



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

FIRST SECTION

Application no. 25894/11
Oksana Vladimirovna GREKOVA
against Russia
lodged on 31 March 2011

STATEMENT OF FACTS

The applicant, Ms Oksana Vladimirovna Grekova, is a Russian national who was born in 1971 and lives in Moscow.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 23 October 2008 the applicant moved into an apartment in Moscow, which she recently bought from Mr S.

Previously the apartment belonged to Mr L., who is a mentally challenged person diagnosed with moderate mental retardation complicated by significant behavioural and adaptation impairment. Mr L. has a long history of being committed to psychiatric institutions, social care facilities, and specialised educational institutions. However, he was never legally incapacitated and no legal guardian was appointed for him.

Initially Mr L. sold his apartment to Mr G. in 2006, later through a chain of changing owners it was acquired by the applicant in 2008.

On 14 July 2008 a prosecutor of the Nagatinskiy Interdistrict Prosecutor's Office for Yuzhniy Administrative Circuit of Moscow brought a civil lawsuit in the name of Mr L. against the subsequent buyers. The domestic court was requested to invalidate all of the sales agreements concerning the apartment in question, evict the current occupants, and recognize property rights of Mr L.

The prosecutor explicitly stated that the plaintiff is unable to bring the claim himself because he belongs to a vulnerable group. Specifically, it was stated that Mr L. is a mentally challenged orphan, who was repeatedly committed to psychiatric institutions and who studied in a correctional boarding school. It was noted that he has a low income and does not have a

permanent residence. The prosecutor considered it his duty to protect Mr L.'s rights by bringing a claim.

The Nagatinskiy District Court of Moscow on 22 July 2008 disagreed with the prosecutor and refused to accept his civil action. The judge stated that Mr L. is not deprived of the legal capacity and may bring the action himself. However, the decision was annulled on appeal on 11 November 2008 by the Moscow City Court.

On 10 April 2009 the prosecutor re-submitted his lawsuit with the same claims and included the applicant as a co-defendant, because she was the owner of the apartment at that moment. Mr L. joined the proceedings as a co-plaintiff.

The psychiatric examination ordered by the court diagnosed Mr L. with moderate mental retardation complicated by significant behavioural and adaptation impairment and concluded that he is unable to fully comprehend the abstract notions and consequences of legal actions.

On 2 June 2010 the Nagatinskiy District Court of Moscow ruled that while Mr L. was not legally incapable the mental condition prevented him from understanding his actions. The domestic court invalidated the sales contracts and ordered the applicant's eviction. The judgment was upheld on appeal by the Moscow City Court on 14 October 2010.

B. Relevant domestic law

The Code of Civil Procedure of the Russian Federation (CCP), which entered into force on 1 February 2003, permits a prosecutor to bring a civil claim in the interests of citizens when they cannot do so themselves for a well-justified reason. In the relevant part it reads as follows:

Article 45. Participation of a prosecutor in the proceedings

“1. A prosecutor may bring a claim for the protection of rights, freedoms, and lawful interests of citizens... A claim for the protection of rights, freedoms, and lawful interests of a citizen shall be brought by a prosecutor only in cases when a citizen cannot bring a claim to court due to reasons of health, age, legal incapacity, and other well-justified reasons ...

2. A prosecutor who brought a claim shall enjoy all the procedural rights and bear all procedural duties of a plaintiff, except for the right to enter into friendly settlement agreement and the duty to pay court fees.”

The Prosecutor's Office Act (Federal Law no. 2202-I of 17 November 1992), as in force at the material time provided:

Article 1. Prosecutor's Office of the Russian Federation

“ ...

3. In accordance with the procedural legislation of the Russian Federation, prosecutors shall participate in the judicial proceedings in courts, commercial courts ...”

Article 35. Prosecutor's participation in judicial proceedings

“1. The prosecutor shall take part in judicial proceedings in cases prescribed by the procedural legislation of the Russian Federation and other federal laws ...

3. The prosecutor, in accordance with the procedural legislation of the Russian Federation, shall be entitled to make an application to the court or to enter a case at any stage of the proceedings, if the protection of rights of citizens and lawful interests of society or the State so requires.

4. The powers of the prosecutor participating in consideration of a case by a court shall be determined by the procedural legislation of the Russian Federation ...”

C. Relevant Council of Europe documents

The relevant part of the Parliamentary Assembly's Resolution 1604 (2003) On the Role of the Public Prosecutor's Office in a Democratic Society Governed by the Rule of Law reads as follows:

“it is essential:

a. that any role for prosecutors in the general protection of human rights does not give rise to any conflict of interest or act as a deterrent to individuals seeking state protection of their rights; ...”

The European Commission for Democracy through Law (the Venice Commission) at its 63rd plenary session (10-11 June 2005) adopted an Opinion on the [Prosecutor's Office Act] of the Russian Federation. Its relevant provisions provide as follows:

“ ...

57...

1. In addition to the essential role played by prosecutors in the criminal justice system, some member states of the Council of Europe provide for the participation of the prosecutor in the civil and administrative sectors for historical, efficiency and economic reasons but their role should always be exceptional (principle of exceptionality).

2. The role of the prosecutor in civil and administrative procedures should not be predominant; the intervention of the prosecutor can only be accepted when the objective of this procedure cannot, or hardly be ensured otherwise (principle of subsidiarity).

3. The participation of the prosecutor in the civil and administrative sectors should be limited and must always have a well-founded, recognisable aim (principle of speciality) ...

5. Prosecutors can be entitled to initiate procedures or to intervene in ongoing procedures or to use various legal remedies to ensure legality (principle of legality).

6. In case it is required for reasons of public interest and/or the legality of decisions (e.g. in cases of protection of the environment, insolvency etc.) the participation of the prosecutor can be justified (principle of public interest).

7. Protecting the rights and interests of disadvantaged groups of society unable to exercise their rights can be an exceptional reason for the intervention of the prosecutor (principle of protection of human rights)...

13. Prosecutors should have no decision-making powers outside the criminal field or be given more rights than other parties before courts (principle of equality of arms).

14. Prosecutors should not discriminate among persons when protecting their rights and should only intervene for well-grounded reasons (principle of non-discrimination).”

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that a prosecutor initiated civil proceedings and participated in them on the side of a plaintiff and thus undermined a fair balance between the parties to the proceedings.

With reference to Articles 8, 13, 14 and Article 1 of Protocol No. 1 the applicant complains about various aspects of invalidation of the sales contract and the eviction proceedings against her.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of her civil rights, in accordance with Article 6 § 1 of the Convention?

2. Was participation of a prosecutor in the civil proceedings on the side of Mr Levenkov required by public interest in protection of vulnerable persons? (see *Batsanina v. Russia*, no. 3932/02, § 27, 26 May 2009).

3. Did participation of a prosecutor in the civil proceedings on the side of Mr Levenkov undermine a fair balance between the parties?