



Annulment of applicant's title to plot of land in favour of municipality: violation of right to protection of property

In today's **Chamber** judgment¹ in the case of [Semenov v. Russia](#) (application no. 17254/15) 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 annulment of the applicant's title to a plot of land that he had bought from a private individual for market gardening, and the return of that land to the municipality of Omsk, at the request of the public prosecutor.

The Court found that the domestic courts had failed to strike a fair balance between the competing public and private interests. They had merely considered that it was prohibited to create plots of land for market gardening in the urban area and had concluded that the municipality of Omsk had been dispossessed of its land against its will. More specifically, the courts had not considered the possibility of protecting the applicant's property rights in the absence of any compelling reasons to return the disputed plot of land to the municipality. The Court further observed that the public prosecutor had brought an action for the recovery of the land almost four years after it had been purchased by the applicant. By taking the end of the prosecutor's verifications as the starting point for the statutory limitation period, the domestic courts had deprived of meaningful effect the rules on limitation and had given the authorities a disproportionate advantage. This approach by the courts had rendered actions for recovery of possession virtually free of any time-bar and had contributed to legal uncertainty in the property market.

Principal facts

The applicant, Andrey Mikhaylovich Semenov, is a Russian national who was born in 1974 and lives in Omsk (Russia).

Mr Semenov owned a plot of land in Omsk (register number 23) in a residential area on which his house was built. On 6 December 2007 Ms G. applied to the Omsk municipal authority for a plot of land to be used for market gardening. On 25 December 2008 the municipal authority allocated her a plot of land in a residential area adjoining Mr Semenov's plot. In May 2009 it was registered in the land register under no. 24 as a plot for market gardening use. In September 2009 the municipal authority granted ownership of plot no. 24 to Ms G. and then drew up the contract of sale in December 2009.

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.

On 12 March 2010 Mr Semenov bought plot no. 24 from Ms G., had his property registered in the unified register and erected a garage, a greenhouse, a chicken coop and a playground on the plot.

On 12 February 2014 the Omsk city prosecutor brought an action against Mr Semenov and the municipal authority, seeking the annulment of Mr Semenov's title to plot no. 24 and its return to the ownership of the Omsk municipal authority.

On 30 April 2014 the court delivered its judgment. It stated that in the residential area of Omsk plots of land were primarily intended for construction and could not be set aside exclusively for market gardening. The court found that by allocating the plot for market gardening and disposing of it, the municipal authority had overstepped its authority. The court found that the contract of sale between the municipality and Ms G. had been signed in breach of the applicable procedure. As a result, the court had annulled that contract and also the contract between Ms G. and Mr Semenov, ordered the deletion of Mr Semenov's title to plot no. 24 and its return to the ownership of the Omsk municipal authority. Mr Semenov challenged this judgment before the Omsk regional court, which rejected his appeal. His appeals in cassation and then to the Supreme Court were dismissed.

After the application was lodged with the Court, Mr Semenov's ownership of plot no. 24 was deleted from the unified register. Mr Semenov requested the municipal authority to redivide the land (перераспределение земель) for the purpose of increasing the area of his own plot, no. 23. In a judgment of 18 February 2016 the court ordered the municipal authority to carry out the requested redivision. In accordance with this judgment, two newly created plots were entered in the land register under new numbers. In August 2016 the municipal authority and Mr Semenov entered into an agreement by which Mr Semenov became the owner of one of the new plots intended for the construction of a building for individual use with some adjoining land which could be used for gardening.

The judgment of 30 April 2014 was not enforced in the part relating to the return of plot no. 24 to the municipality.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained of the annulment of his title to the plot of land that he had purchased.

The application was lodged with the European Court of Human Rights on 30 March 2015.

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

Paul **Lemmens** (Belgium), *President*,
Dmitry **Dedov** (Russia),
Georges **Ravarani** (Luxembourg),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

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

The Court took the view that the annulment of the applicant's title had amounted to a "deprivation of possessions", and it had not been disputed between the parties that the measure had pursued a

public interest aim. The Court referred to its case law case-law to the effect that when a person acquired real property, he or she had to be vigilant in case there were clear indications of fraud earlier in the chain of transfer of ownership. At the same time, the principle of "good governance" required the authorities to act in good time, in an appropriate manner and with utmost consistency in all cases where, in correcting their own mistakes, they would interfere with the right to respect for the enjoyment of possessions.

As regards the authorities' conduct in the present case, the Court noted that the federal authorities had entered the disputed plot of land (no. 24) in the land register as being intended for market gardening use and had registered Ms G.'s title and subsequently that of the applicant in respect of the plot without detecting any irregularities. Moreover, the registration of the right of ownership of real property was a legal act that constituted recognition of that right by the State, and the registration authority had been empowered to reject the application for registration if it had not been certain of the vendor's entitlement to dispose of the land. At the time of the registration of Ms G.'s title, this authority could have noted that the municipal authority had overstepped its authority by carrying out a forensic analysis of the documents presented by Ms G. As regards the local authorities, the Court further observed that the municipal property management board had adopted several acts which validated the sale of the plot to Ms G. for market gardening. It therefore considered that the authorities had not acted in a timely and consistent manner.

The Court found that the domestic courts had not struck a fair balance between the competing public and private interests. They had merely considered that it was prohibited to create plots of land for market gardening in the urban area and had concluded that the municipality of Omsk had been dispossessed of its land against its will. More specifically, the courts had not considered the possibility of protecting the applicant's property rights in the absence of any compelling reasons to return the disputed plot of land to the municipality. The Court further observed that the public prosecutor had brought an action for the recovery of the land almost four years after it had been purchased by the applicant. By taking the end of the prosecutor's verifications as the starting point for the statutory limitation period, the domestic courts had deprived of meaningful effect the rules on limitation and had given the authorities a disproportionate advantage. This approach by the courts had rendered the actions for recovery of possession virtually free of any time bar and had contributed to legal uncertainty in the property market.

With regard to the applicant's conduct, the Court noted that under the Town Planning Code, horticultural activities were possible in residential areas and that there was a rather subtle difference between market gardening and horticulture. Therefore, taking into account the legal permission and the conduct of the authorities, in the absence of any other reason to suggest bad faith or negligence on the part of the applicant, the Court considered that he could have legitimately believed that in purchasing the plot he was acting in accordance with the law and with legal certainty.

The Court noted that after the applicant's ownership of the disputed plot had been annulled, following the land redivision procedure, he had been able to buy back part of the plot of land and had retained possession, without any right or deed, of the other part, which was now municipal property, registered under a different number. These facts, together with the failure of the Omsk municipality to seek enforcement of the judgment of 30 June 2014 within the statutory time-limit of three years, had compromised the return of the land to the municipality. It followed, firstly, that the return of the land to municipal ownership had not been an absolute public imperative or even a necessity and, secondly, that the applicant had been forced to bear real negative consequences as a result of the interference with his right to respect for the enjoyment of his possessions.

The Court concluded that the domestic authorities had failed to strike a fair balance between the demands of the public interest and the need to protect the property rights of the applicant on whom

they had imposed an excessive burden. There had thus been a violation of Article 1 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 3,680 euros (EUR) in respect of pecuniary damage, EUR 2,000 in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

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.