



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

FIRST SECTION

CASE OF PROKOPOVICH v. RUSSIA

(Application no. 58255/00)

JUDGMENT

STRASBOURG

18 November 2004

FINAL

18/02/2005

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 Prokopovich v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 28 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 58255/00) 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 Margarita Semenovna Prokopovich.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged a violation of Article 8 of the Convention in that she had been evicted from her home in her late partner’s flat without a court order.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 8 January 2004, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1940 and lives in Vladivostok.

A. The applicant's life with her partner

8. In 1988 the applicant and her partner, Mr Filippov, together moved into a flat provided by Mr Filippov's employer, a State enterprise. The applicant left the flat where she had previously lived to her daughter and her daughter's family.

9. Although the applicant and Mr Filippov never married, from 1988 onwards they lived together as husband and wife. They purchased all household items for the new flat jointly. Between 1992 and 1995 Mr Filippov supported their family financially because the applicant was unemployed. According to the applicant, Mr Filippov's relatives and their neighbours considered them to be a family. Postcards and letters were addressed to Mr and Ms Filippov and the applicant received correspondence at the new address.

10. The applicant retained her residence registration at her old address. The applicant explains that she suffered from an ear ailment and wanted to remain under the observation of her former ear-specialist. Had she changed her residence registration, she would no longer have been entitled to visit the doctor practising in her former neighbourhood.

B. Death of the applicant's partner

11. The applicant and Mr Filippov spent the summer of 1998 in their country cottage. On 18 August 1998 Mr Filippov returned to the town for a week.

12. On 24 August 1998 Mr Filippov died and his body was found by a neighbour. On 26 August 1998 Mr Filippov was buried in the presence of his son and his two sisters who had been summoned by a telegram.

13. The applicant was not notified of her partner's death or funeral service. She only learnt of it when she returned to the city late in the day on 26 August 1998.

C. Re-allocation of the flat and the removal of the applicant's effects

14. On 27 August 1998 the applicant received a phone call from the local housing maintenance authority (*жилищно-эксплуатационное*

управление), requesting an explanation as to why the flat was not empty. The applicant responded that she did not have formal residence registration in the flat, but she had lived there for more than ten years. On 1 September 1998 a representative of the housing maintenance authority visited the applicant at the flat and drafted a report to the effect that the flat was not empty. The applicant was not given a copy of the report. The representative advised the applicant to secure her right to use the flat through a court.

15. On 2 September 1998 the applicant filed a request with the housing maintenance authority to be given an occupation certificate (*опдел*) for the flat. Her request was refused because on 1 September 1998 an occupation certificate had already been issued to Mr Valetov, the head of the local police department and hierarchical superior of Mr Filippov's son.

16. On 4 September 1998, on returning to the flat, the applicant found that the door had been broken open and that books and other household items were being loaded onto a lorry. The applicant states that the possessions were removed in the presence of Mr Valetov, Mr Filippov's son, several policemen in civilian clothing, and a representative of the housing maintenance authority. Once the removal was completed, the applicant was told to vacate the premises immediately. When the applicant refused to comply with the request, she was thrown out of the flat by force. The door was replaced and the applicant was not given keys.

D. Court proceedings brought by the applicant

17. On 7 September 1998 the applicant filed a complaint against Mr Valetov with the prosecutor's office of the Sovietskiy District of Vladivostok. The applicant requested a criminal investigation into her forcible eviction and the removal of her possessions. On 14 September 1998 the prosecutor's office informed the applicant that her allegations were unsubstantiated and refused to open criminal proceedings.

18. On 1 October 1998 the applicant filed a civil action against the Vladivostok City Council and Mr Valetov. The applicant claimed that she should be recognised as a member of her late partner's household and asked for the occupation certificate issued to Mr Valetov to be declared void. The applicant submitted in evidence many witness statements by relatives, by neighbours living in the same block of flats and by summer house neighbours, as well as personal photographs, letters, postcards and mail receipts.

19. On 27 November 1998 the applicant complained to the Vladivostok city prosecutor's office about the refusal to open a criminal investigation into Mr Valetov's actions. By a letter of 17 December 1998 the applicant was informed that the prosecutor's office had reversed the refusal and ordered the Sovietskiy District prosecutor's office to carry out an inquiry.

