



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

THIRD SECTION

CASE OF KIRILLOVA v. RUSSIA

(Applications nos. 50775/13)

JUDGMENT
(merits)

STRASBOURG

13 September 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kirillova v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Luis López Guerra, *President*,

Helena Jäderblom,

Helen Keller,

Johannes Silvis,

Dmitry Dedov,

Branko Lubarda,

Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 23 August 2016,

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

PROCEDURE

1. The case originated in an application (no. 50775/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Natalya Viktorovna Kirillova (“the applicant”), on 31 July 2013.

2. The applicant was represented by Mr O. Anishchik, a lawyer practising in St Petersburg. The Russian Government (“the Government”) were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that she had been deprived of her flat in contravention of Article 1 of Protocol No. 1 and that her eviction amounted to a violation of Article 8 of the Convention.

4. On 7 January 2014 the President of the First Section decided to grant the application priority under Rule 41 of the Rules of the Court and to give the Government notice of the applicant’s complaints under Article 1 of Protocol No. 1 and Article 8 of the Convention. The remainder of the application was declared inadmissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1962 and lives in Moscow.

A. Transactions in respect of the flat later purchased by the applicant

6. On 1 February 1994 F. bought a 19.3 square metre flat at 22-2-68 Nagatinskaya Naberezhnaya, Moscow. On 23 July 1997 F. died intestate and without heirs. According to the Government, his flat was locked and sealed by the housing maintenance company.

7. On an unspecified date N. brought a civil action seeking recognition as F.'s heir-at-law. The City of Moscow authorities took part in the proceedings as a respondent. On 8 February 2010 the Simonovskiy District Court of Moscow granted her claim and recognised her title to F.'s flat. The judgment came into force on 19 February 2010.

8. On 14 May 2010 N. sold the flat to K. The transaction was registered by the Federal Registration Service.

9. On 24 June 2010 the Moscow City Court quashed the judgment of 8 February 2010 on appeal and dismissed N.'s claims.

10. On 6 July 2010 K. sold the flat to the applicant. On 21 July 2010 the Federal Registration Service registered the sale agreement and the transfer of the title to the flat to the applicant.

B. Annulment of the applicant's title to the flat and eviction proceedings

11. On an unspecified date the Housing Department brought a civil action claiming that N. had been erroneously recognised as F.'s heir-at-law and that the City of Moscow should inherit his property instead.

12. On 8 November 2012 the District Court granted the Housing Department's claims. It ordered the transfer of title to the flat to the City and the requisition of the flat from the applicant. The court also considered that the applicant had not demonstrated due diligence when buying the flat from K. and could not be recognised as a *bona fide* purchaser.

13. On 4 February 2013, following an appeal by the applicant, the Moscow City Court upheld the judgment of 8 November 2012.

14. On 15 April 2015 the District Court granted the Housing Department's claims against the applicant and ordered her eviction.

15. According to the Government, the applicant has not been evicted and continues to reside in the flat.

C. Claim for damages against K.

16. On 9 December 2013 the Perovskiy District Court of Moscow granted a claim by the applicant for damages against K. and awarded her, *inter alia*, 4,060,006 Russian roubles (RUB). K. appealed.

17. On 20 March 2014 the Moscow City Court upheld the judgment of 9 December 2013 on appeal.

18. According to the Government, the bailiff failed to establish K.'s whereabouts or locate any of his assets. The judgment in the applicant's favour remains unenforced. The enforcement proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. For a summary of the relevant domestic provisions and practice, see the case of *Gladysheva v. Russia* (no. 7097/10, §§ 35-37, 6 December 2011).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

20. The applicant complained that she had been deprived of her flat in violation of Article 1 of Protocol No. 1 to the Convention, which provides 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

21. The Court notes that this complaint 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 Government**

22. The Government did not contest that the flat purchased by the applicant constituted her possession and that the revocation of her ownership in respect of the flat amounted to an interference with the applicant's rights set out in Article 1 of Protocol No. 1. In their opinion,

such interference had been in accordance with the applicable national legislation: F. had died intestate and thus the title to the flat should have been transferred to the City of Moscow; N. had not been F.'s heir and N.'s title to the flat had been legitimately annulled. All the subsequent transactions, including the purchase of the flat by the applicant, had been null and void, as a matter of law.

23. The Government further pointed out that the national courts had not recognised the applicant as a bona fide purchaser owing to her lack of diligence when entering into the flat-purchase agreement. The frequency with which the flat had changed hands should have been a red flag for the applicant. N. had obtained access to the flat on 8 February 2010. She had sold it only three months later to K. who had sold it on to the applicant on 6 July 2010 at a price much below its market value. Accordingly, the applicant had had sufficient grounds to doubt that K. had had the right to sell the flat to her. She should have taken additional steps to verify the legitimacy of the transactions in respect of the flat.

