminal Procedure. Pursuant to that order, property in Dniepropetrovsk belonging to the applicants was secured.

9. On 30 March 1999 it issued another order, securing possessions in the flat in Kyiv, on the grounds that the items had been purchased with State funds allegedly stolen by the first applicant.

10. On 6 April 1999 the investigating officer sealed the flat. The applicants' property and personal belongings, including those of the two minor daughters, were secured.

11. Between 1 December 1999 and 20 March 2000 the second applicant repeatedly requested the GPO to allow her access to the flat and to have her personal belongings returned. All her requests were dismissed, lastly on 6 November 2000, in view of the criminal investigation pending against her husband. The GPO made it clear that the property had not been confiscated, but only secured. It added that, formally speaking, the flat itself had not been secured, but only the personal belongings in it; the flat could be returned to others, including members of the family of the accused, under Article 126 of the CCP.

12. On 16 February 2000 the applicants were invited to submit a list of personal belongings which they wished to have returned. In a letter of 24 February 2000 the GPO stated that the applicants had not acted in response. It is not clear whether they ever submitted such a list.

13. On 29 January 2005 the GPO asked the applicants to indicate a person who could clean the apartment and move the secured property to a different place, as the applicants had lost their right to use the flat.

C. Judicial proceedings concerning the right to use the flat

14. On 3 December 1999 the Housing Department of the Cabinet of Ministers (later renamed the Housing and Communal Property Department of the State Affairs Department; hereafter "the Housing Department") sued the applicants at the Shevchenkivsky District Court (Kyiv) seeking a ruling that they had lost their right to occupy the flat as they had not lived there for the past six months without any valid reason.

15. On 6 December 1999 the second applicant, acting on her own behalf and in the name of her minor daughters, lodged a counterclaim against the GPO and the Housing Department, seeking a ruling that they had been unlawfully prevented from entering the flat and collecting their personal belongings. She argued that they were entitled to enter and use the flat as it was their place of residence.

16. On 21 December 1999 the court joined the two actions.

17. On 13 April 2000 the second applicant unsuccessfully requested the court to apply interim measures and prohibit the defendants from barring her access to her property, which included essential items of clothing for herself and her children and necessary household items.

18. On 3 July 2000 she lodged a complaint with the President of the Supreme Court, complaining, *inter alia*, about the lengthy examination of the case and the fact that the GPO never attended the hearings.

19. On 2 October 2000 the Housing Department lodged additional claims against the two daughters, who had reached the age of majority and had therefore lost the right of dwelling in the home, requesting the court to include them in the proceedings as co-defendants. On 5 October 2000 the court allowed that request.

20. On 12 December 2000 the second applicant unsuccessfully asked to have her claims heard separately from those lodged by the Housing Department.

21. On 27 and 28 April 2001 the applicants' lawyers asked the President of the Supreme Court to transfer the case to the Supreme Court, alleging that Judge O. lacked independence and impartiality, and that the proceedings concerned the GPO and the State Department. This request was refused.

22. In a judgment of 22 August 2001 the court, ruling on the requests of the first and second applicants for the case to be heard in their absence, allowed the claims lodged by the Housing Department, finding that the applicants had no right to live in the flat, as they had not occupied it for more than six months. It further found that their housing rights had not been infringed, either by the GPO or by the Housing Department. The court held that the second applicant's complaints against the GPO concerning the securing of the property could be examined separately. The applicants were thus implicitly informed that they could undergo an appropriate procedural step in this regard. It found unsubstantiated the applicants' allegations that the GPO had unlawfully prohibited them from using their belongings, as the second applicant had been asked to provide a list of the items she wished to obtain, but had not done so.

23. On 31 August 2001 the court, interpreting its legal conclusions, found, *inter alia*, that:

(i) the State-owned flat had been assigned to the first applicant for his use on the basis of an occupancy voucher on 5 September 1996;

(ii) the applicants and their two daughters were registered as living permanently in the flat and the first applicant had concluded a rent agreement with the tenancy in his name;

(iii) the first and second applicants and their three children had left Ukraine in January-February 1999, with the second applicant returning to the country on 1 December 1999, and thus had left the flat unoccupied for more than six months; moreover, the first applicant had sought to obtain an

American residence permit; the applicants' claims that they had been absent for valid reasons were not supported by any relevant and sufficient evidence;

(iv) there was no evidence of death threats against the applicants justifying their absence from the flat; and

(v) the first applicant's continued payment of communal charges and the fact that they had left their personal belongings there did not constitute continued use of the flat.