20. On 5 January 1999 the Sovietskiy District prosecutor's office reported that an inquiry had not established any indication of a criminal offence. On 7 May 1999, after the applicant had complained again, the Vladivostok city prosecutor's office examined the matter and confirmed this conclusion.

21. On 9 August 1999 the Sovietskiy District Court of Vladivostok dismissed the applicant's civil action, finding as follows:

"Under these circumstances, the court considers that it has been established in court that [the applicant] lived in the contested flat, which [fact] is corroborated by postcards addressed to Mr Filippov and [the applicant], a parcel delivery notice; however, [the applicant's] residence was of a temporary nature.

The court has established that Mr Filippov, while still alive, did not recognise [the applicant's] tenancy right in respect of the contested flat; [the applicant] did not produce evidence showing that Mr Filippov had recognised her right to tenancy. Besides, it has been established that [the applicant] retained her tenancy right in respect of [her daughter's flat] and that she had moved into the contested flat in breach of the procedure established by Article 54 § 1 of the RSFSR Housing Code...

Furthermore, [the applicant's] assertion about the presence of her personal effects (250 items) in the contested flat... is rebutted by the results of the inquiries carried out by the Sovietskiy District and Vladivostok City prosecutor's offices, as well as the housing maintenance authority report of 4 September 1998.

Under these circumstances, the court finds that [the applicant] has not acquired the tenancy right to [the contested flat]..."

The court grounded its findings on the statements of Mr Filippov's son and daughter-in-law; however, the court rejected a statement by the applicant's daughter on the ground that she was an interested witness. It also determined that statements by five neighbours produced at the hearing were not sufficient to establish that the applicant and Mr Filippov had maintained a joint household.

22. The applicant appealed against the judgment. In her statement of the grounds of appeal of 17 August 1999 the applicant pointed to a very substantial body of evidence proving her residence in the flat (statements by witnesses, postcards, mail receipts, etc.). She alleged that her late partner's son had conspired with his police superior to acquire the flat, which explained why they had managed to obtain in just two days the decisions of the City Council and of the housing maintenance authority, as well as the occupation certificate and residence registration stamp. She complained that she had been thrown out by force, contrary to the applicable provisions of the Housing Code.

23. On 6 October 1999 the Civil Section of the Primorskiy Regional Court upheld the decision of 9 August 1999. The Regional Court endorsed the arguments of the first instance court.

24. The applicant submitted several requests for supervisory review, all of which were turned down.

25. According to the applicant, the flat was privatised in 1999 and sold to a third party.

II. RELEVANT DOMESTIC LAW

26. The RSFSR Housing Code of 24 June 1983 (as amended on 28 March 1998, effective at the material time) provided:

Article 53. Rights and obligations of the tenant's family members

“The tenant's family members shall include the tenant's spouse, children and parents. Other relatives, disabled dependants, and – in exceptional circumstances – other persons may be recognised as the tenant's family members if they live together with the tenant and maintain a joint household.”

Article 54. The tenant's right to accommodate other persons in his premises

“The tenant shall be entitled to accommodate in his living premises, in accordance with the established procedure, his spouse, children, parents, other relatives, disabled dependants and other persons, subject to the written consent of all adult members of his family...”

The persons accommodated by the tenant in accordance with the rules of the present article shall have the same right to use the living premises as the tenant or other members of his family provided that such persons are, or have been recognised as, members of the tenant's family (Article 53) and that no other agreement on the use of the premises has been signed between these persons, the tenant and his family members.”

Article 90. Eviction from living premises

“Eviction from occupied living premises in state or public housing shall only be permissible on the grounds set out in the law.

Eviction shall be ordered by a court...”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

27. The Government, in their additional observations of 23 March 2004 following the Court's decision as to the admissibility of the application on

8 January 2004, contended for the first time that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention in respect of her complaint under Article 8 of the Convention. They submitted that it had been open to her, pursuant to Article 46 §§ 1 and 2 of the Russian Constitution and section 4 of the Russian law “On appeals to a court against acts and decisions violating citizens’ rights”, to lodge a complaint with a court about the unlawful acts of the police officers who had enforced her eviction on 4 September 1998. However, the applicant had not used this remedy.

