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

FIFTH SECTION

DECISION

Application no. 70118/17
Olena Petrivna LISUN
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 27 November 2025 as a Committee composed of:

Gilberto Felici*, President*,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 70118/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 September 2017 by a Ukrainian national, Ms Olena Petrivna Lisun ("the applicant"), who was born in 1963 and lives in Zaporizhzhia, and was represented by Mr D.V. Shtabovenko, a lawyer practising in Zaporizhzhia;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. In 2009 the Vilniansk District State Administration of Zaporizhzhia Region ("the Vilniansk DSA") commissioned, and later approved, a land management plan for the village of Petro-Mykhailivka, located on the banks of the Dnieper River. The plan established a 10-metre water protection zone for that area.

2. In September 2010 the Vilniansk DSA decided to allocate a plot of land of around 1 hectare to Ms P. for gardening; that plot was located outside the village, 10 metres from the water. In February 2011, after all the technical

documentation for the land had been prepared and approved, Ms P. registered her title to that land.

3. In July 2011 Ms P. gave her plot of land to Mr B., who had his title duly registered.

4. In 2013 the local prosecutor enquired into the allocation of land in the relevant area. As a result, it was established that the 2009 decision of the Vilniansk DSA approving the 10-metre water protection zone did not correspond to the domestic legal provisions designating a 100-metre water protection zone for big rivers, of which Dnieper River was one. On the basis of a submission by the prosecutor, in April 2013 the Head of the Vilniansk DSA set aside the above-mentioned 2009 decision.

5. In July 2013 the prosecutor brought an action against the Vilniansk DSA, Ms P. and Mr B., seeking to have the 2010-11 decisions to allocate the land to private parties set aside, to have the title of the persons concerned annulled and to reclaim the land into State ownership.

6. On 29 August 2013 Mr B. sold his plot of land to the applicant; the applicant paid 94,050 Ukrainian hryvnias (UAH; equivalent to approximately 8,800 euros (EUR) at the material time). Subsequently the applicant was involved in the above-mentioned proceedings as a respondent.

7. After one re-examination of the case, the prosecutor's claims were eventually granted and the land reclaimed from the applicant on the basis of Article 388 of the Civil Code. The courts found that, under Article 60 of the Land Code of Ukraine and Article 88 of the Water Code of Ukraine, the water protection zone for big rivers was set at 100 metres. The courts also held that precise boundaries of water protection zones had to be formalised with the appropriate technical documentation. In the absence of such documentation, however, the authorities responsible for deciding on the disposal of such land were required to take into account the legally-defined measurements of the coastal protection belts and approximate sizes of the water protection zones. In that regard, the courts referred to Resolution no. 434 of 5 November 2004 and Resolution no. 486 of 8 May 1996 of the Cabinet of Ministers. Furthermore, according to land legislation, plots of land located in the water protection zone could not be transferred into private ownership and could only be leased, and even then, only to be used for a limited list of purposes. In reaching their conclusions, the courts also referred to the previous case-law of the Supreme Court on the matter.

8. The final judgment in the case was delivered by the Higher Specialised Civil and Criminal Court on 15 February 2017. The applicant sought its review by the Supreme Court on the basis of a divergent application of law but was unsuccessful.

THE COURT'S ASSESSMENT

9. The Government argued that the applicant had failed to exhaust the available domestic remedies, as, following the invalidation of her title, which had been the fault of the local authorities, she had not lodged a claim for damages under Article 1173 of the Civil Code (compensation of damage caused by the unlawful decisions, actions or omissions of a State authority). In support of their arguments, they provided examples of two judgments at the domestic level (cases nos. 439/1127/18 and 488/6211/14-ц).

10. The Court has already examined similar arguments by the Government regarding the possibility of obtaining the above-mentioned type of compensation and has rejected them (see *Drozdyk and Mikula v. Ukraine*, nos. 27849/15 and 33358/15, §§ 26-33, 24 October 2024). There is nothing in the present case to lead the Court to reach a different conclusion.

11. The Government further argued that Article 1 of Protocol No. 1 guaranteed the protection of the right to peaceful enjoyment of possessions for those who acquired property lawfully and in good faith, therefore the circumstances under which the property was acquired and the behaviour of the person concerned were important in the assessment of the interference. They noted in that connection that the 2009 decision of the Vilniansk DSA approving the 10-metre water protection zone had not been in line with the legislation which had set the measurements of those zones in a mandatory manner, and it was on that basis that it had later been set aside. In view of those facts, the Government asserted that the allocation of the land to Ms P. and its further transfers had been unlawful. The State had had a legitimate interest in restoring control over land that had been intended for water protection, forming part of the State's environmental policies in the interests of society.

12. The general principles regarding interference with the peaceful enjoyment of possessions were summarised in, for example, *Kryvenkyy v. Ukraine* (no. 43768/07, § 42, 16 February 2017) and *Kanevska v. Ukraine* (no. 73944/11, § 45, 17 November 2020).

