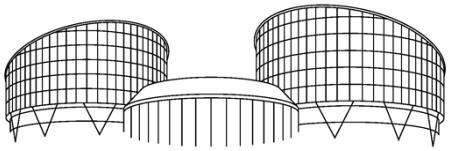

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF SVIT ROZVAG, TOV AND OTHERS v. UKRAINE

*(Applications nos. 13290/11 and 2 others)*

JUDGMENT

*This version was rectified on 26 August 2019*
*under Rule 81 of the Rules of Court.*

STRASBOURG

27 June 2019

**FINAL**

27/09/2019

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

**In the case of Svit Rozvag, TOV and Others v. Ukraine,**

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

Angelika Nußberger, *President,*
Yonko Grozev,
Ganna Yudkivska,
Síofra O'Leary,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 4 June 2019,

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

# PROCEDURE

1. The case originated in applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on the various dates listed in the Appendix by two Ukrainian companies and one Ukrainian national whose details are listed in the Appendix.

2. The applicants were represented by lawyers specified in the Appendix. The Ukrainian Government ("the Government") were represented by Ms O. Davydchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

3. The applicants alleged, in particular, that the prohibition of gambling operations by the Law of 15 May 2009, in particular the revocation of their previously acquired multi-year gambling licences, amounted to an interference with their right to the peaceful enjoyment of their possessions, contrary to Article 1 of Protocol No. 1; the second applicant also alleged that Article 1 of Protocol No. 1 had been breached on account of the suspension of her licence by order of the Ministry of Finance on 8 May 2009, shortly prior to the total prohibition of gambling operations; the first and second applicants further alleged, under Article 6 § 1 of the Convention, that the domestic courts had failed to give sufficient reasons for their decisions, and in particular had failed to comment on the applicants' references, in support of their claims, to Article 1 of Protocol No. 1 and to the Court's case-law; the first and third applicants also alleged, under Article 13, that they did not have an effective remedy with respect to the possible infringement of their rights under Article 1 of Protocol No. 1.

4. On 3 November 2017 notice of the above complaints was given to the Government and the remainder of the second and third applicants'

complaints were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. Concerning all applicants

5. The applicants purchased licences for gambling operations for the periods indicated in the Appendix. They (except the third applicant; see paragraphs 43-47 below) operated gambling businesses. The licences were prepaid for the entire period for which they were issued. The applicants each paid the amount in Ukrainian hryvnias (UAH) equivalent to 150,000 euros (EUR) for the licences (see paragraph 63 below). The licences were revoked by operation of law on 25 June 2009 (see paragraph 15 below).

6. On 23 December 2008 the Cabinet of Ministers introduced a bill in Parliament on regulation of gambling operations. The bill proposed detailed rules for comprehensive regulation of commercial gambling operations, such as a new licensing system and a number of regulatory requirements (see paragraph 78 below). The bill envisaged that the resulting law would come into force thirty days after enactment and that the entities holding gambling licences under the old system would have a year from that day to comply with the new set of requirements; their licences would remain in effect for the periods for which they were issued. On 26 December 2008 Parliament adopted the bill at its first reading.

7. On 18 March 2009 the relevant parliamentary committee approved its amended text for the second reading.

8. On 26 March 2009 two members of parliament introduced a bill which proposed a total prohibition on gambling, to come into force on 1 January 2010. In an explanatory note the authors stated that gambling was developing rapidly, leading to a rise in crime, and that an increasing number of children and young people were being drawn into it (see paragraph 147 below).

9. On 7 May 2009 a fire occurred at a gambling establishment in the city of Dnipro, leaving nine people dead and eleven injured. The incident attracted considerable public attention.

10. On the same day the Cabinet of Ministers issued an instruction (*розпорядження*) entitled “Measures to Increase the Safety of Citizens”, which envisaged a number of measures in response to the disaster, including:

(i) directing the Ministry of Finance and local executive authorities to take action to revoke the licences of the entities which had operated the establishment where the fire had taken place; and

(ii) directing the Ministry of Finance to suspend (*зупинити*) all gambling licences for one month.

11. On 8 May 2009 the Ministry of Finance issued an order by which it suspended all gambling licences until 7 June 2009 with immediate effect.

12. On 15 May 2009 Parliament passed into law the bill introduced on 26 March 2009 (see paragraph 8 above) prohibiting all gambling operations in Ukraine (hereinafter "the Prohibition Law"), with some limited exceptions – notably in respect of lotteries. The law did not contain any provisions regarding compensation for licence holders (see paragraphs 66 and 67 below).

13. The President vetoed the Prohibition Law. He pointed out, in particular, that:

(i) the Licensing Law did not provide for such grounds for the revocation of licences as the banning of a particular activity;

(ii) the proposed law was contrary to the constitutional provisions protecting property (see paragraph 58 below);

(iii) the proposed law was silent regarding the matter of expenses already committed by businesses for the acquisition of licences and for rent; and

(iv) businesses would sue the State for the funds they had paid for licences and permits and for any other damage they would incur if the bill became law.

14. On 11 June 2009 Parliament overrode the veto.

15. On 25 June 2009 the law entered into force and as of that date the applicants' licences were deemed to have been revoked by operation of law.

16. The applicants lodged claims for compensation with the domestic courts, but those claims were dismissed.

## B. The applicants' particular circumstances

### *1. The first applicant*

17. Prior to the prohibition, the applicant company operated at least fifteen gambling establishments and points in Kharkiv.

18. On 26 September 2009 the applicant company lodged a claim for damages against the Ministry of Finance and the State Treasury Administration.

It claimed 11,461,690 Ukrainian hryvnias ((UAH – about 905,426 euros (EUR) at the time) in damages, representing: part of the licence fees corresponding to the period from the Prohibition Law's entry into force to the date on which the applicant company's licence was supposed to expire (25 April 2011); and various losses it had suffered in respect of the purchase

of gambling-related equipment and special tax-control software, the refurbishment of gambling premises and lost profit. Subsequently, it increased those claims to the equivalent of EUR 3,219,900.

It relied on various provisions of domestic law. Its first argument was that, by selling a licence for five years priced "per year", the State had given it a guarantee that it would be able to engage in the licensed activity for the duration of the licence, provided that it complied with the licence terms. The Licensing Law, which was a *lex specialis*, did not provide for the collective revocation of licences, which was only possible on a case-by-case basis on the grounds provided in that law.

The applicant company also relied on the following provisions of the Civil Code (see paragraphs 68-71 below):

(i) Article 1166 concerning the general obligation to compensate for tort damage;

(ii) Article 1170 concerning the obligation of the State to compensate for damage caused by the enactment of laws terminating property rights (hereinafter also referred to as "the Legislative Takings Clause"); and

(iii) Article 1173 concerning the obligation of public authorities to compensate for damage caused by their unlawful decisions and actions.

19. On 10 December 2009 the Kyiv City Commercial Court dismissed the claim. The court cited the part of Article 1166 of the Civil Code requiring intent or negligence for tort liability. Article 1173 required a finding that the acts of the authorities were unlawful. Parliament had the constitutional power to enact laws, which it had done in enacting the Prohibition Law. That law had not been declared unconstitutional by the Constitutional Court. Therefore, there was no indication of unlawful action on the part of the State. For the same reason, Article 1175 of the Civil Code, providing for liability in the event of damage caused by legislative documents that had been declared unlawful (see paragraph 72 below), was equally inapplicable. Neither the Prohibition Law nor the budget provided for any compensation. There was thus no basis for the claim for damages.

20. The applicant company appealed. It raised essentially the same arguments. It also argued that the first-instance court had failed to apply the Legislative Takings Clause, which was the applicable provision in the case since the Prohibition Law had terminated the applicant company's property rights in respect of the licence, cash registers and gambling equipment. That provision of the Civil Code required compensation specifically for lawful action, in this case the enactment of the Prohibition Law. This also followed from the provision of the Constitution requiring full compensation for the taking of private property (see paragraph 58 below).

In addition, the applicant company cited Article 1 of Protocol No. 1 to the Convention and stated that the notions of "possessions" and "property" used in that provision were autonomous and broad. In that context the applicant company stated that in *Tre Traktörer AB v. Sweden* (7 July 1989,

§ 53, Series A no. 159) the Court had recognised that a licence to sell alcoholic beverages constituted a "possession" for those purposes. The applicant company referred to the domestic provisions incorporating the Convention and the Court's case-law (see paragraphs 74-76 below) and submitted that the first-instance court had failed to comply with its obligation to apply Article 1 of Protocol No. 1 and the Court's case-law.

In the concluding part of its appeal the applicant company stated that Article 41 of the Convention provided for payment of just satisfaction.

21. On 6 April 2010 the Kyiv Commercial Court of Appeal upheld the first-instance court's judgment. It cited the Civil Code provisions concerning tort liability in general and tort liability for unlawful action by public authorities (see paragraphs 37 below and 68-71 below) and endorsed the first-instance court's reasoning. It did not comment on the applicant company's arguments concerning the Legislative Takings Clause, Article 1 of Protocol No. 1 or the Court's case-law.

22. The applicant company lodged an appeal on points of law. It argued that the lower courts' finding that there was only an obligation to compensate for unlawful acts was wrong and that the Legislative Takings Clause provided for compensation in the event of the lawful termination of property rights. It repeated the other arguments it had raised in the first appeal.

