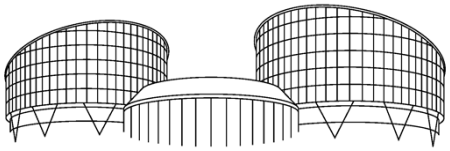

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STOLYAROVA v. RUSSIA

(Application no. 15711/13)

JUDGMENT

STRASBOURG

29 January 2015

FINAL

29/04/2015

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

In the case of Stolyarova v. Russia,

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

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

Having deliberated in private on 6 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 15711/13) 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 a Russian national, Ms Irina Petrovna Stolyarova ("the applicant"), on 13 February 2013.

2. The applicant was initially represented by Mr I. Puzanov and subsequently by Ms M. Samorodkina, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that she had been dispossessed of her flat contrary to Article 1 of Protocol No. 1, that she faced eviction in violation of Article 8 of the Convention, and that the proceedings she had pursued in an attempt to protect her rights had been unfair in breach of Article 6 of the Convention.

4. On 27 August 2013 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Moscow.

6. On 17 March 2005 the applicant bought a flat in Moscow at 69/4-2 Bolshaya Filevskaya Street ("the flat"). The seller of the flat, Mr S., had acquired it under the privatisation scheme in 2004.

A. Privatisation and sale of the flat

7. Before its privatisation the flat was owned by the City of Moscow. On an unspecified date it was allocated to Mr P. as social housing.

8. On 17 April 2001 Mr P. died.

9. On 14 December 2001 the Moscow City housing authorities authorised a certain exchange of flats which resulted in Mr M. moving into the flat which had previously been allocated to Mr P.

10. On 20 November 2002 and 5 March 2003 respectively Mr M. registered his grandfather, Mr S., and his grandmother, Mrs S., as also living in the flat.

11. On 23 March 2004 Mr M. and Mrs S. moved out of the flat.

12. On 18 May 2004 Mr S. signed a social tenancy contract with the Housing Policy and Housing Fund Department of the City of Moscow *(Департамент жилищной политики и жилищного фонда г. Москвы,* hereinafter "the Moscow Housing Department"*)*.

13. On 10 September 2004 the Moscow Housing Department transferred the ownership of the flat to Mr S. under the privatisation scheme.

14. On 1 November 2004 Mr S. registered his ownership of the flat in the State register (*Единый государственный реестр прав на недвижимое имущество и сделок с ним*).

15. On 25 January 2005 an "informational ban" *(информационный запрет)* was imposed in respect of the flat by the criminal investigations service of the Moscow Department of the Interior *(УУР ГУВД г. Москвы)* in view of the possible illegal alienation of the flat.

16. On 17 March 2005 Mr S. sold the flat to the applicant. The terms of the purchase included an undertaking by the seller to buy the applicant an equivalent flat in the event that she lost the title for reasons relating to any defects in the title which pre-dated her purchase of the flat.

17. According to the Government, on 18 April 2005 the applicant's representative was informed that the registration of her ownership of the flat had been postponed for one month.

18. On 17 May 2005, at the request of Mr S., the "informational ban" in respect of the flat was lifted.

19. On 18 May 2005 the applicant's ownership of the flat was entered in the State register.

20. The applicant moved into the flat and has been living there ever since.

B. Challenge to the applicant's ownership and eviction proceedings

21. On 25 November 2008 the criminal investigations service of the Moscow Department of the Interior informed the Moscow Housing Department that it had discovered that the exchange of flats between Mr P. and Mr M. had taken place after the former's death (see paragraph 9 above).

22. On 25 May 2009 the Moscow Housing Department instituted proceedings against Mr M., Mr and Mrs S. and the applicant, asking the court to declare null and void the flat exchange between Mr P. and Mr M. of 14 December 2001, the social tenancy contract between Mr S. and the Moscow Housing Department of 18 May 2004, the privatisation of the flat in favour of Mr S. of 10 September 2004 and its subsequent sale to the applicant of 17 March 2005. They further sought the applicant's eviction, the termination of her title to the flat, and the return of the flat to the city of Moscow.

