

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

FIFTH SECTION

CASE OF LYSAK v. UKRAINE

(Application no. 52299/14)

JUDGMENT

STRASBOURG

20 October 2022

This judgment is final but it may be subject to editorial revision.



In the case of Lysak v. Ukraine,

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

Mārtiņš Mits*, President,*
Lado Chanturia*,*
Ivana Jelić*, judges,*
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 52299/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 July 2014 by a Ukrainian national, Ms Svitlana Vasylivna Lysak ("the applicant"), who was born in 1949 and lives in Cherkasy;

the decision to give notice of the complaint under Article 1 of Protocol No. 1 to the Ukrainian Government ("the Government"), represented by their acting Agent, Ms O. Davydchuk, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 29 September 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 1 of Protocol No. 1 that equipment belonging to her and situated on municipal land had been unlawfully dismantled, for which she had been unable to obtain compensation.

2. The applicant, a private entrepreneur, owned and operated three kiosks (temporary structures at which goods were sold) situated on municipal land in three locations in Cherkasy.

3. The municipal authorities considered that her rights to use the land had expired. The applicant appealed against that assessment to the Cherkasy Regional Commercial Court, which issued preliminary injunctions on 14 August 2008 and 19 May 2009 prohibiting the municipal authorities from dismantling the equipment. On 31 March 2010, in a final decision, the court declared the authorities' assessment unlawful and ruled that the applicant continued to have the right to rent the land in question.

4. On 28 April 2009 the city's executive committee ordered the municipal working group that dealt with unlawful structures to proceed with the removal of the applicant's equipment. A member of the group, Mr K., the director of a municipal company, was directed to provide equipment for the dismantling operation and to arrange for the storage of the dismantled equipment.

5. On 28 May 2009, despite the commercial court's interim injunction (see paragraph 3 above), the municipal working group dismantled the

applicant's equipment and its contents (kiosks, cash registers, stock of goods for sale) and put them in storage. The applicant alleged that the equipment had been damaged in the dismantling process and had become unusable as a result, and the stocks had been lost.

6. On 21 September 2010 the Cherkasy Sosnivsky District Court, in a final decision, declared the executive committee's decision of 28 April 2009 (see paragraph 4 above) unlawful. It referred, in particular, to the fact that the decision had been taken in disregard of the commercial court's injunctions (see paragraph 3 above).

7. The applicant lodged a criminal complaint accusing the city officials of abuse of public office and other crimes. K. was eventually charged with criminal dereliction of duty in that connection. The applicant lodged a civil claim for damages within the framework of those proceedings against K. and the State Treasury.

8. On 4 October 2013 K. was found guilty but released from serving his sentence. The civil claim was dismissed, the court pointing out that it could be resubmitted in separate civil proceedings. Subsequently the conviction was quashed and the case was remitted for further investigation, most recently on 16 February 2016. There is no information about further developments in those proceedings.

9. The applicant sued the city council and the city executive committee in the administrative courts, seeking a declaration that their actions in removing her equipment had been unlawful and also damages. On 22 January 2014 the High Administrative Court upheld the lower courts' decisions rejecting the claim. The courts reasoned in particular that it would be appropriate for the applicant to seek compensation within the framework of the criminal proceedings against K.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

A. The parties' submissions

10. The Government submitted that the application was inadmissible for failure to exhaust domestic remedies. The applicant could have lodged a separate civil claim against Mr K., brought a claim for damages against the City Council after its decision to demolish the kiosks had been declared unlawful or requested a review of the decision of the High Administrative Court of 22 January 2014 in view of "newly discovered circumstances" following the quashing of the judgment finding K guilty.

11. As to the merits, the Government submitted that the demolition of the applicant's structures had constituted a lawful measure of control of the use of property to ensure compliance with the rules of urban planning.

12. The applicant contested the Government's submissions and maintained her complaints.

B. The Court's assessment

13. As to the Government's argument that she had not exhausted domestic remedies, the applicant did pursue several domestic remedies, but in vain. The Court reiterates that when a remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009) and rejects the Government's argument.

14. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

15. The relevant general principles of the Court's case-law can be found in *Vistiņš and Perepjolkins v. Latvia* ([GC], no. 71243/01, §§ 93 and 95-99, 25 October 2012), and *G.I.E.M. S.R.L. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, §§ 289 and 292-93, 28 June 2018).

16. The Court finds that there has been an interference with the applicant's right to the peaceful enjoyment of her possessions. The domestic authorities have never determined the extent of damage to the applicant's equipment. Therefore, the Court does not have sufficient information to determine definitively whether a "deprivation" of property occurred.

17. The interference in question was not "subject to the conditions provided for by law": the domestic courts found the municipal authorities' decision to dismantle the equipment unlawful notably because it had been taken in breach of their injunctions (see paragraph 6 above).

18. These considerations are sufficient for the Court to conclude that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. In her initial application form the applicant stated that she estimated the pecuniary damage she had suffered on account of alleged violations of her rights at 457,950.79 Ukrainian hryvnias (UAH) and the non-pecuniary damage she had suffered at UAH 300,000.

20. After notice of the application had been given to the Government, the applicant was invited to submit her observations in reply to those of the Government and her claims for just satisfaction. Her attention was drawn to the Rule 60 of the Rules of Court and the Practice Direction on Just Satisfaction Claims, notably the need to submit quantified claims even if she

had expressed her wishes concerning just satisfaction at an earlier stage of the proceedings.

21. In response, the applicant stated that she maintained her application and asked the Court to "protect my rights and lawful interests as the aggrieved party and award me just satisfaction pursuant to the legal provisions of the Convention and the Rules of Court".

22. The Government pointed out that the applicant had failed to submit itemised particulars of her claims.

23. The Court considers that it can make an award in respect of non-pecuniary damage even though the applicant has not quantified her claim (see *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, § 218, 16 February 2021, with further references).

24. The same, however, cannot be said in respect of pecuniary damage, which the applicant failed to quantify when invited to do so after notice of the case had been given. The indication of her wish for monetary compensation as expressed at the initial non-contentious stage of the procedure does not amount to a "claim" within the meaning of Rule 60 (see *Nagmetov v. Russia* [GC], no. 35589/08, § 72, 30 March 2017, and, for example, *Kavala v. Turkey*, no. 28749/18, § 237, 10 December 2019). Accordingly, the Court does not make any award to the applicant under this head.

25. The Court awards the applicant 3,000 euros in respect of non-pecuniary damage, plus any tax that may be chargeable.

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, EUR 3,000 (three thousand euros)**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage:
   (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 20 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mārtiņš Mits President