



## State failed to balance competing rights at stake in a case concerning an eviction from State-owned housing

In today's Chamber judgment<sup>1</sup> in the case of [Yevgeniy Zakharov v. Russia](#) (application no. 66610/10), the first against Russia concerning an eviction from State-owned housing, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life and the home) of the European Convention on Human Rights.**

Mr Zakharov, the applicant, complained about his eviction from local authority housing after the death of his partner. In the ensuing court proceedings, the courts refused to recognise him as his deceased partner's family member and thus to acknowledge his right to occupy her room in a communal flat.

The Court considered that the room in which Mr Zakharov had been living with his deceased partner for ten years had been his home and that the courts had failed to balance his right to respect for this home against the interests of the occupants of the other two rooms of the flat. The courts had not therefore determined the proportionality of the interference with Mr Zakharov's right to respect for his home.

Indeed, the domestic court had given paramount importance to the fact that Mr Zakharov had been registered as living elsewhere throughout the ten years he had been living with his partner., without seeking to weigh this against his arguments concerning his need for the room, namely that he had no other housing and had been forced to live in the school where he was working as a night watchman.

### Principal facts

The applicant, Yevgeniy Zakharov, is a Russian national who was born in 1944 and lives in Kaliningrad (Russia).

Mr Zakharov divorced in 1999 and moved in with his new partner, B. They lived together for the following ten years in one of three rooms in a communal flat under a social tenancy agreement. They never married and Mr Zakharov was not registered as living in the room. When B. died in May 2009, the other occupants of the flat locked Mr Zakharov out and the local housing authority informed him that he had to vacate the room as he had no legal right to occupy it.

He thus instituted court proceedings, claiming that he should be regarded as a member of his deceased partner's family who had the right to occupy her room. He argued in particular that he had no other housing – since his ex-wife now owned the flat where he had been registered during the previous ten years and lived there with her new family – and had been forced to live in the school where he was working as night watchman.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In May 2010 the first-instance court granted his claim essentially on the ground that he had been cohabiting with B. in the room for ten years. However, the Regional Court quashed that judgment and dismissed his claims, finding that there was no irrefutable proof that B. had let Mr Zakharov live in the room as a family member rather than as a temporary resident. It based this conclusion on the fact that he had been registered as living at his ex-wife's place of residence throughout the ten years he had been living with B. and had not asked to be removed from the register until after her death.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life and the home), Mr Zakharov complained about having been deprived of his only home after the death of his partner.

The application was lodged with the European Court of Human Rights on 16 October 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,  
Luis López Guerra (Spain),  
Helen Keller (Switzerland),  
Dmitry Dedov (Russia),  
Pere Pastor Vilanova (Andorra),  
Alena Poláčková (Slovakia),  
Georgios A. Serghides (Cyprus),

and also Stephen Phillips, *Section Registrar*.

## Decision of the Court

Mr Zakharov had developed sufficient and continuous links with his deceased partner's room in the communal flat, having lived there for ten years, for it to be considered his "home" under Article 8 of the Convention. The domestic courts' refusal to recognise him as his deceased partner's family member and thus to acknowledge his right to occupy her room had therefore amounted to an interference with his right respect for his home. The Court accepted that that interference had had a legal basis in domestic law (namely, the Housing Code of the Russian Federation of 2004) and pursued the legitimate aim of protecting the local housing authority as the owner of the flat and the rights of persons in need of housing.

However, the Regional Court had failed to balance the competing rights at stake in the case, namely the interests of the occupants of the other two rooms of the communal flat against Mr Zakharov's right to respect for his home. Indeed, that court had given paramount importance to the fact that Mr Zakharov had been registered as living elsewhere throughout the ten years he had been living with B., without seeking to weigh this against his arguments concerning his need for the room. The Regional Court had thus failed to determine the proportionality of the interference with Mr Zakharov's right to respect for his home.

The interference with Mr Zakharov's right to respect for his home had not therefore been "necessary in a democratic society", in violation of Article 8 of the Convention.

### [Just satisfaction \(Article 41\)](#)

The Court held that Russia was to pay Mr Zakharov 5,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in English.*

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