23. On 27 September 2010 the applicant lodged a counterclaim seeking to have her title to the flat recognised by the court. She contended that she had purchased the flat in good faith (as a *bona fide* buyer) and that she had not known that Mr S. had had no right to sell it.

24. On 8 December 2010 the Dorogomilovskiy District Court of Moscow ("the District Court") granted the claim of the Moscow Housing Department. The court found that, since Mr P. had died on 17 April 2001, the flat exchange and all the subsequent transactions in respect of the flat should be declared null and void. The court refused to recognise the applicant as a *bona fide* buyer, having found that she could and should have known of the "informational ban" imposed on the flat, of which the registration service had informed her representative on 18 April 2005.

25. By an additional judgment of 31 March 2011 the District Court dismissed the counterclaims lodged by the applicant.

26. On 14 June 2011 the Moscow City Court quashed the judgments of 8 December 2010 and 31 March 2011 on appeal and remitted the case to the District Court for a fresh examination by a different bench. In particular, the court held that the District Court's refusal to recognise the applicant as a *bona fide* buyer had not been based on sufficient grounds. Furthermore, having recognised the Moscow Housing Department as the owner of the flat and having found that the flat had left the City of Moscow's possession without the latter's intention to divest itself of it, the District Court had not taken into consideration that the flat exchange had not stripped the owner of its title, and that the subsequent transfer of the flat to Mr S. under the privatisation scheme had taken place with the participation of the Moscow Housing Department. Therefore, in violation of the principle of equality of arms the District Court had failed to examine why, in transferring the title to the flat to Mr S. on 10 September 2004, the Moscow Housing Department had failed to check the circumstances under which Mr S. had acquired the

right to own the flat. The court further noted in this connection that by 10 September 2004 Mr P. had no longer been registered as living in the flat, as the information on his death had already been available.

27. On 31 January 2012 the District Court granted the claim of the Moscow Housing Department and dismissed the applicant's counterclaims. The court found the flat exchange and all the subsequent transactions in respect of the flat null and void. It refused to recognise the applicant as a *bona fide* buyer, holding that she should have known of the existence of the "informational ban" imposed on the flat, as it had caused a month's delay in the registration of her title with the State. The court also pointed out that the flat had been owned by Mr S. for only six months before being sold to the applicant and that the applicant had bought it below the market price, which should have raised reasonable doubts as to the legal status of the acquired property.

28. On 22 August 2012 the Moscow City Court, in appellate proceedings, upheld the judgment, having endorsed the District Court's reasoning. It appears from the record of the appeal hearing that the plaintiff explicitly stated that it had no grounds to doubt that the applicant had bought the flat in good faith.

29. On 24 December 2012 the Moscow City Court refused to institute cassation proceedings, having found no violations of material or procedural norms in the previous proceedings.

30. The applicant requested a suspension of the execution of the judgment of 31 January 2012 in so far as it concerned her eviction. On 18 March 2013 the District Court dismissed her request. On 8 July 2013 the Moscow City Court upheld that decision on appeal.

31. According to the applicant's latest submissions, she has not yet been evicted but considers it imminent.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. For the relevant provisions of domestic law, see *Gladysheva v. Russia* (no. 7097/10, §§ 35-37, 6 December 2011).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

33. The applicant complained that she had been deprived of her possessions in violation of Article 1 of Protocol No. 1, which provides, in so far as relevant, as follows:

Article 1 of Protocol No. 1 (protection of property)

"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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

34. The Government considered that the applicant had failed to exhaust the domestic remedies, as she had not brought proceedings against Mr S. for damage caused to her by the loss of title (see paragraph 16 above).

35. The Court notes that the applicant claimed to be a victim of a violation of her right to peaceful enjoyment of her possession as a result of the revocation of her title by a judgment which has become final and enforceable. It observes that no further recourse that may potentially lead to reinstatement of her title lies against that judgment under Russian law. The Court considers therefore that the existence of the possibility for the applicant to seek damages from Mr S. cannot deprive her of victim status for the purposes of her complaint under Article 1 of Protocol No. 1; neither may it be regarded as necessary for compliance with the rule of exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention (see *Gladysheva*, cited above, §§ 60-62).

36. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The Government submitted that the interference with the applicant's property rights had been in accordance with the conditions provided for by law and that it pursued the legitimate aim of protecting the rights and interests of others, notably of people on the waiting list for social housing.

38. The applicant contested the lawfulness of the revocation of her title to the flat. She alleged, in particular, that there had been a gross deficiency in the application of the domestic law by the domestic courts and that the public interest pursued had not been proportionate to her property rights under Article 1 of Protocol No. 1.

2. The Court's assessment

(a) General principles

39. The Court refers to its established case-law on the structure of Article 1 of Protocol No. 1 and the manner in which the three rules contained in that provision are to be applied (see, among many other authorities, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 52, ECHR 2007-III; *Bruncrona v. Finland*, no. 41673/98, §§ 65-69, 16 November 2004; and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

40. The Court reiterates that in order to be compatible with Article 1 of Protocol No. 1, an interference with the peaceful enjoyment of possessions must fulfil three conditions: it must be carried out "subject to the conditions provided for by law", which excludes any arbitrary action on the part of the national authorities, must be "in the public interest", and must strike a fair balance between the owner's rights and the interests of the community.

41. The concern to achieve a fair balance between the demands of the public and the owner's rights is reflected in the structure of Article 1 as a whole, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions or controlling their use. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance, and, notably, whether it imposes a disproportionate burden on the applicant (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII).

42. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. That provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate "public interest" objectives may call for reimbursement of less than the full market value (see, among other authorities, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II).

43. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the proceedings at issue must also afford the individual a reasonable opportunity to put his or her case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see, among other authorities, *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV).

(b) Application of these principles in the present case

44. It is not in dispute between the parties that the revocation of the applicant's title to the flat constituted an interference with her property rights within the meaning of Article 1 of Protocol No. 1. It remains to be determined whether the interference was in accordance with the domestic law, whether it pursued a public interest and achieved a "fair balance" between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights.

45. Regarding the lawfulness of the revocation of the applicant's title to the flat, the Court cannot rule out that there may have been a certain deficiency in the application of the domestic law as alleged by the applicant. Noting, however, that its power to review compliance with domestic law is limited (see *Gashi v. Croatia*, no. 32457/05, § 29, 13 December 2007, and *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, § 57, Series A no. 163), the Court considers that it may dispense with resolving this issue because, irrespective of the domestic lawfulness of the interference, it fell short of the requirement of proportionality, as set out below (see *Gladysheva,* cited above, §§ 72-75).

46. As to the legitimate aim of the impugned measure, the Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a matter of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation (see, among many authorities, *Edwards v. Malta*, no. 17647/04, § 64, 24 October 2006). With this in mind, the Court accepts therefore that the revocation of the applicant's title to the flat pursued the public interest, in that it catered for the needs of those on the waiting list for social housing.

47. Turning to the assessment of whether the impugned measure satisfied the requirement of proportionality, despite the margin of appreciation given to the State the Court must nevertheless, in the exercise of its power of review, determine whether the requisite balance was maintained in a manner consonant with the applicant's right to property (see *Rosiński v Poland*, no. 17373/02, § 78, 17 July 2007).

48. The Court observes that the applicant's title was invalidated because of fraud in the procedures in which the flat had been exchanged and subsequently privatised by a third party. The Court notes in this connection that it was within the State's exclusive competence to define the conditions and procedures under which it alienated its assets to persons it considered eligible and to oversee compliance with those conditions. It was also within the State's exclusive competence to legalise the transfer of the title to the

flat through a registration procedure specifically aimed at providing extra security to the title holder. With so many regulatory authorities having granted clearance to Mr S.'s title, it was not for the applicant, or any other third-party buyer of the flat, to assume the risk of ownership being revoked on account of defects which should have been eliminated in procedures specially designed to do so. The authorities' oversight could therefore not justify subsequent retribution against the applicant (see *Gladysheva,* cited above, § 79).

