



Judgments and decisions of 17 November 2016

The European Court of Human Rights has today notified in writing six judgments¹ and 36 decisions²: five Chamber judgments are summarised below; for one other, in the case of *Karapetyan and Others v. Armenia* (application no. 59001/08), a separate press release has been issued; for two decisions, in the cases of *Anastasov and Others v. Slovenia* (no. 65020/13) and *Mercan v. Turkey* (no. 56511/16), separate press releases have been issued; the 34 other decisions can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments below are available only in English.

Alentseva and Others v. Russia (application no. 31788/06)

The applicant, Svetlana Alentseva, is a Russian national who was born in 1974 and lives in Moscow. The case concerned the ownership of a flat that Ms Alentseva had resided in with her daughter.

In July 2000 Ms Alentseva purchased a flat in Moscow. She moved into the property, and her daughter also resided in the flat after her birth in 2004.

However, it emerged that the flat had been acquired and sold to Ms Alentseva fraudulently. The seller had obtained registered title to the flat only after the will of the previous (deceased) owner, R., had been forged. The seller was convicted of fraud in 2001, and sentenced to five years' imprisonment.

The prosecutor then brought civil proceedings on behalf of the Department for Housing of the City of Moscow, which included a claim for the eviction of Ms Alentseva and the restitution of the flat to the City of Moscow. The claim was made on the grounds that the previous true owner (R.) had died intestate and without heirs, and that by law ownership of the flat should therefore have passed to the City.

In November 2005, the District Court found in favour of the prosecutor. The court invalidated the will made by R. in favour of the fraudster; invalidated the fraudster's title to the flat; and ordered the restitution of the flat to the City of Moscow. Furthermore, though the court recognised that Ms Alentseva had purchased the flat in good faith, it ordered her eviction. The judgment was upheld by Moscow City Court in January 2006. Ms Alentseva and her daughter were evicted in April 2008.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Ms Alentseva complained that she had been deprived of her property, and that there had been no legal basis for the deprivation.

Violation of Article 1 of Protocol No. 1

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's 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. Under Article 28 of the Convention, judgments delivered by a Committee are final.

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

² Inadmissibility and strike-out decisions are final.

Just satisfaction: The Court held that Russia should ensure, by appropriate means, full restitution of Ms Alentseva's title to the flat and the annulment of her eviction order or, in the alternative, that she receive an equivalent flat. The Court further awarded Ms Alentseva 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,200 for costs and expenses.

Pchelintseva and Others v. Russia (nos. 47724/07, 58677/11, 2920/13, 3127/13, and 15320/13)

The applicants are ten Russian nationals who were born between 1960 and 2010. They live in Moscow and the Moscow region. The case concerned actions taken by city authorities to recover ownership of properties that had been purchased by the applicants.

The applicants' apartments had historically been owned by the City of Moscow before being privatised. In each case, the properties had been acquired from the City, and then ultimately sold on to the applicants. However, the privatisation of the flats had been affected by various illegalities, including misuse of powers of attorney (47724/07 and 15320/13) and fraud (58677/11, 2920/13 and 3127/13). However, none of the applicants were implicated in these illegalities, and those applicants who took legal title (Ms Pchelintseva, Ms Dedik, Ms Dergacheva, Ms Polevoda, and Mr Karim) did so as bona fide purchasers.

In each case, city authorities brought proceedings seeking title to the flats and orders for eviction, and were successful. The domestic courts applied exceptions to laws protecting bona fide purchasers.

In two cases the applicants were evicted (47724/07 and 58677/11; eviction proceedings are pending in 3127/13). In two cases the City has since entered into social housing lease agreements with the applicants (58677/11 and 15320/13). In two cases the applicants succeeded in pursuing civil claims against various parties implicated in the illegalities (47724/07 and 2920/13), although the orders they obtained have not been enforced.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), the applicants complained about their deprivation of title and (where applicable) their evictions.

Violation of Article 1 of Protocol No. 1 – in respect of Ms Pchelintseva, Ms Dedik, Ms O. Polevoda, Ms Dergacheva and Mr F. Karim

Just satisfaction: The Court held that Russia should ensure, by appropriate means, full restitution of the applicants' title to the flats and the annulment of their eviction orders or, in the alternative that Ms Pchelintseva, Ms Dedik, Ms O. Polevoda, Ms Dergacheva and Mr F. Karim receive an equivalent flat. The Court further awarded to these applicants the following amounts: EUR 5,000 each to Ms Pchelintseva, Ms Dedik, Ms Dergacheva, Ms O. Polevoda, and Mr F. Karim in respect of non-pecuniary damage; and EUR 2,075 each to Ms Pchelintseva, Ms Polevoda and Mr Karim, and EUR 2,093 to Ms Dedik in respect of costs and expenses.

Ponyayeva and Others v. Russia (no. 63508/11)

The applicants, Nataliya Ponyayeva, Svetlana Oleneva and Anastasiya Oleneva, (a mother and her two daughters), are Russian nationals who were born in 1978, 2006 and 2000 respectively and live in Moscow. The case concerned a dispute over the ownership of a property.

In 2004, several persons obtained power of attorney for Ol., who had been committed to a psychiatric institution. Ol. had resided in a flat in Ulitsa Svobody, Moscow, as a tenant under a social housing agreement. One of the persons with power of attorney for Ol. obtained for him the title of the flat, under a privatisation scheme. Three weeks later, the flat was sold on to B. and K., and their

title to the flat was registered with the Moscow City Department of the Federal Registration Service. In March 2006 B. and K. sold the flat on to Ms Ponyayeva.

