CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF TULESHOV AND OTHERS v. RUSSIA

(Application no. 32718/02)

JUDGMENT

STRASBOURG

24 May 2007

FINAL

12/11/2007

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 Tuleshov and Others v. Russia,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr R. MARUSTE,
Mr A. KOVLER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 2 May 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 32718/02) 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 five Russian nationals, Mr Maksut Netkaliyevich Tuleshov, Mrs Aslganym Kalikovna Tuleshova, Mr Viktor Maksutovich Tuleshov, Mr Sergey Maksutovich Tuleshov and Mr Kalik Isayev ("the applicants"), on 10 August 2002.

2. The applicants, who had been granted legal aid, were represented by Mr V. Kolomin, a lawyer practising in Moscow. 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 applicants alleged that they had been deprived of their house in violation of Article 1 of Protocol No. 1 to the Convention and had been evicted in violation of Article 8 of the Convention.

4. By a decision of 21 March 2006, the Court declared the application admissible.

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are members of one family. Mr Maksut Netkaliyevich Tuleshov, born in 1953 (the first applicant), and Mrs Aslganym Kalikovna Tuleshova, born in 1955 (the second applicant), are husband and wife; Mr Viktor Maksutovich Tuleshov, born in 1979, and Mr Sergey Maksutovich Tuleshov, born in 1977, are their sons; Mr Kalik Isayev, born in 1929, is the second applicant's father. They, and three other children of the first and the second applicants, live together in one household in the town of Marx of Saratov Region.

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

8. In 1993 Mr Kh bought a house from company B. It was a former shop at 8 Third Avenue, Marx, which Kh intended to convert into a dwelling. The house was free from any third party claim.

9. In 1996 the Marx Town Court of the Saratov Region examined an unrelated commercial dispute between company B and a third party and found that B had failed to perform as stipulated in their contract. The house was listed as pledged property in the contract and the court ordered its sale. Apparently the court was not aware that the house had already been sold to Kh.

10. The sale was administered by the court bailiff. The price was set at 13,600,000 roubles (RUR), the pre-redenomination equivalent of RUR 13,600, or approximately 2,800 US dollars. The first applicant offered to buy the house, and on 12 April 1996 the Marx Town Court approved the sale. This decision took effect on 23 April 1996. The first applicant was registered with the real estate registry (*Бюро технической инвентаризации*) as the owner of the house. Apparently the first applicant was not aware of Kh's right to the house and Kh was not aware of the sale to the first applicant.

11. On 22 July 1996 the Marx local administration granted a reconstruction permit by virtue of which the first applicant converted the shop into a dwelling of about 78 square metres. He moved into it with seven members of his family including the other applicants.

12. In 1998 Kh seized the Marx Town Court with a property claim in respect of the house and challenged its sale by the bailiff. The first applicant lodged a counterclaim invoking his title to the house.

13. On 28 June 1999 the Marx Town Court found that the bailiff had sold the house to the first applicant unlawfully and declared the sale null and void. It annulled the first applicant's title and ordered his and his family's eviction. The first applicant was awarded RUR 13,600 as

reimbursement of the house purchase price by company B and the other party to the contract mentioned in paragraph 9 above, and RUR 113,161 of reconstruction costs payable by Kh.

14. On the same day the applicants were served with an eviction order.

15. The first applicant and Kh appealed.

16. Company B and the other party both failed to pay the amount due to the applicant under the judgment (RUR 13,600) as they became insolvent.

17. On 27 August 1999 the Saratov Regional Court upheld the first instance judgment as to the substance, but reversed the award of the reconstruction costs because such a claim had never been made by the applicants.

18. On 15 November 1999 the Presidium of the Saratov Regional Court quashed on supervisory review the decision of 12 April 1996 by which the sale of the house to the first applicant had been ordered.

19. On 9 August 2000 the Marx Town Court, apparently following the first applicant's request for supervisory review, appointed an expert to assess the market value of the house. The evaluation report issued on the same date estimated it as RUR 245,000 (then an equivalent of about 9,738 euros (EUR)). On 31 August 2000 the Saratov Regional Court rejected the request for supervisory review.

20. On 14 March 2001 the applicants brought proceedings for damages against Kh, the Ministry of Finance, the Ministry of Justice and the Judicial Administration Department. They claimed pecuniary damages of RUR 317,654 including the reconstruction costs (RUR 146,461), the sum of RUR 13,600, i.e. the money which had not been paid by the insolvent debtors, and non-pecuniary damages of RUR 210,000. In support of their pecuniary claims they referred to the expert evaluation of 9 August 2000. The court joined Kh to the proceedings as a co-defendant.