49. The Court further notes that the applicant has been stripped of ownership without compensation or provision of replacement housing from the State. The Court reiterates that the mistakes or errors of the State authorities should serve to the benefit of the persons affected, especially where no other conflicting private interest is at stake. In other words, the risk of any mistake made by the State authority must be borne by the State and the errors must not be remedied at the expense of the individual concerned (see *Gashi,* cited above, § 40, and, *mutatis mutandis, Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007).

50. The foregoing considerations are sufficient to enable the Court to conclude that the conditions under which the applicant was stripped of her title to the flat imposed an individual and excessive burden on her and that the authorities have failed to strike a fair balance between the demands of the public interest on the one hand and the applicant's right to the peaceful enjoyment of her possessions on the other.

51. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

52. The applicant complained that her forthcoming eviction amounted to a violation of her right to respect for her home. She relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

53. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

54. The Government considered that the applicant's forthcoming eviction was lawful, pursued a legitimate aim of protecting the rights of persons eligible to social housing and that it was proportionate to that aim. They pointed out that for the time being the applicant continued to occupy the flat. When the eviction was enforced she would not find herself on the street as she owned another flat, a house and two plots of land in the Moscow Region. In any event the applicant could seek assistance from the Moscow Housing Department in order to be provided with suitable social housing in Moscow, including the possibility to live in the flat under social tenancy conditions.

55. The applicant submitted that she had been living in the flat since 2005 and that it had become her home. The invalidation of her title to the flat, leading to the eviction order, amounted to an interference with her right to respect for her home. She accepted that the interference was in accordance with the domestic law and that it pursued a legitimate aim. However, she argued that it was not necessary in a democratic society, did not correspond to a pressing social need and was not proportionate to the legitimate aim pursued. She further asserted that the domestic authorities had made it clear to her that they would not provide her with assistance in resolving her housing need.

2. The Court's assessment

56. The Court first notes that the applicant has been living in the flat since purchasing it from Mr S. in 2005. Her ownership had been duly registered by the competent State authorities. Her right to live there derived from her title to the property. It is thus undeniably her home, and the Government have never claimed otherwise.

57. The Court will next consider whether there has been an interference with the applicant's right to respect for her home. It notes that the judgment which revoked her title also ordered her eviction from the premises, and that the judgment has become final and enforceable. As matters stand, the applicant has no further recourse against the decision that she must vacate the flat, and her request for the enforcement to be suspended was refused. The Court reiterates that once an eviction order has been issued it amounts to an interference with the right to respect for home, irrespective of whether it has yet been carried out (see *Ćosić v. Croatia*, no. 28261/06, § 18, 15 January 2009, and *Gladysheva,* cited above, § 91), and irrespective of

whether one owns other accommodation (see *Brežec v. Croatia*, no. 7177/10, § 40, 18 July 2013). In the present case, the Government did not expressly contest the assertion that there has been an interference with the applicant's right under Article 8, and, in circumstances such as these, the existence of an interference is beyond doubt.

58. The Court further notes that the lawfulness of the eviction order is not in dispute; under the domestic law it is an automatic consequence of termination of ownership. It will thus consider it lawful. As to the existence of a legitimate aim, the Court accepts that the applicant's eviction is aimed at protecting the rights of welfare recipients, to whom the flat should be reallocated, as the Government claim.

59. The Court will therefore proceed to review the question of whether the interference was "necessary in a democratic society". In making this assessment the Court will have to examine whether it corresponded to a "pressing social need" and, in particular, whether it was proportionate to the legitimate aim pursued. It has previously held that the margin of appreciation in housing matters is narrower when it comes to the rights guaranteed by Article 8 than it is for those guaranteed by in Article 1 of Protocol No. 1, because Article 8 concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see *Connors v. the United Kingdom*, no. 66746/01, §§ 81-84, 27 May 2004, and *Orlić v. Croatia*, no. 48833/07, §§ 63-70, 21 June 2011).

