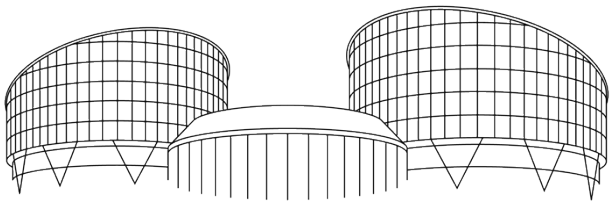

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TKACHEVY v. RUSSIA

(Application no. 35430/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

4 April 2013

FINAL

04/07/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tkachevy v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 12 March 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 35430/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Mr Viktor Nikolayevich Tkachev and Mrs Elvira Eduardovna Tkacheva ("the applicants"), on 15 June 2005.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. In a judgment delivered on 14 February 2012 ("the principal judgment") the Court decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1), declared the complaint under Article 1 of Protocol No. 1 admissible, and held that there had been a violation of that Article in that the expropriation of the applicants' flat in downtown Moscow had lacked a convincingly demonstrated public interest. Under Article 41 of the Convention the applicants sought just satisfaction in the total amount of 2,029,270 euros ("EUR").

4. Since the question of the application of Article 41 was not ready for decision as regards damage, the Court reserved it and invited the Government and the applicants to resubmit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

5. The applicants and the Government each filed observations but failed to reach an agreement. The Court invited the parties to choose an expert who would assess the pecuniary damage sustained by the applicants. As the parties have failed to agree on the expert, the President of the Chamber

entrusted the task, at the Government's expense, to Mr M. Rodin of "Professional Experts' and Valuators' Society" ("the expert").

THE LAW

6. Article 41 of the Convention reads:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Restitution

7. Above all the applicants wished to regain the title to the expropriated flat, the one located at 9/12–1 Znamenka Street in Moscow ("Znamenka"). They stressed their practical and emotional ties with that neighbourhood and lamented their loss of its comforts, historicity, and prestige. They contrasted Znamenka with the replacement flat, the one located at 26 Krasnoprudnaya Street ("Krasnoprudnaya"). The replacement flat, according to the applicants, lay amid the capital's transport and industrial zone and suffered of pollution, passerby crowds, the homeless, and crime.

8. The Government retorted that the restitution had been impossible. First, Znamenka was in private hands and no more belonged to the Moscow Government. Second, after the applicants' resettlement the flat had been reconfigured and no longer existed in its former shape. Third, the flat's new owner had invested substantial own funds into its reconstruction, and the applicants might not lay claim to those improvements.

9. The Court reiterates that to redress a violation of Article 1 of Protocol No. 1 it is indeed best to restore victims' ownership (see, for example, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330 B). In such cases the respondent Government is expected to revert the situation to its pre-breach state (see *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004 II). Yet in the circumstances of the present case a restitution would be technically impossible. According to the expert, Znamenka has been drastically redeveloped and downsized from 121.8 m² to 85.8 m². Essentially, the applicants' former flat is no more.

10. The Court will therefore have to study other means of redress.

B. Pecuniary damage

11. If the restitution proved impossible, the applicants asked the Court to make good their pecuniary loss of EUR 2,006,000. In their estimate this was the current market price of a flat at Znamenka equal to the expropriated one. They arrived at that amount by consulting estate agents' offers on the Internet.

12. The Government opposed that claim. First, the applicants had suffered no loss at all, because, as a domestic court had found in 2005, at the time of their resettlement the replacement flat had been dearer that the expropriated one. Second, the applicants had based their claim on prices of upmarket properties whereas theirs had been but "shabby". Third, the applicants had overestimated the market prices and in reality an equivalent flat at Znamenka cost EUR 938,000 at most. And last, the evaluation of the flats had been within the domestic authorities' margin of appreciation, the domestic courts had found that Krasnoprudnaya had been a fair replacement, and the Court should leave this finding at rest.

13. The Court considers that the applicants' pecuniary loss, if any, should be estimated with reference to property prices of April 2005, the time of the eviction order. For there are far too many variables in house prices, especially in a dynamic metropolitan area, and any reflection on how much the applicants' Znamenka home would have been worth today if they had stayed in it, would veer precariously close to speculation.

14. The Court also admits that, being an international jurisdiction, its faculty of judgment is naturally limited in questions like the present one where domestic ground reality has to be assessed in such a complex economic subsystem as real estate. This is why the Court has decided to resort to the expertise of a professional valuer with solid credentials and experience.

15. According to the expert, at the time of its expropriation Znamenka was EUR 142,000 dearer than Krasnoprudnaya. The expert reached that conclusion through sales comparison approach, i.e. after comparing market value of flats similar to Znamenka and Krasnopurdnaya and offered for sale in April 2005, "market value" being understood as the likeliest sale price in an open competitive market between reasonable, knowledgeable, and free buyer and seller. The Court is satisfied with the method employed by the expert and the way he conducted his study. The Court notes that the valuation method complied with standards of the Russian Ministry of Economic Development, the International Valuation Standards Council, and the European Group of Valuers' Associations. The Court also welcomes that the expert had interviewed both the applicants and the Government so as to reach a poised conclusion.

16. The Court recalls that before the principal judgment was passed the applicants had also claimed their commuting costs, settling-in expenses,

cost of a telephone line, and stress reliever medicines totalling EUR 1,000. However, the applicants have omitted these expenses from their reformulated claim, and there is no ground to examine them.

17. In view of the above, the Court awards EUR 142,000 in respect of pecuniary damage.

C. Non-pecuniary damage

18. In addition, each applicant claimed EUR 5,000 for moral suffering caused by their forced resettlement. In their submission, during the four years that the family had lived at Znamenka the applicants and their children had got used to the neighbourhood and its comforts, and cutting those ties and readjusting their lifestyle to the new place had been painful. The bailiffs who had evicted the family had been accompanied by armed policemen, and the sight of the assault rifles had scared and anguished the children.

19. The Government admitted that the situation could have distressed the applicants. They considered adequate compensation to be EUR 7,500–10,000 per person. They remarked that no award should be made in respect of the children because formally they had been off the applicants list.

20. The Court agrees with the parties that an award of non-pecuniary damages is justified. Making its assessment on an equitable basis, the Court awards to the applicants jointly EUR 10,000 under this head.

D. Costs and expenses

21. The Court recalls that it has already made an award under this head in the principal judgment.

E. Default interest

22. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 142,000 (one hundred forty-two thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President