



Demolition of company's shopping mall by Moscow City Council breached the Convention

The case concerned a private company based in Moscow whose real estate (a shopping mall) had been built in Moscow in the 1990s before being classified by the municipal authorities as an “unlawful construction” (Moscow City Council’s order no. 829-PP of 8 December 2015).

In today’s **Chamber** judgment¹ in the case of [Kooperativ Neptun Servis v. Russia](#) (application no. 40444/17) the European Court of Human Rights held, unanimously, that there had been two violations of the Convention.

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

The Court found that the domestic law as in force at the relevant time imposed a requirement of judicial scrutiny of the decision to include, in the list annexed to order no. 829-PP, the property registered in the name of the applicant company in the national property register. However, no such judicial scrutiny had taken place, either before or after the demolition. Therefore the interference with the applicant company’s right to the peaceful enjoyment of its possessions had not been compliant with the conditions of domestic law.

Violation of Article 6 § 1 (right of access to a court) of the European Convention.

The Court noted that the individual situation of the applicant company – the inclusion of its property on a list of unlawful constructions that had to be demolished, contained in an annex to the municipal order – had not been examined by the courts, as a result of which the company had been unable to have its case heard. This had been incompatible with its right of access to a court as enshrined in Article 6 § 1 of the Convention.

Principal facts

The applicant is a private company, based in Moscow, whose property (a shopping mall) was built in Moscow in the 1990s and was subsequently classified as an unlawful construction.

In 1994 the applicant company entered into a lease agreement with Moscow City Council, which stipulated in particular that the land was to be let to the company for the purposes of completing a three-storey building to be used as an entertainment centre. In addition to this centre, the applicant company built a shopping mall on the site.

From 2006 onwards, the Moscow authorities repeatedly pointed out that the building in question was unlawful, as it had been built over a sewage system. However, the courts which examined the authorities’ case rejected their claims as time-barred.

In 2015 Moscow City Council issued order no. 899-PP for the demolition of about 100 “unlawful constructions”. The relevant buildings, as identified by the Moscow authorities, had to be

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.

demolished by their owners. As the latter refused to demolish them, Moscow City Council had the buildings cleared in February 2016.

The applicant company attempted to challenge the municipal order in court, but was unsuccessful. The commercial courts found they had no jurisdiction on the grounds that the order was a “normative” and not an individual measure. The ordinary courts, in turn, declared the company’s appeal – against the “normative” part of the order – inadmissible on the grounds that it was essentially the same as an earlier appeal by another company against the same part. Moscow City Council did not ask a court to declare the disputed property an unlawful construction. Thus, no court examined the individual situation of the applicant company, which complained of a denial of justice before the European Court of Human Rights.

Complaints, procedure and composition of the Court

The applicant company relied on Article 1 of Protocol No. 1 (protection of property) to the Convention and Article 6 § 1 (right of access to a court) together with Article 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 26 May 2017.

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

Georges Ravarani (Luxembourg), *President*,
 Dmitry Dedov (Russia),
 María Elósegui (Spain),
 Darian Pavli (Albania),
 Peeter Roosma (Estonia),
 Andreas Zünd (Switzerland),
 Frédéric Krenc (Belgium),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

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

The Court noted that the building in question constituted a “possession” of the applicant company within the meaning of Article 1 of Protocol No. 1 to the Convention and that the order to demolish it amounted to an interference with the applicant’s right to the peaceful enjoyment of its possessions. This interference corresponded to the control of the use of property under the second paragraph of Article 1 of Protocol No. 1.

Article 35 of the Russian Constitution provided that no one could be deprived of their property other than by a court order. The requirement of judicial scrutiny had been confirmed by the Russian Constitutional Court, which noted that Article 222 § 4 of the Civil Code was to be interpreted, in the light of Article 35 of the Constitution, as requiring judicial scrutiny of every administrative decision classifying a building as unlawful and to be demolished where the building concerned was listed in the National Register.

It followed that domestic law, as in force at the time, required judicial scrutiny of the decision to include the property, listed under the applicant company’s name in the National Register, in the annex to municipal order no 829-PP. Irrespective of whether at the time of the demolition such judicial scrutiny could or should have been initiated by the authorities or the applicant company (in the first case it would have been an authorisation and in the second a prohibition), it followed from

the interpretation of the national legislation confirmed by the Constitutional Court that such scrutiny should have taken place.

However, no such scrutiny of the applicant company's situation had been carried out either before or after the demolition of the property. The competent authorities had not brought any legal proceedings to lay before the national courts the considerations that the Government had set out in their observations before the Court, in particular those concerning the unlawfulness of the construction and the risks which the building allegedly represented for life, health and the environment. Nor had the applicant company been able to meaningfully exercise its right to judicial scrutiny.

Article 6 § 1 (right of access to a court)

The Court noted that there had been no disagreement between the parties as to the fact that the applicant company's individual situation – the listing of its property among the unlawful constructions to be demolished in an annex to the municipal order – had not been subjected to judicial scrutiny. The Government had not relied on any legitimate aim to justify this restriction on access to justice. They had merely cited various texts containing the rules on the jurisdiction of the commercial and ordinary courts. As a result of those rules, the applicant company had been unable to have its case examined. That situation had been incompatible with the right of access to a court enshrined in Article 6 § 1 to the Convention. There had thus been a violation of that provision.

Article 13 (right to an effective remedy)

The Court found that the Article 13 complaints had already been sufficiently addressed in its findings under Article 6 § 1. Therefore there was no need to examine them separately.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant company 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,784 for costs and expenses.

However, the Court rejected the claim for pecuniary damage. Noting that the applicant company had assessed the value of its property by the method of future rental income capitalisation, the Court considered that acceptance of that method would be tantamount to ruling in favour of the applicant company in its dispute with the authorities, as it would be acknowledging that it had the right to build the shopping mall on the site in question and to receive income by letting out those premises. However, no domestic court had recognised such a right. Having noted in the present case that the authorities had failed to comply with the procedure laid down in domestic law requiring them to apply to a court in order to have the unlawful nature of a construction established, the Court could not speculate as to the outcome of any hypothetical judicial examination. Having regard to the national authorities' argument that the erection of the disputed building on the land in question would never have been authorised in view of the presence of a sewage network, it was not within the Court's remit to carry out such an analysis *de facto* and to rule in favour of a party by making an award in respect of the alleged pecuniary damage. Moreover, the harm caused by the deprivation of access to the courts, by the disruption thus caused to the applicant company's business and by the feelings of powerlessness and frustration of its managers would be covered by the sum awarded for non-pecuniary damage, those grievances being independent of any 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.