24. The court further found that there is no proof that the third applicant left the country in order to pursue his studies or that he had any agreement with a US educational institution at the time when he left Ukraine. It held that his studies abroad cannot serve a sufficient justification for his absence from the apartment, as according to information provided by the university confirming that he had been studying there from August 1999 (two certificates from the university mention June 1999) and thus a long time after his departure from Ukraine. Moreover, the information about the language studies that the daughters had undertaken in the United States in the spring of 1999 constituted insufficient evidence of justified absence from the flat for study reasons.

25. On 20 September 2001 the applicants' lawyers appealed to the Kyiv City Court of Appeal, stating that the first-instance court judgment was unlawful and unsubstantiated. On 16 January 2002 their appeal was dismissed. The court found that all five members of the family were registered at the flat, which had not been privatised, and that they had vacated it for a period longer than six months, without any justification.

26. On 4 April 2002 and 25 April 2003 respectively, the Supreme Court rejected appeals on points of law lodged by the applicants and the two daughters.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Housing Code (as in force at the material time)

27. Article 9 allowed long-term use of residential premises owned by the State. Citizens could privatise the premises they occupied (Article 65 § 1). Article 58 provided that occupancy vouchers constituted grounds for taking up residence in residential premises provided by the local self-government bodies managing these premises. Any residential property was only to be used on the basis of a tenancy agreement concluded in writing in accordance with an occupancy voucher (Article 61).

28. Under Article 71 § 1 (maintaining residential premises for temporarily absent citizens) premises were kept for temporarily absent tenants or members of their family for six months. In the event of absence

for justified reasons the six-month period could be extended at the request of the tenant and in the event of a dispute by the court (Article 71 § 2). The premises were to be kept for more than six months in the following instances (Article 71 § 3): temporary departure from the permanent place of residence for studies abroad (for the whole period of the studies, point 2) and detention or imprisonment following conviction of a person (for the whole period of detention and sentence, point 7) whose family members shared the dwelling. The six-month term ran from the time when the person finished his studies or was released from detention or was no longer required to serve his sentence (Article 71 § 4). The housing legislation of the USSR could establish other conditions for continued use of the premises for a longer term (Article 71 § 5).

29. Article 72 of the Code provided that temporarily absent tenants and members of their families were allowed to retain use of the residential premises for more than six months for justified reasons, and that this period could be extended by the lessee and, in the event of a dispute, by a court.

30. Under Article 107, a tenancy agreement was considered to be null and void if a tenant and his family moved to another place of permanent residence. The agreement could also be revoked by a court at the request of the owner of the premises (Article 108). Tenants could only be evicted with a court order, and those evicted had to be provided with alternative residential accommodation (Article 109).

B. Resolution of the Presidium of the USSR (Verkhovna Rada) on the Foundations of the Housing Legislature of the USSR and the Soviet Republics, introduced on 1 January 1982 (in force at the material time)

31. An occupancy voucher is the prerequisite for moving into residential accommodation (Article 25). It can only be declared null and void by a court. A tenancy agreement must always be concluded on the basis of an occupancy voucher. Tenants of apartments have the same rights to use the apartment as the person to whom the occupancy voucher was issued (Article 26). Tenants are obliged to pay for the apartment and to pay the communal charges (Article 27). Residents temporarily absent from the apartment can retain the apartment for a period of six months; however, this period may only be extended on the basis of the grounds and exemptions provided for by law. Only a court may declare that a person has lost the right to use an apartment due to absence beyond the statutory term (Article 29).

C. Code of Criminal Procedure (as amended on 21 June 2001)

32. The relevant extracts from the Code with regard to arrest and seizure of property in the course of criminal proceedings and procedure for examining complaints against the actions of the prosecutor or investigator are briefly summarised in the judgment of *Merit v. Ukraine*, no. 66561/01, 30 March 2004 (see also *MPP Petrol v. Ukraine* ((dec.), no. 62605/00, §§ 76-79, 25 March 2008).

