



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

FIRST SECTION

Application no. 4795/06
Gennadiy Sergeyeovich ALEKSENKO against Russia
lodged on 19 December 2005

STATEMENT OF FACTS

The applicant, Mr Gennadiy Sergeyeovich Aleksenko, is a Russian national who was born in 1961 and lives in the town of Usinsk, Komi Republic.

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

The applicant is a sole owner of a flat. In 1996 he started living as a family with Ms M. and her teenage daughter in his flat. In 2001 the Usinsk Town Court, upon Ms M.'s claim, confirmed that the family had been established, despite the fact that till 2003 the applicant was officially married to Ms A.

In 2004 Ms M. registered her granddaughter in the applicant's flat without his consent.

The applicant lodged an action against Ms M, her daughter and granddaughter seeking their eviction from the flat. He argued that he and Ms M. had separated a long time ago and that he had moved to another town where he did not have any housing. He intended to sell the flat in Usinsk to buy a flat in the town of his new residence. However, the fact that Ms M. and her family members continued to live in the flat made a sale of the flat impossible. The applicant also stressed that Ms M. and her family members had not paid rent or housing maintenance services.

On 3 May 2005 the Usinsk Town Court dismissed the applicant's action, having found as follows:

“It was established in the court hearing that [the applicant] ceased to be a member of Ms M.'s family before a new Russian Housing Code entered into force (on 1 March 2005), which was confirmed in the court hearing by the plaintiff's representative and by Ms M.

By virtue of Article 5 of Federal law no. 189-FZ of 29 December 2004 ‘On Entering into Force of the Russian Housing Code’ the new Russian Housing Code should only

apply to housing relations which arose prior to the Code's entering into force insofar as to cover rights and obligation which arose after the Code had entered into force.

As it was established by the court, [the applicant], Ms M and Mrs M. had lived as a family and had ceased family relations before the new Russian Housing Code entered into force; it follows that provisions of the new Housing Code cannot be applied to those legal relations and that provisions of the old Housing Code of RSFSR are applicable in the present case; by virtue of Article 127 § 2 [of the Housing Code of RSFSR] Ms M. and Mrs M. maintain a right to use the disputed flat. The court also considers that the registration of [the granddaughter] in the flat in 2004 was also lawful (Article 54 § 1 of the Housing Code of RSFSR).

The plaintiff did not provide any evidence that the respondents prevent him from using the flat. Moreover, [even if they do] this fact could not serve as a lawful ground for stripping them of the right to housing.

The claim also cannot be accepted in view of [the applicant's] reference to the fact that the respondents do not pay rent, as they pay for [the housing maintenance services] to the [housing maintenance authorities], and the plaintiff has not paid for the housing maintenance services for a long time. Furthermore, the respondents do not have a responsibility to pay rent to [the applicant] as the parties have never concluded an agreement on the use of the flat.

Having regard to the abovementioned considerations, the court finds the claims unsubstantiated and dismisses them.”

On 20 June 2005 the Supreme Court of the Komi Republic upheld the judgment on appeal, having endorsed the Town Court's reasoning.

COMPLAINTS

The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 that he is unable to make use of his property given the courts' refusal to evict his former family members from his flat.

QUESTION

Given the courts' refusal to evict the applicant's former family members from his flat and/or to levy a responsibility on them to pay a rent, has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1? Has the interference been in the public interest, and in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1? Furthermore, has that interference imposed an excessive individual burden on the applicant (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 59, ECHR 1999-V?)