21. On 14 December 2001 the Marx Town Court examined the case. It found that Kh had never authorised the reconstruction works on his premises and, relying on Article 1069 of the Civil Code, held that these expenses were incurred as a result of the authorities' unlawful conduct and must be reimbursed by the State. The first applicant was awarded RUR 89,522 (then the equivalent of about EUR 3,305) to be paid by the Ministry of Finance. In so far as the applicants claimed the reimbursement of RUR 13,600, the court held that the first applicant “had not made sufficient effort to recover the debt” from company B and the other party. The remaining pecuniary and non-pecuniary claims including those by the other applicants were dismissed on the grounds that the applicants had not adduced sufficient proof of the amount they claimed as damages.

22. On 15 February 2002 the Saratov Regional Court upheld the judgment of 14 December 2001.

23. On 26 November 2002 the applicants were ordered to leave the house by 6 December 2002.

24. The applicants challenged the eviction order claiming that the award had not been paid and that no other dwelling had been made available to them.

25. On 9 December 2002 the Marx Town Court of the Saratov Region dismissed the applicants' challenge to the eviction order. This decision was upheld on appeal by the Saratov Regional Court on 17 January 2003.

26. On 27 March 2003 the Marx Town Court of the Saratov Region examined another request by the applicants and adjourned the eviction until 4 April 2003. The applicants appealed claiming that this was insufficient and requested an adjournment until social housing could be allocated. The extension was refused.

27. Between April and July 2003 the applicants were served the eviction order three times, each time with a new deadline. The applicants unsuccessfully challenged the order every time it was served.

28. On 12 September 2003 the bailiff of the Tsentralnyy District Court of Moscow informed the first applicant that the bailiff service was no longer competent to enforce awards against the State. He instructed the first applicant to claim his award under the judgment of 14 December 2001 directly from the Ministry of Finance.

29. On 12 October 2003 the applicants and the rest of the family were evicted from the house.

30. On 19 November 2003 they were granted social housing in a municipal hostel where they have been living since then. For eight family members they were allocated a 45 square metres flat comprising three rooms. The toilet, bathroom and cooking facilities are shared with other flats on the same floor, and the residence has central heating but no gas or hot water supply. The applicants received this accommodation under the terms of a social tenancy and have to pay rent. At present ten family members live in this dwelling.

31. On 18 February 2004 the Ministry of Finance informed the second applicant that the payment due to the first applicant pursuant to the judgment had been suspended because the enforcement documents had been sent to the Ministry's Legal Department “for the inspection of the materials of the [applicants'] court dispute”. It promised to “keep the applicants informed about the outcome of the challenge and its legal assessment”.

32. On 16 November 2004 the Ministry of Finance paid the applicant RUR 89,522 (then the equivalent of about EUR 2,405).

33. On 15 May 2006 the applicants obtained an expert evaluation of the market value of their social housing, which was estimated at RUR 70,000 (then the equivalent of about EUR 2,017).

II. RELEVANT DOMESTIC LAW

A. Tort liability of the State

34. Article 1064 § 1 of the Civil Code of the Russian Federation provides that the damage caused to the person or property of a citizen must be compensated in full by the person who caused the damage. Pursuant to Article 1069, a State agency or a State official is liable to a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated at the expense of the federal or regional treasury.

35. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated irrespective of any award for pecuniary damage.

B. Evaluation of real estate

36. The officially fixed reference rates of the market value of residential real estate are periodically published by the State Construction Agency (*Госстрой*) and are mandatory for the calculation of State-funded housing subsidies. Directive No. 158 of 29 August 2003 stated that in the last quarter of 2003 the average price of residential real estate in the Saratov Region was RUR 8,200 (then the equivalent of about EUR 248) per square metre.

THE LAW

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

37. The applicants complained that the authorities had violated their right to the peaceful enjoyment of their possessions. They invoked 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. The parties' arguments

38. The applicants submitted that they had been deprived of the house lawfully purchased by the first applicant under the court administered tender procedure. In their view, the fact that the court bailiff's fault had been established in the domestic proceedings should have entailed the State's full liability for damages. However, all they had managed to obtain through the domestic proceedings was compensation for part of the reconstruction costs. The applicants claimed that this compensation was insufficient to buy a comparable dwelling. The applicants presented calculations based on the 2003 Directive issued by the State Construction Agency which stated that the market value of residential real estate in the Saratov Region in the last quarter of 2003 was RUR 8,200 per square metre. On this basis the applicants claimed that at the time it was paid the award of RUR 89,522 was sufficient to pay for only 10.9 square metres, while the forfeited house measured 78.3 square metres. As for the social housing they received, they maintained that even in combination with the above award it was insufficient because of its unsatisfactory quality and size, and in any event they did not own it. They considered that their overall losses were so substantial as to amount to a deprivation of property for the purposes of Article 1 of Protocol No. 1 to the Convention.

