CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 16153/03
by Vladimir LAZAREV and Pavel LAZAREV
against Russia

The European Court of Human Rights (First Section), sitting on 24 November 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. NIELSEN, *Section Registrar,*

Having regard to the above application lodged on 30 April 2003,

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

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Vladimir Ivanovich Lazarev and Mr Pavel Vladimirovich Lazarev, are Russian nationals who were born in 1955 and 1992 respectively and live in Moscow. The first applicant is the father and legal representative of the second applicant. The respondent Government were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

Both applicants live, together with the second applicant's mother and his elder brother Vladimir (born in 1983), in a flat in Moscow which is not the subject of the present application ("the old flat"). Under the terms of a private ownership certificate dated 26 October 1998, the second applicant is the sole legal owner of the old flat.

In March 1999 the first applicant invested money in the construction of a block of flats in Moscow. Once the work was completed, the first applicant registered title to a flat in that block ("the new flat") in his own name and those of his two sons, Pavel (the second applicant) and Vladimir, in equal shares.

In 2001 the applicant decided to sell the new flat and applied for clearance of the transaction to the guardianship and wardship department of Lefortovo District Council in south-eastern Moscow (*отдел опеки и попечительства районной управы «Лефортово» ЮВАО г. Москвы*, "the guardianship authority").

On 9 January 2002 a deputy head of Lefortovo District Council informed the applicant that clearance would not be given because the sale "would result in a reduction of your under-age son's property" and it would therefore be "not in the interests of the minor". The applicant appealed to a court.

On 17 April 2002 the Lefortovskiy District Court of Moscow gave judgment. It found that Article 60 § 3 of the Family Code did not apply because the new flat had not been (formally) donated to the second applicant, nor had it been inherited by him or acquired at his expense. The new flat had been purchased by the first applicant, who had invested his and his wife's savings. Having regard to the fact that the second applicant was also the legal owner of the flat where the applicants' family lived, the court found that the refusal by the guardianship authority had not been justified.

On 10 May 2002 the Moscow City Court, on an appeal by the guardianship authority, quashed the judgment and remitted the case to the District Court. It pointed out that an interest in the new flat had been duly registered in the second applicant's name and that the District Court had failed to verify what compensation would be made available to the second applicant following the sale of his share.

On 21 October 2002 the Lefortovskiy District Court of Moscow delivered a new judgment and dismissed the complaint on the following grounds:

> "[The first applicant] confirmed before the court that one-third of [the new flat] had been transferred to [the second applicant] voluntarily. Accordingly, the sale of the flat, including [the second applicant's share], would result in a reduction of his property.

> The court cannot take into account the [first applicant's] argument that the sale of [the new flat] would not impair the minor's rights because the minor is the legal owner of the [old flat]. The minor had acquired the right of ownership over the [old flat] in 1998, and in 2000 he acquired the right of ownership to one-third of the [new flat]. As by that time he already had title to the [old flat], the sale of one-third of the [new flat] would entail a reduction of the minor's property, which is not permitted under the applicable legislation. Pursuant to Article 37 of the Civil Code and Article 60 of the Family Code, the under-age child's property may be disposed of only in his interests.
>
> Pursuant to letter no. 244/26-5 sent by the Ministry of Education (on 9 June 1999), the sale of residential premises must in all cases be accompanied by the purchase of residential premises in the minor's name, if he is to lose his share of the property. [The first applicant] did not produce any evidence showing how [the second applicant] would be compensated for the loss of one-third of the [new flat]."

On 18 November 2002 the Moscow City Court upheld the judgment of 21 October 2002. It endorsed the same line of reasoning: the transaction would result in a reduction in the minor's property and was therefore not in the minor's interests.

B. Relevant domestic law and practice

1. Family Code of the Russian Federation of 29 December 1995

Article 60 § 3 provides that a child acquires title to, *inter alia*, the property donated to him, inherited by him or acquired at his expense. The child's rights to dispose of his property are governed by Articles 26 and 28 of the Civil Code. The parents may dispose of the child's property in accordance with the rules set out in Article 37 of the Civil Code.

Article 60 § 4 provides that the child's parents have no title to the child's property.