23. On 22 September 2010 the High Commercial Court rejected the applicant company's appeal and upheld the lower courts' decisions. It stated that the Prohibition Law did not provide for the termination of property rights within the meaning of the Legislative Takings Clause, or for payment of any compensation to licence holders. The law in question had not been declared unconstitutional by the Constitutional Court. Therefore, the lower courts had correctly found that the applicant company had failed to show that there had been either any unlawful conduct on the part of the defendants or a causal connection between the defendants' actions and its losses, both of which were required elements in a claim for damages.

*2. The second applicant*

24. The applicant lodged several claims with the domestic courts. They are set out below in the order in which they were completed domestically and the applicant submitted her corresponding application forms with the Court.

**(a) First set of proceedings: reimbursement of licence fees**

25. In the first set of proceedings (application form submitted on 25 September 2012) the applicant claimed UAH 360,349.59 (about EUR 30,160 at the time) from the State Treasury Administration and the Ministry of Finance, corresponding to the licence fees for the unused part of her licence, in respect of the period from the Prohibition Law's entry into

force to the date on which her licence was supposed to expire (16 May 2011).

She relied on various provisions of domestic law, most notably the Legislative Takings Clause (see paragraph 70 below). In that context she pointed out that, in accordance with the Court's judgment in *Tre Traktörer AB* (cited above), licences constituted "possessions" for the purposes of Article 1 of Protocol No. 1. She relied on the provisions of domestic law incorporating the Convention and the Court's case-law and the primacy of the former (see paragraphs 74 and 76 below) and argued that the Prohibition Law, by revoking her licence, had terminated her property rights within the meaning of the Legislative Takings Clause.

26. On 15 December 2011 the Kyiv Commercial Court rejected her claim on the grounds that the Prohibition Law did not provide for the reimbursement of the licence fees paid for licences revoked by operation of that law.

27. The applicant appealed, relying in particular on the same provisions of the Civil Code, the Convention, the Court's case-law and the incorporating provisions of domestic law. She also pointed to the provisions of the Code of Commercial Procedure prohibiting the courts from refusing to give judgment in the absence of legislation governing an issue (see paragraph 76 below).

28. On 1 February 2012 the Kyiv Commercial Court of Appeal upheld the first-instance court's judgment. It cited domestic provisions concerning the obligations of the public authorities to compensate for damage caused by their unlawful conduct (see, in particular, paragraph 71 below), and stated that Parliament's constitutional role was to enact laws, that it had acted within those powers in adopting the Prohibition Law and that that law did not provide for the payment of any compensation to former licence holders.

29. The applicant, reiterating essentially the same arguments, lodged an appeal on points of law with the High Commercial Court.

30. On 21 May 2012 the High Commercial Court upheld the lower courts' decisions, holding that there was no indication of an error of law in them.

#### (b) Second set of proceedings: challenge against the Cabinet of Ministers' instruction to suspend all gambling licences

31. In the second set of proceedings (application form submitted on 4 November 2013), the applicant sought to have the acts of the Cabinet of Ministers and of the Ministry of Finance regarding the one-month suspension of her licence declared unlawful and quashed (see paragraph 11 above). She argued that no law conferred power on the Cabinet of Ministers and the Ministry of Finance to suspend a licence. The Licensing Law itself

only provided for the revocation of licences in certain cases but not for the "suspension" of licences (see paragraph 64 above).

32. The Kyiv Circuit Administrative Court returned the applicant's claim in so far as it was directed against the Ministry, holding that the administrative courts at the place of her registration as a businessperson were competent. This resulted in the third set of proceedings instituted by her (see paragraph 37 below). It proceeded to examine the remainder of the claim against the Cabinet of Ministers. Similar claims lodged by three other companies were joined to the proceedings.

33. On 27 September 2011 the first-instance court agreed with the applicant's arguments, allowed the claim and declared unlawful the relevant part of the Cabinet of Ministers' instruction (see paragraph 10 above).

34. On 31 May 2012 the Kyiv Administrative Court of Appeal allowed appeals by the Cabinet of Ministers and the Ministry of Finance and quashed the first-instance court's judgment. It referred to the constitutional rules defining the Cabinet of Ministers as the highest executive authority having the power to issue instructions to ministries (see paragraphs 60 and 62 below). The Ministry of Finance was required to follow the Cabinet's instructions. Accordingly, the Cabinet of Ministers had had the power to issue the instruction in question.

35. One of the other claimant companies lodged an appeal on points of law, which the applicant joined. The appeal presented essentially the same arguments as in the applicant's claim (see paragraph 31 above).

36. On 28 May 2013 the High Administrative Court upheld the Court of Appeal's decision, having largely repeated its reasoning.

#### (c) Third set of proceedings: challenge against the Ministry of Finance order suspending all gambling licences

37. In the third set of proceedings (application form submitted on 19 July 2016) the applicant submitted a separate claim seeking to have the order of the Ministry of Finance which had suspended her licence declared unlawful and quashed. Her main argument was that the Ministry had acted *ultra vires* (see paragraph 31 above). The applicant also stated that, in addition to breaching domestic law, the order had also breached Article 1 of Protocol No. 1 which she quoted. She referred to the the Court's judgment in *Tre Traktörer* to the effect that a licence constituted a "possession". The applicant also invoked Article 17 of the Convention.

38. On 2 July 2013 the Zakarpattya Circuit Administrative Court rejected her claim, holding that, because the Cabinet of Ministers had powers to give instructions to ministries (see paragraph 62 below) and the ministries had the power to issue their own orders, the Ministry, in issuing the impugned order which complied with the Cabinet of Ministers' instructions, had acted within its powers.

39. The applicant appealed. She reiterated the same arguments, insisting that the order was contrary to higher-level norms than the Cabinet of Ministers' instruction, namely the Licensing Law and Article 1 of Protocol No. 1.

40. On 2 December 2015 the Lviv Administrative Court of Appeal upheld the first-instance court's judgment, essentially repeating its reasoning.

41. On 20 January 2016 a judge of the High Administrative Court denied the applicant's company leave to appeal on points of law, stating that there was no appearance of any error of law in the lower courts' decisions.

*3. The third applicant*

42. The third applicant, a single-shareholder company, was established in September 2008.

43. On 10 November 2008 the applicant company paid the full price for a five-year licence to the State Treasury and on 14 November 2008 it obtained its licence, valid from 28 October 2008 to 27 October 2013.

44. According to the applicant company, it invested in preparation for the opening of a gambling business, acquired permits, cash registers and gambling equipment, rented premises and recruited staff, but never launched the business because of the prohibition of gambling.

45. In July 2009 the applicant company asked the Ministry of Finance for a refund of the licence fees but was told that no refund was forthcoming.

46. In November 2010 the applicant company asked an authority responsible for licensing for a certificate, which it intended to submit to the State Treasury Department to obtain reimbursement of the funds paid for the licence, under the procedure established for the reimbursement of erroneous and excess payments to the Treasury (see paragraph 77 below).

47. Having received no response, the applicant company lodged a claim against the licensing authority, the State Treasury Administration and the Ministry of Finance, seeking reimbursement of the amount it had paid for the licence. It relied on the provisions concerning reimbursement of erroneous or excess payments to the Treasury and the provisions of the Code of Administrative Justice that required the courts to give judgment even in the absence of relevant legislation (see paragraphs 76 and 77 below).

48. On 4 May 2011 the Lviv Circuit Administrative Court allowed the applicant company's claim in part and ordered the State Treasury to return UAH 963,030.15 (about EUR 80,600 at the time), corresponding to the part of the licence fees for the period from the Prohibition Law's entry into force to the date on which the applicant company's licence was supposed to expire (27 October 2013).

The court stated, in particular, that the defendants' main argument was that there was no established mechanism for the reimbursement of funds

paid for revoked gambling licences. However, the court rejected that argument, relying on the provision of the Code of Administrative Justice that required the courts to give judgment even in the absence of relevant legislation (see paragraphs 76 below). The key consideration for the court was that, under the Licensing Law, a licence was a document which granted the right to operate a particular business for a certain period of time. The applicant company had paid and obtained the licence for the totality of that period. Given that it was prevented from actually using the licence, a portion of the fees had to be reimbursed.

49. The defendants appealed. Copies of their appeals have not been provided to the Court.

50. The applicant company responded. In addition to its other arguments, it relied on Article 1 of Protocol No. 1, the Court's judgment in *Tre Traktörer AB* (cited above) and the provision of the Code of Administrative Justice requiring administrative courts to apply the Court's case-law (see paragraph 76 below). It argued that, because the Prohibition Law had revoked its licence in the absence of any grounds for doing so under the Licensing Law and, indeed, in the absence of any wrongdoing on its part, the domestic law did not meet the requirement of "foreseeability" under the Convention. It also pointed out that the transitional provisions of the Prohibition Law required the Cabinet of Ministers to enact new regulations as required for the implementation of the Prohibition Law (see paragraph 67 below). The applicant company argued that those regulations had to include the mechanism for compensation but that the Cabinet's failure to enact them could not disadvantage the former licence holders.

51. On 21 July 2014 the Lviv Administrative Court of Appeal quashed the first-instance court's decision, holding that the Prohibition Law did not provide for any mechanism for reimbursement and that the procedures established for erroneous or excess payments to the Treasury were inapplicable.