24. The Government considered that the interference with the applicant's property rights had pursued the legitimate aim of protecting the interests of others, notably of persons in need of housing. The transfer of the flat to the State should not be viewed as having been carried out in the State's interests only. The City of Moscow was responsible for providing affordable housing to people on low incomes. Accordingly, The City of Moscow had reclaimed the flat in the interests of those people.

25. Lastly, the Government submitted that the interference with the applicant's rights had been proportionate: the applicant had not been evicted; should she consider herself in need of social housing, she could apply for it. In any event, the applicant's rights would be restored through her action for damages against K.

(b) The applicant

26. The applicant maintained her complaint. She considered that the interference with her possession had not been in accordance with the law. She further contested the domestic courts' finding that she had not been a *bona fide* purchaser of the flat. As regards the frequency with which the flat had changed hands and the artificially low price she had allegedly paid for the flat, the applicant argued that those facts had not been established in the course of the relevant domestic proceedings and that the Government were precluded from relying on them in the proceedings before the Court. In any event, the Government had not submitted any evidence in support of their allegation as regards the market value of the flat. In the applicant's opinion the fact that K. had sold her the flat only a month and a half after he had purchased it had not been sufficient for the national courts to conclude that she had not bought the flat in good faith. To date there has been no official judgment or other act establishing that K. had acted in contravention of the law when buying and then selling the flat. There was nothing in the

Government's submissions to suggest that K. had not been a *bona fide* purchaser of the flat. In any event, each transaction in respect of the flat had been subject to strict verification by the relevant State bodies which had discerned no illegality in that respect.

27. The applicant further submitted that the interference with her property rights had been disproportionate to the legitimate aim pursued. The loss of property coupled with the absence of any compensation had placed an excessive individual burden on her. As regards the Government's argument that she could apply for social housing, in her opinion such an application would have resulted in her name being put on the waiting list. Nothing in the Government's submissions showed that she would be eligible for prompt access to social housing. Even though the applicant continued to reside in the flat, her eviction was imminent. Lastly, she submitted that she had brought an action for damages against K. However, it had been to no avail.

2. *The Court's assessment*

(a) **General principles**

28. The general principles concerning protection of property are well established in the Court's case-law (see *Gladysheva*, cited above, §§ 64-68).

(b) **Application of these principles in the present case**

(i) *Whether there was an interference with the applicant's possession*

29. The Court observes that it is common ground between the parties that the flat constituted the applicant's possession and that the revocation of her title to it amounted to an interference with her rights set out in Article 1 of Protocol No. 1 to the Convention. The Court sees no reason to hold otherwise.

30. The Court's task in the present case is, accordingly, to determine whether the interference satisfied the requirement of lawfulness and was not arbitrary and whether it struck a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I).

(ii) *Whether the interference was lawful*

31. As regards the lawfulness of the revocation of the applicant's title to the flat, the Court reiterates its earlier finding that the Russian legislation governing possible reclamation of a property from a *bona fide* purchaser might lack clarity (see *Gladysheva*, cited above, §§ 72-75). However, the Court may dispense with resolving this point because, irrespective of the domestic lawfulness of the interference, it fell short of the requirement of proportionality, as will be set out below.

(iii) *The aim of the interference*

32. As to the legitimate aim of the impugned measure, in the Court's view, this question is closely related to the broader issue of whether the interference with the applicant's rights was necessary in a democratic society. In view of its analysis in paragraphs 33-40 below, the Court does not find it necessary to decide as to whether there was a matter of public concern warranting deprivation of property.

(iv) *Whether there was a fair balance*

33. The Court must next examine whether the interference with the peaceful enjoyment of possessions struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, or whether it imposed a disproportionate and excessive burden on the applicant.

34. Regard being had to the particular circumstances of the present case, the Court cannot accept the Government's argument that the repossession of the flat by the City of Moscow authorities did not constitute a disproportionate burden on the applicant.

35. Firstly, the Court notes that it was well known to the authorities in 1997 that the owner of the flat had died intestate and without heirs and that the flat was to be transferred to the State. However, no action was taken in that connection. The Government have not furnished any explanation as to why, contrary to the public interest of catering for the needs of those on the waiting list for social housing, the City of Moscow authorities chose not to obtain title to the flat once they became aware that the property was a *bona vacantia* in 1997.