2. Civil Code of the Russian Federation of 30 November 1994

Article 26 provides that, with certain exceptions concerning small-scale, routine transactions, transactions entered into by minors aged 14 to 18 are valid only if approved by their legal representatives, in other words their parents, adoptive parents or guardians.

Article 28 provides that transactions on behalf of a minor under fourteen years of age must be carried out by his or her parents, adoptive parents or guardians. Transactions carried out by legal representatives of the minor in respect of the minor's property are governed by Article 37 §§ 2 and 3.

Article 37 § 2 provides that a guardian may not alienate his charge's property or perform any transaction resulting in a reduction of the charge's property without obtaining preliminary clearance of the planned transaction from the guardianship and wardship authority. Article 34 § 1 designates the

local self-government bodies which are responsible for guardianship and wardship matters.

3. Letter from the Ministry of Education

On 9 June 1999 the Ministry of Education of the Russian Federation sent a letter (no. 244/26-5) entitled "On additional measures for the protection of minors' right to housing" to all guardianship and wardship departments. The relevant part of the letter reads as follows:

> "If a guardianship and wardship authority issues advance clearance of a transaction which involves the sale of a flat followed by the subsequent purchase of a flat, the operative part of the clearance (resolution) must either specify that the transaction is to be carried out subject to the condition that the new flat will be purchased in the minor's name if the minor loses his interest in the [sold] property, or indicate the address where the minor is to live if the minor is simply a member of the legal owner's family."

COMPLAINTS

The applicants complained under Article 1 of Protocol No. 1 and Articles 17 and 18 of the Convention that the refusal of clearance by the State guardianship authority had amounted to control of the use of their property and that such control had not been in the general interest. The planned sale would have been beneficial for the family finances and would have furthered the interests of each family member, especially taking into account the fact that the second applicant was the legal owner of another flat and that his right to housing would have suffered no impairment.

The applicants alleged that the State had unlawfully interfered with their family life in breach of Article 8 of the Convention.

THE LAW

1. The applicants complained of unjustified control of the use of their property, in breach of Article 1 of Protocol No. 1 and Articles 17 and 18 of the Convention. The Court will examine this complaint under Article 1 of Protocol No. 1, which provides:

> "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."

The Government submitted that the sale of the flat, one-third of which was owned by the second applicant, was possible only once clearance had been given by the guardianship authority. The first applicant should have proved that the sale of the flat would not impair the rights of his under-age son, which he had failed to do. In the circumstances, the guardianship authority had rightly withheld clearance of the sale. The interference had therefore been lawful. It had also been necessary for the protection of the interests of the second applicant and had not imposed an excessive burden on anyone involved.

The applicants responded that, in refusing clearance of the sale, the domestic authorities appeared to have proceeded from the presumption that the parents intended to defraud their own child. However, the parents had not been stripped of their parental rights, nor had they been declared legally incapable. In so acting, the domestic authorities had infringed the first applicant's right to be presumed innocent, as they had required him to adduce evidence showing that he had no intention of defrauding his own son. Such a requirement had no legal basis and was arbitrary. It was also offensive because it implied the authorities' involvement in the planning of the family budget. Furthermore, the refusal had imposed an excessive burden on the family. The money invested in the new flat had been "frozen" and they could not undertake renovation of the old flat.

The applicants complained that they had been prevented by the State authorities from alienating the property, of which they had been the legal owners. The interference falls to be examined under the so-called "third rule" of Article 1 of Protocol No. 1, that is, "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" (see *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V). Admittedly, the domestic authorities' decision concerned only the second applicant's interest in the new flat; the first applicant's right to dispose of his interest in the flat was not restricted. However, it is obvious that the market value of the first applicant's share, if it were put up for sale on its own or even together with the elder son's part, would be significantly lower than if the entire flat were to be sold. Nevertheless, the Court need not inquire further into the first applicant's status as a victim of the alleged violation because the complaint is, in any event, inadmissible for the following reasons.

It is common ground between the parties that the impugned restriction was imposed in accordance with the procedure established by domestic law, notably Articles 28 and 37 of the Civil Code, which vested the discretionary

power of giving or withholding consent to a transaction affecting the property of a child in the State guardianship authority.

