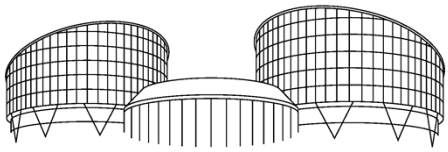

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KOROTYUK v. UKRAINE

(Application no. 74663/17)

JUDGMENT

Art 1 P1 • Positive obligations • Flagrant and serious deficiencies of criminal investigation into breach of copyright by making available applicant's book for payable online download without consent • Lack of an available and effective civil remedy • *Blumberga v. Latvia* principles applicable to criminal encroachments by private individuals on intellectual property rights, in absence of an effective separate civil remedy

STRASBOURG

19 January 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Korotyuk v. Ukraine,

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

Georges Ravarani*, President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lado Chanturia,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 74663/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms Oksana Viktorivna Korotyuk ("the applicant"), on 10 October 2017;

the decision to give notice of the application to the Ukrainian Government ("the Government");

the parties' observations;

Having deliberated in private on 6 December 2022,

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

INTRODUCTION

1. The applicant is the author of a book that was made available for illegal download on the Internet. The case concerns her complaint that the authorities failed to conduct a prompt and effective investigation in that respect, in breach of the State's positive obligations, under Article 1 of Protocol No. 1 to the Convention, to protect intellectual property.

THE FACTS

2. The applicant was born in 1986 and lives, according to the most recent available information, in Kyiv. The applicant was represented before the Court by Mr M.G. Korotyuk, a lawyer practising in Kyiv.

3. The Government were represented by their then acting Agent, Ms O. Davydchuk.

4. The facts of the case may be summarised as follows.

5. The applicant is the author of a book, *Scientific and Practical Commentary to the Law of Ukraine on Notaries*. Without her consent, a copy of the book was made available for download against payment on a website primarily dedicated to sharing Ukrainian textbooks. The payments were made to a Ukrainian bank card and activated by way of a text message sent to a Ukrainian number.

6. On 18 February 2013 the applicant lodged a formal complaint with the police seeking the institution of criminal proceedings for intentional breach of copyright (see paragraph 26 below). The applicant stated that her own enquiries revealed that the website appeared to be registered in the name of Mr O.O. The applicant indicated Mr O.O.'s name, date of birth and taxpayer identification number. Criminal proceedings were opened.

7. On 21 March 2013 the applicant requested that the police investigator conduct the following specific investigative activities: (i) obtain information from bank A. about the owner of the bank card (she indicated a specific number) allegedly used to receive payments for downloads of her book; (ii) obtain information from the S. company, which operated the text messaging service, about the user of the number allegedly used to initiate the book's downloads; and (iii) appoint a technical specialist nominated by her. She also stated that she would bring a civil claim for damages once the number of illegal downloads and the persons involved were identified.

8. The applicant repeatedly renewed these and other such requests throughout the subsequent proceedings.

9. On 16 June 2013 the police discontinued the criminal proceedings, finding that the offence had not occurred (*за відсутністю події злочину*). By way of reasoning, the investigator stated that Mr O.O., who for the last two years had lived in Croatia, had stated by fax that he had had nothing to do with the sharing of the applicant's book. This had also been confirmed by his father, Mr P.O.

10. On 26 November 2013 a prosecutor overruled that discontinuation decision and the investigation was resumed.

11. On 14 October 2014 the applicant applied for a disclosure order in respect of bank A. On 24 October 2014 the District Court issued the order, directing the bank to disclose information to the applicant's lawyer about the owner of the account with the number indicated by the applicant (see paragraph 7 (i) above). On 5 November 2014 the bank responded that it had no account with the number indicated.

12. Subsequently, the applicant became aware that the relevant bank account was allegedly not with bank A. but with bank B. The applicant's lawyer requested the relevant information from the latter bank but on 28 November 2014 received a refusal based on bank secrecy. On 8 December 2014 he applied for a disclosure order in respect of bank B. but on 23 December 2014 the District Court rejected the application because by that time, the relevant criminal proceedings had been discontinued by a decision of 18 December 2014 (see paragraph 13 below).