33. Pursuant to Article 126, property belonging to a suspect or accused can be attached in order to secure funds in the event of a civil claim or an order for the confiscation of property in criminal proceedings. Secured property must be inventoried and may be transferred for storage to representatives of enterprises, institutions, organisations or members of the accused's family or others. Those responsible for the storage of property must be informed of their criminal liability for failure to comply with the storage obligations they have undertaken. Seizure of property and its transfer for storage are to be carried out on the basis of a substantiated resolution that must be signed by the person who inventoried the property, witnesses to the seizure of the property and the person responsible for storage. An inventory must be appended to the resolution. A specialist should be invited to estimate the value of seized property in case such a valuation is required. If there is no further need to secure the property, the investigator shall lift the security

34. A decision of the investigator or prosecutor can be appealed against to the prosecutor and higher prosecutor respectively (Articles 234 and 235). Complaints about their actions and decisions taken on those complaints can be appealed against to the first-instance court, which must examine them in an administrative hearing (*попереднього розгляду*) or upon examination of the case on the merits (*при розгляді справи по суті*) (Article 234). Also, according to Article 409 of the Code, claims for exemption of property from an inventory shall be examined simultaneously with other issues related to enforcement of a judgment given in a criminal case.

D. Code of Civil Procedure (as in force until 19 October 2000)

35. Article 381 provided that property could be inventoried for the purposes of enforcing a criminal judgment that involved confiscation as a sanction. Under Article 385, persons who considered that inventoried property was their property, and not the property of the debtor, had the right to claim this property and request its exemption from the inventory. Under Article 380 matrimonial property or property belonging to other citizens could also be confiscated if a judgment in criminal proceedings established that these possessions were the proceeds of criminal activity.

E. Civil Code, 16 January 2003 (as in force from 1 January 2004)

36. Under Article 387 an owner of property had the right to seek the return of his possessions from a person who had unlawfully taken them.

F. Code of Civil Procedure, 1961 (as in force until 1 September 2005)

37. Under Article 130, claims for exemption of property from the inventory could be lodged with the appropriate court.

G. Practice of the Supreme Court

38. The Plenary Supreme Court stated in its Resolutions:

(i) no. 6 of 27 August 1976 on judicial practice in cases regarding exemption of property from an inventory, that proceedings in connection with such requests shall be brought in accordance with Article 409 of the Code of Criminal Procedure, which allows exemption of property from an inventory after a criminal conviction and on the basis of a confiscation order. The courts were not allowed to reject exemption from seizure claims lodged before the criminal case had been decided. However, the court could temporarily suspend proceedings on such a claim (similar provisions are contained in Resolution no. 4 of the Plenary Supreme Court of the USSR of 31 March 1978, in force at the material time);

(ii) no. 20 of 22 December 1995 on judicial practice in cases regarding claims relating to protection of private property, that requests for exemption of property from the list of inventoried property that has been seized are a means of protection of property rights and should be treated by the courts accordingly.

39. Certain decisions of the Supreme Court in civil cases indicated that the courts examined claims for exemption of property from the inventory intended for confiscation after the domestic criminal proceedings had been finalised and a decision taken on confiscation of property. However, in some instances these claims were examined separately from the main criminal proceedings.

COMPLAINTS

40. The applicants complained about the outcome of the proceedings. They also alleged that the length of the proceedings was unreasonable and that the courts were not independent and impartial. They rely on Article 6 § 1 of the Convention.

41. Relying on Article 8 § 1 of the Convention, they further alleged that they could only have access to their home and belongings if the General Prosecutor's Office quashed its order to secure the apartment and personal belongings. They maintained that the prosecution had acted unreasonably.

42. They also complained that they had had no effective remedies in respect of their complaints concerning the denial of access to their home and personal belongings, contrary to Article 13 of the Convention.

43. Relying on Article 1 of Protocol No. 1, the applicants alleged that their property rights had been infringed and that they had had no effective remedies in this respect, in violation of Article 13 of the Convention.

44. The applicants lastly maintained that they had been discriminated against by State bodies, contrary to Article 14 of the Convention.

