



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

Communicated on 3 January 2019

FOURTH SECTION

Application no. 9749/11
Yelena Vasilyevna SAKHANENKO
against Ukraine
lodged on 15 January 2011

STATEMENT OF FACTS

The applicant, Ms Yelena Vasilyevna Sakhanenko, is a Ukrainian national, who was born in 1968 and lives in Odesa.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Chronology regarding the applicant's family's house

In March 2001 the applicant's family privatised the house in which they had been living since 1980. The land plot underneath the house and surrounding it was being used by the Odesa State Academy of Construction and Architecture ("OSACA"). In 2008 OSACA registered several immovable objects as its property, including the applicant's family's house, located on the land plot at issue. In 2010 the applicant's house was demolished.

2. Civil and administrative proceedings

On 14 August 2001 the applicant's family instituted civil proceedings, arguing that OSACA had prevented the applicant's family from having access to their house.

In March 2002 OSACA instituted administrative proceedings against Odesa municipal authorities and the applicant's family, arguing, among other things, that the applicant's family had no right to the house. On 29 April 2002 the Tsentralnyy District Court of Odesa issued a preliminary

court order attaching the house in dispute and freezing the possibilities of making transactions with the house. In the meantime the civil proceedings instituted by the applicant's family had been suspended pending the outcome of the administrative case. On 13 May 2008 the Prymorskyy District Court of Odesa dismissed OSACA's administrative claim as unfounded. On 25 February 2009 the Odesa Administrative Court of Appeal quashed that judgment and terminated the proceedings on the grounds that the dispute was outside the administrative jurisdiction. On 7 May 2009 the attachment order was lifted. On 9 December 2010 the Higher Administrative Court upheld the court of appeal's finding that the case had to be closed for lack of jurisdiction.

In the resumed civil proceedings the applicant's family updated their claims arguing that, in addition to the physical prevention from having access to their property, OSACA had groundlessly attached the house by way of judicial order and had registered the house as its own property in 2008 and had eventually destroyed the house. The applicant's family claimed damages on that account.

On 6 July 2012 the Prymorskyy District Court of Odesa partly allowed the applicant's family's claims: (i) it ordered OSACA not to prevent the applicant's family from having "access to their house", and (ii) it invalidated OSACA's ownership certificate of 2008 in respect of the house in dispute. The court established that OSACA had prevented the applicant's family from using their house since 2000 and that in 2010 OSACA had demolished the house in dispute. The court dismissed the claim for damages in relation to the destruction of the house after finding that the market value of the demolished property had not been proven and the expert examination in that regard could not be conducted in the absence of the requisite documents. Likewise, there was no evidence that any damage had been caused to the applicant's family by other restrictive measures taken by OSACA.

On 14 November 2012 the Odesa Regional Court of Appeal partly quashed the decision of 6 July 2012 and found that all the claims by the applicant's family had been unsubstantiated. As regards OSACA's obligation not to prevent the applicant from having access to the house, the appellate court found that by the time of consideration of the case the applicant's family had not been using the house because the latter was "inhabitable". The appellate court further dismissed as unsubstantiated the claim regarding invalidation of OSACA's ownership certificate.

On 17 April 2013 the Higher Specialised Court of Ukraine on Civil and Criminal Matters upheld the appellate court's decision of 14 November 2012.

COMPLAINTS

1. The applicant complains under Article 1 of Protocol No. 1 to the Convention that she was prevented from having access to her house and that her house was eventually destroyed by a State entity.
2. The applicant complains under Article 6 § 1 of the Convention that the length of the proceedings in her cases was excessive.

QUESTIONS TO THE PARTIES

1. Was the applicant prevented from having access to her property in breach of Article 1 of Protocol No. 1 to the Convention? Has the applicant been deprived of her possessions contrary to Article 1 of Protocol No. 1? Was the applicant in a position to obtain compensation for the alleged violation of her property rights?

The Government are invited to provide all the procedural documents and other material regarding the unsuccessful expert examination ordered by a civil court in respect of the value of the applicant's house.

2. Was the length of both sets of proceedings in the present case in breach of the “reasonable time” requirement of Article 6 § 1 of the Convention?