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

THIRD SECTION

DECISION

Application no. 7721/06
Nikolay Nikolayevich KALANDADZE
against Russia

The European Court of Human Rights (Third Section), sitting on 5 September 2017 as a Committee composed of:

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

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Nikolay Nikolayevich Kalandadze, is a Russian national, who was born in 1964 and lives in Moscow.

The Russian Government ("the Government") were represented by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

A. The circumstances of the case

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

On 20 July 1995 the applicant bought a flat from B. According to the contract B. reserved his right to live in the above flat.

From 24 July 1995 to 24 March 2000 B. served his sentence in prison. When he returned from prison, the applicant did not let him move in the flat.

On 27 June 2001 B. sued the applicant seeking to cancel the sale. On 29 November 2002 the Izmaylov District Court of Moscow declared the transaction void for the applicant's failure to comply with its terms. On 20 February 2003 the Moscow City Court upheld the judgment on appeal.

On 29 May 2003 B. instituted second set of proceedings challenging the registration of the applicant's title to the flat. On 24 November 2004 the district court dismissed his claim as time-barred. The court in particular found that B. had become aware about his right's infringement on 24 March 2000. He thus missed three-year time-limit provided by the domestic law. On 4 March 2005 the city court upheld the judgment on appeal.

On 18 August 2005, following B.'s request, the Presidium of the Moscow City Court quashed the judgment of 24 November 2004 and the decision of 4 March 2005 by way of supervisory review and granted B.'s claim.

B. Relevant domestic law

Article 223 § 1 of the Civil Code of the Russian Federation ("the Civil Code") provides that the right of ownership arise for the acquirer of the property from the moment of its transfer, unless otherwise stipulated by the law or by the contract.

Article 223 § 2 of the Civil Code establishes that where the transfer of property is subject to state registration, the purchaser acquires title from the moment of such registration.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about the quashing by way of supervisory review of the judgment in his favour. He further complained under Article 6 § 1 about the excessive length of the proceedings. Lastly the applicant complained about the alleged unfairness of the proceedings which ended on 20 February 2003.

THE LAW

The Government submitted that the applicant could not have had any right over the disputed property by virtue of the Izmaylovskiy District Court's judgment of 29 November 2002 declaring the property purchase contract null and void.

The applicant maintained his claims.

The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is independent of the formal classifications in domestic law: the issue that needs to be examined is whether the circumstances of the case, considered as a whole, may be regarded as having conferred on the applicant title to a substantive interest protected by that provision (see, among many other authorities, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 124, ECHR 2004-XII).

The Court observes that the applicant in the instant case settled in the flat after buying it from B. under the conditions and in accordance with the procedure provided for by law. He was recognised as its lawful owner by the State, including the property registration authorities, as well as housing and residence registration bodies. However, on 29 November 2002 the purchase contract of the flat, which was a legal ground to possess a flat, was annulled. From that moment on the applicant could not have had considered as a legal owner of the flat. The Court notes that unlike in other cases, where the applicants continue to possess the property and be considered as a legal owner thereof without proper registration of the title (see, for example, *Gubiyev v. Russia*, no. 29309/03, §§ 61-63, 19 July 2011), in the instant case the legal ground of the applicant's title, that is the purchase contract of the flat, was challenged and subsequently annulled. Although the applicant's title continued to be registered in the cadastre, the Court is not convinced that the mere fact that the property rights to the flat were remained registered under domestic law should enable it to conclude, that the applicant had a possession within the meaning of Article 1 of Protocol No. 1 to the Convention (see by way of contrast *Gladysheva v. Russia*, no. 7097/10, § 69, 6 December 2011).

Having regard to the above findings the Court concludes that the applicant by the time of the quashing of the judgment in his favour on 18 August 2005 did not have a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

It follows that this complaint is incompatible *ratione materiae* and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

Having regard to its finding above, the Court considers that the applicant's complaint about the same facts under Article 6 § 1 of the Convention does not require a separate examination.

As regards the applicant's complaint under Article 6 § 1 of the Convention about the excessive length of the proceedings the Court notes that the applicant was a party to two separate sets of proceedings and their length cannot be considered cumulatively for the purposes of Article 6 § 1 of the Convention. The proceedings in question lasted (1) less than 1 year and 8 months, and (2) a little over 1 year and 9 months (see, *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004).

It follows that this complaint must be rejected under Article 35 §§ 3 (a) and 4 of the Convention as manifestly ill-founded.

As for the applicant's complaint about the alleged unfairness of the proceedings which ended on 20 February 2003 the Court considers that the applicant submitted his application to the Court on 13 February 2006 that is out of the six-month time-limit. It thus must be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares inadmissible the application.

Done in English and notified in writing on 28 September 2017.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President