13. On 18 December 2014 the police decided to discontinue the proceedings for lack of constituent elements of an offence. The decision was reasoned as follows.

(i) It was established that downloading the book from the website had been possible by way of payment to a bank account at bank A. with the same

number as that indicated by the applicant in her submission of 21 March 2013 (see paragraph 7 (i) above).

(ii) On 15 September 2014 the police had requested information from bank A. but it had responded that no account with the number indicated was in service.

(iii) A representative of the publishing house that had published the paper copy of the book had been questioned and indicated that he did not know who might have been involved in sharing the book on the Internet.

(iv) The website was registered with the D. company in the United States of America and hosted by a provider company in London. The domain name had been registered with another company in London. The identity of the registrant could only be established through a request for international legal assistance.

(v) The services for the text message number in question were provided by the M. company located in Kyiv "but no other information could be provided, as it was confidential" (*однак іншу інформацію надати не взмозі, оскільки вона є конфіденційною*).

(vi) The decision concluded that it was impossible to prove either the fact that the book had been unlawfully distributed or the identity of the person involved in its alleged distribution.

14. On 2 April 2015 the Kyiv Court of Appeal quashed the discontinuation decision of 18 December 2014 as premature on the grounds, notably, that the reasons given for the discontinuation (see paragraph 13 (iv) and (v) above) showed that in fact not all possible steps had been taken to establish the circumstances of the case.

15. On 17 April 2015 the applicant formally requested that the police resume the investigation following the Court of Appeal's decision. In her request she mentioned, in particular, that the bank card in question used for the illegal downloads had been issued by bank B.

16. It appears from the extensive exchange of correspondence between the applicant, the police and the courts that in the following months there was confusion as to where (which court, police or prosecutor's office) the criminal case file was.

17. On 6 October 2015 and 5 May 2016 the police again discontinued the proceedings on largely the same grounds as those stated in the decision of 18 December 2014 (see paragraph 13 above). According to the 2015 and 2016 discontinuation decisions, however, the M. company stated to the police that it was not servicing the text message number in question.

18. It appears that the applicant was not immediately informed about those decisions: for instance, on 16 August 2016 the applicant requested information from the police about the progress of the investigation. On 25 August 2016 the police informed the applicant that the investigation had been discontinued on 5 May 2016 but did not provide a copy of the

discontinuation decision. A copy was provided after two requests from the applicant, on 28 December 2016.

19. The applicant appealed each time, in 2015 and 2016, arguing in particular that the decisions had been taken prematurely, without any further investigation having been undertaken, and that she herself had been prevented from obtaining a disclosure order in respect of bank B. by the unlawful discontinuation of proceedings on 18 December 2014 (see paragraphs 12 and 13 above).

20. The District Court quashed the discontinuation decision of 2015 on 18 December 2015 and the decision of 2016 on 8 February 2017 as premature, taken superficially and not indicating any new investigative steps taken to advance the investigation before deciding to discontinue. In the last-mentioned quashing decision, in particular, the court stated that, before taking the discontinuation decision, the investigator had failed to identify the owner of the text message number in question.

21. The investigation has been pending since then but there is no information as to any specific investigative steps being taken. Most recently, in a letter of 13 May 2021, the prosecutor's office informed the applicant's lawyer that the investigation was ongoing and that the prosecutor's office had issued certain instructions (not specified in the letter) to the police investigator as to the additional investigative steps to take.

22. On 28 February 2018 the applicant lodged an electronic complaint of copyright infringement with Google (apparently a system of the so-called "DMCA Takedown" instituted to comply with the United States Digital Millennium Copyright Act) and the relevant content was removed from Google's search results.

RELEVANT LEGAL FRAMEWORK

I. CODE OF CRIMINAL PROCEDURE 2012

23. Article 55 of the Code of Criminal Procedure 2012 defines an aggrieved party as a person who has sustained damage as a result of a criminal offence. An aggrieved party acquires procedural rights from the moment he or she lodges a complaint about the offence committed against him or her. Article 56 lists the rights of aggrieved parties, including the right to be informed about a suspicion or charges notified to a defendant and about decisions to discontinue criminal proceedings; the right to submit evidence; the right to appeal against decisions of the investigating authority, the prosecutor and the court; and the right to obtain compensation for damage caused by the offence.

