



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

FIFTH SECTION

CASE OF SVITLANA ILCHENKO v. UKRAINE

(Application no. 47166/09)

JUDGMENT

STRASBOURG

4 July 2019

FINAL

04/10/2019

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

In the case of Svitlana Ilchenko 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 Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 11 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 47166/09) 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 Svitlana Ivanivna Ilchenko (“the applicant”), on 31 August 2009.

2. The applicant was represented by Ms A. Ilchenko, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr I. Lishchyna.

3. The applicant alleged, in particular, that the demolition of her garage amounted to a deprivation of property and breached her rights under Article 1 of Protocol No. 1 to the Convention.

4. On 3 November 2017 notice of the above complaint was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE****A. Background information**

5. The applicant was born in 1951 and lives in Kyiv.

6. The applicant resided in a flat on Saksaganskogo Street, in Kyiv city centre, and had used a one-car brick garage in the courtyard of her house since 1980.

7. In April 1983 the executive committee of the Kyiv Leninsky District Council issued a decision authorising the applicant to use her garage.

8. From 1993 to 1998 the applicant rented from the district executive committee (*виконавчий комітет*), under a signed lease, the part of the courtyard occupied by the garage.

9. In January 1995 the district executive committee issued a letter to the applicant indicating that it had no objection to her registering the garage in her name.

10. In February 1995 the Kyiv Technical Inventory Bureau, which at the time was responsible for registering rights in real property, registered the garage in the applicant's name, on the grounds of the executive council decision of April 1983 and its letter of January 1995 (see paragraphs 7 and 9 above).

11. In the course of the 1990s she bought her flat, taking it into private ownership.

12. The applicant submitted a certificate, dated October 2002 and issued by the municipal housing management agency, indicating that the applicant owned a brick garage measuring 34 sq. m in the courtyard of her house.

13. In 2002 the city and a private developer started planning a new housing project in the vicinity of the applicant's house, on the site where the applicant's garage was located. The Kyiv City Council allocated land for that purpose to the city's Housing Directorate (the Directorate) in April 2003. The lease was signed in July 2003.

B. Negotiation and compensation offers

14. On 29 November 2002 a municipal company involved in the development project wrote to the applicant's husband. It informed him that the development project would involve the need to move the garage and invited him to discuss possible ways forward.

15. On 29 May 2003 the Directorate wrote to the applicant informing her that the land where the garage was located had been designated for new housing development. It stated that the applicant was using the garage without legal grounds and that her registration of the garage was invalid. The garage, therefore, would have to be demolished. There was neither available space nor grounds to propose an alternative placement for the garage. Therefore, the city was proposing monetary compensation. The applicant was invited to the Directorate with her paperwork to enter into the compensation agreement. In the event of refusal of compensation, the Department would sue.

16. According to the material in the case file the applicant failed to follow up on the offers to negotiate.

C. Main litigation

17. On 3 July 2003 the Directorate instituted civil proceedings against the applicant, seeking demolition of her garage.

18. The applicant filed a counterclaim, seeking acknowledgment of her title to the plot of land under the garage (“the plot of land”) and the annulment of the documents authorising the new development.

19. On 3 February 2004 the Brovary Court of Kyiv Region dismissed the Directorate’s main claim and found for the applicant. The court found that the applicant was the owner of the garage, had used the land openly since 1980 and had thus acquired title to the land by adverse possession. She could also apply to get private title to it, free of charge, under the Land Code (see the relevant legislative provisions in paragraphs 36 and 37 below).

20. The court held that there had been irregularities in approving the development project. In particular: (i) more land had been allocated than the City Council had decided; (ii) the land had been allocated without resolving the matter of the applicant’s conflicting rights to a part of it; (iii) the land under the applicant’s garage could not be expropriated for public needs since the development project was of a commercial nature.

21. On 7 July 2005 the Kyiv Regional Court of Appeal quashed the first-instance court’s judgment, finding for the Directorate and against the applicant. The court of appeal found that the applicant had not proved her right to the land. It also established that the provision of the 2001 Land Code concerning adverse possession (see paragraph 37 below) did not apply to the applicant since the fifteen-year period required by that provision had to be counted from 2002 when the Code had come into force. The right to use the land had never been properly granted to the applicant. The first-instance court’s findings concerning the irregularities in the documents authorising the development project were unsubstantiated. Referring to the Land Code provision concerning unauthorised occupation of land (see paragraph 38 below), the Court of Appeal ordered the applicant to vacate the land she was occupying without authorisation, by demolishing her garage (*звільнити самовільно зайняту земельну ділянку... шляхом знесення гаражу*).

