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

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Retroactive annulment of title deeds over plots of land classified as "forestry resources": unjustified interference

In today's **Chamber** judgment[1] in the case of Gavrilova and Others v. Russia (application no. 2625/17) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned the judicial annulment of the applicants' title deeds to plots of land which they had purchased under a series of transactions, and the return of those plots to State ownership on the grounds that they were "forestry resources".

The Court found in particular that the applicants, who had not been guilty of any offence, had had to suffer the consequences of the authorities' errors and omissions, in the absence of any form of compensation. The fair balance that had to be struck between the requirements of the public interest and the need to protect the applicants' property rights had therefore been disrupted.

Principal facts

The applicants are five Russian nationals who were born between 1944 and 1985. They live in Russia.

The case concerns the judicial annulment of the applicants' title deeds to plots of land which they had purchased as part of a series of transactions, and the return of those plots to State ownership on the grounds that they were "forestry resources". The land was located in the Lesnoye residential leisure park in the Gachina district (Leningrad Region).

In September 2014 the Federal Agency for State Heritage Management brought an action for recovery of possession against the applicants and five other parties who had purchased plots on the land in question. The Gachina Court dismissed the action on the grounds that it was for the public authorities to ensure the protection of State heritage and that the applicants, as bona fide purchasers, should not be penalised for the authorities' negligence. However, the Leningrad Regional Court allowed an appeal by the Federal Agency's in April 2016. It held, in particulier, that the land formed part of the national forestry resources, that it belonged to the State and that it could not be privatised unless it had lawfully changed category, which had not been the case. An appeal on points of law by the applicants was dismissed under two decisions given in July 2016.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicants complained of the annulment of their property rights over the plots which they had purchased.

The application was lodged with the European Court of Human Rights on 22 December 2016.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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Judgment was given by a Chamber of seven judges, composed as follows:

Paul **Lemmens** (Belgium), *President*,
Dmitry **Dedov** (Russia),
Georges **Ravarani** (Luxembourg),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),

and also Milan **Blaško**, *Section Registrar.*

Decision of the Court

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

The Court noted that the annulment of the applicants' title deeds had amounted to a "deprivation of property". It further noted that the impugned measure had pursued the public-interest aim of land management by the authorities and the protection of the forest as part of the natural environment, which called for an appropriate spatial development policy. The Court reiterated in that connection that environmental protection had become a cause whose defence aroused the constant and sustained interest of the public, and consequently the public authorities.

The Court pointed out that the proportionality of the interference involved striking a fair balance between the requirements of the public interest of the community and the imperatives of protecting the fundamental rights of individuals. That balance was disrupted where the person concerned had had to bear "an individual and excessive burden".

In its analysis of the proportionality of the measure, in addition to the authorities' conduct, the Court often considered the attitude of the owner of the property, including the degree of fault or care which he or she had displayed.

In the instant case, as regards the conduct of the authorities, the Court noted that they had, on the one hand, been slow to act: they had failed to register the State's property rights over the land and its characterisation as part of the national forestry resources, they had remained inactive for almost 24 years (since 1991) even though they had known that the State had lost possession and the ownership of the land, and they had permitted the dereliction and gradual destruction of the woodland with which it had been covered. On the other hand, they had validated the categorisation and designation of the land, as well as the transactions relating to it and to the plots formed after it had been divided up. In so doing the authorities had failed in their duty to act promptly and diligently.

Furthermore, in hearing and determining the action for recovery of possession lodged by the State, the appellate court – which had accepted that the applicants had acted in good faith – had failed to balance the competing public and private interests: it had merely found that the impugned piece of land had always been State property and that it could not be privatised. The Court considered that the court had not taken account of the purchasers' bona fide, in breach of Convention requirements and the indications of the Supreme Court and the Constitutional Court.

Moreover, whereas the Gachina Court had pointed out that the public-interest aim could have been achieved by means of less drastic measures, for example by having the State purchase the applicants' plots or by assigning them different but equivalent plots, the appellate court had not considered those possibilities.

In fact, the Regional Court had found that statute-barring should not have been used as a means of justifying the unlawful acts committed against the owner – the State – and that the Federal Agency

had not had cognisance of the violation of the State's rights until the prosecutor's office had informed it, even though, according to the court's findings, which had not been contradicted by the Regional Court, more than 20 years had passed since the first transaction relating to the land. Not only did that approach run counter to the practice of the Higher Commercial Court, but also it deprived the regulations on statute-barring established by the law of any real effect by making it conditional upon the outcome of the verifications conducted by the prosecutor's office, which could take several years, or indeed several decades, after the privatisation of an item of real property. That gave the public authorities a disproportionate advantage, rendered actions for recovery of possession virtually free of any time-bar and fomented insecurity on the real-estate market.

As regards the applicants' conduct, the Court observed that they had never been accused of acting in bad faith or of showing negligence in purchasing the plots of land. It could not discern anything to suggest that that had been the case. It also noted that the woodland located in the territory of the municipalities had not been classified as "forestry resources" under the former Forestry Code, and could be located in areas which were not classified as forestry resources under the new Forestry Code, such that they could be privatised.

As a result, the applicants, acting in good faith, trusting the authorities and lacking the means of detecting any irregularities in the purchase of plots of land, could legitimately have believed that in purchasing those plots, at least some of which comprised woodland, located in the territory of the municipality, they had been acting in accordance with the law and that they had been on legally safe ground. The fact is that neither the applicants' bona fide not the fact that the situation had not been attributable to them had been mentioned during the domestic proceedings.

Consequently, the Court concluded that the applicants, who had committed no wrongdoing, had had to suffer the consequences of the authorities' errors and of the rigid application of the provisions on recovery of possession, without receiving any form of compensation. The fair balance that had to be struck between the requirements of the public interest and the need to protect the applicants' property rights had therefore been disrupted, and there had been a violation of Article 1 of Protocol No. 1 to the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay one of the applicants 870 euros (EUR) in respect of costs and expenses. None of the other applicants had submitted claims for costs and expenses.

The Court also held that the issue of just satisfaction under Article 41 of the Convention, as regards pecuniary and non-pecuniary damage, was not ready for decision, and reserved it.

The judgment is available only in French.

Press contacts
During the current public health-crisis, journalists can contact the Press Unit via echrpress@echr.coe.int

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.