28. The applicant disagreed. She indicated that she had complained to, among others, the head of the local police department and the chief inspector of the Ministry of the Interior.

29. The Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII; *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). The Government’s submissions referred to the events that had occurred before the application was lodged with the Court and there had been no relevant legal developments thereafter. There are no exceptional circumstances which would have absolved the Government from the obligation to raise their preliminary objection before the Court’s decision as to the admissibility of the application on 8 January 2004.

30. Consequently, the Government are estopped from raising a preliminary objection of non-exhaustion of domestic remedies at the present stage of the proceedings. The Government’s objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. The applicant complained that her eviction from her late partner’s flat had been unlawful. She invoked Article 8 of the Convention which reads as follows:

“1. Everyone has the right to respect for his ... home...

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.”

A. The parties' submissions

1. The applicant

32. The applicant submitted that she had moved into her partner's flat as a member of his family. They had jointly furnished the flat, purchased household goods together and shared maintenance expenses. She had therefore been entitled to succeed to the tenancy under Articles 53 and 54 of the RSFSR Housing Code. She contended that the domestic courts had wrongly rejected the statements by six witnesses on her behalf who had confirmed the she and her late partner had lived together as husband and wife. The applicant maintained that on 4 September 1998 police officers had evicted her by force, without a court order, in breach of Article 90 of the RSFSR Housing Code.

2. The Government

33. The Government, in their memorandum of 9 July 2003, submitted that the applicant had not been a victim of the alleged violation. They claimed that the applicant had lived in the contested flat without any legal title. She had not been the spouse of the tenant of the flat and she had had no legal entitlement to continuation of the tenancy after his death. Therefore, in the Government's opinion, there was no interference with her rights under Article 8 § 1 of the Convention.

34. In their additional observations of 23 March 2004, the Government conceded that in the circumstances of the case the applicant had been evicted from her late partner's flat in the absence of a court decision. They further accepted that the procedure for eviction established by the second paragraph of Article 90 of the RSFSR Housing Code had not been complied with.

B. The Court's assessment

1. Whether the flat in question was the applicant's "home" within the meaning of Article 8 of the Convention

35. The Government disputed that the applicant's right to respect for her home was at issue because her residence in the contested flat had not been legally established.

36. The Court recalls the Convention organs' case-law that the concept of "home" within the meaning of Article 8 is not limited to those which are lawfully occupied or which have been lawfully established. "Home" is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular habitation constitutes a "home"

which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see the following authorities: *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 52-54, and Commission's report of 11 January 1995, § 63; *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, § 46; *Wiggins v. the United Kingdom*, no. 7456/76, Commission decision of 8 February 1978, *Decisions and Reports* (DR) 13, p. 40).

37. According to the applicant, she had established the contested flat as her home in 1988 when she had moved in with her partner. She produced receipts and other financial documents showing that they had purchased furniture and household items together and that they had jointly borne housing charges and maintenance expenses. It also appears that the applicant received letters and postcards sent to her and to her partner at the mailing address of the contested flat. Statements by several witnesses, the accuracy of which the Court has no cause to doubt, indicate that the applicant had been frequently seen in and around Mr Filippov's place. Moreover, the domestic courts established that the applicant had in fact lived in the contested flat (see § 21 above). The Government did not dispute that the flat at issue was the applicant's actual place of residence. Having regard to the co-existence of the convincing, concordant and unrebutted factual circumstances outlined above, the Court finds that the applicant had sufficient and continuing links with Mr Filippov's flat for it to be considered her "home" for the purposes of Article 8 of the Convention.

38. Furthermore, the Court is satisfied that the applicant had not established any other home elsewhere. Although the Government refused to consider Mr Filippov's flat as the applicant's "home", they omitted to indicate what other premises could have been her "home". Indeed, it notes that, although the domestic courts premised their findings on the fact that the applicant had retained the legal right to take up residence in her daughter's flat, they did not maintain that that flat was the applicant's actual home.