13. The Court considers that the land purchased by the applicant from Mr B. constituted her "possessions" within the meaning of Article 1 of Protocol No. 1 and that the court decisions allowing the prosecutor's claim for the recovery of that land entailed an interference with her property rights.

14. In this connection, the Court must assess whether the interference was lawful and in the public interest and whether it pursued a legitimate aim by means reasonably proportionate to the aim sought to be realised (see *Kryvenkyy*, cited above, § 42).

15. As regards lawfulness, the Court notes that the land was reclaimed from the applicant on the basis of Article 388 of the Civil Code, which allows for the recovery of property by its lawful owner from a *bona fide* purchaser

if the property has been disposed of against the owner's will (see, for a summary of related domestic law, *Kanevska*, cited above, §§ 27-29).

16. The Court further reiterates that in assessing compliance with Article 1 of Protocol No. 1, it must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". The Court has often reiterated that regional planning and environmental conservation policies, where the community's general interest is pre-eminent, confer on the State a margin of appreciation that is greater than when exclusively civil rights are at stake. Consideration must be given in particular to the question of whether the applicant, on acquiring the property, knew – or should have reasonably known – about the restrictions on the property, or possible future restrictions, the existence of legitimate expectations with respect to the use of the property or acceptance of the risk on purchase, the extent to which the restriction prevented use of the property and the possibility of challenging the necessity of the restriction (see *Kristiana Ltd. v. Lithuania*, no. 36184/13, §§ 107-08, 6 February 2018, with further references).

17. The Court notes in that regard that the transfer of land to Ms P. and Mr B. occurred when the 2009 decision of the Vilniansk DSA establishing the 10-metre water protection zone had still been in place. At the same time, by the time the applicant purchased the land in August 2013, that decision had already been invalidated and the prosecutor's action against Ms P. and Mr B. had already been pending (see paragraphs 4-5 above). The domestic courts eventually confirmed that the land in question fell within the 100-metre water protection zone of the Dnieper River and could not be transferred into private ownership. In so ruling, they referred, in particular, to the provisions of the Water Code that had been in place since its adoption in 1995 (see paragraph 7 above). While the applicant had her title to the land duly registered (as had the previous owners), it appears that such a clear legislative requirement could not have been overridden by decisions of the local authorities. Moreover, as, by the time of purchase, the disputed decision of the Vilniansk DSA had already been invalidated, that is to say there had been no technical documentation/land management plans establishing any water protection zones for the territory concerned, the application of the general 100-metre rule in such circumstances would have appeared to be all the more reasonable.

18. In view of those circumstances, the applicant should have shown particular diligence before signing the sale contract. She was or should have been aware that the land was located in such a special zone and that there was a possibility that her entitlement to that land could be annulled. She could have contacted the local authorities with a request for detailed information or documents regarding the land in question (see *Shynkarenko v. Ukraine* (dec.), no. 64661/11, § 28, 15 October 2019; *Vasylevska v. Ukraine* (dec.), no. 37919/15, § 20, 4 July 2024; and *West East Group LTD v. Ukraine* (dec.),

no. 64284/14, § 19, 17 October 2024; contrast *Kulyk v. Ukraine* [Committee], no. 40214/16, §§ 17 and 20, 9 May 2025).

19. In this connection, the Court reiterates that it is primarily for the national authorities, notably the courts to interpret and apply domestic law. While it is not bound by the findings of domestic courts and remains free to make its own appreciation in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts. In the circumstances of the present case, the Court finds no cogent elements to question the conclusion reached by the domestic courts in this regard (see *West East Group LTD*, cited above, § 20, with further references).

20. As to proportionality, the Court must determine whether a fair balance has been struck between the demands of the general interest in that connection and the interest of the person concerned. The Court recognises that the State enjoys a wide margin of appreciation with regard to the means to be employed and to the question of whether the consequences are justified in the general interest for the purpose of achieving the objective pursued (see, for example, *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 293, 28 June 2018).

21. The Court notes that the land in question was acquired by the applicant under a sale contract with Mr B. The Court has already accepted in similar cases that the opportunity for an applicant to bring a claim against the seller, seeking the recovery of the amount paid was, as a matter of principle, an available and appropriate avenue (see *Kanevska*, § 49, and *Vasylevska*, § 21, both cited above; see also, *mutatis mutandis*, *Tverdokhlebova v. Ukraine*, no. 15830/16, § 44, 16 January 2025), especially where the previous owner had obtained the property free of charge, as in the present case. Furthermore, the applicant did not inform the Court as to how she had been using the land (which had been intended for individual gardening), if at all, and whether she had made any investment in it (see *Shynkarenko*, § 29, and *West East Group LTD*, § 23, both cited above).

22. In the light of the foregoing specific circumstances of this case, the Court considers that the present application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 December 2025.

Martina Keller Deputy Registrar	Gilberto Felici President