24. Under Articles 127 and 128, a person who has sustained pecuniary and/or non-pecuniary damage as a result of a criminal offence can lodge

a civil claim against a suspect or an accused in the course of the criminal proceedings at the pre-trial stage, before the commencement of the trial.

25. Articles 159 to 163 provide that a court can, at the request of a "party to the criminal proceedings", order a person holding certain information or documents to disclose them to the requesting party subject to a number of conditions, notably that the information in question is needed to establish important circumstances in the criminal proceedings. Article 3 § 1 (19) of the Code of Criminal Procedure defines an aggrieved party as a party to the criminal proceedings on the side of the prosecution (along with the prosecutor and investigator). The defendant and his or her lawyer are the main parties on the side of the defence.

II. CRIMINAL CODE 2001 (AS WORDED AT THE RELEVANT TIME)

26. Article 176 of the Criminal Code provided at the relevant time that the unlawful reproduction and dissemination of works or any other intentional violation of copyright and neighbouring rights, if it had caused "considerable damage", was punishable by a fine, the withholding of up to 20% of income for up to two years or imprisonment for up to two years combined with the confiscation of illegal copies of the works.

At the relevant time "considerable damage" was defined by law (a combination of provisions of the Criminal Code and of the Tax Code) as damage exceeding an amount equivalent to approximately 1,055 euros (EUR).

Paragraph 2 of that Article increased the potential punishment to up to five years' imprisonment for the same actions if committed repeatedly or by a group of people or if the amount of damage exceeded EUR 10,550.

III. CIVIL CODE 2003

27. Article 1177 of the Civil Code provides that the State is to compensate the victim of a criminal offence if the offender is not identified or is insolvent.

THE LAW

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

28. The applicant complained that the authorities failed to conduct a prompt and effective investigation in respect of illegal downloading of her book, which was in breach of the State's positive obligation to protect intellectual property. In her application form the applicant relied on Articles 6 and 13 of the Convention. Notice of that complaint was given to the

Government under Article 1 of Protocol No. 1 and the applicant relied on the latter provision in her reply to the Government's observations.

29. The Court, being the master of characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018) finds it appropriate to examine the applicant's complaint under Article 1 of Protocol No. 1 (see, for example, *Béláné Nagy v. Hungary* [GC], no. 53080/13, §§ 45-46, 13 December 2016). That provision 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. The parties' submissions

30. The Government submitted that the State had complied with its positive obligations by enacting Article 1177 of the Civil Code, which provided for a conditional right to compensation for victims of unsolved criminal offences or those committed by insolvent perpetrators (see paragraph 27 above). However, because no law had been enacted implementing that provision, the applicant had not had a sufficiently established claim to compensation for the purposes of Article 1 of Protocol No. 1 (they relied on *Petlyovanyy v. Ukraine* (dec.), no. 54904/08, 30 September 2014). The investigation in the case was ongoing.

31. The applicant pointed out that, because no law had been enacted setting out conditions for compensation under the above-mentioned provision of the Civil Code, a claim for compensation under that provision was not an effective remedy. In the applicant's view, the breach of the State's obligations lay rather in the absence of an effective investigation, which had left her defenceless in the face of theft of intellectual property and deprived her of an opportunity to lodge a claim for damages. This was because it made it impossible to identify the persons involved in the offence and the losses caused by the offence.

B. The Court's assessment

1. Admissibility

32. In so far as the Government may be understood as contesting the applicability of Article 1 Protocol No. 1 on the basis that the applicant did not have a legitimate expectation to obtain compensation from the State under Article 1177 of the Civil Code, the Court observes that the applicant did not

complain of her inability to obtain compensation from the State, but rather of the State's failure to protect her intellectual property rights and, in particular, of her alleged inability, supposedly caused by a lack of effective investigative steps on the part of the State authorities, to lodge a claim for damages against the parties which had unlawfully disseminated and exploited her work in breach of her copyright.

