CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 24077/02
by Natalya GERASIMOVA
against Russia

The European Court of Human Rights (First Section), sitting on 25 March 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 21 May 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Natalya Nikolayevna Gerasimova, is a Russian national who was born in 1942 and lives in Moscow.

A. The circumstances of the case

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

Since 1985 the applicant has been living in a two-room flat on the Molodtsova Street in the Yuzhnoye Medvedkovo area of the North-Eastern Administrative District of Moscow. In early 1990s the flat was privatised. In 1993 the applicant inherited the title to the flat from her mother.

1. Planned resettlement of the applicant

In June 2001 the applicant was advised by the Housing Policy Department of the North-Eastern Administrative District Council (*Департамент жилищной политики Префектуры СВАО*) that the building where her flat was located had been scheduled for demolition in September 2001 within the framework of a city-wide programme for reconstruction of Soviet-era housing. The applicant was offered a flat on the Izyumskaya Street in the Yuzhnoye Butovo area of the South-Western Administrative District of Moscow.

The applicant refused to move to the Yuzhnoye Butovo area citing a number of reasons: she alleged, in particular, that the area was poorly connected to the city centre, the flat offered had no telephone line, the social infrastructure in that recently built neighbourhood was lacking, and, finally, the area was not environmentally safe. The applicant insisted that her building should stand or, alternatively, that she should be given a flat in the same neighbourhood.

2. Eviction proceedings against the applicant

On 1 August 2001 the North-Eastern Administrative District Council lodged a civil action for eviction of the applicant from her flat and her resettlement to the Yuzhnoye Butovo area.

On 27 September 2001 the Babushkinskiy District Court of Moscow granted the Council's action. The court held that the decision to demolish the applicant's current dwelling had been made lawfully in the framework of the reconstruction programme approved by the Moscow City Government. According to the court, the housing law required that an evicted person should be granted a flat of not lesser value. It established that the applicant's flat on the Molodtsova Street had the book value of 182,814.80 Russian roubles (RUR), while the book value of the flat on the Izyumskaya Street was RUR 540,416.66. Furthermore, the applicant's "old" flat measured 46.6 square metres and she was granted a flat of 54.4 square metres, so the housing law had been complied with. The court ordered the applicant's from her flat on the Molodtsova Street, removed her title to that flat and transferred it to the Council's account. It confirmed the applicant's entitlement to the flat on the Izyumskaya Street.

The applicant appealed to the Moscow City Court. In her grounds of appeal she submitted, in particular, that she had not been given a choice between flats in various administrative districts of Moscow, that the

Moscow Government had planned to build several new blocks of flats in her old neighbourhood, but they did not offer her a flat in one of those blocks, that she would be unable to go to work because the new area would be too far. She also challenged the valuation of the flats which the District Court relied on and stated that "an independent real estate agency located outside the North-Eastern Administrative District estimated the market value of my flat on the Molodtsova Street to be 4-5 thousand US dollars more than that of the flat on the Izyumskaya Street". The applicant, however, did not provide any documents supporting this statement.

On 6 December 2001 the Civil Chamber of the Moscow City Court upheld the judgment of 27 September 2001. The City Court confirmed that the housing laws required an evicted owner to be awarded title to a flat of not lesser value and that there was no requirement to provide several options to choose from. The court established that the applicable requirements had been complied with because the surface and the book value of the new flat were greater that those of the old one. As to the applicant's arguments about the incorrect evaluation, the court dismissed her statements as unsubstantiated with any documents. Finally, the court held that her complaints about the travel distance to her work place were not relevant to the quality of the provided flat as such.

On 24 January 2002 the enforcement proceedings were opened.

On 29 January 2002 the Moscow City Court refused the applicant's request to lodge an application for supervisory review of the judgments of 27 September and 6 December 2001.

On 30 and 31 March and 1 and 2 April 2002 a court bailiff unsuccessfully attempted to contact the applicant to serve on her an eviction notice.

On 2 April 2002 in the afternoon the applicant was at home; the court bailiffs loaded the applicant's belongings onto a lorry and transported them to the flat on the Izyumskaya Street.

3. Proceedings for registration of the applicant's title

On an unspecified date the applicant applied to the Babushkinskiy District Court for a clarification of the judgment of 27 September 2001. She submitted that the title had not been transferred to her because the local council requested her to pay for the increased living surface and advance the fee for registration of the title.

On 26 August 2002 the Babushkinskiy District Court delivered a procedural order (*определение*). The court held that, pursuant to Article 49-3 of the Housing Code, if the eviction was required because of demolition of a building, the registration fees were to be payable by the party who sued for eviction, i.e. the North-Eastern District Council in that case. The registration authority, on the other hand, could not require the applicant to pay for the difference in the living surface because this claim

had not been a matter of judicial determination in the framework of the eviction proceedings which culminated in the court's award of the title to the flat on the Izyumskaya Street to the applicant. The court ordered the Council to bear the title registration fee.