22. On 8 August 2005 the applicant applied for the suspension of enforcement of the Court of Appeal’s judgment, arguing that she had appealed against it on points of law and that enforcement at that stage would have an irreversible effect.

23. On 12 August 2005 the State bailiffs demolished the garage.

24. The applicant instituted proceedings against the bailiffs seeking to declare their actions unlawful (see paragraph 32 below).

25. On 19 August 2005 the Brovary Court granted the applicant's suspension application on the grounds that there were circumstances which may complicate or render impossible the enforcement of the eventual decision in the case.

26. On 16 February 2006 the Supreme Court quashed the first-instance court's judgment of 3 February 2004 and the Court of Appeal's judgment of 7 July 2005 and remitted the case for fresh examination to the first-instance court. The Supreme Court noted that the applicant was the owner of the garage, had paid land tax and had thus used the land openly. Contrary to what the Court of Appeal had held, the provision of the 2001 Land Code concerning adverse possession applied to her. The lower courts had to clarify the status of the land and, in particular, whether the applicant had applied to the local authorities, as the Land Code required, to formalise her right to the land by adverse possession.

27. There is no indication in the case file that the applicant ever applied for formalisation of her rights acquired by adverse possession prior to the institution of proceedings against her.

28. On 21 May 2007 the Kyiv Shevchenkivsky District Court found for the Directorate and against the applicant. The court found that the applicant had had no right to the land underneath as it had not been granted to her according to the procedures set forth in land legislation. The 1983 decision (see paragraph 7 above) had not been a decision giving her the right to use land but merely provided a temporary permission for the construction of a garage on it. In fact, no decision granting her right to land had been taken. In addition, the court held that, under domestic law as it had stood at the time the applicant had registered her garage, the applicant had not possessed documents which could have allowed her lawfully to register her garage as her property. Referring to the article of the Land Code concerning unauthorised occupation of land (see paragraph 38 below), the court ordered the applicant to vacate the land. As to the applicant's counterclaim, the District Court decided that there was no indication of any illegality in the documents authorising the development project.

29. On 24 June 2008 the first-instance court dismissed the applicant's additional counterclaims which it had neglected to dismiss in the original judgment of May 2007. These concerned the applicant's claim to be provided with an alternative garage in the new development, to have the new development pushed back at least 15 m from her house, to have access to her house facilitated and to restore the greenery destroyed by the development project. It held that its judgment of May 2007 and the grounds underpinning it also meant dismissal of those additional claims.

30. On 29 October 2008 the Kyiv City Court of Appeal upheld the judgments of the first-instance court of May 2007 and June 2008. Among

other matters, it found it established that the garage had been registered as the applicant's property. Nevertheless, it endorsed the lower court's findings to the effect that she had never properly obtained the right to use the land.

31. On 3 March 2009 the Supreme Court upheld the lower courts' decisions, holding that there was no indication of error in them.

D. Proceedings against the bailiffs

32. On 22 August 2005 the applicant lodged her claim against the State bailiffs seeking to have their actions in demolishing her garage declared unlawful.

33. She argued, in particular, that she had not been given sufficient opportunity to comply with the judgment ordering her to vacate the land (see paragraph 21 above).

34. On 3 April 2007 the Brovary Court dismissed her claim. It held that, even though the bailiffs had notified her of the obligation to comply with the Court of Appeal's judgment with a delay, on 8 August 2005, the garage had not been demolished until 12 August (see paragraph 23 above).

35. The courts dismissed an appeal by the applicant as lodged out of time.

II. RELEVANT DOMESTIC LAW

36. Article 118 of the Land Code of 2001 allows individuals to apply for privatisation of land which they use and sets forth a procedure for doing so.

37. Article 119 of the Code provides that individuals that have used land openly and without interruption for fifteen years can apply to the State or municipal authorities to obtain rights of ownership or use of such land.

38. Article 212 of the Code provides that land occupied without permission (*самовільно зайняті земельні ділянки*) must be returned by court order to the lawful owners or users without reimbursement of any costs incurred during the period of unlawful occupation. The land must be restored to its original state, including through the demolition of any structures, at the expense of the squatter.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

39. The applicant complained that her right to the peaceful enjoyment of her possessions had been breached on account of demolition of her garage.

She invoked Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

40. The Government submitted that the applicant had failed to exhaust effective domestic remedies. She had never claimed compensation for her garage, even though the city had offered it (see paragraph 15 above). She could have done so by claiming damages either within the framework of her claim against the bailiffs or in separate proceedings.

