EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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# Cases concerning deprivation of property without compensation: Russian legislation amended to improve protection for purchasers of dwellings

In its decision in the case of Olkhovik and Others v. Russia (application no. 11279/17) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

In today's **Chamber** judgment[1] in the case of Lidiya Nikitina v. Russia (application no. 8051/20) the Court 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.

Both cases concerned the annulment, without compensation, of the applicants' title to apartments which they had purchased, and the return of the apartments to municipal ownership as unclaimed properties.

In the case of **Olkhovik** the Court noted that the new compensatory remedy introduced by section 68.1 of the new federal law with effect from 1 January 2020 was *a priori* accessible to the applicants, who in principle had until 31 December 2022 to claim compensation from the State for the return of their apartments to the municipal authorities. The remedy in question made it possible to obtain full compensation in respect of pecuniary damage, without the need to prove any fault on the part of the authorities. As the applicants had not availed themselves of that possibility, the Court found that they had not exhausted domestic remedies.

In **Lidiya Nikitina**, the Court considered that the new compensatory remedy was not accessible to the applicant. On the merits, it found that the applicant could legitimately and reasonably rely on the checks carried out by the competent authorities but had had to bear the consequences, without being compensated, of acts that were solely imputable to third parties and to the federal and municipal authorities responsible for conducting checks. The fair balance to be struck between the demands of the general interest and the need to protect the applicant's property rights had not been achieved.

## Principal facts

### Olkhovik and Others

The applicants, Olga Vasilyevna Olkhovik, Galina Viktorovna Kirillova and Lena Radionovna Reykhert, are Russian nationals who were born in 1962, 1958 and 1969 respectively and live in Moscow and Sertolovo (Russia).

Ms Olkhovik, Ms Kirillova and Ms Reykhert all bought apartments from private individuals. It subsequently transpired that the original owners had died without leaving heirs. The relevant municipal authorities brought proceedings against the applicants and the vendors for recovery of the properties, and the domestic courts found in their favour. The courts returned the apartments to municipal ownership and annulled the applicants' title without awarding them compensation. Ms Olkhovik subsequently brought a successful action for damages against the vendor in her case.

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.

**Lidiya Nikitina v. Russia**

The applicant, Lidiya Aleksandrovna Nikitina, is a Russian national who was born in 1954 and lives in St Petersburg.

In March 2017 Ms Nikitina bought an apartment from L. and registered her title to the property. A few months later she signed an agreement for the resale of the apartment. The authority responsible for recording the sale informed Ms Nikitina and the purchaser that registration had been refused on the grounds that L. had actually died in October 2016 without leaving any heirs. The St Petersburg city authorities brought proceedings against Ms Nikitina and the purchaser for recovery of the apartment as an unclaimed property. The domestic courts allowed the city authorities' claim and ordered the annulment of the applicant's title to the property.

## Complaints, procedure and composition of the Court

The applications in **Olkhovik and Others** were lodged with the European Court of Human Rights on 30 January 2017, 25 October 2017 and 28 December 2019.

The application in **Lidiya Nikitina** was lodged with the European Court of Human Rights on 27 January 2020.

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, all the applicants complain that they were deprived of their real property without compensation.

The decision and the judgment were each given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
Frédéric **Krenc** (Belgium),
Mikhail **Lobov** (Russia),

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

## Decision of the Court

### Article 1 of Protocol No. 1

**Olkhovik and Others**

The Court observed that section 31.1 of the former Federal Law on the registration of real-property rights as applicable at the relevant time made it possible, subject to certain conditions, to obtain compensation in a maximum amount of 1,000,000 roubles (RUB) for the loss of a dwelling.

