



No legal basis in domestic law for the seizure and sale of the applicant's properties as a consequence of her former husband's conviction

In today's **Chamber** judgment¹ in the case of [Godlevskaya v. Russia](#) (application no. 58176/18) 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 concerns an order for the seizure and sale (*обращение взыскания по приговору*) of the applicant's immovable property, imposed by the courts following the criminal conviction of her former husband.

The Court specified that the seizure and sale of assets amounted to an interference – involving control of the use of property – with the applicant's right to the peaceful enjoyment of her possessions. It reiterated that any interference with the peaceful enjoyment of possessions had to have a legal basis in domestic law. In the present case, it concluded that there had been no legal basis for the measure and, in consequence, that there had been a breach of the Convention.

Principal facts

The applicant, Lyudmila Godlevskaya, is a Russian national who was born in 1963 and lives in Moscow (Russia).

In 1996 the applicant married G., with whom she contracted a marriage contract in 2000. Between 2011 and 2014 the applicant purchased two flats and one other property. In 2015 the couple divorced.

In the meantime, a criminal investigation was opened in 2011 into embezzlement at a factory where G. had been a director since 2006. In 2015 he was placed under investigation in that case. The following year, at the request of the factory, which had joined the proceedings as a civil party, the court authorised the interim seizure of the applicant's properties, finding that there were plausible grounds to believe that those assets had been obtained through G.'s criminal conduct. That decision was upheld by the regional court.

In 2017 G. was given a suspended two-year prison sentence for two offences of embezzlement committed between 2007 and 2009. Noting that the buildings in question had been purchased in the applicant's name during G.'s marriage, the court ordered that they be seized and sold, and held that the proceeds were to be handed over to the factory. An appeal and an appeal on points of law, lodged by the applicant, were rejected. She then applied three times to the civil courts for the seizure order to be lifted (*иски об освобождении от ареста*), but these applications were also rejected. In 2020 G. died.

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.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 to the Convention (protection of property), the applicant complained about the order for the seizure and sale of her immovable property, imposed on account of her former husband's conviction.

The application was lodged with the European Court of Human Rights on 28 November 2018.

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

Georges **Ravarani** (Luxembourg), *President*,
Georgios A. **Serghides** (Cyprus),
Dmitry **Dedov** (Russia),
María **Elósegui** (Spain),
Anja **Seibert-Fohr** (Germany),
Andreas **Zünd** (Switzerland),
Frédéric **Krenc** (Belgium),

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

Decision of the Court

Article 1 of Protocol No. 1

The Court noted that the marriage contract placing the applicant and G. under the statutory regime of separation of property had not been disputed, set aside or terminated, that the applicant had purchased and registered the contested properties in her own name, and that she was their owner within the meaning of Russian law. It considered therefore that those properties were the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention.

It then held that a seizure-and-sale order, even if not yet executed, amounted to an interference – involving control of the use of property – with the applicant's right to the peaceful enjoyment of her possessions. It also reiterated that any interference with the peaceful enjoyment of possessions had to have a clear legal basis in domestic law. This was all the more so with regard to a final deprivation, without compensation, of lawfully acquired property from a person who had been neither charged in criminal proceedings nor, *a fortiori*, convicted.

It noted in this connection that, in justifying the sale and seizure, the Russian courts had relied on various provisions, namely Articles 115 § 3 and 299 § 11 of the Code of Criminal Procedure (CCrP) and Article 45 of the Family Code.

It decided to examine each of these provisions successively in order to ascertain whether the domestic law provided a legal basis meeting the requirements of legal certainty inherent in Article 1 of Protocol No. 1 to the Convention.

With regard to Article 115 § 3 of the CCrP, it noted at the outset that this provision governed only temporary seizure measures (*наложение ареста*), and not seizure and sale, which entailed final deprivation of the relevant assets (*обращение взыскания*).

With regard to Article 299 § 1 of the CCrP, it noted that this provision included a list of "questions" that the court had to rule on when deciding to convict or acquit a defendant. While paragraph 11 of Article 299 § 1 required the court to rule on what was to be done with seized assets, it could not, as such, be considered as forming a sufficiently clear and foreseeable legal basis under Article 1 of Protocol No. 1 to justify the seizure and sale of property. Indeed, the Government had never argued that the expression "rule on what was to be done with seized assets" could be understood as authorising a transfer of ownership of the assets. It was also clear from the Constitutional Court's

judgment of 17 April 2019 that Article 299 of the CCrP could not serve as the legal basis for a seizure and sale of assets belonging to a third party for the purpose of compensating the victims of a criminal offence.

With regard to Article 45 § 2 of the Family Code, the Court noted that it allowed for the total or partial seizure and sale of assets if a judgment in criminal proceedings established that a joint asset belonging to spouses had been acquired or renovated using funds from the unlawful activities of one of the spouses. This Article could therefore constitute a legal basis for the interference, subject to two cumulative conditions: (1) the measure had to concern assets that belonged to both spouses; (2) it had to be established, in a judgment finding a criminal offence, that these common assets had been acquired or renovated using funds derived from the criminal activity. However, it had not been shown that these conditions had been met in the applicant's case. The disputed seizure-and-sale order concerned an asset which belonged to the applicant alone, and was not an asset which belonged to both spouses. In addition, the criminal courts had accepted that the applicant's own assets had been sufficient to enable her to purchase the properties in question, and they had never established that the embezzled sums had been used to finance these purchases. It followed that Article 45 § 2 of the Family Code could not constitute a sufficient legal basis for the disputed interference in this case.

In consequence, as the Government had not cited any other provision capable of justifying the seizure and sale of the applicants' properties, the Court concluded that there had been no legal basis to this measure. It followed that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

Just satisfaction (Article 41)

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

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel : + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

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.