60. The Court notes that the domestic courts automatically ordered the applicant's eviction after they had stripped her of ownership. They made no further analysis as to the proportionality of the measure to be applied against her, namely her eviction from the flat which they declared to be State-owned.

61. The Court observes that the applicant's home has been repossessed by the State, and not by a private party whose interests in the flat would have been at stake (see *Orlić*, cited above, § 69). Insufficient details were given about the intended beneficiaries allegedly on the waiting list for social housing to allow the Court to weigh their personal circumstances against those of the applicant. In any event, no individual on the waiting list would have had the same attachment to the flat as the applicant; nor would he or she have had a vested interest in that particular dwelling, as opposed to a similar one.

62. The Court further observes that while it is open to the applicant to seek assistance from the Moscow Housing Department in being provided with suitable social housing in Moscow, the possibility of obtaining such assistance and any potential results thereof remain purely speculative at the present time and cannot therefore be taken into account in the assessment of the proportionality of the interference with the legitimate aim pursued.

63. In the light of the foregoing considerations, the Court considers that the interference with the applicant's right under Article 8 was not "necessary in a democratic society" as it did not correspond to a "pressing social need" and was not proportionate to the legitimate aim pursued. There has therefore been a violation of Article 8 of the Convention in the instant case.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

64. The applicant further complained under Article 6 of the Convention that the proceedings before the national courts had been unfair. She claimed, in particular, that, whereas the Moscow Housing Department had explicitly acknowledged that she had bought the flat in good faith (see paragraph 28 above), the domestic court had reached a conclusion to the contrary. Furthermore, the court had relied on an "informational ban" in respect of the flat, whereas such legal notion did not exist in the domestic law. Lastly, the District Court had not followed the instructions given by the Moscow City Court on 14 June 2011. In so far as relevant, Article 6 reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] tribunal ..."

65. Both parties presented observations on the matter.

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

67. However, having regard to the findings of violation of the applicant's rights under Article 1 of Protocol No. 1 and Article 8 of the Convention, which are at the heart of the present case (see paragraphs 51 and 63 above), the Court considers that it is unnecessary to examine separately whether there has been a violation of Article 6.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

> "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. Damage

69. The applicant claimed 8,599,795 Russian roubles (RUB) in respect of pecuniary damage, broken down as follows:

(a) RUB 8,592,680, which is the current market value of the flat;

(b) RUB 2,500 for the expert valuation of the flat;

(c) RUB 1,245 for medicine for the applicant's stress-related condition; and

(d) RUB 3,370 and RUB 1,259 for postal expenses.

70. As to non-pecuniary damage, the applicant claimed 40,000 euros (EUR), referring to the anxiety and stress she was enduring because of the imminent loss of her home. She alleged, among other things, that she was under permanent stress as a result of her involvement in relevant court proceedings, that she felt frustrated and vulnerable *vis-à-vis* the domestic authorities and the domestic system of justice, and uncertain about her future. The applicant further alleged that as a result of the stress she had developed a number of medical conditions and had left her job.

71. The Government viewed the applicant's claim for compensation of the market value of the flat as an attempt to challenge the outcome of the domestic proceedings and considered that it should be dismissed. They further considered that the applicant's claim for compensation of medical expenses was manifestly ill-founded and irrelevant to the subject matter of the application. They also contested her claim for non-pecuniary damage, considering it unreasonable, excessive and inconsistent with the Court's case-law.

72. The Court considers it appropriate to deal with the postal expenses and expert fees claimed by the applicant under the head of costs and expenses.

73. As to medical expenses, the Court considers that the applicant has failed to prove the existence of a causal link between the subject matter of the present application and her health condition. For that reason the Court rejects this claim.