52. The applicant company appealed, arguing that the first-instance court's judgment had been correct. It reiterated its arguments. Developing its argument in respect of the alleged lack of foreseeability of the domestic law, it also quoted certain passages from *Sierpiński v. Poland* (no. 38016/07, §§ 72, 79 and 80, 3 November 2009) concerning uncertainty in respect of compensation as applicable to its own case.

53. On 15 March 2016 the High Administrative Court upheld the appeal court's decision. It stated that the lower courts' conclusion that the procedures established for erroneous or excess payments were inapplicable had been correct.

# II. RELEVANT DOMESTIC MATERIAL

## A. Constitutional rules

### *1. Constitution of 1996*

54. Article 8 of the Constitution provides that the provisions of the Constitution have direct effect and guarantees the right to apply to the courts relying directly on the Constitution.

55. Article 9 provides that international treaties ratified by Parliament are part of domestic law.

56. Article 13 § 4 requires the State to ensure the protection of property.

57. Article 19 establishes the principle of legality and the principle that any action by the public authorities must be based on powers granted by the Constitution or laws passed by Parliament.

58. Article 41 guarantees the right to property. It provides, in particular:

> "...
>
> No one shall be unlawfully deprived of the right of property. The right of private property is inviolable.
>
> The expropriation of objects covered by the right of private property may be carried out only in exceptional cases for reasons of social necessity, on the grounds of and by the procedure established by law, and on condition of full compensation for their value in advance. The expropriation of such objects with full compensation for their value at a subsequent stage is permitted only under conditions of martial law or a state of emergency.
>
> Confiscation of property may take place only pursuant to a court decision, in the cases, to the extent and by the procedure established by law.
>
> ..."

59. Article 42 provides that everyone has the right to engage in entrepreneurial activity that is not prohibited by law.

60. Article 113[1] defines the Cabinet of Ministers as the highest body in the executive branch of government.

61. Article 150 authorises the Constitutional Court to review the constitutionality of laws enacted by Parliament on applications from the President, forty-five members of parliament, the Supreme Court, the Parliamentary Commissioner for Human Rights and the legislature of the Autonomous Republic of Crimea. At the relevant time, no right to apply for individual constitutional review was recognised.

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[1] Rectified on 26 August 2019: the text was "Article 133".

*2. Cabinet of Ministers Law of 2008[2] (in force at the relevant time)*

62. Section 1 of the Law provided that the Cabinet of Ministers exercised executive power directly, as well as through ministries and other executive agencies which it had the power to direct, coordinate and control.

### B. Licensing Law of 2000

63. Section 15 of the Law, as worded at the material time, provided that payment for a licence had to be made at the time that the licence was issued. The fee for the issuance of a licence for gambling operations was EUR 30,000 per year, and licences were issued for a five-year term.

64. Section 21 of the Law contained an exhaustive list of situations in which a licence could be revoked (*анулювання*), such as in the event of a repeated breach of the terms of the licence or misrepresentation in the licence application. The Law did not contain any provisions on the revocation of licences in the event of the prohibition of a previously lawful licensed activity. Neither did it provide for any temporary "suspension" (*зупинення*) of licences.

### C. Safety rules

65. The Laws regulating fire and workplace safety and public-health supervision provide for the right of the relevant inspectors to conduct checks of various establishments and suspend their operations if they present a risk of fire, workplace accidents or health hazards.

### D. Prohibition Law

66. Section 2 of the Law on the Prohibition of Gambling in Ukraine of 15 May 2009 contains a general prohibition on gambling in Ukraine with some limited exceptions – notably in respect of lotteries.

67. Section 4 of the Law contains transitional provisions.

Pursuant to section 4(1), the Law came into effect on the date of its official publication, which occurred on 25 June 2009; it was to remain in effect until a law was passed authorising gambling in specially designated areas (no such law has been passed to date).

Section 4(2) provides that gambling licences issued prior to the date of the Law's entry into force are deemed to have been revoked and that no new licences will be issued.

Section 4(4) directed the Cabinet of Ministers to take the following action, within three months:

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[2] Rectified on 26 August 2019: the text was "Cabinet of Ministers Law of 1998".

(i) submit to Parliament a bill providing for gambling in specially designated areas;

(ii) submit to Parliament draft amendments to other laws flowing from the Prohibition Law;

(iii) amend its own regulations in line with the Prohibition Law and ensure that executive agencies did the same at their level; and

(iv) adopt new regulations as required for the implementation of the Law.

### E. Civil Code of 2003

68. Article 1166 of the Code, which sets out general grounds for tort liability, provides that a person who causes damage can be released from liability where the damage did not result from intent or negligence on his or her part. It also provides that a person can be held liable for lawful acts where the Code and other laws so provide.

69. Subsequent Articles of the Code set out alternative grounds for possible claims for damages in tort.

70. Article 1170 of the Code provides that, in the event of the enactment of a law which terminates property rights in respect of certain assets (*у разі прийняття закону, що припиняє право власності на певне майно*), the State is to compensate the owner for the loss in its entirety. This provision is also referred to as the "Legislative Takings Clause" (see paragraph 18 above).

71. Article 1173 of the Code requires the public authorities to compensate for damage caused by unlawful decisions, actions or inaction of such authorities. There is no need to show that the authority acted with intent or negligence.

72. Article 1175 of the Code provides for compensation for the adoption of a legislative document (*нормативно-правового акта*) if that document is subsequently declared unlawful and rescinded. There is no need to show intent or negligence.

73. As a general rule, the statute of limitations for tort claims is three years (Article 257 of the Code).

### F. The place of international treaties and the Court's case-law in the domestic legal system

74. Section 17 of the Law on the Execution of Judgments of the European Court of Human Rights of 2006 provides that the courts, when deciding cases, are to apply the Convention and Protocols and the Court's case-law of as a source of law.

75. Section 19 of the International Treaties Law of 2004 provides that international treaties are deemed part of domestic law and prevail over conflicting provisions of domestic legislation.

76. Article 8 §§ 1 and 2 of the 2005 Code of Administrative Justice, as worded at the relevant time, provided that the courts were guided (*керується*) by the principle of the rule of law and that they had to apply this principle taking into account the case-law of the European Court of Human Rights. Paragraph 3 provided that claimants could invoke the Constitution directly.

Under paragraph 4 of the same Article, the courts could not refuse to give judgment if there was no legislation governing matters before them or if the relevant legislation was incomplete, unclear or contradictory. A similar provision could be found in Article 4 of the 1991 Code of Commercial Procedure.

Article 9 § 4 of the Code of Administrative Justice provided that in the event of a contradiction between a legislative act and the Constitution, an international treaty or a legislative instrument which was higher in the hierarchy of norms and one which was lower, the court was to apply the former. Paragraph 6 provided that in the event of a conflict between a binding international treaty and a law enacted by Parliament, the court had to apply the treaty. A similar provision could be found in Article 4 of the Code of Commercial Procedure.

### G. Procedure for reimbursement of erroneously paid funds

77. The State Committee for Entrepreneurship, the State agency responsible for certain licensing matters at the time, established (order no. 88 of 7 May 2009) a procedure for reimbursement of funds paid erroneously or excess payments for licences and permits. Under the procedure, on a licensee's application a regional department of the Committee had to issue a reimbursement certificate, to be submitted to the State Treasury Administration. The State Treasury Administration also approved a procedure for reimbursement of taxes and payments made to the Treasury in error or in excess of what was due (*помилково або надмірно зарахованих*).

### H. Legislative proposals

78. The system of gambling regulation proposed by the Cabinet of Ministers in its bill no. 3535 of 23 December 2008 contained the following elements: (i) a licensing system with five-year licences, provisions for revocation and temporary suspension of licences; (ii) a requirement for gambling operators to own rather than rent all gambling equipment and to comply with certain minimum capital levels, from EUR 200,000 to

EUR 1,000,000 depending on the type of operations; (iii) restriction of the locations where gambling establishments could operate, barring them from such places as schools and public transport, and minimum requirements for the size of gambling establishments (500 sq. m for casinos and 250 sq. m for others); (iv) special certification for gambling equipment and software.

The text proposed for the second reading tightened certain regulatory requirements, such as raising the minimum age for entry to gambling establishments from eighteen to twenty-one years and adding certain additional places, such a cultural heritage sites, to the list of places where gambling would be prohibited.

# THE LAW

## I. JOINDER OF THE APPLICATIONS

79. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment, in accordance with Rule 42 § 1 of the Rules of Court.

## II. SCOPE OF THE FIRST APPLICANT"S COMPLAINTS

80. In its observations in reply to those of the Government, submitted on 24 May 2018, the first applicant appeared to complain of the suspension of its gambling licence (see paragraph 11 above). The Court considers that this complaint cannot be regarded as an elaboration on the applicant company's original complaint, which concerned the revocation, and not suspension, of its licence, the aspect on which the Government have commented. The Court therefore considers that it is not appropriate to take up this matter in the context of the present case.

## III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE FIRST AND SECOND APPLICANTS

81. The first and second applicants complained that the domestic courts had failed to address their references to the Convention and the Court's case-law even though those references had been relevant to the proceedings they had brought for compensation. The applicants relied on Article 6 § 1 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 ..."

## A. Admissibility

82. In her application forms the second applicant complained that, in the second and third sets of proceedings (see paragraphs 31 and 37 above), the domestic courts had failed to give sufficient reasons for their decisions. The domestic courts had disregarded her references to Article 1 of Protocol No. 1 and the Court's judgment in *Tre Traktörer AB v. Sweden* (7 July 1989, Series A no. 159).