36. The Court further notes that by 2010, that is to say thirteen years later, the authorities had done nothing to secure their rights in respect of the flat. After the judgment recognising N.'s title to the flat was quashed by the appeal court, no injunction against any transaction in respect of the property was requested or imposed. As a result, the flat changed hands twice, including being sold to the applicant, each transaction having been verified and approved by the Federal Registration Service. In that connection, the Court reiterates that where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler*, cited above, § 120). Given the circumstances, the authorities' failure to act promptly and in an appropriate manner in order to secure available housing hardly seems justified.

37. The Court also rejects the Government's argument that the applicant was responsible for her situation, because she had failed to act diligently when buying the flat. There is no explanation in the domestic courts' decisions as to how they had reached such a conclusion. The Government submitted that the frequency of the transactions involving the flat and its allegedly low offer price should have alerted the applicant to potential

issues. However, those circumstances were referred to for the first time in the proceedings before the Court; the domestic courts did not mention it in their decisions. Accordingly, the Court finds that the fact that the applicant had not demonstrated due diligence when buying the flat had not been established.

38. Lastly, the Court notes that the applicant was stripped of ownership without compensation or provision of replacement housing from the State. The judgment in her favour ordering K. to pay her damages resulting from the repossession of the flat by the City of Moscow remains unenforced to date.

39. The foregoing considerations are sufficient to enable the Court to conclude that the conditions under which the applicant was stripped of her title to the flat imposed an individual and excessive burden on her and that the authorities failed to strike a fair balance between the demands of the public interest on the one hand and the applicant's right to peaceful enjoyment of her possessions on the other.

40. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

41. The applicant complained that the eviction is a violation of her right to respect for home. She relied on Article 8 of the Convention which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

42. The Government admitted that the national courts' decision to order the applicant's eviction had constituted an interference with her rights set out in Article 8 of the Convention. They considered that such an interference had been lawful, pursued the legitimate aim of protecting the rights of persons eligible for social housing and that it had been proportionate to that aim.

43. The applicant maintained her complaints.

44. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible. However, having regard to the findings relating to Article 1 of Protocol No. 1 to the Convention (see paragraphs 28-40 above), the Court considers that it is not necessary also to examine the same facts from the standpoint of Article 8 of the Convention (see, *mutatis mutandis*, *Akhverdiyev v. Azerbaijan*, no. 76254/11, § 101-05, 29 January 2015).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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. Pecuniary damage

46. The applicant claimed pecuniary damage without quantifying it. In her view, the amount of the award would be dependent on the successful enforcement of the judgment in her favour obtained against Mr K. The applicant expressed her doubts, however, as to the prospect of such outcome.

47. The Government submitted that no award should be made to the applicant in respect of her pecuniary claims given that her rights had been restored at the national level.

48. The Court considers that the question of the application of Article 41, in so far as it concerns pecuniary damage, is not ready for a decision (Rule 75 § 1 of the Rules of Court). Accordingly, it reserves that question and the further procedure, and invites the Government and the applicant, within four months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, to submit their observations on the matter and, in particular, to inform it of any agreement that they may reach.

B. Non-pecuniary damage

49. The applicant submitted that she had incurred non-pecuniary damage resulting from the loss of her property, leaving its amount to the Court's discretion.

50. The Government submitted that the applicant should not be entitled to receive compensation of non-pecuniary damage as her claims in that respect were not substantiated.

51. The Court has no doubt that the applicant has suffered distress and frustration on account of the loss of her property. Making its assessment on an equitable basis, the Court awards the applicant 5,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

C. Costs and expenses

52. The applicant claimed 35,000 Russian roubles (RUB) for legal expenses incurred in the domestic proceedings. She further claimed

RUB 1,359 for postal expenses and RUB 134,999 for the legal expenses incurred in the proceedings before the Court. She submitted relevant receipts and documents.

53. The Government submitted that the applicant had not indicated her claims clearly. They further considered that the claims in respect of the legal expenses incurred in the domestic proceedings were not supported by the necessary documents and should not be reimbursed. They did not object to the applicant's postal expenses being reimbursed.

54. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable to award the sum of EUR 2,200 covering costs under all heads.

D. Default interest

55. 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 to the Convention;
3. *Holds* that there is no need to examine the complaint under Article 8 of the Convention;
4. *Holds* that the question of the application of Article 41, in so far as it concerns the claim for pecuniary damages, is not ready for decision; accordingly,
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicants to submit, within four months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;

5. *Holds*

(a) that the respondent State is to pay the applicant, within the same three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage;

(ii) EUR 2,200 (two thousand two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for non-pecuniary damages and costs and expenses.

Done in English, and notified in writing on 13 September 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President