



Authorities failed to prove a compelling public interest when expropriating a property for a private investment project in an attractive area near Moscow

In today's **Chamber** judgment¹ in the case of **Volchkova and Mironov v. Russia** (application nos. 45668/05 and 2292/06) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned the expropriation of a property situated in the town of Lyubertsy, near Moscow, for a private investment construction project. The applicants, owners of a plot of land and house in Lyubertsy, complained in particular that they had been deprived of their property solely for the benefit of a private investment project, a multi-storey block of flats, which had not pursued any social purpose, and that the compensation they had been awarded was derisory.

The Court found that the expropriation of the applicants' property had been provided for by law and that there was no reason to call into question the domestic courts' interpretation and application of this law in the applicants' case. However, it had doubts as to whether such deprivation of the applicants' property for the sake of constructing collective housing had sought to achieve a compelling public interest. The expropriation decision had essentially been taken by the local authorities on the basis of making aesthetic improvements to the town and not in order to address an important general problem. Moreover, nothing suggested that any part of the newly built housing, including within the 5% given to the local authorities under the investment contract, had effectively been classified and then distributed as social housing. Lastly, it agreed with the applicants that the domestic courts had failed to deal with their arguments about the market value of their property and therefore the inadequacy of the compensation they had been awarded.

Principal facts

The applicants, Tatyana Volchkova and Boris Mironov, are Russian nationals who were born in 1945 and 1935 respectively and live in Moscow and Lyubertsy (Russia).

The applicants were joint owners of a plot of land and house in the town of Lyubertsy. In March 2003 the local authorities ordered the expropriation of the applicants' house and land for the construction of a multi-storey block of flats.

The investment project was part of a larger town planning scheme "to improve the architectural appearance of the town and resettle inhabitants in housing that no longer met sanitary requirements". The investment contract had been concluded between the Lyubertsy town administration and an investor. Following recourse to the expropriation procedure, under the investment project the investor was to get 95% and the municipality 5% of newly constructed housing; it appears that the municipality acquired title to the applicants' land. Under the investment project the investor agreed to provide those who were expropriated with compensation as well as to contribute to the funding of amenities or facilities for the town. The applicants subsequently turned

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

down a number of offers made to them by the investor, considering the compensation to be inadequate or the proposed alternative housing unsuitable.

The local authorities and the applicants both brought court proceedings, on the one hand, seeking judicial authorisation for the expropriation and, on the other, arguing that the expropriation was unlawful and disproportionate. In April 2005 the first-instance court, found in the local authorities' favour, referring in particular to the Land Code and rejecting the argument that the authorities did not have competence to issue the expropriation orders in question. The first applicant was awarded 28,500 United States dollars (USD) and the second applicant USD 85,600; they were each given the right to acquire a social tenancy contract for a flat. The applicants appealed, notably contesting the expert report relied on by the first-instance court and its method of assessing the value of their house and land. They argued that, when determining the market value of the land, the report had failed to take into account that the expropriation of the land was for commercial gain. Their appeal was however rejected in a summary manner in July 2005. Their applications for supervisory review were also subsequently dismissed, ultimately in July 2006.

In the meantime, in August 2005, the applicants were evicted.

Complaints, procedure and composition of the Court

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicants complained in particular that they had been deprived of their property for the benefit of a private investment project which had not pursued a compelling public interest. They further argued that the compensation they had been awarded was derisory, the market valuation of their properties not having taken into account the prospective substantial increase in the value of the land once expropriated, given its location and planned use to build a new block of flats. Lastly, Ms Volchkova complained that her eviction had breached her rights under Article 8 (right to respect for private and family life and the home).

The applicants also raised a number of complaints under Article 6 (right to a fair trial within a reasonable time) of the Convention.

The applications were lodged with the European Court of Human Rights on 9 and 30 December 2005 respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Branko Lubarda (Serbia),
Luis López Guerra (Spain),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Georgios A. Serghides (Cyprus),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

It was not in dispute in the applicants' case that there had been a "deprivation of possessions" within the meaning of Article 1 of Protocol No. 1.

Furthermore, the Court found that that deprivation of the applicants' possession had been provided for by law, namely the Land Code, and reiterated that it was primarily for the national authorities, notably the courts, to interpret and apply that domestic law. In the applicants' case, there was no

reason to call into question the domestic courts' interpretation of the relevant provisions of the Land Code; nor did it find any evidence that the courts had acted in bad faith or neglected to apply correctly the legislation regarding the competence of municipalities to issue expropriation decisions.

However, the Court had to go beneath appearances and look into the reality of the situation when examining whether depriving the applicants of their property had sought to pursue a genuine "public interest". While bearing in mind that States have considerable room for manoeuvre ("margin of appreciation") in expropriation matters, it had doubts as to whether the deprivation of the applicants' property for the sake of constructing collective housing had sought to achieve a compelling public interest. While there were stringent criteria for challenging the "public interest" relied upon for a deprivation of possessions, these criteria were not to be taken as *carte blanche* to resort to expropriation measures, irrespective of their contexts.

In the present case, even though the expropriation had been related to a larger town planning scheme, the decision had been taken at local level. Nor had the expropriation sought to address any important general problem, but had referred to aesthetic improvements to the town. Indeed, there was nothing to suggest that the applicants' house had been dilapidated and therefore uninhabitable. Moreover, there was nothing to show that: the choice of land for the construction project had been adequately discussed with the local population, including the applicants; that alternative locations had been considered; or that there was a shortage of housing in the area. The allegedly compelling nature of the public interest was, at the very least, undermined by the remaining doubts over the main document concerning the town planning. Moreover, nothing suggested that any part of the newly built housing, including within the 5% given to the local authorities under the investment contract, had effectively been classified and then distributed as social housing.

Therefore, having examined the investment contract and the relevant domestic decisions, the Court was not convinced by the domestic administrative and judicial authorities that the reasons for using the expropriation procedure had a proper reasonable basis and had been compelling.

As concerned the issue of compensation, the Court acknowledged that the applicants had chosen not to accept offers made at the preliminary non-judicial stage of the proceedings. That did not mean though that they had waived their entitlement to adequate compensation; under Russian law, where parties had failed to reach an agreement in an expropriation procedure, the matter had to be determined by the courts. However, the appeal court had dismissed the applicants' arguments – contesting the expert report and putting forward a different valuation of the property – in a summary manner.

The Court therefore held that there had been a violation of Article 1 of Protocol No. 1.

Given the above findings, the Court further held that it was not necessary to give a separate ruling on the admissibility and merits of certain complaints under Article 6 and Ms Volchkova's complaint about the eviction from her house under Article 8.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicants 3,000 euros (EUR) each in respect of non-pecuniary damage, and EUR 100 to Ms Volchkova for costs and expenses. It also held that the question of pecuniary damage was not ready for decision and reserved it for a later date.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.