39. The Government maintained that the transfer of the house had been necessary for the protection of the lawful owner's rights and considered that the aggregate of the award of construction costs and the grant of social housing was sufficient to compensate for the losses that the applicants could prove before the domestic courts. In the Government's opinion, there had been no violation of Article 1 of Protocol No. 1 to the Convention.

B. The Court's assessment

40. The Court notes, first, that the house in question was acquired and renovated by the first applicant to provide residence for the whole family. It follows that all applicants had a vested pecuniary interest in continuing to live there. Accordingly all applicants may claim that the house constituted their “possessions” within the meaning of Article 1 of Protocol No. 1. The Court notes, next, that the transfer of the house to the former owner constituted an interference with their right to peaceful enjoyment of possessions. This was indeed not in dispute between the parties.

41. The Court accepts, in the absence of any indication to the contrary, that the first applicants' ownership was terminated “lawfully” in domestic terms and in the pursuit of the “public interest”, that is protecting the rights of the legal title holder, who had precedence. It therefore remains to be examined whether this measure was also proportionate to the legitimate aim

pursued so as to be compatible with the guarantees enshrined in Article 1 of Protocol No. 1 to the Convention.

42. The Court reiterates that an interference with the peaceful enjoyment of possessions must strike a "fair balance" between the demands of the public or general interest of the community and the requirements of the protection of the individual's fundamental rights. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance, and notably, whether it does not impose a disproportionate burden on the applicant (see *Former King of Greece and Others*, [GC], no. 25701/94, § 89, ECHR 2000-XII).

43. The Court further reiterates that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. This provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see, among other authorities, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II).

44. Turning to the facts of the present case, the Court observes that the national courts recognised the applicants as bona fide buyers and occupants and held the court bailiff responsible for the unlawful sale of Kh's property to them. The Court further notes that the domestic courts upheld the first applicant's tort action against the State in respect of the reconstruction costs. However, they refused to award full compensation for the house value on the grounds that the house purchase price had already been awarded and it was the first applicant's fault that he had not recovered it from company B and its counterparty. In addition, the court found that the applicants had not adduced sufficient proof of the amount they claimed as damages.

45. The Court notes in this respect that the house purchase price awarded in 1999 was not paid to the first applicant due to the liable parties' insolvency. It is not clear from the judicial decisions or the Government's submissions what steps the first applicant was expected to take to receive the award from the insolvent debtors, or to what extent his failure to do so contributed to their default under the judgment. In any event, the Court observes that the amount which he had supposedly failed to receive (RUR 13,600) would only be a fraction of the alleged losses. In the Court's view, the applicant's claims in this respect were not prima facie unreasonable or unsubstantiated. In particular, it sees no reason for the courts to disregard the court-commissioned expert evaluation of 9 August 2000, which estimated the value of the transferred house at RUR 245,000. Indeed, this evaluation was neither contested before the domestic courts, nor superseded by an alternative estimate. It follows that this part of the claim was rejected by the courts without sufficient grounds.

46. As regards the accommodation allocated to the applicants in the municipal hostel, the Court notes that the applicants received the housing under a social tenancy and have to pay monthly rent. The Government have not indicated what advantage, if any, it brings to the applicants compared with renting at the market rates. For this reason, and in view of the limited scope of the tenancy title compared with that of ownership, the Court sees no grounds to take account of this benefit when assessing whether the compensation offered to the applicants was reasonable.

47. It follows that the applicants received only RUR 89,522 as compensation for the house the cost of which, according to the expert evaluation of 9 August 2000, was RUR 245,000 in the material period. The Court notes that in the present cases there have been no legitimate objectives of "public interest" that would call for less than reimbursement of the full market value.

48. The Court therefore concludes that the failure to pay adequate compensation imposed on the applicants an individual and excessive burden and upset the fair balance between the demands of the public interest on the one hand and the applicants' right to the peaceful enjoyment of their possessions on the other. Accordingly there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

49. The applicants complained that their eviction without an adequate replacement had infringed their right to respect for their home. They invoked Article 8 of the Convention which provides 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."