The restriction was imposed in pursuit of a general interest, namely the protection of children's right to housing. In the particular context of the Russian real-estate market, where children and elderly people have been the prime targets of fraudulent transactions involving their flats, the interest was legitimate and worthy of enhanced protection. The guardianship authority was called upon to ensure that children's financial interests and right to housing were not harmed through malevolent or negligent actions on the part of their legal representatives, including their natural parents.

The Court has further to ascertain that there was a reasonable relationship of proportionality between the contested restriction and the legitimate aim pursued or, in other words, that an individual and excessive burden was not imposed on the applicants (see *Natalya Gerasimova v. Russia* (dec.), no. 24077/02, 25 March 2004).

It is relevant for the assessment of proportionality that the situation complained of was brought about by the first applicant himself. At the time of the acquisition of the new flat, especially if he was contemplating selling it subsequently, he should have considered the legal implications of his decision to register a share of the flat in the name of his seven-year-old son. It has not been claimed that the relevant provisions of the Family or Civil Code were not accessible or that their application was not sufficiently foreseeable. If necessary, the first applicant could have sought appropriate legal advice.

Once an interest in the new flat had been transferred into the second applicant's ownership, it became part of his possessions. The requirement to obtain clearance from the guardianship authority for alienation of the minor's property applied irrespective of the basis on which such property had been acquired, whether for a consideration or free of charge. Hence, the finding of the domestic courts that the consent of the guardianship authority had been required in the circumstances of the present case was neither arbitrary nor discriminatory.

The Court cannot agree with the first applicant's claim that the domestic authorities withheld consent because they presumed bad faith on his part. His ability to act in the best interests of his children, and to manage the family budget in the way he considered most efficient was not disputed or questioned. The primary concern of the national authorities was to safeguard the possessions of the second applicant to the maximum extent possible until he came of age and was able to manage his property for himself.

It is certainly possible that by selling the new flat and re-investing the proceeds wisely, the first applicant could have realised a considerable profit which would have ultimately benefited the entire family, including the second applicant. However, in that case the second applicant would have

lost formal title to the possessions he had once had, without there being a corresponding legal obligation on the first applicant to repay an appropriate part of the realised investment to him.

The Court notes that domestic law did not lay down any specific arrangements for safeguarding the financial interests of minor children in the event of alienation of their property, leaving unfettered discretion in that matter to the parents and affording a great degree of flexibility to the national authorities. It seems peculiar that, despite having had ample opportunity to do so, the first applicant did not at any point in the domestic proceedings suggest any measure for the protection of the second applicant's interests following the sale of his share of the flat. Such measures could have included, in particular, crediting the proceeds from the sale to the bank account established in the second applicant's name, an escrow account or any other legal arrangement where the second applicant was the designated beneficiary.

Finally, it is also relevant for the assessment of proportionality that the impugned restriction was not of unlimited duration and that the clearance requirement applied only until the second applicant reached the age of fourteen. In these circumstances, the Court is not persuaded by the argument that an individual and excessive burden was imposed on either the first or the second applicant.

Having regard to the above considerations, the Court is satisfied that the decisions of the domestic authorities have struck a fair balance between the general interest of the community and the requirements of the protection of the individual's fundamental rights.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicants further complained about an unjustified interference with their family life under Article 8 of the Convention, which provides:

> "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."

Even assuming that the decisions of the domestic authorities relating to the use of property owned by the applicants amounted to an interference with their right to respect for their private life, the Court reiterates that its task is not to substitute itself for the domestic authorities, who have the benefit of direct contact with all the persons concerned, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation. Article 8 requires that the domestic

authorities strike a fair balance between the interests involved and that, in that balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents (see *Sommerfeld v. Germany* [GC], no. 31871/96, §§ 62-64, ECHR 2003-VIII, and *Sahin v. Germany* [GC], no. 30943/96, §§ 64-66, ECHR 2003-VIII).

The Court refers to its above findings that the interference complained of was prescribed by law and proportionate to the legitimate aim pursued, notably the protection of the rights of the second applicant. It sees no reason to reach a different conclusion under Article 8 of the Convention.

It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President