

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

THIRD SECTION

CASE OF KHAZIYEVA v. RUSSIA

(Application no. 4877/15)

JUDGMENT

STRASBOURG

26 September 2017

This judgment is final but it may be subject to editorial revision.



In the case of Khaziyeva v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 5 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 4877/15) 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 Nazilya Khamzinovna Khaziyeva ("the applicant"), on 30 December 2014.

2. The applicant was represented by Ms A. Maralyan, a lawyer admitted to practice in Russia. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 28 August 2015 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Ufa.

A. Transactions with the flat later purchased by the applicant

5. On 26 December 2006 a new block of flats was commissioned by the Ufa Town Administration.

6. On 30 September 2010 the Ordzhonikidzevskiy District Court of Ufa recognised T.'s title to the flat at 66/2-54, Ulitsa Kommunarov, Ufa.

7. On 28 October 2010 T. sold the flat to M. The transaction and M.'s title to the flat were registered by the state registration authorities.

8. On 13 January 2011 M. sold the flat to the applicant. The transaction and the applicant's title to the flat were registered by the state registration authorities.

B. Annulment of the applicant's title to the flat

9. On an unspecified date the Housing Foundation of the Republic of Bashkortostan brought a civil claim seeking, *inter alia*, the invalidation of the applicant's title to the flat and eviction.

10. On 23 July 2013 the District Court granted the claims in full. The court established that the judgment of 30 September 2010 had been forged and that T. had died in 2008 and could not have been a party to the relevant proceedings. The court refused to recognise that the applicant had purchased the flat in good faith for her failure to check the authenticity of the judgment of 30 September 2010. It further took into account that M. had sold the flat to the applicant for 180,000 Russian roubles (RUB) while she had bought it for RUB 190,000.

11. On 17 November 2013 the Supreme Court of the Republic of Bashkortostan upheld the judgment of 23 July 2013 on appeal.

12. On 4 April 2014 the Supreme Court rejected the applicant's cassation appeal.

13. On 9 July 2014 the Supreme Court of the Russian Federation rejected the applicant's second cassation appeal.

14. According to the Government, the eviction order was not enforced and the applicant continues to reside in the flat.

THE LAW

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

15. The applicant complained that she had been deprived of her flat in violation of Article 1 of Protocol No. 1 to the Convention, which provides, in so far as relevant, 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."

16. The Government contested that argument. While they acknowledged that the invalidation of the applicant's title to the flat had constituted an interference with her possessions, they considered that such interference had been in strict compliance with the requirements set forth in Article 1 of Protocol No. 1. It had been in accordance with law and pursued the legitimate aim of providing affordable housing to people on low incomes. Lastly, they submitted that the interference had been proportionate with the legitimate aim pursued.

17. Relying on the Court's findings in the cases of *Gladysheva* and *Stolyarova* (see *Gladysheva v. Russia*, no. 7097/10, 6 December 2011, and *Stolyarova v. Russia*, no. 15711/13, 29 January 2015) the applicant maintained her complaint.

A. Admissibility

18. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. The Court observes that it is common ground between the parties that the flat constituted the applicant's possession and that the revocation of her title to it amounted to an interference with her rights set out in Article 1 of Protocol No. 1 to the Convention. The Court sees no reason to hold otherwise. It further considers that it may dispense with resolving the issues of the lawfulness and legitimate aim of such interference as it, in any event, fell short of the requirement of proportionality, as will be set out below.

20. The Court notes that the flat left the State's "possession" as a result of the fraud committed by an unidentified perpetrator who had forged the judgment confirming T.'s title to the flat. The Court observes that, when an application for state registration of T.'s title to the flat and its subsequent sale to M. was lodged with the state registration authorities, it was encumbered on the latter to check the authenticity of the judgment confirming T.'s title to the flat and the legitimacy of each subsequent transaction with the flat (compare *Pchelintseva and Others v. Russia*, nos. 47724/07 and 4 others, § 98, 17 November 2016). The Government, however, did not proffer any explanation, as to why the state registration authorities had failed to detect the fraud, had accepted the forged judgment as authentic and had approved the ensuing transactions with the flat. In such circumstances, the Court cannot accept the argument advanced by the national judicial authorities that the applicant could not be considered a *bona fide* purchaser of the flat for her failure to have doubts as to the

authenticity of the judgment checked and accepted by the state registration authorities. Nor did the Government or the domestic courts explain why the frequency of the transactions with the flat and its purchase price should have been a red flag for the applicant.