THE LAW

I. COMPLAINT UNDER ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 RELATING TO THE SEIZURE OF THE APPLICANTS' FLAT

45. The applicants complained that the General Prosecutor's Office had arbitrarily and unlawfully interfered with their right to respect for their home, and that they had been deprived of access to the flat that was allegedly in their lawful possession. They relied in this respect on Article 8 of the Convention and Article 1 of Protocol No. 1, which provide as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 1 of Protocol No. 1

"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. The Government's submissions

46. The Government submitted that only the second applicant had exhausted domestic remedies, as she had instituted proceedings against the GPO and the Housing Department seeking access to the flat. As to the victim status of the first and third applicants, the Government claimed that the domestic courts had refused access to the flat only to the second applicant, and the first and the third applicants could not therefore claim to be victims within the meaning of Article 34 of the Convention.

47. In respect of the merits of the applicants' complaint under Article 8 of the Convention, the Government maintained that the flat at issue could not be considered the applicants' "home", being a mere "temporary home" until the applicants had voluntarily left the country. There was therefore no interference with the applicants' rights under Article 8 of the Convention. Even assuming that there was an interference, it was lawful, initially based on the need to secure possible property confiscation in pending criminal proceedings. Later, it was based on the applicants' absence from the flat for more than six months. The Government argued that any interference there had pursued a legitimate aim, namely to satisfy the housing needs of Ukrainian citizens, being "necessary in a democratic society", and was guided by the need to ensure social justice in matters of fair distribution of housing.

48. The Government further stated that the applicants had no property rights over the flat, as it belonged to the State and they had only forfeited their right to rent it. Article 1 of Protocol No. 1 was therefore not applicable.

B. The applicants' submissions

49. The applicants first disputed the Government's arguments relating to the admissibility of their complaints, stating that they had exhausted domestic remedies with respect to their complaints as to access to the flat.

50. As to their complaint under Article 8 of the Convention, the applicants argued that the flat had been their family home since 1996 and that they wished to return to it but had been deprived of access. They stated that prohibiting them from entering their "home" or depriving them of its use constituted an arbitrary, disproportionate and unlawful measure. The applicants claimed that they had received the flat for an indefinite period of use on the basis of the occupancy voucher, which had never been declared null and void; besides which the tenancy agreement had never been

revoked; they were permanently registered at that flat; their belongings were still in it; and they had never wished to change their permanent residence.

51. Regarding their complaint raised under Article 1 of Protocol No. 1, the applicants stated that the flat was owned by the State, but they were the lawful tenants; they had certain property rights over the flat, and the State authorities had infringed those rights by unlawfully depriving them of their indefinite and permanent right to use the flat. Thus, from their point of view the State authorities had unlawfully deprived them of their possession of the flat.

C. The Court's assessment

52. The Court first notes that in the Government's submissions the first and third applicants could not claim to be victims within the meaning of Article 34 of the Convention, and that they had not exhausted domestic remedies. However, even assuming that these objections are unsubstantiated, it finds that this part of the application is in any event inadmissible, for the reasons set out below.

1. Article 8 of the Convention

53. The Court reiterates that, whether or not a particular property constitutes a "home", will depend on the factual circumstances of each particular case, namely, the existence of sufficient and continuous links with a specific place (see *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts)). Furthermore, the length of temporary or permanent stays in it, frequent absence from it or its use on a temporary basis, for the purposes of short-term stays or even keeping belongings in it, do not preclude retention of sufficient continuing links with a particular residential place, which can still be considered "home" for the purposes of Article 8 of the Convention (see *McKay-Kopecka v. Poland* (dec.), no. 45320/99, 19 September 2006).

54. In the present case, the applicants occupied the flat from 5 September 1996 onwards as their family home, and lived and were registered there on a permanent basis. When they left Ukraine they left all their furniture and personal belongings there. They were party to the tenancy agreement and had an account with the Housing Department, paying communal charges for the flat and being responsible for its upkeep (see paragraph 7 above). At the same time, the Court notes that the applicants all left Ukraine in early 1999, and showed no interest in the apartment from then until December 1999, when the second applicant alone began to ask for access to the flat (see paragraphs 4-6 and 11 above). Thus, even if it were accepted that the flat can be regarded as the applicants' "home" for the purposes of Article 8 of the Convention, the link between

the applicants and the flat was substantially weaker than in the case of applicants who remain in a dwelling.