83. In their observations the Government submitted that the courts had not commented on the applicant's invocation of Article 1 of Protocol No. 1 and the *Tre Traktörer* judgment's holding that a licence constituted a possession since that point was not subject to doubt. In any event, protections equivalent to those of Article 1 of Protocol No. 1 were incorporated into domestic law and therefore any discussion of the applicant's arguments in domestic law terms was sufficient. The domestic courts' decisions were duly reasoned and justified on the substance despite the absence of detailed discussion in terms Article 1 of Protocol No. 1, which had not been called for under the circumstances.

84. Despite being invited to do so, the applicant did not submit any observations in reply.

85. The Court notes that the applicant failed to respond to the Government's arguments, which do not appear unreasonable. In the absence of any submissions from the applicant to the contrary, the Court considers that the applicant has failed to develop her arguments in this respect so as to lay a basis for an arguable complaint under Article 6 § 1 of the Convention.

86. Accordingly, the second applicant's complaint under Article 6 § 1 of the Convention is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

87. By contrast, as far as the first applicant is concerned, the Court considers that its complaint under Article 6 § 1 of the Convention 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*

#### (a) The first applicant

88. The applicant company submitted that by ignoring its reference to Article 1 of Protocol No. 1, which was a specific, pertinent and important argument, the courts had fallen short of their obligation under Article 6 § 1 of the Convention (citing *Pronina v. Ukraine*, no. 63566/00, § 25, 18 July 2006).

89. Domestic law expressly incorporated the Convention and the case-law of the Court. Therefore, the domestic law itself required the courts to examine in detail any issue of a violation of the Convention raised by any party. Under domestic law, the appellate commercial courts examined cases anew on the basis of the evidence produced both at first instance and in the appellate proceedings. There were no restrictions on presenting new arguments on appeal. Moreover, the Court of Appeal (see paragraph 21 above) had not said that it was precluded from examining new arguments on procedural grounds. The applicant company, before both appeal courts, had specifically referred to Article 1 of Protocol No. 1, explained the applicability of that provision with reference to *Tre Traktörer* (cited above) and pointed out that the Convention required the payment of compensation in the event of interference with the peaceful enjoyment of possessions (see paragraph 20 above), even if its reference to Article 41 of the Convention in support of the latter statement was erroneous. The domestic courts had not described those references as unclear or irrelevant but had simply ignored them.

**(b) The Government**

90. The Government submitted that the first applicant had enjoyed full procedural rights in the relevant proceedings. It had only relied on Protocol No. 1 to the Convention on appeal and had only referred to the Court's *Tre Traktörer AB* judgment (cited above) in order to point out that a licence was a "possession" within the meaning of the Court's case-law. The applicant company had not submitted any specific and substantial references to the Court's case-law for examination by the domestic courts. Article 1 of Protocol No. 1 was incorporated into domestic law and there was no need to discuss the notion of a licence as property as that concept was well known. The applicant company's references to Article 41 of the Convention likewise did not call for comment from the domestic courts since that provision was only applicable in the proceedings before the Court, and was irrelevant in the domestic proceedings.

*2. The Court's assessment*

91. The Court notes at the outset that the applicant company's case before the domestic courts turned not on any matter of fact but, rather, on the interpretation of the relevant legal provisions.

92. In this context the Court reiterates that its power to review compliance with domestic law is limited. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. This is particularly true when, as in this instance, the case turns upon difficult questions of

interpretation of domestic law. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018).

93. The Court considers that this principle is applicable in the present case as well, even though the situation is somewhat complex because domestic law itself has incorporated the Convention and the Court's case-law as sources of law to be followed by domestic courts.

94. Nevertheless, in the particular circumstances of this case it is clear that the applicant company's main arguments centred on uniquely domestic legal provisions, most notably the provision of the Civil Code enshrining a right to compensation in the event of the enactment of laws expropriating property – the Legislative Takings Clause (see paragraph 18 above). Its reliance on the Convention was very limited and appears to have been in aid of its main, purely domestic law-based, arguments.

95. Most importantly, it merely quoted Article 1 of Protocol No. 1 and argued that it was applicable, without any specific arguments as to why it considered that that provision had been breached. The applicant company submitted no explicit arguments that would have been required for an analysis of matters under that provision, such as lawfulness, public or general interest and proportionality.

96. The applicant company appears to have attempted to argue that, because the notions of "possessions" and "property" used in Article 1 of Protocol No. 1 covered licences, and because the Court, in its *Tre Traktörer AB* judgment (cited above), had interpreted the termination of a licence as a measure entailing interference with property rights, the domestic courts had to adopt the same approach in their interpretation of the Legislative Takings Clause of the Civil Code and to interpret the term "assets" used in that provision (see paragraph 70 above) in the same way as the Court had interpreted the terms used in Article 1 of Protocol No. 1. The applicant company, however, never stated that argument clearly and it remained merely implicit. The subsidiary nature of that argument was further illustrated by the fact that it was first raised only on appeal (see paragraph 20 above).

97. Despite the undeveloped nature of that argument, the High Commercial Court addressed it by holding that, in its interpretation, the Prohibition Law had not "terminated property rights", the term used in the Legislative Takings Clause, and was therefore not the type of law which would entitle the applicant company to damages under that provision of the Civil Code (see paragraph 23 above).

98. To be sure, the fact that it was only the highest court that addressed that argument and that it did so in a very succinct fashion and without reference to any previous case-law supporting that interpretation, are all

relevant factors for the Court's assessment of the admissibility and merits of the complaint under Article 1 of Protocol No. 1 (see paragraphs 121 and 177 below).

99. However, they are not sufficient for the Court to hold that the interpretation of the relevant domestic provisions by the domestic courts was arbitrary or manifestly unreasonable. What that interpretation revealed about the state of domestic law itself is a different matter, of relevance for the Court's assessment of the applicants' complaints under Article 1 of Protocol No. 1 (see paragraphs 173-179 below).

100. Finally, the Court notes that the applicant company's reference to Article 41 of the Convention was apparently of no relevance in the context of the domestic proceedings and, as such, required no comment from the domestic courts.

101. There has therefore been no violation of Article 6 § 1 of the Convention in respect of the first applicant.

## IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

102. The applicants complained that the revocation by law of their licences without any compensation had breached their right to peaceful enjoyment of their possessions, guaranteed by Article 1 of Protocol No. 1. The second applicant also complained that that provision had been breached on account of the suspension of her licence in May 2009. Article 1 of Protocol No. 1 reads:

> "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

#### *1. The parties' submissions*

##### (a) The Government

103. The Government submitted that the applicants had lodged their complaints outside the six-month time-limit. The applicants could not challenge the Prohibition Law before the ordinary courts as only the Constitutional Court could review the constitutionality of acts of Parliament. Only a certain limited number of institutions could lodge applications for constitutional review with that court, among them the

Parliamentary Commissioner for Human Rights (see paragraph 61 above). However, there was no indication that the applicants had ever asked her to submit an application for constitutional review regarding the Prohibition Law. In any event, that was not an "effective remedy". Therefore, the applicants had been required to apply to the Court within six months of 25 June 2009, when the Prohibition Law had come into force.

**(b) The applicants**

104. The first applicant submitted that the Prohibition Law's silence on the matter of compensation had given it reason to hope that it could obtain compensation on the basis of the Constitution and other legislative provisions in place. That belief had been reinforced by the reasoning given for the President's veto on the Prohibition Law, which indicated, as an argument against the law, that if it were passed, the holders of licences would be entitled to compensation (see paragraph 13 (iv) above). The commercial courts had not declined jurisdiction or considered the applicant company's claim frivolous. Rather, they had examined it on the merits at three levels of jurisdiction.

105. The second applicant did not submit any observations in reply to the Government's observations on admissibility and the merits. In her application form of 25 September 2012 (see paragraph 25 above) she stated that the decision of the High Commercial Court of 21 May 2012 in the first set of proceedings (see paragraph 30 above) had been the final domestic decision in her case.

106. The third applicant pointed out that the first-instance court had in fact allowed its claim (see paragraph 48 above). It emphasised that it had taken issue not with the Prohibition Law as such, because that law had not excluded the payment of compensation, but with the lack of any compensation mechanism, which had been revealed only later. The applicant company had attempted to obtain reimbursement of the licence fees and had then submitted its case to the courts, which had full jurisdiction to resolve the matter. It had only been after the decision of the High Administrative Court (see paragraph 41 above) that the appropriate remedies had been exhausted. In accordance with the Court's case-law, mere doubts as to the effectiveness of a remedy did not relieve it of the obligation to use it.

*2. The Court's assessment*

107. The Court notes at the outset that the second applicant did not respond to the Government's arguments in respect of her alleged failure to comply with the six-month time-limit. However, she did submit a claim for just satisfaction based primarily on her argument that she had been deprived of the benefits of her licence (see paragraph 187 below).

108. In the Court's view, the applicant's claim for just satisfaction also indicates that she implicitly rejected the Government's arguments regarding compliance with the six-month time-limit. It is also relevant that the applicant's failure to submit observations does not prevent the Court from taking an informed decision on compliance with the six-month time-limit in her case since the claim she brought before the domestic courts in respect of the revocation of her licence was largely similar to that of the first applicant, which did submit observations (see paragraphs 18 and 25 above).