As of 1 January 2020 the legislation had been amended in order to provide enhanced protection to purchasers of dwellings. The rules governing the compensatory remedy against the State were amended by section 68.1 of the new Federal Law on the registration of real property (*Федеральный закон от 13 июля 2015 N 218-ФЗ "О государственной регистрации недвижимости"*) which had retrospective effect in a manner favourable to purchasers. The remedy was available in principle to all *bona fide* purchasers (provided that they were private individuals), including those whose dwellings had had to be returned before 1 January 2020. The conditions governing the use of this remedy were the following: (i) the person whose dwelling had been returned had to be a "*bona fide* purchaser"; (ii) he or she had to have obtained a court decision awarding compensation for the damage sustained as a result of the return of the dwelling; (iii) that decision had to have remained

unenforced for at least six months for reasons beyond the control of the dispossessed purchaser; and (iv) the purchaser had to apply to the courts seeking compensation from the State. The compensation was intended to cover the full amount of the pecuniary damage resulting from the return of the property. The success of the court action was not dependent on a finding of fault on the part of the authorities.

In the Court's view, this new compensatory remedy was *a priori* accessible to the applicants, who in principle had until 31 December 2022 to claim compensation from the State. Furthermore, this compensatory remedy was, on the face of it, appropriate in the present case. The applicants complained of the deprivation of their property without compensation, and the remedy in question afforded them the specific possibility of obtaining full compensation for the pecuniary damage caused by such deprivation. It was not dependent on proof of any fault on the part of the authorities.

In sum, the Court considered that there was no cause for it to cast doubt, at this stage, on the effectiveness of the new compensatory remedy with regard to Article 1 of Protocol No. 1 as a means of affording redress for the harm caused to *bona fide* purchasers by the return of their dwelling to the authorities.

However, the Court did not rule out the possibility of reviewing its position on the actual effectiveness of this new remedy if it emerged from the domestic courts' practice that actions for compensation against the State were ineffective, for instance because the proceedings were conducted at great length or with excessive formalism or because the amounts awarded by way of compensation were insufficient. If necessary, the applicants could reapply to the Court if their actions against the State were dismissed.

The Court held that the applicants had not made use of this new remedy and that, accordingly, their complaints under Article 1 of Protocol No. 1 should be rejected under Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies.

**Lidiya Nikitina v. Russia**

The Court observed at the outset that the new compensatory remedy was not accessible to the applicant. She was unable to sue anyone for damages and therefore could not complete the first stage of the remedy, consisting in obtaining a judicial decision awarding compensation for the damage caused by the return of the apartment. Accordingly, the Court dismissed the Government's objection of failure to exhaust domestic remedies and declared the application admissible.

The Court noted that the sale of the apartment to the applicant had resulted from inadequate and delayed coordination between the various local and federal authorities. While L.'s death had been known to the authorities by December 2016 at the latest, the registration authority had not learnt of it until June 2017, and the city authorities had not acted until October of that year. The Court also noted that the present case in all likelihood involved offences of fraud, forgery and use of forged documents.

The Court had previously ruled that the registration authority or other authorities might conceivably fail to detect the falsification of documents. Nevertheless, in the present case the Court noted that the authorities had not taken any steps or initiatives to identify the persons responsible for that situation. It therefore held that the authorities had not acted in a timely manner and with the requisite diligence.

In the Court's view, given the existence of authorities responsible for matters relating to residential properties and ownership thereof, it was not for the purchaser to assume unconditionally the risk of the property being returned. Hence, the applicant could legitimately and reasonably rely on the checks carried out by the competent authorities. It had not been alleged at any point in the domestic proceedings that she had acted in bad faith or been negligent when purchasing the apartment.

In sum, the Court held that the applicant had had to bear the consequences of acts that were solely imputable to third parties and to the federal and municipal authorities, without being compensated. The fair balance to be struck between the demands of the general interest and the need to protect the applicant's property rights had not been achieved. There had therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

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

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*For similar rulings see: Gladysheva v. Russia, no. 7097/10, 6 December 2011; Pchelintseva and Others v. Russia, nos. 47724/07 and 4 others, 17 November 2016; Alentseva v. Russia, no. 31788/06, 17 November 2016; Ponyayeva and Others v. Russia, no. 63508/11, 17 November 2016; Kirillova v. Russia, no. 50775/13, 13 September 2016.*

*The decision and judgment are available only in French.*

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