39. Therefore the Court concludes that Mr Filippov's flat was the applicant's home for the purposes of Article 8 of the Convention.

2. Whether there was an interference by a public authority with the applicant's right to respect for her home

40. Having established that the flat in question was the applicant's home for the purposes of Article 8 of the Convention, the Court has to determine whether there was an interference with her right to respect for her home by a public authority.

41. The Government claimed that the applicant should have lodged a complaint against the police officers who had locked her out of the

contested flat in accordance with the procedure for lodging complaints about acts and decisions by public officials and agencies. The Court interprets this statement as an acknowledgment that the persons who had executed the applicant's eviction had acted in their capacity as State officials.

42. The Court finds that the applicant's eviction from the contested flat by State officials constituted an interference with her right to respect for her home by a public authority.

3. Whether the interference was justified

43. In order to determine whether the interference was justified under paragraph 2 of Article 8, the Court will first examine whether it was "in accordance with the law" (see *Gillow v. the United Kingdom*, cited above, § 48).

44. The Court notes that Article 90 of the RSFSR Housing Code permitted eviction only on the grounds established by law and only on the basis of a court order. That provision introduced an important procedural safeguard against arbitrary evictions and its wording permitted no exceptions.

The Government have conceded that the procedure established by Article 90 of the RSFSR Housing Code should have been followed in the applicant's case, even though her residence had not been legally established. The Court sees no reason to dissent. It cannot discern any circumstances that could have justified in the instant case a departure from the normal procedure of eviction and the remarkably hasty re-allocation of the flat to a police officer just seven days after the death of the former tenant.

45. It follows that the interference in the present case cannot be considered to be "in accordance with the law", as required by Article 8 § 2 of the Convention. Accordingly, there has been a violation of Article 8. In the light of this conclusion, the Court is not required to determine whether the interference was "necessary in a democratic society" for one of the aims enumerated in paragraph 2 of Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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. Damage

47. The applicant claimed 1,132,614 Russian roubles (“RUR”, approximately 32,620 euros) in respect of pecuniary damage, of which RUR 348,614 represent the value of her personal effects left behind in the contested flat, the remaining RUR 784,000 being the value of a one-room flat measuring 30 sq. m. in a standard block of flats. The applicant also claimed RUR 226,000 (approximately EUR 6,500) in respect of non-pecuniary damage.

48. The Government contended that the claims for damage were not reasonable because the applicant was not a victim of the alleged violation.

49. The Court notes that the applicant did not have title to her late partner’s flat and there is therefore no cause to reimburse her for its value. It further notes that the applicant’s complaint about the loss of her personal effects was declared inadmissible on 8 January 2004.

In the Court’s view, the applicant undoubtedly sustained significant non-pecuniary damage which cannot be compensated solely by the finding of a violation. Less than a week after the sudden death of her partner she was evicted by force from the flat where they had lived for ten years and locked out of it. She found herself in a precarious housing situation exacerbated by feelings of frustration and injustice. The applicant must have experienced considerable stress and anxiety in consequence of that and in settling elsewhere. Taking all the relevant factors into account and making an assessment on an equitable basis, the Court awards the sum of EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

50. The applicant claimed RUR 39,200 as her costs and expenses. Those include RUR 33,200 for the purchase of basic essentials after her eviction and RUR 6,000 (approximately EUR 175) for legal expenses.

51. The Government did not comment.

52. The Court accepts that the applicant incurred some expenses in order to obtain redress both in the domestic legal order and at the European level. The amount of legal expenses does not appear excessive or unreasonable. The Court however observes that at the admissibility stage one of the applicant’s complaints was declared inadmissible. It is therefore appropriate to reimburse the costs and expenses alleged by the applicant only in part. Having regard to the elements at its disposal, the Court awards the applicant EUR 120 for the costs incurred in the domestic and European proceedings, plus any tax that may be chargeable on that amount, whereas it rejects the part of the applicant’s claim which refers to the purchase of basic essentials.

C. Default interest

53. The Court considers it appropriate that the default interest 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 6,120 (six thousand one hundred and twenty euros) in respect of non-pecuniary damage and costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President