



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

Communicated on 15 May 2014

FIRST SECTION

Application no. 48812/09  
Alla Nikolayevna KOPYTOK  
against Russia  
lodged on 21 August 2009

**STATEMENT OF FACTS**

The applicant, Ms Alla Nikolayevna Kopytok, is a Russian national, who was born in 1962 and lives in Lipetsk. She is represented before the Court by Ms O. Yegorova, a lawyer practising in Lipetsk.

**A. The circumstances of the case**

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

On 18 September 2007 the applicant signed a contract for the purchase of a flat in Lipetsk. The seller was Ms E.M.T., acting on her own behalf and on behalf of her minor daughter Maria. The contract stipulated that the property was not encumbered with the rights of any third parties.

The flat in question had been allocated as social housing to Mr V.A.V. and his wife E.M.T. in 1979. They had been living there with four children: Yelena, Mikhail, Dmitriy and Maria. Mikhail and Dmitriy were given custodial sentences in 1998 and 2004 respectively and were still serving them at the material time. Yelena moved out in 1997 to continue her studies in Makhachkala. In 2006, E.M.T and Maria became the sole owners of the property by way of privatisation. Mr V.A.V., Mikhail, Dmitry and Yelena refused in writing their shares in the privatised property.

As the seller avoided submitting the contract to State registration, the applicant sought a court order requiring the seller to perform the contract. By default judgment of 2 April 2008, the Oktyabrskiy District Court of Lipetsk granted her relief in the form of an order compelling State registration of the applicant's full title to the property. On 12 November 2008 her title was registered.

The applicant then sued E.M.T. and her four children, seeking termination of their right to use the flat, annulment of the registration of their residence at that address, and their eviction.

On 7 April 2009 the Oktyabrskiy District Court granted her claim in part. It ordered the eviction of E.M.T. and Maria who were no longer owners of the property, but rejected the claim in respect of Yelena, Mikhail and Dmitriy on the following grounds:

“According to the parties, the contested property contains personal belongings and chattel of the defendants [Mikhail, Dmitriy and Yelena]; it follows from their written statements that, in refusing their shares in the contested property during its privatisation, they did not intend to stop using the flat. Since there was no arrangement between the owner of the contested property and the defendants regarding discontinuation of the right to use the property, the court considers that [Mikhail, Dmitriy and Yelena] had the same right to use the flat identical to that of the owner; accordingly, there are no legal grounds for granting [the applicant’s] claim to declare their right to use the flat terminated.

A change in the owner of the contested property is not an independent ground for terminating [their] right to use the flat ...

The plaintiff’s arguments to the effect that [Mikhail, Dmitriy and Yelena] do not actually live in the contested property is not an independent ground for terminating [their] right to use the flat ...

Since the defendants’ right to use the flat has not terminated, there are no grounds for ordering their eviction ...”

On 27 May 2009 the Lipetsk Regional Court rejected the applicant’s appeal, endorsing the District Court’s judgment.

The applicant unsuccessfully attempted to institute supervisory-review proceedings. On 4 August 2009 a judge of the Lipetsk Regional Court disallowed her application for supervisory review, rejecting the applicant’s reliance on Article 292 § 2 of the Civil Code by quoting from the Plenary Supreme Court’s ruling of 2 July 2009 (both cited below).

## **B. Relevant domestic law and practice**

Article 292 of the Civil Code (“The rights of family members of the owner of a residential property”) provides as follows:

“... 2. Transfer of ownership of a residential house or flat to another person is a ground is a ground for terminating the right to use the residential property by the family members of the previous owner, unless the law stipulates otherwise.”

On 2 July 2009 the Plenary Supreme Court of the Russian Federation issued Ruling no. 14, On certain issues arising in judicial practice in the application of the Housing Code of the Russian Federation, which provided in the relevant part as follows:

“Paragraph 2 of Article 292 of the Civil Code does not apply to former members of the owner’s family ... since, in giving their consent to the privatisation of the residential property – lacking which privatisation would not have been possible ... – they acted on the assumption that they would retain the right to use the said property for an indefinite period of time; accordingly, [their right to use the flat] must be taken into account when the ownership of the property is transferred to another person on relevant grounds (for instance, sale-purchase, exchange, giving, reverse mortgage, inheritance).”

## COMPLAINT

The applicant complains under Article 1 of Protocol No. 1 about a violation of her right to peaceful enjoyment of her property on account of the fact that the domestic courts granted the permanent right to use the property to unrelated third parties.

### **QUESTIONS TO THE PARTIES**

1. Was there a violation of Article 8 of the Convention on account of the domestic courts' decision to confer the permanent right to use the applicant's flat to family members of the former owner?

2. Was there a violation of Article 1 of Protocol No. 1 on account of the domestic courts' decision to confer the permanent right to use the applicant's flat to family members of the former owner?