33. The Court reiterates that protection of intellectual property rights, including the protection of copyright, falls within the scope of Article 1 of Protocol No. 1 (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 72, ECHR 2007-I). In the present case, it is uncontested that the applicant was the author of and held copyright on the book in question. Therefore, the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention and this provision applies.

34. A question can be asked whether the applicant can be considered to have "suffered a significant disadvantage", within the meaning of Article 35 § 3 (b) of the Convention, on account of the violation she alleged. Indeed, the applicant was an author of a specialist work which might not have attracted wide commercial success even in the absence of an opportunity to download it illegally. The Court notes, however, that the very core of the applicant's complaint goes to the authorities' alleged failure, due to the flaws in the investigation, to allow the applicant even to establish the extent of damage she suffered (see paragraph 31 above). In such circumstances, it would not be appropriate to reject the applicant's complaint under Article 35 § 3 (b) of the Convention.

35. The Court further notes that the complaint under examination is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

36. The relevant principles of the Court's case-law have been set out in *Blumberga v. Latvia* (no. 70930/01, §§ 67-68, 14 October 2008) as follows:

> "67. The Court considers that in the context of Article 1 of Protocol No. 1, when an interference with the right to peaceful enjoyment of possessions is perpetrated by a private individual, a positive obligation arises for the State to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights, including, where appropriate, by claiming damages in respect of any loss sustained. Furthermore, where the interference is of a criminal nature, this obligation will in addition require that the authorities conduct an effective criminal investigation and, if appropriate, prosecution (see, *mutatis mutandis*, *M.C. v. Bulgaria*, no. 39272/98, §§ 151-153, ECHR 2003-XII). In that respect, it is clear that the obligation, like the obligation under Articles 2 and 3 of the Convention to conduct an effective investigation into loss of life or allegations of ill-treatment, is one of means and not one of result; in other words, the obligation on the authorities to investigate and prosecute such acts cannot be absolute, as it is evident that many crimes remain unresolved or unpunished notwithstanding the reasonable efforts of the State authorities. Rather, the

obligation incumbent on the State is to ensure that a proper and adequate criminal investigation is carried out and that the authorities involved act in a competent and efficient manner. Moreover, the Court is sensitive to the practical difficulties which the authorities may face in investigating crime and to the need to make operational choices and prioritise the investigation of the most serious crimes. Consequently, the obligation to investigate is less exacting with regard to less serious crimes, such as those involving property, than with regard to more serious ones, such as violent crimes, and in particular those which would fall within the scope of Articles 2 and 3 of the Convention. The Court thus considers that in cases involving less serious crimes the State will only fail to fulfil its positive obligation in that respect where flagrant and serious deficiencies in the criminal investigation or prosecution can be identified (cf. ibid., §§ 167-168).

68. The Court considers, furthermore, that the possibility of bringing civil proceedings against the alleged perpetrators of a crime against property may provide the victim with a viable alternative means of securing the protection of his rights, even if criminal proceedings have not been brought to a successful conclusion, provided that a civil action has reasonable prospects of success (cf. *Plotiņa v. Latvia* (dec.), no. 16825/02, 3 June 2008). While the outcome of criminal proceedings may have a significant or even decisive effect on the prospects of a civil claim, whether lodged in the context of the criminal proceedings or brought in separate civil proceedings, the State cannot be held responsible for the lack of prospects of such a claim simply because a criminal investigation has not ultimately led to a conviction. Rather, the State will only fail to fulfil its positive obligations under Article 1 of Protocol No. 1 if the lack of prospects of success of civil proceedings is the direct consequence of exceptionally serious and flagrant deficiencies in the conduct of criminal proceedings arising out of the same set of facts, as outlined in the preceding paragraph."

37. The above principles have been applied in cases concerning burglary (see *Keipenvardecas v. Latvia* (dec.), no. 38979/03, § 64, 2 March 2010), financial offences (see *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, §§ 276-77, 12 December 2013) and arson (see *Abukauskai v. Lithuania*, no. 72065/17, §§ 54-73, 25 February 2020). In the Court's view, they also apply, mutatis mutandis, to encroachments by private individuals on intellectual property rights, as in the present case, where such an encroachment *prima facie* constituted a criminal offence and any separate civil remedy would not be effective due to a combination of circumstances set out in paragraphs 38 to 43 below.

