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

FIRST SECTION

DECISION

Application no. 20347/09
Vladimir Georgiyevich POPOV against Russia
and 5 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 4 November 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above applications lodged on 10 April 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are Russian nationals residing in Moscow. Their names and dates of birth are set out in the appendix.

2. In the early 1960s the municipal authorities of Moscow authorised the creation of a garage-owners' cooperative, G., and allocated a plot of land for use by the cooperative. The plot of land remained municipal property.

3. All of the applicants were members of the cooperative G.

4. In 2001 the municipal authorities of Moscow adopted a new zoning and urban development plan, under the terms of which the plot of land occupied by the prefabricated metal garages was assigned for housing development.

5. On 1 December 2005 the lease on the land occupied by the garages expired. The municipal authorities informed the cooperative G. that it would not be renewed.

6. On 29 March 2006 the Justice of the Peace for the 125th Circuit of the Kuzminki District of Moscow recognised the applicants' property rights in respect of the prefabricated garages. On 22 June 2006 the judgment was upheld on appeal by the Kuzminskiy District Court of Moscow. On the basis of these judgments the applicants' property rights were recorded in the real estate register by the Moscow department of the Federal Registration Service.

7. Subsequently, in 2006, the urban development project was approved by the municipal authorities and T Jsc, a private construction company, was chosen to be the contractor for the project. The applicants were asked to vacate the plot of land and were offered compensation for the prefabricated garages or, as an alternative, the opportunity to invest in the construction of new parking facilities, with the price of the parking spaces being offset by the value of the expropriated prefabricated metal garages. The applicants refused these offers. The municipal authorities instituted civil actions against them.

8. On 16, 18, and 21 July 2008 the Kuzminskiy District Court of Moscow ordered the vacating of the plot of land, the expropriation of the applicants' garages, and payment of compensation to the owners by T Jsc. The court awarded each of the applicants between 8,000 and 8,500 euros (EUR) in compensation for the expropriated property, the sums being derived from the expert valuation of 12 March 2008. It rejected an alternative expert valuation provided by the applicants because it had been based on market research rather than on a valuation of the actual properties, and also because of its failure to distinguish between the prefabricated garages and the various extensions built onto them without permission. The District Court reviewed the applicants' claims regarding their title to the plots of land and concluded that since the expiry of the lease in 2005 the applicants had occupied and used the plots of land without any title or right. It took this fact into account in assessing the value of the expropriated garages, since it was only the cost of the actual prefabricated metal garage units themselves that had to be compensated.

9. The applicants appealed against the judgments.

10. On 16 October and 6 November 2008 the Moscow City Court upheld the lower court's judgments in full, dismissing all of the applicants' counter-arguments.

11. In view of the high cost of demolishing the garages and vacating the occupied land, the applicants did not comply with the judgments. On 29 January 2009 the Kuzminskiy District Court of Moscow – ruling on the municipal authorities' application – altered the manner of enforcement of the aforementioned judgments by ordering the applicants to vacate their

garages and allowing the municipal authorities to demolish them and to clear the plot of land.

12. By August 2009 the judgments had been enforced as regards the parts concerning the demolition of the prefabricated garages and the vacating of the plots of land. In respect of the part concerning payment of compensation for the expropriated garages, the applicants obtained the relevant writs of execution but chose not to initiate enforcement proceedings by submitting them to the Bailiffs' Service. The main rationale behind this course of action by the applicants was their intention to further challenge the lawfulness of the aforementioned judgments before the courts.

13. In July 2010 – after several unsuccessful attempts to have the expropriation judgments reconsidered – the applicants submitted the writs of execution to the Taganskiy District Department of the Federal Bailiffs' Service. By September 2010 all of the payments had been made to the applicants and the enforcement proceedings were completed by the bailiffs.

COMPLAINTS

14. The applicants complained under Article 6 § 1 of the Convention that the enforcement of the judgment concerning their garages and payment of compensation had been lengthy and deficient. Under Article 1 of Protocol No. 1 the applicants further complained that the amount of compensation for their demolished garages had been disproportionate. They also submitted ancillary complaints under Article 6 of the Convention and Article 1 of Protocol No. 1.

THE LAW

15. In accordance with Rule 42 § 1 of the Rules of Court, the Court decided to join the applications, given their similar factual and legal background.

A. Alleged violation of Article 6 of the Convention

16. The applicants complained that the enforcement of judgments in their favour had been lengthy and inefficient. In their submission they relied on Article 6 § 1 of the Convention which, in its relevant part, provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

17. The Court reiterates that the "right to a court", embodied in Article 6 § 1, would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by a court must therefore be regarded as an integral part of the "fair trial" for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, 7 May 2002).

18. Within the domain of enforcing a final and binding judicial decision against a private party, a State's obligations are limited to providing the necessary assistance to a creditor and ensuring its effective operation (see *Kunashko v. Russia*, no. 36337/03, § 38, 17 December 2009; *Anokhin v. Russia* (dec.), no. 25867/02; and *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). On various occasions in the past, the Court has noted that such assistance must be adequate, sufficient, diligent, and should form a legal arsenal (*l'arsenal juridique*) available to an individual (see *Fuklev v. Ukraine*, cited above, § 84; *Fociac v. Romania*, no. 2577/02, § 69, 3 February 2005; and *Dachar v. France* (dec.), no. 42338/98).