On 5 September 2002 the order became final.

On 10 April 2003 a court bailiff requested the Municipal Housing Department of the North-Eastern Administrative District Council to report why the judgment of 27 September 2001, as clarified on 26 August 2002, remained unenforced in the part concerning transfer of the title to the Izyumskaya Street flat to the applicant.

On 7 May 2003 the Municipal Housing Department responded to the bailiff that the judgment had not imposed the duty to transfer the title on the Department and that it was not competent to act on behalf of the North-Eastern Administrative District Council.

As of 2 June 2003 this part of the judgment remained unenforced.

B. Relevant domestic law

On 6 July 1999 the Moscow City Government adopted Resolution no. 608 "On the tasks of comprehensive reconstruction, in the period to 2010, of areas where five-storey houses were built in the first period of industrial house-building". The Resolution provided that the entire neighbourhoods occupied with substandard five-storey houses built in the Khrushchev era (so-called "Khrushchev housing", "*хрущёвки*") were to be demolished (at a rate of no less than 700,000 square metres a year) and new modern houses were to be built (at a rate of no less than 1 million square metres a year). The city budget allocated money for demolition, construction and resettlement of residents. The schedule for demolition and resettlement was to be determined by *préfets* of administrative districts of Moscow.

On 22 March 2001 the *Préfet* of the North-Eastern Administrative District of Moscow issued Resolution no. 638 "On suspension of housing transactions in five-storey and dilapidated houses scheduled for resettlement and demolition in connection with the reconstruction programme in the North-Eastern Administrative District". The Resolution indicated that house no. 3 on the Molodtsova street (where the applicant lived) was scheduled for demolition, and its residents for resettlement, in the framework of the large-scale city reconstruction programme. It also provided that from that moment no transactions with the flats could be carried out.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that she was offended and humiliated because her flat had been taken away from her. She submits that in the new neighbourhood she has limited access to medical assistance and restricted work opportunities. She alleges that the proceedings before the domestic courts impaired her health and caused mental anguish. Finally, she considers that the impossibility to rent out her old flat between July 2001 and April 2002 and to use the potential rent payments for the purchase of medicine was a torture.

2. The applicant complains under Article 4 § 2 of the Convention that she was forced to pack, unpack and move around the flat heavy furniture and boxes.

3. The applicant complains under Article 6 § 1 of the Convention about the allegedly incorrect interpretation of applicable laws by the domestic courts. She submits that the domestic courts failed to assess fairly the value of the replacement flat as opposed to her old flat.

4. The applicant complains under Article 1 of Protocol No. 1 that she was deprived of her possessions in the interest of a group of people who would purchase flats in the newly constructed house in the North-Eastern District. Such interest, in her opinion, cannot be considered a public interest.

5. The applicant complains under Article 8 of the Convention that she was evicted from her home, that her contacts with friends and relatives were severed or made difficult because of travel distance, and that she would have to spend substantial amounts of money to purchase household items in the new flat. She alleges that the interference pursued no other aim but the need to populate the remote area of Yuzhnoye Butovo and clear place in the North-Eastern District for new residents.

6. The applicant complains in substance, without invoking any Convention provisions, that the judgment of the Babushkinskiy District Court of 27 September 2001, as clarified on 26 August 2002, has not been enforced in the part concerning the transfer of title to her and payment of registration fees.

7. Finally, the applicant complains under Article 2 § 1 of Protocol No. 4 about a violation of her right to choose freely her area of residence within the city of Moscow.

THE LAW

1. The applicant complains under Articles 3 and 4 § 2 of the Convention that her eviction and resettlement debased her and caused her emotional

distress and that she had to perform exhausting physical work moving her belongings. Article 3 of the Convention provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 4 § 2 of the Convention reads:

> "No one shall be required to perform forced or compulsory labour."

As to the complaint under Article 3, the absolute prohibition of degrading or inhuman treatment enshrined in that Convention provision applies when a "minimum level of severity is attained" (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). While the Court sees no reason to doubt the applicant's contention that her eviction and resettlement were a source of significant distress, it considers that this situation would not cause the applicant suffering or humiliation of such intensity as to constitute "degrading" treatment within the meaning of Article 3 (cf., *e.g.*, *Saliba v. Malta* (dec.), no. 4251/02, 27 November 2003; *Volkova v. Russia* (dec.), no. 48758/99, 18 November 2003).

As regards the complaint under Article 4 § 2, the Court notes that the facts, as submitted, do not disclose any appearance of a violation of this provision.

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

2. The applicant complains under Article 6 § 1 that the domestic courts did not apply the domestic laws in a correct manner and did not give a fair assessment of the value of the replacement flat offered to her. Article 6 § 1 of the Convention provides, in the relevant part, as follows:

> "In the determination of his civil rights and obligations... everyone is entitled to a fair... hearing ... by [a]... tribunal established by law..."