38. The Court notes that the Government did not claim that the domestic legal system ensured the requisite protection through the general possibility for the applicant to bring a civil action or use other remedies outside of the domain of criminal law.

39. In particular, no argument has been made that the applicant had any such remedies under Ukrainian law against any of the persons involved whose identity was known to him (such as the company that hosted the relevant website, located in London – see paragraph 13 (iv) above) without identifying the individuals or entities directly responsible for making her book available for illegal downloads.

40. Likewise, the Government did not argue that it would be open to the applicant to lodge a civil claim or use other non-criminal remedies in any

other jurisdiction, notably in the United States of America or in the United Kingdom. In particular, no submissions were made to the Court as to what jurisdictional principles or substantive rules of liability could serve as the basis for any such action.

41. In the present case the persons directly responsible for copyright infringement used Ukrainian banking and telecommunication services providers (see paragraphs 5 and 13 (iv) above) that were fully within the jurisdiction of the Ukrainian authorities. The most direct means of identifying those persons was to request information from those providers and the only identifiable way of requesting information from them was through a criminal investigation.

42. The Court observes that the applicant's attempts to identify individuals or entities who established the system of illegal downloads were unsuccessful. The Court is inclined to accept the applicant's position that, in the circumstances of the present case, where the State made the choice to criminalise certain serious cases of copyright infringement, the identity of the party (or parties) that infringed copyright could in practice only be established through the use of the investigative powers of the State. It appears that the pursuit of a civil claim before the criminal investigation had identified that party or parties was not a practical possibility for the applicant.

43. In this context the Court also observes that domestic law allowed a civil claim to be lodged within the framework of criminal proceedings only after a suspect or accused had been identified (see paragraph 24 above; see also, for example, *Afanasyev v. Ukraine*, no. 38722/02, § 77, 5 April 2005, and *Basyuk v. Ukraine*, no. 51151/10, § 64, 5 November 2015).

44. The Court finally notes the Government's argument that they had complied with their positive obligations by enacting Article 1177 of the Civil Code, which provides for compensation of victims of criminal offences if the offender is not identified or is insolvent. However, as noted by the Government themselves, the law required to implement that provision has not been adopted and, consequently, there is no possibility for the applicant to obtain compensation on the basis of Article 1177 of the Civil Code without the implementing legislation.

45. It follows from the foregoing that, although copyright disputes are in general of civil law nature, in the specific circumstances of the present case, which concerned an alleged criminal offence, the respondent State was under a positive duty under Article 1 of Protocol No. 1 to conduct an effective criminal investigation. To hold otherwise would disregard the practical realities of the situation and go against the principle that the Convention must be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory (see, *mutatis mutandis*, *Vistiņš and Perepjolkins v. Latvia*, no. 71243/01, § 114, 25 October 2012).

46. It remains to be examined, therefore, whether the State discharged its positive obligations through the enactment of criminal law provisions and by

applying them in practice. In examining that question the Court is conscious of the fact that those are obligations of means, not of result.

47. The Court notes in this regard that the criminal investigation was characterised by a number of flaws, most notably those set out below.

48. The applicant identified specific steps which were likely to lead to identification of perpetrators and did not require the authorities to engage in large-scale search measures which would be out of proportion with the gravity of the offence alleged. Notably, she informed the authorities that the parties involved in the illegal download scheme were using a specific bank card issued by a Ukrainian bank and a Ukrainian short message number (see, for example, paragraphs 7 and 15 above). All that was required of authorities was to take reasonable and easily available steps to identify the users of the account and number in question. However, the authorities failed to take those limited and easily available steps, without providing any coherent explanation as to what prevented them from doing so.

49. Notably the authorities insisted on the fact that bank A. had not issued the card allegedly used to receive payments for illegal downloads, even though the applicant, as early as April 2015, had informed the authorities that, according to her information, the card in question had in fact been issued by bank B. (see paragraphs 15 and 17 above).