109. The Court reiterates that Article 35 § 1 cannot be interpreted in a manner which would require an applicant to apprise the Court of his complaint before his position in the matter has been finally settled at the domestic level; otherwise the principle of subsidiarity would be breached. Where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period as being the date on which the applicant first became or ought to have become aware of those circumstances (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 260, ECHR 2014 (extracts)). The existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (ibid., § 223).

110. The parties cited no domestic case-law or other authoritative material pre-dating the relevant events and providing an interpretation of the relevant provisions which the applicants had relied upon in the domestic proceedings, such as to either support the Government's submission that the applicants' claims were bound to fail from the outset or, on the contrary, the applicants' submission that their claims had sufficient prospects of success to at least be attempted. That is rather understandable given that the situation was apparently novel in domestic practice (see, *mutatis mutandis*, *Khlebik v. Ukraine*, no. 2945/16, § 60, 25 July 2017, and the case-law cited therein).

111. In this situation the Court can only base its examination of the Government's objection on (i) the language and context of the relevant domestic legal provisions themselves; and (ii) the way in which the domestic courts treated the relevant claims.

112. On the first point a number of factors may have indicated to the applicants that their expectation of obtaining compensation was not entirely unfounded.

113. Firstly, the Prohibition Law itself was silent on the matter of compensation and no other legislative provision explicitly ruled it out.

114. Secondly, certain provisions in the domestic law may well have led the applicants to believe that there was a basis for compensation in them.

115. As far as the first two applicants are concerned, their argument based on the Legislative Takings Clause, read in conjunction with the constitutional provision requiring full compensation in cases of deprivation of property and the Court's case-law interpreting the revocation of licences as an interference with property rights (see paragraphs 18 and 25 above), does not appear frivolous or far-fetched.

116. While the domestic courts eventually interpreted domestic law as requiring a previous declaration that a law was unconstitutional or that conduct was unlawful as prerequisites for claiming compensation (see paragraphs 23 and 28 above), those requirements do not appear in the text of the Legislative Takings Clause itself (see paragraph 70 above).

117. As far as the third applicant is concerned, the Court notes that the Prohibition Law did not reform the existing licensing regime, under which the licence payments were made for a certain defined period of operations, but was enacted in parallel to it. This may well have led the applicant company to consider that it was still entitled to compensation under the principles underlying the pre-existing licensing regime and domestic procedures for the reimbursement of excess payments.

118. Thirdly, the President, in his formal opposition to the Prohibition Law, indicated that businesses whose licences were revoked as a result of the law would be able to claim damages (see paragraph 13 (iv) above).

119. In other words, it could not have been clear to the applicants from the text of the relevant legal provisions themselves and from the overall context that their claims were bound to fail from the outset.

120. The way the domestic courts treated their claims tends to reinforce that conclusion: the courts did not declare the applicants' claims frivolous or manifestly ill-founded and examined them on the merits at three levels of jurisdiction.

121. The first applicant had to wait until its case reached the High Commercial Court for its key argument, based on the Legislative Takings Clause, to be addressed in any way (see paragraph 30 above). Even then, that argument was addressed in a very succinct fashion.

122. A similar argument presented by the second applicant was never explicitly addressed by the domestic courts. However, given that, as the Court has stated above, that argument was not frivolous or irrelevant, the applicant was entitled to hope that it might eventually be successful before one of the higher courts.

123. The third applicant's claim was in fact allowed by the domestic first-instance court. It was only the domestic appellate court that found the reimbursement procedure relied on by the applicant company inapplicable (see paragraphs 48 and 51 above respectively). Given that there was a disagreement on that point between the first-instance court and the appellate court, the applicant company was certainly entitled and, indeed, possibly

even required, to wait until the dispute was finally resolved by the High Administrative Court before bringing the case before the Court.

124. The Court reiterates that the Convention must be interpreted in a way which promotes harmony between its provisions (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 244, 28 June 2018). In this connection, the Court observes it is an important element of its analysis of complaints under Article 1 of Protocol No. 1 whether or not domestic law provides for compensation for a measure of interference with the right of property, even if the absence of compensation does not automatically disclose a violation of that provision in cases concerning measures of "control" on the use of property (see *Depalle v. France* [GC], no. 34044/02, § 91, ECHR 2010).

125. If the Court were to interpret the requirement of exhaustion of domestic remedies in the way proposed by the Government it would have to decide, in the absence of any observations by the domestic courts on this point and of any specific indication in the text of the legislation itself, whether the relevant legislation precluded the applicants from obtaining compensation, a crucial issue for its analysis under Article 1 of Protocol No. 1. In the absence of any express resolution of that issue in the impugned legislation itself, this would have required the Court to derogate from the principle that it is primarily for the domestic courts to interpret and apply domestic law (see *Radomilja and Others*, cited above, § 149) and that the Court's task is not to review the relevant law and practice *in abstracto* (see *N.C. v. Italy* [GC], no. 24952/94, § 56, ECHR 2002-X). That would be a disservice to the principle of subsidiarity (compare *Charron and Merle-Montet v. France* (dec.), no. 22612/15, § 31, 16 January 2018).

126. In the light of the foregoing, the Court considers that, in the particular circumstances of the present case, the applicants' complaint regarding the revocation of their licences has not been lodged out of time. The Government's objection must therefore be dismissed.

127. As far as the second applicant's complaint regarding the suspension of her licence prior to its revocation is concerned, the Government did not question that it had been submitted within the six-month time-limit. The Court sees no reason to hold otherwise (see paragraphs 31, 36, 37 and 41 above).

## B. Merits

### *1. The parties' submissions*

#### (a) The applicants

##### *(i) The first applicant*

128. The applicant company submitted that the effect of the Prohibition Law was that it had been *de facto* deprived of its possessions: in particular, the premises and equipment adapted for its gambling business had become useless and could not be used elsewhere. The applicant company had also been directly deprived of part of the fees it had paid for the gambling license.

129. The Prohibition Law did not meet the criteria of the quality of "law". In particular, the lack of provision for compensation had created uncertainty. In addition, the law had created uncertainty by requiring that new draft legislation governing gambling be submitted (see paragraph 67 above), thus creating an impression that the ban would be temporary, but at the same time had not provided for any consequences in the event that the Government failed to comply with its obligation to introduce new draft legislation – which was what had actually happened.

130. The Prohibition Law did not pursue any legitimate public interest but was merely a method of boosting the then Prime Minister's electoral support in the upcoming presidential elections. Any objective public interest in the immediate, total and indefinite ban on gambling had never been explained.

131. The social situation had indeed required a measure of control over the gambling business but the immediate termination of licences that had already been issued and prepaid had been neither necessary nor desirable and the adoption of that measure had been prompted by political considerations rather than by any genuine public interest.

132. The Government's own legislative proposals submitted shortly before the enactment of the Prohibition Law belied the notion that the situation was so catastrophic that it could only be addressed by a total prohibition.

133. Thus, in December 2008 the Prime Minister had initiated a bill proposing not a ban on gambling but simply a new system for its regulation. The bill envisaged that the resulting law would come into force thirty days after publication and would give the gambling operators a year to bring their activities into line with the new law (see paragraphs 6 and 78 above). Therefore, even though the social evils referred to by the Government (see paragraph 146 to 149 below) had supposedly already existed at the time, the Government had not considered that addressing them required an

immediate and total ban on gambling, and instead had envisaged much less restrictive measures.

134. Even the stricter anti-gambling bill submitted by members of parliament, which envisaged a total prohibition on gambling, had initially provided that the prohibition would come into effect after a transitional period, on 1 January 2010 (see paragraph 8 above).

135. Even the Prohibition Law itself had been framed as a temporary prohibition and required the Cabinet of Ministers to submit proposals for regulation of gambling businesses, which had never happened. The bills referred to by the Government (see paragraph 148 below) were a private initiative and there was no indication that they had ever been supported by the executive. The failure to act on the promise to introduce this legislation had created uncertainty, imposing an additional burden on the applicant company (citing *Zelenchuk and Tsytsyura v. Ukraine*, no. 846/16, 1075/16, § 120, 22 May 2018).

136. The draft of the Prohibition Law had not undergone any assessment by experts from Parliament or the executive. The law had been passed three days after the bill had been introduced and had entered into force just forty days later.

137. The fire which had triggered the passage of the law did not call for a prohibition on gambling. Safety problems could be, and were, addressed through comprehensive checks, which the applicant company had in fact easily passed.

138. The consequences for the applicant company, which had never been accused of any breach of the law, threat to fire safety or fiscal violations, were very serious: it had purchased a prepaid licence, had bought special software from the State for the cash-registration system, had bought other equipment, employed 306 people and rented and equipped twenty-six gambling premises. Nothing had led it to expect that its business would have to cease at such extremely short notice. The President had vetoed the Prohibition Law precisely on the grounds that it imposed unjustified costs on the holders of licences (see paragraph 13 (iii) above).

*(ii) The second applicant*

139. In her application forms the applicant submitted that, by suspending and revoking her licence, the respondent State had deprived her of her property, namely the right to use the licence for the period for which it had been paid, in the absence of any relevant grounds. She submitted essentially the same arguments as before the domestic courts (see paragraphs 25, 31 and 37 above).

140. In respect of the suspension in particular, she submitted that her property rights had been limited not by law but by subordinate acts which had contradicted the law in force at the relevant time, especially the

Licensing Law. The decisions of the Cabinet of Ministers and the Ministry of Finance suspending the applicant's licence had therefore been *ultra vires*.