41. The applicant responded that she had claimed compensation in the form of a parking space in the new development but the developer and the city had refused it.

42. The Court considers that the findings of the domestic courts are unambiguous: they applied in the applicant’s case the legal rule concerning squatters (see paragraphs 21 and 28 above). That rule not only does not entitle squatters to any compensation for their demolished structures but also requires them to cover the landowner’s demolition costs (see paragraph 38 above).

43. Accordingly, the Court considers that the application cannot be rejected for failure to exhaust domestic remedies. The Government’s objection must therefore be dismissed.

44. The Court notes that the application 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 applicant

45. The applicant submitted that she had had ownership of the garage and that her ownership, contrary to the Government’s submissions (see paragraph 54 below) had been duly registered. It had been a permanent brick garage (see paragraph 12 above) and not a temporary metal structure

which could have been disassembled as the Government were alleging. She had paid land tax in that connection and the tax authorities had continued to demand tax from her even following the demolition of the garage, up until 2011.

46. The applicant had openly and in good faith possessed the garage and had lawfully used the land underneath it unchallenged for twenty years, from 1983 to 2003.

47. The interference had amounted to a deprivation of possessions, rather than a measure of control, as the Government suggested (see paragraph 55 below).

48. As to the public interest, the applicant alleged that there had been irregularities in the decision to allow the developer to build on the site where the garage had been located. Development of new housing on the site in question had not been in the public interest because there had already been rather dense residential housing, of four to five storeys, in that area.

49. Referring to the findings of the Brovary Court of February 2004 (see paragraph 20 above) she argued that the interference had not been lawful.

50. Furthermore, the demolition of her garage had been unlawful because it had been carried out in execution of the Court of Appeal's judgment against her even though that execution had been later suspended (see paragraphs 23 and 25 above). The bailiffs had not provided her with sufficient opportunity to comply with the judgment voluntarily before proceeding with enforcement (see paragraph 33 above).

51. The new housing development that had displaced the applicant's garage had not served the housing needs of the general population as the Government argued (see paragraph 56 below) but had merely provided a space for an elite housing development for the rich in the historical centre with views over the botanical gardens and prices of 4,000 to 5,000 euros (EUR) per sq. m, a price which had been inaccessible to the population, with parking spaces sold for EUR 80,000 apiece. The development had not pursued the interests of social justice. It had disrupted the previous residents' quiet way of life and the eleven to nineteen-story towers had disfigured a neighbourhood previously characterised by low-rise nineteenth-century buildings. They had put excessive pressure on the electricity, water and gas supply infrastructure, leading to disruptions in those areas.

52. The interference, therefore, had not pursued a legitimate aim.

53. As to proportionality, no compensation had been provided and there had been no exceptional circumstances justifying that.

(b) The Government

54. The Government did not contest that the applicant had had ownership of the garage. They stressed, however, that the registration of the garage as real property had been in dispute. Nothing showed that the garage

had been anything other than a temporary metal structure which could have been disassembled.

55. The Government did not contest that there had been an interference with the applicant's possessions. However, the applicant's right to occupy land had been temporary and tenuous. Therefore, demolition of the structure had to be seen as a measure of control of the use of property rather than deprivation.

56. The action had been lawful and in the public interest of developing new housing: Kyiv had had the highest population density in the country and had been in need of it. Development of new housing had been one of the priorities of urban development, as evidenced by the Kyiv urban development plan. The fact that the developer had also been able to derive commercial gain from the project was irrelevant.

57. The fact that the execution of the Court of Appeal's judgment had been suspended (see paragraph 25 above) had been of no relevance since eventually the substance of that judgment had been upheld. Considering the problems with execution of judgments in Ukraine in general, the authorities could hardly be reproached for executing the judgment in this case with expedition. The applicant had not shown that the judgment's enforcement at that precise moment had imposed any undue burden on her.

2. The Court's assessment

(a) Existence of an interference

58. It has not been contested that there has been an interference with the applicant's possessions. Even though the first-instance court expressed a doubt as to the status of the garage, eventually the Court of Appeal settled that matter by finding that the garage was indeed registered as the applicant's property (see paragraphs 28 and 30 above). The Court sees no reason to hold otherwise.

(b) Applicable rule

59. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see *Lekić v. Slovenia* [GC], no. 36480/07, § 92, 11 December 2018).

60. The Court considers that, in the present case, the applicable rule is the one concerning the deprivation of property (see *Allard v. Sweden*, no. 35179/97, § 50, ECHR 2003-VII, and *N.A. and Others v. Turkey*, no. 37451/97, §§ 31 and 38, ECHR 2005-X).