50. There is no indication that the authorities attempted to verify that updated information. Moreover, they, incomprehensibly, continued to rely on the fact that the card in question had not been issued by bank A. as one of the grounds for the discontinuation of proceedings (see paragraph 17 above).

51. The authorities limited themselves to repeatedly stating that the telephone number used to initiate unlawful downloads was not administered by the M. company. They did not make any apparent attempt to identify the entity which did administer that number (see paragraph 17 above).

52. Neither the domestic authorities nor the Government before the Court argued that taking those steps would have imposed a disproportionate burden on the authorities in view of their other priorities. For example, there is no indication that the authorities could not advance with the investigation without complex investigative actions abroad: although many of the entities associated with the offending website operated in other countries, the parties which infringed the applicant's copyright made use of Ukrainian banking and telecommunication services providers (see paragraphs 5 and 13 (iv) above) that were fully within the jurisdiction of the Ukrainian authorities.

53. Furthermore, it is noteworthy that the applicant herself attempted to supplement the efforts of the domestic authorities, as far as the bank card was concerned, by applying for a disclosure order herself (see paragraph 11 above). However, she was prevented from doing so because of the authorities' hasty decision to discontinue proceedings. Given the subsequent confusion over the location of the case file, the applicant could not renew her request until at least 18 December 2015, when the next decision to

discontinue proceedings was quashed by the domestic courts as being premature (see paragraph 20 above).

54. It is true that the applicant did not take the initiative to request again the information in question, once that was possible (after 18 December 2015). However, the material in the case file indicates that the applicant was not regularly informed about the relevant decisions or even the location of the case file at any given moment, which made it difficult for her to help the investigation in the periods when it was still technically pending (see paragraphs 16 and 18 above).

55. In summary, the Court finds as follows as regards the effectiveness of the investigation.

(i) There were specific investigative steps available to the authorities and identified by the applicant which were likely to allow the authorities to identify the parties involved. This concerned, most importantly, identification of the holder of the bank card allegedly used to collect payment for illegal downloads (see, for example, paragraphs 49 and 50 above).

(ii) There is no indication that taking those steps would have imposed a disproportionate burden on the authorities, even taking into account the relatively limited gravity of the alleged offence against the applicant's intellectual property.

(iii) The authorities consistently and repeatedly failed, over a long period of time and without any coherent explanation, to take those steps which was also acknowledged by the domestic courts (see, for example, paragraph 20 above).

(iv) The applicant had no practical opportunity to supplement the authorities' investigation through her own actions, in part because of the authorities' own conduct (see paragraphs 12, 16 and 18 above).

56. The Court finds, in view of the combination of those circumstances, taken cumulatively, that the State failed to fulfil its positive obligations in respect of the applicant's property on account of flagrant and serious deficiencies that characterised the criminal investigation.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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."

59. The applicant claimed 2,100.20 euros (EUR) in respect of pecuniary damage, based on her estimation of lost revenue from paper copies of her book which, the applicant believed, had remained unsold on account of its

availability for illegal download. She also claimed EUR 2,000 in respect of non-pecuniary damage and EUR 284 for costs and expenses (postage costs incurred in the domestic proceedings and in the proceedings before the Court).

60. The Government contested those claims.

61. The Court notes that the violation has been found in the present case only in respect of compliance with the State's positive obligations under Article 1 of Protocol No. 1. Those obligations being ones of means and not of result, even had they been fully complied with the applicant might not have been able to recover any losses she may have suffered. Moreover, the applicant's claim in respect of pecuniary damage is not based on any proof that the book was actually downloaded from the Internet and that, if that happened, it caused paper copies of the book to remain unsold. The Court, accordingly, rejects this claim.

62. The Court, having regard to the nature of the violation found, which concerns the State's failure to comply with its positive obligations, awards the applicant EUR 750 in respect of non-pecuniary damage, plus any tax that may be chargeable.

63. The Court also considers it reasonable to award EUR 284 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, 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 750 (seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 284 (two hundred and eighty-four euros), plus any tax that may be chargeable to the applicant, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President