55. The Court notes that the national courts held that the applicants had lost their right to use their flat, rejected their request for access to the flat and found that the GPO had sealed the flat lawfully (see paragraphs 22-23 above). There was therefore an interference with the applicants' rights to respect for their home under Article 8 § 1 of the Convention which required due justification under the second paragraph of this provision.

56. As regards the criteria of "in accordance with the law" and "legitimate aim", the Court is not persuaded by the applicants' contentions that these were not complied with. The measure in question was initially based on the provisions of the Code of Criminal Procedure, and the eventual seizure took place under the Housing Code (see paragraphs 8 and 22 above). The Court does not perceive any basis for finding unlawfulness in the broader Convention sense.

57. The Court further accepts that the measure pursued the aims initially of preventing crime and protecting the rights of others in the context of an investigation of a serious crime in respect of which public interest was considerable, and subsequently of protection of the rights of the State as the owner of the flat. It therefore needs to proceed to determine whether the interference in question, and the manner in which it was carried out, was proportionate to that legitimate aim.

58. In assessing that proportionality, regard must be had to whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In this context, the importance of the right to respect for home, which is pertinent to personal security and well-being, must be taken into account, although the strength or weakness of the applicants' ties to the flat is also a relevant factor. Further, in determining whether an interference is justified the Court will take into account that a margin of appreciation is left to the Contracting States, which are in principle in a better position to make an initial assessment of the necessity of a given interference (see, e.g., *Olsson v. Sweden*, judgment of 24 March 1988, Series A no. 130, § 68).

59. In this context, the Court notes that the first applicant was wanted in connection with serious criminal charges and had left the country five months after the criminal procedure had been instituted (see paragraphs 3-4 above). Moreover, his intention to leave the country for a long or indefinite period of time is definitely demonstrated by the fact that he applied for asylum in the United States (see paragraphs 4 and 23 above). As to the second applicant, she left the country in January 1999 and returned home in November 1999 (see paragraphs 5 and 23 above). Finally, as mentioned by the domestic judicial authorities, the third applicant had not left the country in order to pursue his studies, but decided to enter the university in the United States long after his departure (see paragraph 24 above).

60. In respect of the loss of the right to occupy the flat, the Court is mindful that the Housing Code provided for a general assumption that a person loses the right to a home if he or she does not occupy it for more than six months, unless there are valid reasons (see paragraph 28 above). It notes that the domestic courts established, in the procedure before them, whether the applicants had been absent from the flat for at least six months and whether the reasons for their absence were justified (see paragraphs 23 - 24 above). They decided to apply the formal requirement in a strict way, finding the applicants' submissions unsubstantiated. The Court notes in this regard that Article 8 does not afford a right to be provided with a home and that States are generally allowed a wide margin of appreciation in determining general measures of economic or social strategy (see *Velizhanina v. Ukraine* (dec.), no. 18639/03, 27 January 2009), especially in setting up rules for providing living space for free or at advantageous conditions. The Court also takes into account that the legislation applied dates back to the Soviet time and is therefore difficult to apply to the changed living conditions at the end of the 1990s. Whilst it is true that the domestic courts did not directly address the proportionality of the interference, the Court, having regard to all the particular circumstances of the present case, does not find their decision disproportional to the legitimate aims pursued. It adds that the applicants did not submit before the domestic courts that they had no other place to live.

61. It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3(a) and 4 of the Convention.

2. Article 1 of Protocol No. 1

62. The Court has already found that a claim to a flat based on an occupancy voucher constitutes a "possession" falling within the ambit of Article 1 of Protocol No. 1 (see *Akimova v. Azerbaijan*, no. 19853/03, §§ 39-41, 27 September 2007; *Gulmammadova v. Azerbaijan*, no. 38798/07, § 44, 22 April 2010). It recalls that State intervention in socio-economic matters such as housing is often necessary in securing social justice and public benefit. In this area, the margin of appreciation available to the State in implementing social and economic policies is necessarily a wide one. The domestic authorities' judgment as to what is necessary to achieve the objectives of those policies should be respected unless that judgment is manifestly without reasonable foundation (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III).

63. In the present case, the Court observes that the first applicant and his family were allocated the State-owned flat on the basis of the occupancy voucher when the first applicant was appointed to the position of Deputy Prime Minister of Ukraine (see paragraph 7 above). The first applicant eventually signed the tenancy agreement for himself and the members of his family and members of his family were registered as living there. The

tenancy agreement allowed the applicants, as tenants, to rent the flat, to allow third persons to live in it, and to exercise other rights which correspond to ordinary contractual tenancy rights. Moreover, they could privatise the flat upon payment of a privatisation fee (see paragraphs 27 and 30 above).