*(iii) The third applicant*

141. The applicant company submitted that the Prohibition Law amounted to *de facto* deprivation of its property in the absence of formal expropriation, rather than a "measure to control the use of property". The change introduced by the Prohibition Law had been such that the law did not meet the requirements of the principle of legal certainty, which was an element of the rule of law: the company, which had not broken any law, had had its property expropriated in disregard of the pre-existing licensing legislation.

142. The amount the company had paid for the licence, EUR 150,000, had been significant for it and its founder: the average monthly salary in Ukraine in 2008 had been EUR 240. Such an amount had also been very significant for a small business like the applicant company. The money had been transferred to the State in exchange for the right to operate a business. The founder had also made other investments in preparation for the launch of the gambling business. All of these funds had been lost and as a result, the founder had never been able to launch another business.

143. The present case did not concern a mere reduction of the applicant company's activity but a total prohibition, which had put it out of business entirely. Referring to the Court's case-law regarding deprivation of property, the applicant company argued that there were no "exceptional circumstances" that could justify the total absence of compensation. In sum, no fair balance had been struck between the public interest and the interest of the applicant company.

**(b) The Government**

144. The Government agreed that the withdrawal of the applicants' licences constituted an interference with their rights under Article 1 of Protocol No. 1, even though they had not had a legitimate expectation of obtaining any compensation (see paragraph 151 below).

145. The interference had been lawful, being based on the Prohibition Law, which was clear and publicly available. The applicants' reliance on the Licensing Law was wrong, because it was the Prohibition Law and not the Licensing Law that governed the situation in question. The fact that the Prohibition Law had been passed rapidly and did not provide for compensation did not mean that it did not meet the lawfulness requirement. All lawful procedures had been followed and the urgency had been dictated by the social ills caused by gambling.

146. The gambling industry had developed rapidly between 2007 and 2009 and attracted 20% of the adult population, who were spending considerable funds on gambling: in 2009 the market had been estimated at

between 1 and 1.5 billion United States dollars. Unofficial and unlicensed activities were estimated to account for 60% of the market. The lack of systematic regulation and the failure to comply with the existing regulations had created a situation where gambling had become excessively popular without, however, generating adequate tax revenue for the State.

147. The Government referred to the data cited in the explanatory note on the bill which had eventually become the Prohibition Law (see paragraph 8 above): crime related to gambling addiction and financial crime in this sector were on the rise; there was a proliferation of gambling machines in places not designated for that purpose, attracting in particular minors, despite the formal legislative prohibition; in fact, at least three quarters of gamblers were students and schoolchildren; every fourth person who lost had reported thoughts of suicide and some had acted on those thoughts.

148. The Government cited the experience of a clinical programme providing care for gambling addiction which had seen an increase in patient intake between 2006 and 2008. They also referred to press publications supposedly showing the negative impact of gambling, leading to an increase in social tensions. From November 2007 to May 2009 five bills had been introduced in Parliament aiming to regulate gambling, primarily by relegating it to certain well-defined areas.

149. The aim of the Prohibition Law was thus to protect the interests of society. The social problems caused by gambling, namely crime and juvenile delinquency and the drawing of minors into gambling, and the growth of unlicensed gambling establishments, were such that there was no other solution which would achieve the results sought.

150. As far as proportionality was concerned, the Government stressed the subsidiary role of the Convention system and the wide margin of appreciation afforded to the national authorities in matters of general social and economic policy, on which opinions in a democratic society could reasonably differ. The revocation of all gambling licences was a "tough" step, but it was the only possible solution given the gravity of the social problems caused by gambling.

151. As to the lack of compensation, the Government pointed out that it was in the very nature of entrepreneurial activity that it involved the acceptance of risks. No compensation was required for measures controlling the use of property (citing *Depalle*, cited above, § 91). Domestic law provided for compensation for damage caused by unlawful action on the part of the State authorities, but in the present case there had been no such unlawful action. Therefore, the applicants had had no expectation of obtaining any compensation. In this connection the Government stressed that a "legitimate expectation" had to be more concrete than a mere hope, and had to be based on a legal provision or a legal act such as a judicial

decision (citing *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

152. The Government referred to *McKenna v. Ireland* (no. 16221/90, Commission decision of 17 October 1991), where the European Commission of Human Rights had rejected an application concerning the revocation of a gambling licence on the grounds that the county council had unfettered power to revoke it at any time and that the applicant had to have been aware of the negative public opinion concerning gambling which had eventually led to the revocation of his licence.

*2. The Court's assessment*

153. A recent summary of the relevant principles of the Court's case-law in respect of Article 1 of Protocol No. 1 can be found in *Zelenchuk and Tsytstyura* (cited above, §§ 97-102). The relevant principles concerning specifically revocation of licences can be found in *Vékony v. Hungary* (no. 65681/13, §§ 29-32, 35 and 36, 13 January 2015), and in other judgments cited in the next paragraph.

**(a) Existence of an interference and the applicable rule**

154. It is well established in the Court's case-law that the termination of a valid licence to run a business constitutes an interference with the right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1, and that it falls to be examined under the second paragraph of that Article as a measure to control the use of property (see, for example, *Tre Traktörer AB*, cited above, § 55; *Rosenzweig and Bonded Warehouses Ltd v. Poland*, no. 51728/99, § 49, 28 July 2005; *Bimer S.A. v. Moldova*, no. 15084/03, § 51, 10 July 2007; *Megadat.com SRL v. Moldova*, no. 21151/04, §§ 64 and 65, ECHR 2008; *Vékony*, cited above, §§ 29 and 30; and *S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania*, no. 27227/08, §§ 39 and 40, 15 December 2015).

155. The Court sees no reason to hold otherwise in the present case and considers that the same also applies in respect of the suspension of the second applicant's licence.

**(b) Lawfulness**

156. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental

principles of a democratic society, is inherent in all the Articles of the Convention (see *Lekić v. Slovenia*, no. 36480/07, § 94, 14 February 2017).

157. The principle of lawfulness also presupposes a certain quality of the applicable provisions of domestic law. In this regard, it should be pointed out that when speaking of "law", Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term. It follows that the legal norms upon which the interference is based should be sufficiently accessible, precise and foreseeable in their application. In particular, a norm is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities (ibid., § 95).

*(i) Suspension of the second applicant's licence*

158. The second applicant's main argument in respect of the suspension of her licence was that an exhaustive list of grounds and a procedure for the revocation of licences were laid down in the Licensing Law and that the Cabinet of Ministers' and the Ministry of Finance's decisions suspending her licence had been issued in disregard of those rules. That view was shared by the domestic first-instance court (see paragraphs 139, 31 and 33 above respectively).

159. The domestic higher courts' response on this point was essentially that the Cabinet of Ministers had an inherent power, flowing directly from its constitutional power as the chief executive and existing, therefore, entirely alongside the ordinary licensing legislation and independent of it, to direct that the licences be suspended. The Ministry of Finance had to obey this instruction (see paragraph 34 above).

160. However, this appears to have been the first time the courts had interpreted the law in that way. Neither the higher courts nor the Government cited any previous judicial decisions interpreting the law in such a manner. The Court, for its part, perceives nothing in the language of the relevant domestic legal provision which might have indicated to the applicant that, despite the presence in the licensing legislation of an exhaustive list of grounds and a procedure for the revocation of licences and the absence of any mention of a possibility of "suspension" on different grounds (see paragraph 64 above), the executive nevertheless possessed an inherent power to suspend licences anyway.

161. To the extent that the domestic courts appeared to imply that the recognition of such inherent power was justified by compelling interests such as the protection of human life, health and the environment, the applicant could be justified in considering that those concerns were sufficiently covered by the well-established powers of the fire, workplace-safety and public-health authorities to suspend the operations of particular gambling establishments in the event of danger (see paragraph 65 above). It has never been suggested that there were grounds for any such

suspension in the applicant's case. The suspension applied to all gambling licences, not just those of the entities which had operated the establishment where a fire had taken place, and it applied without either an individual or even a general assessment of the health and safety and fire concerns which the Ministry of Finance, the body which issued the order, might have had in relation to gambling establishments and licence-holders.

162. In any event, the interpretation of domestic law by the domestic courts meant that the executive's discretion was unfettered by any rule indicating with sufficient clarity the scope and conditions of its exercise. It therefore provided no perceptible measure of protection against arbitrariness.

163. These considerations are sufficient for the Court to conclude that the domestic legal provisions did not meet the requirements of the quality of "law" and, therefore, that the suspension was not lawful.

164. There has accordingly been a violation of Article 1 of Protocol No. 1 on account of the suspension of the second applicant's licence.

*(ii) Revocation of the applicants' licences*

165. The applicants submitted, essentially, that the Prohibition Law did not meet the Convention's quality-of-law requirements because, essentially, it did not provide for compensation (see paragraph 129 above). However, compensation is not a requirement of "lawfulness" and this matter is to be examined as an element of the proportionality analysis (see *Depalle*, cited above, § 91). The applicants also alleged that the Prohibition Law had created uncertainty because it was framed as a temporary measure, whereas in fact it had instituted a permanent and total ban. The Court considers that that, too, is a matter to be examined as part of the proportionality analysis (see *Zelenchuk and Tsytsyura*, cited above, § 106).

