



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

FIRST SECTION

Application no. 38783/07
Natalya Yuryevna LACHIKHINA
against Russia
lodged on 21 August 2007

STATEMENT OF FACTS

The applicant, Ms Natalya Yuryevna Lachikhina, is a Russian national, who was born in 1971 and lives in Barnaul, Altay Region, Russia.

A. The circumstances of the case

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

1. Criminal proceedings and impounding of the applicant's car

On 26 July 2006 the applicant bought Toyota Camry vehicle from Yu.Sh., having paid for it 760,000 Russian rubles (RUB). On 27 July 2006 D.P. issued a hand written note to that effect (on 7 July 2006 Yu.Sh. authorized D.P. to take any actions in respect of the Toyota Camry vehicle, including its sale).

On 31 June 2006 the vehicle was recorded in the State register of the vehicles. That registration was preceded by necessary checks in the State maintained data bases about its history and legal status, including whether that car has been stolen or had any legal restrictions on its sale, such as being mortgaged.

In August and October 2006 the applicant spent RUB 20,400 and 13,910 on, accordingly, alarm system and winter tires. She submitted copies of purchase documents.

On 6 December 2006 the vehicle was impounded on the basis of a seizure order issued by an investigator on the same date. The seizure order was issued in relation to criminal case no. 16038375 opened on 10 October 2006 by the investigative department of the Sovetskiy District department of the interior of Krasnoyarsk (the district investigative department) against Yu.Sh. As it follows from the case materials, Yu.Sh. was charged with two episodes of swindling, whereby he had obtained credits from MDM-Bank

by mortgaging to the bank vehicles including the Toyota Camry. The vehicles have then been sold by him in breach of the mortgage conditions. The applicant's Toyota Camry thus constituted a material evidence of the crime (*вещественное доказательство*), and as such should be kept with the criminal investigation file.

On 14 December 2006 the applicant seized the Sovetskiy District Court of Krasnoyarsk with a complaint seeking to declare invalid the decision to seize her car of 6 December 2006.

On 21 December 2006 the Sovetskiy District Court reviewed the applicant's claim under the procedure of Article 125 of the Code of Criminal Procedure and dismissed it. It found that the vehicle constituted an important piece of evidence in the pending criminal case and as such had been rightly impounded and kept with the criminal case. The applicant appealed, and on 22 February 2007 the Krasnoyarsk Regional Court confirmed the decision of 21 December 2006.

In the meantime, the applicant also complained against the investigator's decision to the Sovetskiy District Prosecutor's Office. On 17 January 2007 the District Prosecutor's Office confirmed the lawfulness of the investigator's actions and advised the applicant to seek redress through civil proceedings. The impounded vehicle should in the meantime be placed for safekeeping at a special secure parking lot.

On 21 March 2007 the Krasnoyarsk Town Prosecutor's Office informed the applicant that the investigator's actions had been correct and lawful.

On 10 July 2007 criminal proceedings in file no. 16038375 against Yu.Sh. were adjourned, in view of the suspect's absconding from justice. Yu.Sh. was placed on the list of wanted persons.

Also on 10 July 2007 the Sovetskiy District Court of Krasnoyarsk granted the district investigative department's motion to arrest the vehicle Toyota Camry since there were grounds to believe that it had been purchased by Yu.Sh. as a result of a crime (use of falsified documents). The applicant has not taken part in the court proceedings and it does appear that she has been notified of this hearing.

On 24 April 2008 the Sovetskiy District Court of Krasnoyarsk considered the applicant's new complaint brought under Article 125 of the Code of Criminal Procedure. The court noted that the criminal proceedings against Yu.Sh. remained pending, that MDM-Bank had lodged a civil claim against Yu.Sh. and sought to obtain property of the Toyota Camry vehicle which had been mortgaged to that bank, since the credit has not been paid. The applicant's objection that she has been a bona fide buyer of the vehicle should be reviewed in civil proceedings.

On 22 July 2008 the Krasnoyarsk Regional Court upheld this decision. It specified that wherever civil proceedings about the ownership of material evidence were on-going, the safe keeping of the evidence would continue after the entry of the criminal judgment into force.

2. Civil proceedings

On 15 February 2007 the Leninskiy District Court of Barnaul refused to consider on the merits the applicant's request to establish the fact of her ownership of the vehicle. The representatives of MDM-Bank, who had the status of third party in the proceedings, asked the court to leave the motion

without consideration. The District Court noted that the applicant's motion had at its basis a civil dispute and should be resolved accordingly.

On 4 April 2007 the Krasnoyarsk Regional Court upheld the decision of 15 February 2007.

On 2 October 2007 the Zheleznodorozhny District Court of Krasnoyarsk refused to consider on the merits the applicant's claim against the Krasnoyarsk Department of the Interior and MDM-Bank to stop preventing her from the use of her vehicle. The court decided that the decision of the Sovetskiy District Court of 21 December 2006, as confirmed by the Krasnoyarsk Regional Court on 22 February 2007, had already settled the situation raised by the applicant within the procedure of Article 125 of the Code of Civil Proceedings.

On 17 December 2007 the Krasnoyarsk Regional Court confirmed the decision of 2 October 2007. The Regional Court noted that the legal regime of the vehicle has been determined by its status as material evidence of the crime. Accordingly, any questions related to its use should be regulated by the legislation on criminal procedure. Her complaint brought under Article 125 of the Code of Criminal Procedure has been dismissed, therefore her civil claim could not be examined on the merits.

COMPLAINT

The applicant complains under Article 1 of Protocol No. 1 of the Convention that her property rights in respect of the Toyota Camry vehicle have been violated.

QUESTIONS TO THE PARTIES

Has the applicant been deprived of her possessions in the public interest, and in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1?

In particular, did that interference impose an excessive individual burden on the applicant (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 59, ECHR 1999-V; and compare with *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 64, 1 April 2010)?