



The applicants were deprived of their right of property in breach of the expropriation procedure provided for by Russian law

In today's **Chamber judgment**¹ in the case of **Tkachenko v. Russia** (application no. 28046/05) 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 an expropriation procedure in respect of the applicants' house, which was located on a plot of land belonging to the municipality.

The municipality decided to rent this plot of land to a private entrepreneur for the construction of a block of flats. He brought proceedings against the applicants, requesting that their right of property be terminated. This request was granted by the domestic courts.

The Court found, in particular, that the interference with the applicants' right to enjoy their property had not complied with the conditions provided for by Russian law.

Firstly, the procedure provided for by the Civil Code in respect of expropriation, intended to provide expropriated owners with certain safeguards, had not been followed. Secondly, the district court had referred to Article 239 of the Civil Code in granting the entrepreneur's request to terminate the applicants' right of property, although that article permitted only local authorities to submit such requests.

Principal facts

The applicants, Mikhail Tkachenko, Nina Tkachenko, Aleksandr Tkachenko, and Nataliya Tkachenko, are Russian nationals who were born in 1964, 1966, 1985, and 1989 respectively and live in Aksay, Rostov-on-Don region (Russia), as did Nina Tkachenko until her death in 2011.

In 1999 a company (A.) ceded to the applicants, through the privatisation process, half of a house located in the centre of Aksay. The city council was the owner of the land on which the house was situated. The applicants lived in their part of the house and the other half was occupied by other people.

In 2003 the head of the Aksay district administration adopted order no. 999 on taking back a plot of land, including the land on which the applicants' house was located, and granting an individual entrepreneur (K.) a lease to that land for the purpose of constructing a block of flats.

In 2004 K. brought proceedings against the applicants, requesting that their right of property be terminated and that they be evicted. K. further offered to give them a house and a plot of land that he had purchased for them on the outskirts of Aksay, in exchange for their property. The Aksay District Court granted this action on the basis of Article 239 of the Civil Code concerning expropriation. It therefore terminated the applicants' right of ownership to their part of the house and granted them ownership of the other house, purchased for them by the investor. That judgment

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.

was upheld on appeal in 2005. In the same year the applicants were evicted and moved into their new home. Their house was demolished and a 10-storey building was subsequently erected on the site.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention and Article 8 (right to respect for private and family life and the home), the applicants alleged that the expropriation procedure provided for by Russian law had been totally flouted and that their eviction and the demolition of their home had been an arbitrary measure.

The application was lodged with the European Court of Human Rights on 14 July 2005.

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

Helena **Jäderblom** (Sweden), *President*,
 Branko **Lubarda** (Serbia),
 Helen **Keller** (Switzerland),
 Dmitry **Dedov** (Russia),
 Pere **Pastor Vilanova** (Andorra),
 Georgios A. **Serghides** (Cyprus),
 Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 1 of Protocol No. 1 (protection of property)

The Court noted that the applicants had been deprived of their immovable property, for the purposes of Article 1 of Protocol No. 1 to the Convention, by the local public authorities acting through the intermediary of a private citizen. The Court reiterated that in order to be compatible with Article 1 of Protocol No. 1, any interference had to meet three conditions: it had to be “subject to the conditions provided for by law” and “in the public interest”, and it had to strike a fair balance between the interests of the community and the rights of owners.

With regard to compliance with the principle of legality, the Court noted that the applicants had been deprived of their house in the context of reconstruction of an area of the city in line with the general development plan. It was thus an expropriation for the needs of the municipality, within the meaning of Articles 11 and 83 § 3 of the Land Code and Article 239 of the Civil Code. In this connection, the provisions of the Civil Code concerning expropriation set out a multi-stage procedure, intended to provide the expropriated owners with certain safeguards. In the present case, however, this procedure had not been followed and the applicants had been unable to benefit from these legal safeguards. In addition, the regional court had not replied to the applicants’ ground of appeal based on the compulsory application of the expropriation procedure, and the Government had provided no explanation as to why the authorities had failed to comply with the expropriation procedure. In the Court’s view, these were not therefore simple procedural shortcomings, but amounted to a deprivation of property in total breach of the applicable procedure. Lastly, the Court noted that, in granting the private entrepreneur’s request to the courts to end the applicants’ right of ownership, the district court had referred to Article 239 of the Civil Code. However, this article permitted only public authorities to submit expropriation requests, to the exclusion of any other person.

In consequence, the interference with the applicants' right to their property had not complied with the conditions provided for by law within the meaning of Article 1 of Protocol No. 1 to the Convention. **It followed that there had been a violation of Article 1 of Protocol No. 1 to the Convention.**

Other articles

In view of its finding of a violation of Article 1 of Protocol No. 1 to the Convention, the Court considered that it was not necessary to examine the applicants' complaint under Article 8 (right to respect for private and family life and for the home).

Article 41 (just satisfaction)

The Court held that Russia was to pay the applicants 5,000 euros (EUR) jointly in respect of pecuniary damage and EUR 5,000 each in respect of non-pecuniary damage.

The judgment is available only in French.

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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.