**(c) General interest**

166. It is a well-established principle of the Court's case-law that, since the margin of appreciation available to the legislature in implementing social and economic policies is wide, the Court will respect the legislature's judgment as to what is in the public interest, unless that judgment is manifestly without reasonable foundation (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 106, ECHR 2014).

167. The Court agrees with the domestic authorities' finding that the prohibition pursued general interest and served the legitimate aims of preventing crime, juvenile delinquency, tax evasion and fighting gambling addiction (see *Zelenchuk and Tsytsyura*, cited above, § 108).

**(d) Proportionality**

168. The Court reiterates that Article 1 of Protocol No. 1 requires of any interference that there should be a reasonable relationship of proportionality between the means employed and the aim pursued. This fair balance will be upset if the person concerned has to bear an individual and excessive burden (see *G.I.E.M. S.r.l. and Others v. Italy*, cited above, § 300).

169. The Court's task, however, is not to review domestic law *in abstracto*, but to determine whether the manner in which it was applied to, or affected, the applicants gave rise to a violation of the Convention (see *Garib v. the Netherlands* [GC], no. 43494/09, § 136, 6 November 2017).

170. In the present case, this means that the Court is not concerned with the wisdom, propriety or otherwise of allowing or banning gambling in general or in Ukraine in particular. Its only concern in the present case is the specific legislation applied to the applicants and how it was implemented.

171. Turning to that question, the Court reiterates that the lack of a sufficient transitional period and of any compensation were factors which led the Court to find violations of Article 1 of Protocol No. 1 in previous cases which concerned the revocation of licences in the absence of any breach of the law by the licence holder (see, for example, *S.C. Antares Transport S.A. and S.C. Transroby S.R.L*, §§ 45 and 49, and *Vékony*, § 35, both cited above).

172. The Court sees no reason to find otherwise in the present case. The following aspects of the measure applied to the applicants lead the Court to the conclusion that it was disproportionate and imposed an individual and excessive burden on them.

173. The previous licensing legislation provided that licences would remain in effect for a certain period of time, could not be revoked at will and could only be revoked in a limited range of circumstances, none of which occurred in the applicants' cases. That being so, the applicants were entitled to expect that they would be allowed to continue to operate their businesses at least until the end dates of their licences and, if the legislation changed in the meantime, to obtain a certain form of compensation for any unused time remaining on the licence. This distinguishes their situation from that of the applicants in the *McKenna* and *Depalle* cases (both cited above) referred to by the Government (see paragraphs 151 and 152 above) who knew from the outset that their licence and authorisation to use land respectively remained subject to unilateral revocation at all times.

174. It has never been alleged that the applicants or their employees engaged in any wrongdoing.

175. Even if originally the wording of the Prohibition Law could have given grounds to believe that the total prohibition would be temporary, in fact it proved to be indefinite (contrast, for example, *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, no. 44460/16, § 122, 7 June 2018).

Indeed, the implicit promise that the measure would be temporary, to be replaced shortly by a policy of restricted gambling zones, only added an element of uncertainty to the situation and demonstrated a lack of consistency in the domestic authorities' policy (compare *Zelenchuk and Tsytsyura*, cited above, §§ 114-21, 146 and 147).

176. There is no evidence that any balancing exercise was undertaken at the legislative level: the legislature did not cite any reasons for choosing the most restrictive policy of total prohibition out of the range of options open to it and, most importantly, for putting it into effect at such short notice. No such reasons were ever put forward at the stage of judicial review (ibid., § 122; and contrast *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 116, ECHR 2005-VI, and in the context of Articles 10 and 8 respectively, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 13-33 and 113-16, ECHR 2013 (extracts), and *Anchev v. Bulgaria* (dec.), no. 38334/08 and 68242/16, § 104, 5 December 2017). The first applicant's allegation that the legislative proposal in question was not subjected to any meaningful expert analysis (see paragraph 136 above) has not been contested.

177. The transitional period amounted, in theory, to forty days, from the enactment of the Prohibition Law until its entry into force (see paragraphs 12 and 15 above and compare *Vékony*, cited above, § 34, where the transitional period of ten months was found to be too short). However, for most of that period, which was already too short, the applicants' licences were suspended through a measure which itself violated Article 1 of Protocol No. 1 in respect of the second applicant (see paragraph 164 above). In essence, there was no transitional period to speak of. This was further aggravated by the fact that policy on gambling had changed in a particularly rapid fashion, with the previously announced policy of tighter regulation changing to total prohibition in the space of just two months (see paragraphs 6, 7 and 12 above).

178. If anything, far from giving the applicants notice that their activity would soon need to be discontinued, the Government's previous legislative proposal in the field of gambling may have led them to believe that they needed to invest more in their businesses in order to be able to continue to operate under the new regulatory regime (see paragraph 78 above).

179. There was no monetary compensation and no compensatory measures of any other kind. This failure to compensate extended even to the direct costs imposed by the State itself for the right to operate, for a certain period of time, the businesses which the State later decided to prohibit, most notably the licence fees (see paragraph 197 below).

180. Under such circumstances, the measure applied to the applicants was disproportionate, on account primarily of the quality of the decision-making process which led to it, the lack of any compensatory measures,

even in respect of the direct costs imposed by the State itself, and the lack of a meaningful transition period.

181. There has accordingly been a violation of Article 1 of Protocol No. 1 on account of the manner in which the applicants' licences were revoked.

## V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE SECOND AND THIRD APPLICANTS

182. The second and third applicants complained that they did not have an effective domestic remedy in respect of their complaints under Article 1 of Protocol No. 1. Article 13 of the Convention reads:

> "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."

183. The Government contested that argument.

184. The Court notes that this complaint is closely linked to the complaints examined under Article 1 of Protocol No. 1 (see paragraphs 164 and 181 above) and must likewise be declared admissible.

185. However, given the grounds on which it has found a violation of Article 1 of Protocol No. 1, the Court considers that no separate issue arises under Article 13. Consequently, the Court holds that it is not necessary to examine this complaint separately.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

186. 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

#### *1. The parties' submissions*

##### (a) The first applicant

187. The first applicant claimed 3,186,684 euros (EUR) in total in respect of the pecuniary damage caused by the revocation of its licence, broken down as follows:

| | Claim | Amount, EUR | Comments, if any |
|---|---|---|---|
| 1 | Licence fees, representing the | 55,039 | Calculated on the basis of EUR 82.15 per day |

| | | | |
|---|---|---|---|
| | unused licence period from 25 June 2009 to 25 April 2011 | | when the licence could not be used, given that the full licence fee of EUR 150,000 covered five years, that is, 1,826 days |
| 2 | Depreciated cost of special cash registers adapted uniquely for gambling | 4,150 | The cash registers met specifications of the tax authorities designed uniquely for gambling businesses (order of the Tax Administration of 10/09/2008 no. 581, line 47) |
| 3 | Specialised tax-control software for gambling cash registers | 106,175 | The use of the software had been obligatory.[3] The applicant company had purchased the software and implementation services from the only company approved for such purposes by the Tax Administration (line 74 of the order cited above) and prepaid the full price of the software package on 02/10/2008 |
| 4 | Loss on gambling machines | 1,790,788 | The difference between the depreciated purchase price of the machines (UAH 19,527,166) and the price for which they were sold following the prohibition (UAH 383,640) |
| 5 | Refurbishment and adaptation of rented premises for gambling purposes | 105,366 | |
| 6 | Advertising costs | 34,309 | |
| 7 | Compensation for unused leave to staff made redundant | 18,669 | A statement from the company's accountant listed 256 staff dismissed on 30/06/2009 and compensation for unused leave paid to them |
| 8 | Lost revenue | 1,072,188 | Based on the post-tax profit of UAH 1,522,522 shown in the company's tax declaration for the first quarter of 2009, extrapolated for the period until April 2011, when the licence was supposed to expire |
| | **Total** | **3,186,684** | |

188. The first applicant also claimed certain amounts in respect of the suspension of its licence and EUR 50,000 for non-pecuniary damage.

**(b) The second applicant**

189. The second applicant claimed the following amounts in respect of pecuniary damage:

(i) EUR 2,464.50 in respect of the suspension of her licence, based on the same principle as that used by the first applicant, at EUR 82.15 per day of suspension (see row 1 of the table in paragraph 187 above);

(ii) EUR 56,765.65 in respect of the revocation of the licence, based on the same calculation;

(iii) EUR 66,574.69 for inflationary losses, calculated on the basis of consumer inflation in Ukraine from July 2009 to March 2018.

She also claimed EUR 25,000 in respect of non-pecuniary damage.

3. Cash Registers Law of 1995 and Cabinet of Ministers' resolution of 7 February 2001 no. 121.

**(c) The third applicant**

190. The third applicant claimed the following amounts in respect of pecuniary damage:

(i) EUR 150,000 in licence fees;

(ii) EUR 12,522 in respect of gambling equipment and cash registers that the applicant company's founder had purchased in July 2008 and had transferred to the company as his capital contribution upon its creation in September 2008 (see paragraph 42 above).

191. The third applicant also claimed EUR 10,000 in respect of non-pecuniary damage. It submitted that it had one founder and manager who had capitalised the company and who had suffered long-lasting uncertainty, disappointment and anxiety as a result of the revocation of his company's licence and the lack of compensation.

