



Demolition of a garage without compensation determined by a proper procedure led to a violation of the applicant's rights

In today's **Chamber** judgment¹ in the case of [Svitlana Ilchenko v. Ukraine](#) (application no. 47166/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned the applicant's garage being demolished to make way for a new commercial housing development.

The Court found in particular that the applicant, who had had the garage and used the land underneath it since the 1980s, had ultimately been treated by the courts as a squatter and that no account had been taken of the specific nature of her case.

The applicant had only been asked to negotiate a possible *ex gratia* award, and the authorities had failed to carry out a proper procedure to assess fair compensation in line with the market value of the property.

Principal facts

The applicant, Svitlana Ivanivna Ilchenko, is a Ukrainian national who was born in 1951 and lives in Kyiv (Ukraine).

Ms Ilchenko owned a garage, situated in the yard of her apartment building, which she registered in her name in February 1995. She had used the garage and the land underneath it since the 1980s.

In 2002 the local authorities began to plan a commercial housing property development, which included the land under the garage, which therefore had to be knocked down. Ms Ilchenko was invited to negotiate compensation on an informal basis, however, she did not follow up on those offers.

Court proceedings began in July 2003. The first-instance court found in her favour in February 2004, but that judgment was overturned on appeal and bailiffs pulled the garage down in August 2005.

In February 2006 the Supreme Court quashed both judgments and remitted the case, requiring the lower courts to clarify the status of the land on which the garage had stood.

In May 2007 the court dealing with the case afresh at first-instance found that Ms Ilchenko had had temporary permission for the construction of a garage and that the land had never been granted to her. It ordered her to vacate, referring to a Land Code provision on land occupied without permission. The Supreme Court upheld the findings in 2009.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention, the applicant complained that the demolition of her garage had breached her right to the peaceful enjoyment of her possessions.

The application was lodged with the European Court of Human Rights on 31 August 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
Ganna **Yudkivska** (Ukraine),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the applicant’s right to the garage had not been questioned for 20 years, until the authorities had begun to plan the new housing development. Furthermore, any lack of authorisation for the garage had apparently not been due to a breach of the law at the time the garage had been built, but had rather been caused by the transition from Soviet legislation, when the private ownership of land and classical tenancies were not recognised, to the current system.

The Court went on to focus its analysis on whether the authorities’ interference with Ms Ilchenko’s property rights had been proportionate or in the public interest.

It took note of her argument that the property development had been for expensive apartments for sale, that the area of central Kyiv concerned was already densely populated, and that the project had only increased pressure on the local infrastructure. The Government had not responded to those arguments.

The Court held that any public interest served by the development had not been so strong as to warrant her being deprived of her property without compensation. Indeed, being classed as a squatter by the courts had meant she had no right to compensation and might have had to reimburse the city for the demolition costs. The courts had not taken any account of the specific nature of her situation.

It was true that the applicant had not followed up on an offer to negotiate, however, the way the courts had interpreted her situation had meant that any compensation would have been *ex gratia*, rather than a legally guaranteed award based on a legal right. Her failure to cooperate in the compensation negotiation had not therefore amounted to a waiver of her rights.

In fact, no legal framework had existed for such negotiations or for giving her the information needed for an informed decision. The Government had failed to comment on how much compensation she would have been offered or how it would have been calculated, a situation that was due to the lack of such a set procedure.

In the circumstances of the case only compensation determined through a procedure leading to an overall assessment of the consequences of the expropriation, including the award of an amount in line with the market value of the property, could meet Convention requirements. Ms Ilchenko had not been offered such compensation, accompanied by appropriate safeguards, and had therefore suffered a violation of her rights under Article 1 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Ukraine was to pay the applicant 8,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Patrick Lannin (tel: + 33 3 90 21 44 18)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Somi Nikol (tel: + 33 3 90 21 64 25)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.