21. The Court considers, accordingly, that, in view of the said omissions on the part of the authorities in procedures specially designed to prevent fraud in real-property transactions, the judicial authorities' decision to recover the flat from the applicant, without payment of compensation or provision of replacement housing, hardly seems justified. The Court reiterates that mistakes or errors on the part of State authorities should serve to benefit the persons affected. In other words, the consequences of any mistake made by a State authority must be borne by the State and errors must not be remedied at the expense of the individual concerned (see *Stolyarova*, cited above, § 49). The Court therefore concludes that the forfeiture of the title to the flat by the applicant, in the circumstances of the case, placed a disproportionate and excessive burden on her. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The applicant complained that her eviction had amounted to a violation of the right to respect for home. They relied on Article 8 of the Convention, which reads 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."

23. The Government admitted that the applicant's eviction had constituted an inference with her right set out in Article 8 of the Convention. They considered, however, that such interference had been lawful, had pursued the legitimate aim of protecting the rights of persons eligible to social housing and had been proportionate to that aim. Lastly, the Government submitted that the flat had not been recovered by the State and the applicant continued to reside there.

24. The applicant maintained her complaint.

25. The Court notes that the applicant's complaint about her eviction is linked to the one examined above and must therefore likewise be declared admissible. However, having regard to the findings relating to Article 1 of Protocol No. 1 to the Convention (see 19-21 above), the fact that the eviction order has not been enforced to date and that the applicant continues to reside in the flat, the Court considers that it is not necessary to examine

the same facts from the standpoint of Article 8 of the Convention (compare *Pchelintseva and Others*, cited above, §§ 102-05).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 3,266,000 Russian roubles (RUB) and 10,0000 euros (EUR) in respect of pecuniary and non-pecuniary damage respectively.

28. The Government considered the applicant's claims unsubstantiated and unreasonable.

29. The Court takes into account that in the present case it has found a violation of the applicant's rights guaranteed by Article 1 of Protocol No. 1 to the Convention. It considers that there is a clear link between the violation found and the damage caused to the applicant.

30. The Court reiterates that, normally, the priority under Article 41 of the Convention is *restitutio in integrum*, as the respondent State is expected to make all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach (see, among other authorities, *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85; *Tchitchinadze v. Georgia*, no. 18156/05, § 69, 27 May 2010; *Fener Rum Patrikliği (Ecumenical Patriarchy) v. Turkey* (just satisfaction), no. 14340/05, § 35, 15 June 2010, § 198; and *Stoycheva v. Bulgaria*, no. 43590/04, 19 July 2011). Consequently, having due regard to its findings in the instant case and to the fact that the applicant did not receive compensation for loss of title to the flat in the domestic proceedings, the Court considers that the most appropriate form of redress would be to restore her title to the flat and to annul the eviction order. Thus, the applicant would be put as far as possible in a situation equivalent to the one in which she would have been had there not been a breach of Article 1 of Protocol No. 1 to the Convention (compare, *Gladysheva*, cited above, § 106).

31. In addition, the Court has no doubt that the applicant has suffered distress and frustration on account of the deprivation of property. Making its assessment on an equitable basis, the Court awards to the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

32. The applicant also claimed RUB 40,000 for the costs and expenses incurred before the domestic courts and RUB 2,200 (assessment of the current value of the flat) and EUR 2,650 (legal fee) for those incurred before the Court. She requested that the amount in respect of the legal fee for the proceedings before the Court should be paid directly into the bank account of her representative.

33. The Government considered that the applicant's claims in respect of the costs and expenses incurred before the domestic courts should be dismissed as irrelevant to the proceedings before the Court. As regards the remainder of the claims, the Government submitted that they should be dismissed as the applicant had not yet made any payment to her representative.

34. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,403 covering costs under all heads. EUR 553 of this sum is to be paid directly to the applicant and EUR 850 into the bank account of Ms A. Maralyan, a lawyer who represented her in the proceedings before the Court.

C. Default interest

35. The Court considers it appropriate that the default interest rate 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. *Declares* the application admissible;

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

3. *Holds* that there is no need to examine the complaint under Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State shall ensure, by appropriate means, full restitution of the applicant's title to the flat and the annulment of the eviction order;

(b) that the respondent State is to pay to the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,403 (one thousand four hundred and three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses. EUR 553 of this sum is to be paid directly to the applicant and EUR 850 into the bank account of Ms A. Maralyan, a lawyer who represented her in the proceedings before the Court;

(c) 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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President