**(d) The Government**

192. The Government reiterated their submissions on the merits of the applicants' complaints under Article 1 of Protocol No. 1 (see paragraphs 145 to 151 above). They submitted that all the applicants' claims were unsubstantiated and, in any event, excessive, and that there was no connection between the alleged violations and the damages claimed and urged the Court to reject the claims.

193. As far as commercial companies were concerned, the Government submitted that an award in respect of non-pecuniary damage could be made only where specific circumstances as set out in *Comingersoll S.A. v. Portugal* ([GC], no. 35382/97, § 35, ECHR 2000-IV) were shown. The applicant companies had failed to show that any such circumstances existed.

194. The first applicant's claim in respect of the gambling equipment was based entirely on its own internal estimates; it had used the gambling machines for three years and had failed to provide information on the market value of comparable used equipment. As for the lost profit, the applicant company's estimates were based merely on its own documentation and were speculative.

195. The second applicant had failed to demonstrate any connection between the violation alleged and inflationary losses.

196. In assessing the third applicant's claim for pecuniary damage it had to be taken into account that the applicant company had obtained the licence in 2008 but had failed to launch a gambling business before the prohibition had taken effect. It was unclear when it had been intending to start operating.

*2. The Court's assessment*

**(a) All applicants: licence fees**

197. The Court considers it appropriate to grant the applicants' claims in respect of the reimbursement of the *pro rata* part of the licence fees which would have covered the period during which they could not operate their gambling businesses because of the Prohibition Law and also, in the case of the second applicant, the period when her licence was suspended.

**(b) The first applicant**

198. The applicant company's claim in respect of pecuniary damage on account of the suspension of its licence should be rejected as its complaints in that respect fall outside of the scope of the application (see paragraph 80 above).

199. The Court considers that, on the basis of the same principle as for licence fees (see paragraph 197 above), the applicant company must also be compensated for its expenditure on tax regulations-compliant equipment and software suited uniquely for gambling (see lines 2 and 3 of the table in paragraph 187 above) because that expenditure had been imposed on the company by the State as a cost of operating a lawful gambling business, which the State itself later decided to prohibit.

200. The award to be made in respect of direct losses thus amounts to EUR 164,541.

201. As far as the first applicant's other claims are concerned, the Court observes that it obtained its gambling licence in 2006 and operated in 2007 and 2008. There is no indication that it could not have recouped a substantial part of its investment in its gambling business while it was still allowed to operate.

202. Moreover, it should be noted that the Court has found a violation of Article 1 of Protocol No. 1 not on account of the prohibition of gambling as such but only on account of the manner in which that measure was adopted and implemented, notably the lack of a meaningful transitional period. Therefore, not all of the applicant company's losses due to the discontinuation of its gambling business need to give rise to compensation.

203. As far as the gambling equipment is concerned (see line 4 of the table in paragraph 187 above), while it is reasonable to assume that, following the prohibition of gambling, the prices of gambling equipment would have dropped considerably, the applicant company did not provide any indication as to what the market prices of used equipment of that type had been prior to the prohibition. It only submitted estimates of their depreciated cost, produced by its own in-house accountant. It is unclear from those estimates when the equipment had been acquired and what its condition was at the relevant time. Therefore, the applicant company has not

provided the Court with sufficient information to assess the scope of its losses in that regard.

204. The same applies to the applicant company's claim in respect of the refurbishment of gambling premises, advertising and personnel costs (see lines 5 to 7 of the table). Concerning the latter, owing to the paucity of documentation submitted by the applicant company, the causal link between its former employees' unused leave and the prohibition of gambling has not been convincingly shown.

205. Finally, as far as the applicant company's claim in respect of lost profit is concerned (line 8), it provided only its tax return for the first quarter of 2009, showing that it made a profit in that period and extrapolated that profit to the period of twenty-one months over which its licence was supposed to remain valid. However, it failed to provide any information as to what share of its profit had come from gambling and what its earnings were in the period following the prohibition. Even assuming that all of its income had derived from gambling and it had lost all of it, there is no indication that, in the absence of the prohibition, its business would have remained as profitable.

206. At the same time, it is clear that the applicant company did indeed lose at least a substantial part of its business. The assessment of that loss is subject to a number of imponderables, given the inherently risky and uncertain nature of commercial activity. In such circumstances, it is appropriate for the Court to make a global assessment (see *Comingersoll S.A.*, cited above, § 29). Therefore, the Court considers it appropriate to increase its overall award to account for the loss of the applicant company's profits (see paragraphs 200 above and 210 below).

**(c) The second applicant**

207. The Court considers that the second applicant's claim in respect of inflationary losses is unsubstantiated. In her calculations she relied on the consumer price index in Ukraine, which, according to her calculations, increased by about 119% over the relevant period. That index is calculated largely on the basis of UAH-denominated prices, whereas the applicant's underlying claim is in euros. Over the same period the EUR/UAH exchange rate changed from about 1 to 10 in July 2009 to about 1 to 32 at the end of March 2018, when the applicant lodged her claim for just satisfaction, a rise of about 320% for the euro against the hryvnia. The award in euros compensates the applicant for any inflationary losses.

**(d) The third applicant**

208. The third applicant's claim in respect of reimbursement of the licence fees should be granted only in part. The applicant company claimed the full amount of the licence fees it had paid even though there was a period during which it had possessed a licence but did not use it because of

its own failure to launch its business (see paragraphs 43 and 11 above). That period, from November 2008 until April 2009, took up at least one-tenth of the period of time for which the applicant company's licence was supposed to remain in effect. It is appropriate to reduce accordingly the amount the applicant company claimed in this respect (see paragraphs 190 above and 210 below).

209. For the same reason, its other claims in respect of pecuniary damage should be rejected: given that it had never launched its gambling business prior to the gambling prohibition, it would be inappropriate to compensate it for the investment it made in the business. The Court notes, furthermore, that at domestic level the third applicant had sought merely reimbursement of the licence fees paid (see paragraph 47 above).

#### (e) Conclusion

210. In summary, the Court considers it appropriate to award the applicants the following amounts in respect of pecuniary damage:

(i) EUR 300,000 to the first applicant;

(ii) EUR 58,500 to the second applicant;

(iii) EUR 135,000 to the third applicant.

211. The Court, having regard in particular to the nature of the applicants' business and the awards made in respect of pecuniary damage, considers that the finding of violations constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

## B. Costs and expenses

### *1. The parties' submissions*

212. The applicants claimed the following amounts under this head:

(i) the first applicant: EUR 4,747 for court fees incurred before the domestic courts and 19,000 United States dollars in respect of legal fees incurred before the Court;

(ii) the second applicant: EUR 600 in court fees and travel costs incurred in the domestic proceedings and EUR 1,500 for legal fees and EUR 100 postal costs incurred in the proceedings before the Court;

(iii) the third applicant: EUR 214 for the fee paid for lodging an appeal with the High Administrative Court.

213. As far as the first and third applicants were concerned, the Government submitted that, since an appeal to the domestic courts was not an appropriate remedy, no costs could be awarded on that account. As to the legal fees before the Court, the applicants had failed to provide sufficient information as to the time the lawyer had spent on the case and the hourly rate. The Government also raised a doubt as to whether the second applicant had actually paid the lawyer the fees claimed. They also contended that the

documentation she had provided in respect of the costs allegedly incurred in the domestic proceedings was insufficient. The claims were therefore unsubstantiated and, in any event, excessive.

*2. The Court's assessment*

214. 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 to the documents in its possession and the above criteria, the Court considers it reasonable to award the following sums, covering costs under all heads:

(i) EUR 17,000 to the first applicant;
(ii) EUR 2,200 to the second applicant;
(iii) EUR 214 to the third applicant.

### C. Default interest

215. 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 the applications;

2. *Declares* the second applicant's complaint under Article 6 § 1 of the Convention inadmissible and the remainder of the applications admissible;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the first applicant;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the second applicant on account of the suspension of her licence;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 on account of the manner in which the applicants' licences were revoked;

6. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention in respect of the second and third applicants;

7. *Holds* that the finding of violations constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

8. *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 300,000 (three hundred thousand euros) to the first applicant, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 58,500 (fifty-eight thousand five hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;

(iii) EUR 135,000 (one hundred and thirty-five thousand euros) to the third applicant, plus any tax that may be chargeable, in respect of pecuniary damage;

(iv) EUR 17,000 (seventeen thousand euros) to the first applicant, EUR 2,200 (two thousand two hundred euros) to the second applicant, and EUR 214 (two hundred and fourteen euros) to the third applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 27 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President

# APPENDIX

| No. | Application no. | Lodged on | Licence valid from/to | Applicant<br>Date of birth (for individuals)<br>Place of residence and nationality for individuals or place of registration for companies | Represented by:<br>name and place of practice |
|---|---|---|---|---|---|
| 1. | 13290/11 | 15/02/2011 | 26/04/2006 to 25/04/2011 | SVIT ROZVAG, TOV<br>Kharkiv | Olena Yevgeniyivna SAPOZHNIKOVA<br>Kyiv |
| 2. | 62600/12 | 26/09/2012 | 17/05/2006 to 16/05/2011 | Nataliya Ivanivna STANKO<br>05/07/1975<br>Loza of Irshavsky District, Zakarpattya Region | Igor Mykhaylovych SHKORKA<br>Uzhgorod |
| 3. | 49432/16 | 08/08/2016 | 28/10/ 2008 to 27/10/2013 | IGRO-BET, PP<br>Lviv | Oksana Igorivna YAKYMETS<br>Lviv |