61. In that connection the applicant's situation should be distinguished from those in cases concerning illegal construction (see *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 69, 21 April 2016, with further references, and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 290 and 291, 28 June 2018).

62. In the present case, it has never been suggested that any law was broken in the construction of the garage. The applicant had regular registered title to it. It was never invalidated (contrast *Gladysheva v. Russia*, no. 7097/10, § 71, 6 December 2011, where such retrospective invalidation did take place and the Court found the first rule of Article 1 of Protocol No. 1 applicable, although even such retrospective invalidation of title to property does not necessarily prevent the rule concerning deprivation of property being applicable; see, in that connection, *Turgut and Others v. Turkey*, no. 1411/03, §§ 88-90, 8 July 2008, and *Maksymenko and Gerasymenko v. Ukraine*, no. 49317/07, § 50, 16 May 2013).

63. In fact, the applicant's rights to the garage and its regular nature were not questioned for twenty years, until the new high-value development, the placement of which happened to coincide with the situation of the applicant's garage, came along (see paragraph 14 above). In that sense the present case can also be distinguished from the cases such as *Depalle v. France* ([GC], no. 34044/02, § 86, ECHR 2010), where every decision authorising continued situation of a house on coastal public property specified that it was temporary and subject to revocation at will without compensation.

64. It appears that the "unauthorised" nature of the applicant's use of land in the present case resulted not from any breach of the law at the time her garage was built but primarily from the evolution of Ukrainian law, within the framework of the transition from Soviet law, which did not recognise any private ownership of land (see *Zelenchuk and Tsytsyura v. Ukraine*, nos. 846/16 and 1075/16, § 9, 22 May 2018) and tenancy in the classical sense, to a system based on ownership and tenancy which characterises Ukrainian land law today.

(c) Lawfulness of the interference

65. The applicant's arguments to the effect that there had been irregularities in the decision to allocate land for new development were dismissed by the domestic courts (see paragraphs 21 and 28 above).

66. 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. 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, with further references).

67. The Court perceives no arbitrariness or manifest unreasonableness in the domestic courts’ interpretation of the domestic law concerning such matters stressed by the applicant as: (i) her right to use the land under her garage, (ii) regularity of the documentation authorising the development project as a result of which her garage had been demolished, and (iii) the manner in which the bailiffs had proceeded with the demolition (see paragraphs 28 and 34 above).

(d) Aim of the interference and proportionality

68. As to the issue of the “public interest” in the interference, the Court considers that, in the present case, it is inextricably linked to the matter of proportionality; it will therefore examine them together (see *Volchkova and Mironov v. Russia*, nos. 45668/05 and 2292/06, § 114, 28 March 2017, and *Batkivska Turbota Foundation v. Ukraine*, 5876/15, § 58, 9 October 2018).

69. It is true that the States’ margin of appreciation in town-planning policy is wide (see, for example, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52). However, in the present case there is no indication, and the Government have not demonstrated, what particular policy consideration drove the municipal authority’s endorsement and support for the placement of the housing project (see paragraph 13 above and compare *Volchkova and Mironov*, cited above, § 122). The applicant’s arguments that the only interest in construction in that particular spot was to develop high value real estate for sale, that the area was already densely populated and that high-rise development in the area only served to increase the pressure on its infrastructure (see paragraph 51 above) remain without response. The latter aspect also appears to belie the Government’s argument concerning the population density in Kyiv (see paragraph 56 above).

70. In this context, regardless of whether the interference can be considered to have been in the “public interest”, any public interest involved was, in any event, not so strong as to justify the taking of property without compensation. In particular, there is no indication that such particularly strong interests as protection of the environment (see, for example, *Depalle*, cited above, § 84, and *Kristiana Ltd. v. Lithuania*, no. 36184/13, § 107, 6 February 2018), the need to uphold the rule of law and prohibition on illegal construction (see, for example, *Saliba and Others v. Malta*,

no. 20287/10, § 44, 22 November 2011) or considerations of social justice (see, for example, *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 117, ECHR 2005-VI) drove the authorities' decisions.

71. It is a well-established principle of the Court's case-law that compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, in particular, whether it imposes a disproportionate burden on the applicant (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 110, 25 October 2012). As the Court held above (see paragraph 42), the applicant was treated as a mere squatter and, as such, not only had no right to any compensation but, in principle, was under an obligation to reimburse the city for the costs incurred in the demolition of her garage. No account was taken of the specificity of her situation (see paragraphs 61 to 64 above).