19. Furthermore – in contrast to the enforcement of judgments against a State – in the case of enforcement against a private party, a creditor is not relieved of the duty to initiate separate enforcement proceedings, actively participate in them and cooperate with the authorities (see, *mutatis mutandis, Anokhin v. Russia* (dec.), cited above; *Shestakov v. Russia* (dec.), no. 48757/99; and *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C).

20. In the present case the Court accepts that the applicants' prefabricated garages were expropriated in pursuit of the public interest of urban development. However, the judgments of the Kuzminskiy District Court of Moscow of 16, 18, and 21 July 2008 imposed obligations on two private parties: firstly the applicants, who were ordered to vacate the plots of land, and secondly the contracting company T Jsc, which was ordered to pay them compensation for the demolished garages (see paragraph 8 above). Furthermore, on 29 January 2009 the District Court transferred the duty to vacate the plots of land from the applicants to T Jsc (see paragraph 11 above). Accordingly, the Court considers that in the present case the obligation to comply with the judgment rested with two private parties and each of them was bound by a duty to initiate separate enforcement proceedings, to actively participate in them and to cooperate with the authorities (see paragraph 18 above).

21. The Court notes that the aforementioned judgments of the District Court were enforced promptly, within less than ten months in respect of the part concerning the demolition of the prefabricated garages and the vacating of the plot of land. In respect of the payment of compensation, the

judgments were not enforced until almost two years after they had become final, but by the applicants' own admission they did not submit the relevant writs of execution to the Bailiffs' Service for more than a year and a half after having obtained them.

22. While it is of relevance that the applicants did not challenge the efficiency of the enforcement proceedings at the national level, the Court considers that in the present case it is not necessary to examine whether they exhausted the available domestic remedies, since the applicants' complaints are in any event manifestly ill-founded.

23. It is clear that the applicants themselves were responsible for the delay of one year and a half in enforcing the judgments in their favour. The Court does not doubt that the applicants were entitled to withhold submission of the writs of execution pending attempts to further challenge lawfulness of expropriation; however the resulting delay may not be attributed to any lack of diligence or efficiency on the part of the Bailiffs' Service. After the applicants had initiated the enforcement proceedings in 2010, the compensation awarded through the expropriation judgments was paid to them within three months.

24. Accordingly, the complaint regarding allegedly lengthy and inefficient enforcement of judgments in the applicants' favour must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1

25. The applicants further complained that the compensation they had received for the expropriated prefabricated garages was insufficient. They relied on Article 1 of Protocol No. 1, which, in its relevant part, provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law ..."

26. In this regard the Court reiterates that, under Article 1 of Protocol No. 1, any interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, Series A no. 52, p. 26, § 69). In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 38, Series A no. 332).

27. The Court considers that compensation terms are material to assessing whether or not the contested measure respects the requisite fair

balance and, in particular, whether it imposes a disproportionate burden on the applicants. In this connection, the Court has already found that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and a complete lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 in exceptional circumstances only (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI, and *The Holy Monasteries v. Greece*, 9 December 1994, Series A no. 301-A, p. 35, § 71).

28. Turning to the facts of the present case, the Court does not question that the prefabricated metal garage units constituted possessions belonging to the applicants and that urban development constituted a public interest justifying interference with the peaceful enjoyment of these possessions. Furthermore, the Court notes that the applicants were awarded compensation for the expropriated garages and thus the only issue remaining to be examined is whether the amount of compensation was proportionate.

29. In its judgments of 16, 18, and 21 July 2008 the District Court awarded each of the applicants between EUR 8,000 and 8,500 of compensation for the expropriated property. In determining the value of the property and the amount of compensation to be awarded to the applicants, the domestic court examined two expert valuations presented by the plaintiffs and the defendants, resulting in lower and higher value estimates respectively.

30. It is clear from the judicial decision in the present case that the District Court was guided in its choice of expert valuation by three valid lines of reasoning (see paragraph 8 above). Firstly, while the applicants' report was based on market research alone, the plaintiffs' report was based on the valuation of the actual property. Secondly, the higher estimated values in the applicants' valuation were partly due to the inclusion of various extensions to the prefabricated garage units, even though these extensions had been built without necessary construction permits and were therefore unlawful. Thirdly, the applicants' report failed to take into account the fact that the applicants did not have title to the plots of land occupied by their garages and the valuation should therefore have been limited to the value of the prefabricated metal garage units themselves.

31. In this respect the Court considers it crucial that the Russian courts' decision regarding which expert valuation to use as a basis for the awards was not arbitrary but was, on the contrary, well-reasoned and supported by relevant and convincing arguments. The Court sees no grounds to disagree with them.

32. Accordingly, the complaint regarding allegedly insufficient compensation for the expropriated property is manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

C. Other complaints

33. The applicants also submitted a number of complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning the alleged general unfairness of the proceedings, breach of the principle of equality of arms, partiality of the courts, and deprivation of land. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly they must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President

APPENDIX

No	Application No	Applicant Date of birth
1.	20347/09	**Vladimir Georgiyevich POPOV** 06/10/1950
2.	20375/09	**Irina Alekseyevna CHICHINKINA** 01/05/1955
3.	20378/09	**Igor Vasilyevich YEVSTRATOV** 19/05/1959
4.	20382/09	**Oleg Eduardovich NIKITIN** 01/05/1956
5.	20385/09	**Sergey Gennadyevich SOLODYAGIN** 24/03/1960
6.	20388/09	**Anastasiya Alekseyevna KABATOVA** 06/10/1980