THIRD SECTION

**CASE OF OLKHOVSKIY v. RUSSIA**

*(Application no. 53716/17)*

JUDGMENT

STRASBOURG

9 July 2019

*This judgment is final but it may be subject to editorial revision.*

In the case of Olkhovskiy v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

 Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 18 June 2019,

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

PROCEDURE

1.  The case originated in an application (no. 53716/17) 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, Mr Sergey Sergeyevich Olkhovskiy (“the applicant”), on 10 July 2017.

2.  The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3.  On 7 November 2017 notice of the complaint concerning the annulment of the applicant’s title to real property was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 2012 and lives in Kaliningrad.

A.  Transactions in respect of the flat later purchased by the applicant

5.  A flat measuring 33.9 sq. m and located at 22-189 Prospekt Pobedy, Kaliningrad, belonged to the Town of Kaliningrad. B. resided in the flat under a social tenancy agreement.

6.  On 21 August 2008 the municipality transferred the title to the flat to B. under a privatisation scheme. On 16 October 2008 B. died. It appears that no information as regards the privatisation agreement and B.’s title to the flat was entered into the Unified State Register of Immovable Property (Единый государственный реестр прав на недвижимое имущество и сделок с ним).

7.  On an unspecified date the title to the flat was transferred to Chob. on the basis of a court judgment of 7 November 2011. The State registration authorities entered the relevant information into the State Register.

8.  On an unspecified date Chob. sold the flat to Chub. The transaction and the transfer of the title to Chub. were registered in the State Register.

9.  On 3 February 2012 Chub. sold the flat to the applicant and his father. According to the purchase contract, the total value of the flat was 900,000 Russian roubles (RUB). The value of the applicant’s share in the flat was RUB 700,000.

10.  On 13 February 2012 the applicant’s title to the flat was registered in the State Register. The applicant became the owner of two thirds of the flat. The applicant and his parents moved into the flat and resided there.

B.  Termination of the applicant’s title to the flat

11.  On an unspecified date an investigation was opened in respect of Chub.’s acquisition of the flat, which it was alleged had been fraudulent. It was established that Chub. had forged the court judgment recognising Chob.’s title to the flat.

12.  On 12 January 2015 Leningradskiy District Court of Kaliningrad found Chub. guilty of fraud and sentenced him to a term of imprisonment.

13.  On an unspecified date the municipality brought a civil action against the applicant and his father, seeking the restitution of the title to the flat.

14.  On 15 July 2016 the Tsentralniy District Court of Kaliningrad granted the municipality’s claims in full. The court considered that the title to the flat had not been transferred to B. and that the municipality had always been the lawful owner of the flat. It ruled that the municipality had lost the title to the flat “against its will” and, as a matter of law, it could reclaim the flat from its bona fide owners.

15.  On 9 November 2016 the Kaliningrad Regional Court upheld the judgment of 15 July 2016, in substance, on appeal.

16.  On 8 February 2017 the Supreme Court of the Russian Federation dismissed the applicant’s cassation appeal against the judgments of 15 July and 9 November 2016.

C.  Eviction proceedings

17.  On 29 May 2018 the Tsentralniy District Court of Kaliningrad granted claims brought by the municipality against the applicant and ordered his eviction.

18.  On 29 August 2018 the Regional Court upheld the judgment of 29 May 2018 on appeal.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

19.  The applicant complained that he had been deprived of his property in violation of Article 1 of Protocol No. 1 to the Convention, which provides, in so far as relevant, 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.

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

20.  The Government considered that the complaint should be dismissed as the applicant had failed to bring an action for damages against Chub., who had been found guilty of fraud in respect of the flat later purchased by the applicant.

21.  The applicant did not comment.

22.  The Court notes that it has already examined the issue of exhaustion of effective domestic remedies. In particular, in a case where the applicant was deprived of her housing as a result of the revocation of her title to a flat by a final and enforceable judgment (see *Gladysheva v. Russia*, no. 7097/10, §§ 60-62 and 89, 6 December 2011), it concluded that, under Russian law, there was no further recourse against that judgment that might potentially lead to the reinstatement of the applicant’s title to the flat. It further noted that the possibility of bringing an action for damages, in those circumstances, could not deprive the applicant of victim status for the purpose of lodging a complaint under Article 1 of Protocol No. 1 to the Convention. Nor could doing so be regarded as necessary for compliance with the rule of exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. Lastly, the Court considered that any damages that the applicant might have been able to recover against the seller of the flat might only be taken into account for the purposes of assessing the proportionality of the interference and calculation of pecuniary damage, if a violation of Article 1 of Protocol No. 1 to the Convention was found by the Court, and if just satisfaction was awarded under Article 41 of the Convention (ibid., § 62).

23.  The Court considers that those findings hold true in the context of the present case. The Government have not put forward any fact or argument capable of persuading it to reach a different conclusion. Accordingly, it was not incumbent on the applicant to pursue the civil remedy referred to by the Government. The Government’s objection in this regard is, therefore, dismissed.

24.  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

25.  The Government conceded that the transfer of the title to the flat to the town administration had amounted to an interference with the applicant’s property rights. Nevertheless, such interference had been in accordance with the law, had pursued a legitimate aim and had been proportionate and “necessary in a democratic society”. The town administration had always held the title to the flat. It had rightfully brought a civil action seeking the restitution of its property, which it had lost against its will and, as a matter of law, it had had a right to recover that property from the applicant. The flat would be reassigned to persons in need of social housing. The judgment in the town administration’s favour had not been enforced to date and the applicant continued to reside there. It remained open to him to bring an action for damages against Chub. to mitigate his financial losses.