74. The Court refers to its finding above that the authorities violated the applicant's right to peaceful enjoyment of her possessions guaranteed by Article 1 of Protocol No. 1, having stripped her of the title to the flat (see paragraph 51 above). It also refers to its finding that the order to evict the applicant from the flat, following her dispossession, violated her right to respect for home enshrined in Article 8 of the Convention (see paragraph 63 above). In making this finding, the Court has stressed the central importance of the right to home in the Convention hierarchy of rights (see paragraph 59 above), and has taken into account the applicant's attachment to that particular flat (see paragraph 61 above). It considers that there is a clear link between the violations found and the damage caused to the applicant.

75. The Court reiterates that, normally, the priority under Article 41 of the Convention is *restitutio in integrum*, as the respondent State is expected to make all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach (see, among other authorities, *Piersack v. Belgium* (Article 50),

26 October 1984, § 12, Series A no. 85; *Tchitchinadze v. Georgia*, no. 18156/05, § 69, 27 May 2010; *Fener Rum Patrikliği (Ecumenical Patriarchy) v. Turkey* (just satisfaction), no. 14340/05, § 35, 15 June 2010, § 198; and *Stoycheva v. Bulgaria*, no. 43590/04, § 74, 19 July 2011). Consequently, with due regard to its findings in the instant case, and in particular having noted the absence of a competing third-party interest or other obstacle to the restitution of the applicant's ownership, the Court considers that the most appropriate form of redress would be to restore the applicant's title to the flat and to reverse the order for her eviction. Thus, the applicant would be put as far as possible in a situation equivalent to the one in which she would have been had there not been a breach of Article 8 of the Convention and Article 1 of Protocol No. 1 (see *Gladysheva*, cited above, § 106).

76. In addition, the Court has no doubt that the applicant suffered distress and frustration on account of the deprivation of her possessions and the imminent eviction from her home. The resulting non-pecuniary damage would not be adequately compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 under this head.

B. Costs and expenses

77. In addition to postal expenses and expert fees (see paragraphs 69 and 72 above), the applicant claimed RUB 53,860 for the costs and expenses incurred before the domestic courts, comprising court fees, lawyer's fees and notary charges, and EUR 5,000 for those incurred before the Court (EUR 3,000 for legal services by Mr I. Puzanov and EUR 2,000 for legal services by Ms M. Samorodkina). The applicant submitted a copy of her agreement with Ms M. Samorodkina and explained that she could not provide a copy of her agreement with Mr I. Puzanov, because the latter had been arrested by the domestic authorities in summer 2013 and she had been unable to locate him. She noted, however, that Mr I. Puzanov's services under a similar agreement in the case of *Gladysheva* had amounted to EUR 5,000 and that the Court had found that the above sum had been appropriate for the work performed by the lawyer (see *Gladysheva,* cited above, § 112).

78. The Government did not object to granting the applicant RUB 3,370 for postal expenses and RUB 2,500 for the expert valuation of the flat. They considered, however, that the remainder of the applicant's claim should be dismissed as unsubstantiated.

79. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 170 for costs and expenses in the domestic proceedings.

80. As to the costs and expenses incurred by the applicant in the Strasbourg proceedings, the Court observes that Mr I. Puzanov and Ms M. Samorodkina made substantial submissions on behalf of the applicant. It accepts therefore that they rendered the legal services as alleged. It therefore considers it reasonable to award the applicant the sum of EUR 5,000 for the proceedings before the Court.

81. The total award under the head of costs and expenses amounts therefore to EUR 5,170. Out of this sum EUR 3,000 should be paid into Mr I. Puzanov's bank account, and EUR 2,000 should be paid to Ms M. Samorodkina's bank account.

C. Default interest

82. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;

5. *Holds,* unanimously,
   (a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the full restitution of the applicant's title to the flat and the annulment of her eviction order;
   (b) that the respondent State is to pay the applicant, within the same 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 the currency of the respondent State at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,170 (five thousand one hundred and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, out of which EUR 5,000 is to be paid into the representatives' bank accounts (EUR 3,000 to Mr I. Puzanov and EUR 2,000 to Ms M. Samorodkina);

(c) 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President