A. The parties' arguments

50. The applicants stated that their eviction constituted a disproportionate interference with their right to respect for their home. They referred to insufficient compensation, the poor quality of the social housing granted to them and also to a considerable delay in enforcement of the court award in their favour.

51. The Government reiterated their submissions under Article 1 of Protocol No. 1 to the Convention and maintained that there had been no violation of Article 8.

B. The Court's assessment

52. The Court notes, first, that the house from which the applicants were evicted was their home within the meaning of Article 8 and that their eviction constituted an interference with their right to respect for their home. It accepts that the measure in question was lawful in domestic terms and in the pursuit of the "public interest", that is protecting the rights of the lawful owner. It therefore remains for the Court to examine whether this interference was proportionate to the legitimate aim pursued.

53. The Court notes that the authorities accommodated the applicants in the municipal hostel, however, it observes that the accommodation was offered more than two years after the eviction order was issued and one month after it had been enforced. It follows that the applicants were living under the threat of expulsion for a long time being in the state of uncertainty about receiving substitute housing from the State. At the same time, their possibility for private rental or purchase of accommodation was limited due to the fact that the compensation awarded to them was insufficient (see paragraph 48 above) and in any event was paid with a delay of about three years, which meant that the applicants received it more than a year after they were evicted.

54. In view of the foregoing, the Court considers that the interference with the applicants' right to respect for their home was disproportionate to the legitimate aim pursued.

55. It follows that there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicants claimed 18,350 euros (EUR) in respect of pecuniary damage arguing that this represented the sum which, combined with the already received 89,522 roubles (RUR), would permit them to buy an

equivalent or comparable house and to cover all expenses related to moving house and paying rent for the social housing.

58. The Government contested these claims as excessive and unreasonable. They did not present an alternative estimate of the applicants' losses and considered that, if the Court were to find a violation of the applicants' Convention rights, the acknowledgment of a violation would constitute sufficient just satisfaction.

59. The Court takes note of the calculations of losses presented by the applicants in the domestic proceedings and before the Court (paragraphs 20 and 38 above) and observes that they have not been contested at any stage. In the light of this information the Court considers the claim reasonable, and, in the absence of an alternative estimate by the Government, awards the applicants jointly EUR 18,350 for any pecuniary damage they sustained as a result of the loss of their house and their eviction, plus any tax that may be chargeable on the above amount.

B. Non-pecuniary damage

60. The applicants submitted that the unlawful house sale, the ensuing litigation, the deprivation of property, the eviction from their home and their subsequent hardships living in cramped and substandard accommodation with a large family including small children and an elderly person had caused them severe distress. They claimed EUR 228,000 for non-pecuniary damage, which amount they claimed on behalf of eight family members each of whom had been through six years of sufferings.

61. The Government reiterated their objections made in respect of the applicants' pecuniary claims.

62. The Court recalls the violations of the Convention which it has found and considers that the applicants must have sustained non-pecuniary damage as a result thereof. It therefore considers that the finding of the violations of the Convention in itself does not constitute sufficient just satisfaction in the instant case and, making its assessment on an equitable basis, awards the applicants jointly EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

C. Costs and expenses

63. The applicants were represented by Mr V. Kolomin, a lawyer practising in Moscow. According to the contract entered into by the applicants on 26 April 2006, they agreed to pay the representative a fee of EUR 4,000. In addition to that, the applicants hired a local legal counsel assisting them in the preparation of the documents for the proceedings before the Court, who charged a fee of EUR 1,063. The applicants claimed

reimbursement of the lawyer's fees, less EUR 850 already received by way of legal aid from the Council of Europe.

64. The Government did not dispute the claims under this head.

65. The Court has to establish, first, whether the costs and expenses indicated by the applicant were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, § 220).

66. The Court considers that the costs, in so far as Mr Kolomin's fee is concerned, were actually and necessarily incurred and relate to the violations found. As regards the fees of the local counsel, the applicants have not presented any receipts relating to the sum claimed. Accordingly the Court awards to the applicants jointly EUR 4,000 for costs and expenses less EUR 850 already received by way of legal aid from the Council of Europe, plus any tax that may be chargeable on the above amounts.

C. Default interest

67. 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. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

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 applicants jointly, within 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 Russian roubles at the rate applicable at the date of settlement:

(i) EUR 18,350 (eighteen thousand three hundred and fifty euros) in respect of pecuniary damage;

(ii) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;

(iii) EUR 3,150 (three thousand one hundred and fifty euros) in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President