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

THIRD SECTION

DECISION

Application no. 35231/14
Razilya Igdamovna TUKHBATOVA
against Russia

The European Court of Human Rights (Third Section), sitting on 12 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, Ms Razilya Igdamovna Tukhbatova, is a Russian national, who was born in 1959 and lives in Ufa. She was represented before the Court by Ms O. Preobrazhenskaya, a lawyer admitted to practice in Moscow, 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.

A. The circumstances of the case

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

1. Prior transactions with the flat

The flat at 26/2-37, Ulitsa Ordzhonikidze, Ufa, was originally owned by G. and G. Both of them died on 15 March 2010.

On an unspecified date A. sued G. and G. seeking the transfer of the title to the flat to him. On 20 May 2011 the Kalininskiy District Court of Ufa granted A.'s claims. On an unspecified date A.'s title to the flat was registered by the state authorities.

On 23 August 2011 the District Court re-opened the proceedings, upon the request of the Town of Ufa, and left A.'s claims without consideration on the merits in view of the respondents' death.

On 11 March 2013 N., acting on behalf of A. by virtue of a power of attorney, and the applicant signed a contract according to which A. sold the flat to the applicant. N. and the applicant submitted the documents for the state registration of the transfer of the title to the flat to the applicant.

According to the applicant, she paid the amount due under the contract to N. and moved into the flat while her application for the registration of the transfer of the title to the flat to her was still pending.

2. Civil proceedings concerning the title to the flat

(a) Challenge of A.'s title to the flat and dismissal of the applicant's claims in respect of the flat

On 25 March 2013 the Town of Ufa brought an action against A. seeking the transfer of the flat to the Town of Ufa. On the same date the District Court issued an injunction in respect of the transactions with the flat.

On 8 April 2013 the state registration authorities informed the applicant that her application for the registration of the transfer of the title to the flat to her could not be granted pending the civil proceedings instituted by the Town of Ufa.

On 21 May 2013 the applicant joint the proceedings asking the court to recognise her as a *bona fide* purchaser of the flat.

On 31 July 2013 the District Court granted the Town's claims in full. The court established that A. had never been the owner of the flat. It further established that it had been D., who, having forged all the relevant documents and posed as A., had obtained the title to the flat in A.'s name. Lastly, the court noted that the applicant had not acquired a title to the flat and could not be considered a *bona fide* purchaser of the flat.

On 24 October 2013 the Supreme Court of the Republic of Bashkortostan upheld the judgment of 31 July 2013 on appeal.

On 19 March 2014 the Supreme Court of the Republic of Bashkortostan rejected the applicant's cassation appeal.

On 26 May 2014 the Supreme Court of the Russian Federation rejected the applicant's second cassation appeal.

(b) Recognition of the Town's title to the flat

On 19 December 2014 the District Court established that, following the death of spouses G., the flat should have been considered a *bona vacantia* and recognised that the flat was the Town's property.

According to the Government, no eviction proceedings were institute against the applicant and she continues to reside in the flat to date.

3. Criminal proceedings on the charges of fraud

On 23 January 2012 the Oktyabrskiy District Court of Ufa found D. guilty of having fraudulently acquired a title to the flat under A.'s name.

On 3 November 2015 the Kalininskiy District Court of Ufa found P. guilty of fraud on account of misappropriation of the amount paid by the applicant to N. in respect of the flat. It also ordered that P. repay the said amount to the applicant. The prosecution and the applicant appealed.

The parties did not inform of the outcome of the proceedings against P.

B. Relevant domestic law

The ownership of real (immovable) property and other proprietary rights in respect of real property, their emergence, transfer or termination are subject to state registration (Article 131 § 1 of the Russian Civil Code). Such rights come into existence at the time of the state registration (Article 8 § 2 of the Russian Civil Code in effect prior to 1 March 2013; Article 8.1 of the Russia Civil Code in effect after 1 March 2013).

COMPLAINTS

The applicant complained under Article 1 of Protocol No. 1 to the Convention about the authorities' refusal to recognise her title to the flat.

She complained under Article 8 of the Convention that she could be evicted from the flat.

THE LAW

1. The applicant complained that she had been deprived of the flat in contravention of Article 1 of Protocol No. 1 to the Convention which 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."

The Government submitted that the applicant had not acquired ownership of the flat and that the facts complained of by her had not disclosed a violation of the rights alleged.

The applicant maintained her complaint. She considered that the flat had constituted her possession despite the state authorities' refusal to recognise her title to it and that the judicial authorities' decision to transfer the title to the flat to the municipality had amounted to the interference with her possessions in contravention of Article 1 of Protocol No. 1 to the Convention.

The Court reiterates that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his or her "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention (see, among other numerous authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

Turning to the circumstances of the present cases, the Court notes that at no time did the applicant hold title to the flat. Nor did she submit any evidence suggesting that the authorities had, at least, *de facto* acknowledged that she had a proprietary interest in the flat. The fact that she chose to pay for the flat prior to obtaining the title to it and had been allowed by the seller of the flat to move in is insufficient for the Court to conclude that the flat constituted the applicant's existing possession. Lastly, the Court discerns nothing in the materials before it to establish that the applicant could legitimately expect her rights in respect of the flat to be recognised by the domestic authorities.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

2. The applicant complained about the risk of being evicted from the flat. She 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."

The Government submitted that no eviction order had been delivered against the applicant and she continued to reside in the flat.

The applicant maintained her complaint.

Having examined the parties' submissions, the Court considers that the facts complained of do not raise an issue under Article 8 of the Convention. In the absence of a valid and enforceable eviction order against the applicant, the Court is unable to conclude that there has been an interference with the applicant's right to respect for home. 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,

Declares the application inadmissible.

Done in English and notified in writing on 5 October 2017.

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President