72. The Court is conscious of the fact that the applicant failed to follow up on the city's offer to negotiate compensation (see paragraphs 15 and 16 above). However, given how the domestic courts had interpreted and applied domestic law, any offer of compensation could only be *ex gratia* and the only way for the applicant to have been entitled to any legally guaranteed compensation would have been to have it established that she had had a right to the land, which she attempted to do before the domestic courts.

73. Therefore, her apparent failure to follow up on the city's offer to negotiate an *ex gratia* settlement cannot be interpreted as waiver of her rights (see *Volchkova and Mironov*, cited above, § 125). Moreover, there was no procedural framework for such negotiations and for furnishing her with the information necessary to make an informed decision on any eventual offer (compare *Potomska and Potomski v. Poland*, no. 33949/05, §§ 77 and 78, 29 March 2011). The Government failed to comment on how much compensation would have been offered and what any such offer would have been based on. This is not surprising given that no compensation was due by law and no established procedure was in place to provide any essential safeguards in that process. In such circumstances the applicant's failure to follow up on the city's offer to negotiate is not sufficient to find that there was no violation of her rights.

74. The applicant, therefore, was denied any right to compensation.

75. The Court considers that in a situation like the present one, where the development project was primarily to develop housing for private commercial gain, even though the domestic authorities also judged it in the public interest because it contributed to the increase and renovation of the available housing stock, only compensation determined through a procedure ensuring an overall assessment of the consequences of the expropriation, including the award of an amount of compensation in line with the market value of the taken property, could satisfy the requirements of Article 1 of

Protocol No. 1 (see, *mutatis mutandis*, *Vistiņš and Perepjolkins*, cited above, § 111).

76. No such compensation, accompanied by appropriate safeguards, was offered to the applicant.

77. There has, therefore, been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 141,656 euros (EUR) in respect of pecuniary damage. This included EUR 137,156 in compensation for the garage, calculated on the basis of alleged value per sq. m of the flats in the block built on the site of her former garage (EUR 4,034), multiplied by 34 sq. m, the area of her garage.

80. The applicant also claimed EUR 4,500 in respect of the inconvenience allegedly caused to her by the need to find an alternative place for her car, the alleged loss of value of her car due to less advantageous parking conditions and the alleged loss of her personal belongings, which had been stored in the garage, in the process of its demolition.

81. She also claimed EUR 20,000 in respect of non-pecuniary damage.

82. The Government submitted that the applicant's claims in respect of pecuniary damage were unsubstantiated, based on speculation rather than expert assessment, and that there was no causal link between the alleged violation and the alleged damage. The applicant's claim in respect of non-pecuniary damage was unfounded since there had been no violation of her rights.

83. As to the value of the garage, the Court does not agree with the applicant's calculations: they are based on the alleged value of upscale real estate, which bears no comparison with the asset she had.

84. At the same time, it is evident that the applicant's garage presented a certain value and that she suffered a loss as a result of its demolition for which she was never compensated.

85. As to the other heads of pecuniary damage claimed, the Court agrees with the Government: the applicant's claims are either unsubstantiated or there is no causal link between the violation found and the damage alleged.

86. In the light of the foregoing considerations and having regard to all the material in its possession, the Court finds it appropriate to make an overall assessment (see, for example, *East West Alliance Limited v. Ukraine*, no. 19336/04, §§ 258-65, 23 January 2014; *Bagdonavicius and Others v. Russia*, no. 19841/06, §§ 132 and 133, 11 October 2016; and *Velkova v. Bulgaria*, no. 1849/08, §§ 62 and 63, 13 July 2017).

87. In making this assessment the Court cannot overlook the fact that there were factors mitigating the seriousness of the interference with the applicant's right to peaceful enjoyment of her possessions (see, *mutatis mutandis*, *Zelenchuk and Tsytsyura*, cited above, § 143). Firstly, while the applicant's failure to follow up on the offer to negotiate was not sufficient for the Court to find that there had been no violation of her rights (see paragraph 73 above), it is still a relevant consideration (see, *mutatis mutandis*, *Depalle*, cited above, § 90). Secondly, in the domestic proceedings the applicant claimed compensation of demonstrably greater value – a parking space in a new upscale development – than the asset she had – a garage of some age with no right to use the land under it (see paragraph 29 above). What is more important, she reasserted the same argument before the Court, making it necessary for the Court to make a global assessment.

88. The Court, ruling in equity, considers it reasonable to award the applicant the aggregate sum of EUR 8,000, covering all heads of damage.

B. Default interest

89. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
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, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 4 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President