64. The Court notes that the applicants' title to the flat was cancelled by the national courts which, applying the relevant provisions of the Housing Code (see paragraphs 28-29 above), found that the applicants had had no right to live in the flat having not occupied it for more than six months without relevant reasons (see paragraphs 22-24 above). The Court considers that the legislation applied in the present case can be seen as pursuing a legitimate aim, namely the implementation of social and economic policies.

65. As to the proportionality of the measure, the Court first observes that property in the flat itself remained with the Government throughout, and the measure affected the applicants' occupation rights, rather than the real estate. Given that the applicants were not dependent on the occupation rights in the sense that their ordinary residence was elsewhere, and given the wide margin of appreciation enjoyed by the States, the Court considers that the extinguishment of the applicants' rights in accordance with the relevant provisions did not interfere with their property rights in a manner contrary to Article 1 of Protocol No. 1.

66. It follows that this complaint is manifestly ill-founded and therefore inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. COMPLAINT UNDER ARTICLE 1 OF PROTOCOL NO. 1 RELATING TO DENIAL OF ACCESS TO THE APPLICANTS' BELONGINGS

67. The applicants complained, relying again on Article 1 of Protocol No. 1, that they had been deprived of access to their belongings in the flat.

A. The parties' submissions

68. The Government maintained that the applicants could not claim to be victims and that they had not exhausted domestic remedies. In particular, they did not seek return of their possessions "under Articles 385 and 387 of the Civil Code", under the procedure envisaged by Article 130 of the Code of Civil Procedure for review of arrest measures by a court. The Government also claimed that the applicants were never impeded from having access to those of their belongings which had not been secured.

69. The applicants disputed the Government's arguments. They did not consider the remedy suggested by the Government appropriate, as they were not able to use the property which had not been seized, and they had never

claimed that the seized property had been seized unlawfully. They further repeated that the present application related only to the property which had not been secured or seized.

B. The Court's assessment

70. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see *Sejdovic v. Italy* [GC], no. 56581/00, § 43, ECHR 2006-II).

71. Turning to the present case the Court first notes that the applicants insisted that their complaint under Article 1 of Protocol No. 1 concerned only their property which had not been secured or seized. Therefore, neither the procedure envisaged by Articles 385 and 387 of the Code of Civil Procedure as to the property secured for further confiscation, nor the procedure envisaged by Article 130 of the Code of Civil Procedure for review of arrest measures by a court, can be considered an appropriate remedy for the present application. The Court further notes that the applicants had been invited to submit a list of personal belongings which they had wished to have returned but they have not done so (see paragraph 12 above). The Court has not been provided with any evidence proving the contrary. Therefore, the applicants failed to undertake ordinary measures reasonably expected from them to protect their property rights. The applicants accordingly cannot be regarded as having exhausted the available domestic remedies.

72. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. COMPLAINT UNDER ARTICLE 13 OF THE CONVENTION

73. The applicants further alleged that they had no effective remedies in respect of their complaints of denial of access to their home and personal belongings, contrary to Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

74. The Government stated that there were no reasons to apply Article 13 of the Convention, as the applicants had no arguable claims under Article 8 and Article 1 of Protocol No. 1. More specifically, in relation to Article 8 of the Convention, the applicants had been unsuccessful before the domestic courts and, in relation to Article 1 of Protocol No. 1, they had not used all the remedies available under Ukrainian law.

75. The Court, with reference to its findings under Article 8 of the Convention and Article 1 of Protocol No. 1 (see paragraphs 53 and 77 above), considers that the applicants' complaint raised under Article 13 of the Convention is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3(a) and 4 of the Convention.

IV. COMPLAINTS UNDER ARTICLES 6 AND 14 OF THE CONVENTION

76. The first applicant complained that the proceedings before the national courts had been unfair and unreasonably long, that the courts had lacked impartiality and independence, and that he had been discriminated against. He relied on Article 6 § 1 and Article 14 of the Convention.

77. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that these complaints do not disclose any appearance of a violation of the Convention. It follows that they are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President