Two months later, the inter-district prosecutor brought a civil claim on behalf of Ol. and the Department of Housing of the City of Moscow, seeking invalidation of the privatisation and subsequent transactions in respect of the flat. In July 2010, the District Court granted the claim. The court held that the signatures establishing power of attorney for Ol. had been forged; that the City of Moscow's ownership of the flat should be restored; and that, though she had purchased the flat in good faith, Ms Ponyayeva's title to the property was annulled. The court also recognised Ol.'s right to reside in the flat, and ordered the applicants' eviction. The applicants appealed the judgment, but the ruling was upheld by the Moscow City Court on 6 April 2011.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), the applicants complained that they had been unlawfully deprived of their property.

Violation of Article 1 of Protocol No. 1 – in respect of Ms Ponyayeva

Just satisfaction: The Court held that Russia should ensure, by appropriate means, full restitution of Ms Ponyayeva's title to the flat and the annulment of her eviction orders or, in the alternative, that she receive an equivalent flat. The Court further awarded EUR 5,000 to Ms Ponyayeva for non-pecuniary damage and EUR 2,100 for of costs and expenses.

Lelyuk v. Ukraine (no. 24037/08)

The applicant, Dmytro Lelyuk, is a Ukrainian national who was born in 1979 and lives in Donetsk (Ukraine). The case concerned the allegedly unlawful detention of Mr Lelyuk, and his subsequent attempt to claim compensation in the Ukrainian courts.

In May 1997 Mr Lelyuk was found guilty of robbery by Donetsk Kirovskyy District Court, and sentenced to three years' imprisonment. However, in July 1997 he was granted amnesty by the Donetsk Regional Court of Appeal.

In September 1997 the Donetsk Regional Court of Appeal then quashed its earlier decision to grant amnesty, and upheld Mr Lelyuk's conviction. However, Mr Lelychuk only became aware of the Regional Appeal Court's second decision after his arrest in February 2003.

The District Court's judgment was sent to the local police. However, they made no attempt to contact Mr Lelyuk for over five years. Nevertheless, in February 2003 the Kirovskyy police arrested Mr Lelyuk at his home, and brought him to Dzerzhynsk prison to serve his sentence. The police did not check whether the sentence was time-barred before taking measures for its enforcement.

Soon after his arrest, Mr Lelyuk lodged a complaint with the Kirovskyy Court. In March 2006, the court found in Mr Lelyuk's favour, holding that both his arrest and detention had been unlawful. In particular, the court held that Mr Lelyuk had not been informed of the decision that had quashed the amnesty, and that his sentence had become time-barred by the time that it was enforced. The ruling was upheld by the Regional Court later that year. Both courts held that they did not need to respond to Mr Lelyuk's request for release, because he had already been released on parole in May 2005.

Mr Lelyuk lodged a claim for damages against the Ministry of Interior, on account of his unlawful arrest and detention. However, his claim was rejected by the Kirovskyy Court in April 2007. The court held that Mr Lelyuk had not been deprived of his liberty unlawfully, on the basis that he had never appealed against the judgments that were made against him in 1997, and because he had been released without any conclusion about his guilt. The Regional Court upheld the decision three months later.

Mr Lelyuk's lawyer appealed to the Supreme Court. However, the court refused to examine Mr Lelyuk's case on 30 October 2007, on the grounds that he had refused to supply a power of attorney after this had been requested by the court. Mr Lelyuk maintains that he did in fact supply the power of attorney, in accordance with the court's instructions.

Relying in particular on Article 5 §§ 1 and 5 (right to liberty and security), Mr Lelyuk complained that he had been unlawfully deprived of his liberty and that he had not had an enforceable right to compensation for this deprivation.

Violation of Article 5 § 1

Violation of Article 5 § 5

Just satisfaction: Mr Lelyuk did not submit a claim for just satisfaction.

Loboda v. Ukraine (no. 8865/06)

The applicant, Grygoriy Loboda, is a Ukrainian national who was born in 1952 and lives in Borzna (Ukraine). The case concerned his investigation and trial for fraud.

Mr Loboda was a shareholder in a company, D.. In early 2001, law enforcement authorities opened an investigation into Mr Loboda for suspected misappropriation of D.'s property.

On 6 June 2001, police called Mr Loboda in for questioning as a witness (not as a defendant). He was not permitted to have a lawyer present. At the interview, Mr Loboda told police that he had received 20 concrete slabs from another company, K., in settlement of a debt owed to D., and had used them on his farm with the knowledge of the directors of both K. and D.. After Mr Loboda was officially indicted for fraudulent appropriation of the slabs, he refused to make any further statement. He presented the authorities with a recent agreement between himself and the directors of both D. and K., which stated that the transfer of the slabs to him had been made to settle both a debt owed from K. to D., and also a debt owed from D. to his own farm.

In August 2003 the Borzhnianskiy District Court found Mr Loboda guilty of fraudulent appropriation of the concrete. However, it also issued a separate ruling criticising the police's decision to question Mr Loboda as a witness on 6 June 2001, and stating that that evidence had not been taken into account by the court. Mr Loboda lodged two successive appeals against his conviction, but these were rejected by both the Chernigiv Regional Court of Appeal and the Supreme Court – the final decision being issued on 28 October 2004. The Supreme Court considered the case without Mr Loboda or his lawyer being present, but in the presence of the prosecutor.

Relying on Article 6 § 1 (right to a fair trial), Mr Loboda complained in particular that the appeal before the Supreme Court had breached the principle of equality of arms, because the cassation review had taken place in his absence, but in the presence of the prosecutor.

Violation of Article 6 § 1

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Loboda.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.