The Court recalls that it is not called upon to examine the alleged errors of facts and law committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. On the basis of the materials submitted by the applicant, the Court observes that the applicant was able to introduce the arguments in defence of her interests which she considered appropriate to introduce and the judicial authorities gave them due consideration. Furthermore, the Court notes that since the applicant did not submit to the domestic courts any documents showing the value of either her old flat or the replacement flat which she believed to be "fair" and she only limited her submissions on this aspect to a vague reference to an opinion of an unspecified real estate agency, the domestic courts cannot be held

responsible for an alleged failure to assess either flat in an amount which would be up to the applicant's expectations.

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

3. The applicant complains under Article 1 of Protocol No. 1 that her deprivation of the title to the old flat did not advance any public interest. Article 1 of Protocol No. 1 reads 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."

It is undisputable that the applicant suffered an interference with her property rights because her title to the old flat was terminated by a court judgment which amounted to a "deprivation" of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. The Court must therefore ascertain whether the interference was justified in the circumstances of the case.

The Court notes that the decisions of the domestic courts were made in the pursuance of Resolution no. 608 of the Moscow City Government that established the general legal framework of the city-wide reconstruction programme and Resolution no. 638 of the local *préfet* that designated the applicant's house for demolition and resettlement. Therefore the interference was in accordance with the law.

The Court does not agree with the applicant's argument that the impugned interference did not pursue any public interest. It considers that demolition of crammed, dilapidated dwellings and construction of modern blocks of flats performed on a large scale throughout Moscow were undeniably in the public interest.

The Court next recalls that not only must a measure depriving a person of her property pursue, on the facts as well as in principle, a legitimate aim "in the public interest", but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, § 120) or, in other words, the "fair balance" must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). The assessment of the fairness of the balance may be grounded on the terms of compensation afforded to the aggrieved

applicant. In this connection, the Court also recalls that Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest", such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *Lithgow and Others v. the United Kingdom*, cited above, § 121).

Turning to the facts of the present case, the Court observes that the taking away of the applicant's old flat was compensated by way of providing her with a replacement flat. The domestic courts accepted the local authorities' submissions showing that the replacement flat was of a bigger living surface and of a greater book value than the applicant's old flat and held that the applicant had been amply compensated for the loss of her old home. While the Court sees no reason to doubt the applicant's allegations that the remote location and a less developed social infrastructure adversely affected the market value of the replacement flat, it notes the applicant failed to produce – either in the domestic proceedings or before this Court – any evidence, such as an independent expert evaluation, that would permit a comparison of the full market value of her old flat and that of the replacement flat. Nor did the applicant claim before the domestic courts that she be awarded compensation in the form of an amount of money rather than the replacement flat that would allow her to purchase a new flat to her liking in the free market. Under these circumstances the decisions of the domestic courts concerning the fairness of the compensation do not appear arbitrary or unreasonable. The Court therefore concludes that the compensation awarded to the applicant has met the standards established in its case-law.

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

4. The applicant complains under Article 8 of the Convention that she was evicted of her old flat without any legitimate aim. Article 8 of the Convention provides 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."

The court-sanctioned eviction of the applicant from her old flat which had been her "home" has clearly interfered with the applicant's right to respect for her home under Article 8 § 1. As to whether the interference was justified in terms of para. 2 of Article 8, the Court considers that the

interference was clearly in accordance with the law and served the aim of protecting of the rights of other city residents to live in decent housing conditions. Having regard to the above reasoning under Article 1 of Protocol No. 1, the Court concludes that the impugned interference was proportionate to the aim pursued.

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

5. The applicant complains, without invoking any Convention provisions, about non-enforcement of the judgment of the Babushkinskiy District Court of 27 September 2001, as clarified on 26 August 2002, in the part ordering that the applicant be given clear title in respect of the replacement flat. The Court considers this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (cf. *Burdov v. Russia*, no. 59498/00, ECHR 2002-III).

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

6. The applicant complains under Article 2 § 1 of Protocol No. 4 that she was resettled to a new neighbourhood against her will. Article 2 § 1 of Protocol No. 4 provides as follows:

> "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

The Court notes that the applicant does not appear to be prevented, by law or in practice, from renting or purchasing a flat in her old neighbourhood or, for that matter, in any area of Moscow.

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

For these reasons, the Court unanimously

Decides to adjourn the examination of the complaints concerning non-enforcement of the judgment of the Babushkinskiy District Court of 27 September 2001;

Declares the remainder of the application inadmissible.

Commented [Note1]: Summarise the complaints without necessarily citing the invoked Convention Articles.

Søren NIELSEN
Registrar

Christos ROZAKIS
President