26.  The applicant maintained his complaint.

2.  The Court’s assessment

27.  The Court has, on a number of previous occasions, examined cases in which the Russian State or municipal authorities, being the original owners of housing, had been successful in reclaiming such housing from bona fide owners once it had been established that one of the prior transactions in respect of such property had been fraudulent (see *Gladysheva*, cited above, §§ 77-83; *Stolyarova v. Russia*, no. 15711/13, §§ 47-51, 29 January 2015; *Andrey Medvedev* *v. Russia*, no. 75737/13, §§ 42-47, 13 September 2016; *Kirillova v. Russia*, no. 50775/13, §§ 33-40, 13 September 2016; *Anna Popova* *v. Russia*, no. 59391/12, §§ 33-39, 4 October 2016; *Alentseva v. Russia*, no. 31788/06, §§ 55-77, 17 November 2016; *Pchelintseva and Others v. Russia*, nos. 47724/07 and 4 others, §§ 90‑101, 17 November 2016; and *Ponyayeva and Others v. Russia*, no. 63508/11, §§ 45-57, 17 November 2016). Having examined the specific conditions and procedures under which the State had alienated its assets to private individuals, the Court noted that they were within the State’s exclusive competence and held that any defects in those procedures, resulting in the loss by the State or municipal authorities of their real property, should not have been remedied at the expense of bona fide owners. The Court further reasoned that the restitution of such property to the State or municipality, in the absence of any compensation being paid to the bona fide owner, imposed an individual and excessive burden on the latter and failed to strike a fair balance between the demands of the public interest on the one hand and the bona fideowners’ right to the peaceful enjoyment of their possessions on the other.

28.  Turning to the circumstances of the present case, the Court sees no reason to hold otherwise. The Court notes that as a result of the alleged fraud committed by Chub., the flat was no longer in the town administration’s “possession”. The Court further notes that there were safeguards in place to ensure that the flat changed hands in accordance with the domestic law. The lawfulness of the transaction and title in respect of the flat were subject to control by the registration authorities. The Government, however, did not proffer any explanation as to why those safeguards had not been effective in detecting the fraud and protecting the town administration’s interests. In particular, neither the domestic judicial authorities nor the Government clarified why it had been possible for the registration authorities to approve the transfer of title to the flat to Chob. at a time when the flat had been municipal property. The Government did not proffer any explanation as to why the State registration authorities had failed to detect the fraud, had accepted the forged judgment as authentic and had approved the transactions concerning the flat. In such circumstances, the Court concludes that it was a faulty registration procedure that led to the town administration’s loss of the title to the flat. The registration authorities failed to detect the fraud and protect municipal interests.

29.  Lastly, the Court accepts that, as suggested by the Government, it was open to the applicant to mitigate his losses by bringing an action for damages against Chub. However, the Court is not convinced that the Government have demonstrated that such an action would have had any prospect of success. In this respect, the Court notes that the town administration chose not to sue Chub. to recover its own losses resulting from the fraud. In any event, the Court reiterates that any compensation the applicant might receive from such an action could only be relevant for the evaluation of his losses, for the purposes of Article 41 of the Convention if a violation were found (see paragraph 22 above).

30.  Regard being had to the above, the Court considers that it was not for the applicant to assume the risk of the title to the flat being revoked on account of omissions on the part of the authorities in procedures specially designed to prevent fraud in real-property transactions. The Court reiterates that mistakes or errors on the part of the State authorities should serve to the benefit of the persons affected. In other words, the consequences of any mistake made by a State authority must be borne by the State and any such errors must not be remedied at the expense of the individual concerned (see *Stolyarova*, cited above, § 49). It concludes that the forfeiture of the applicant’s title to the flat and the transfer of the ownership of the flat to the town administration, in the circumstances of the case, placed a disproportionate and excessive burden on the applicant. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

31.  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

32.  The applicant claimed 1,500,000 Russian roubles (RUB) and RUB 200,000 in respect of pecuniary and non-pecuniary damage respectively.

33.  Discerning no violation of the applicant’s rights, the Government submitted that no award should be made to him. In any event, they considered the applicant’s claims excessive and unsubstantiated.

34.  The Court takes into account that in the present case it has found a violation of the applicant’s rights guaranteed by Article 1 of Protocol No. 1 to the Convention. It considers that there is a clear link between the violation found and the damage suffered by him.

35.  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 as it existed 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, 19 July 2011). Consequently, having due regard to its findings in the instant case and to the fact that the applicant did not receive any compensation for the loss of his title to the flat in the domestic proceedings, the Court considers that the most appropriate form of redress would be to restore the applicant’s title to his share in the flat. Thus, he would be put, as far as possible, back into a situation equivalent to the one in which he would have been had there not been a breach of Article 1 of Protocol No. 1 to the Convention (compare *Gladysheva*, cited above, § 106). In the alternative, if the State no longer owns the flat, or if it has been otherwise alienated, the Government should ensure that the applicant receives title to an equivalent property.

36.  In addition, the Court has no doubt that the applicant suffered distress and frustration on account of the deprivation of his possessions. Making its assessment on an equitable basis, the Court awards to the applicant EUR 2,600 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B.  Costs and expenses

37.  The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C.  Default interest

38.  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 to the Convention;

3.  *Holds*

(a)  that the respondent State shall ensure, by appropriate means, within three months, full restitution of the applicant’s title to his share in the flat. In the alternative, if the State no longer owns the flat, or if it has been otherwise alienated, the Government should ensure that the applicant receives title to an equivalent property;

(b)  that the respondent State is to pay the applicant, within three months the following amounts,to be converted into the currency of the respondent State, EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, at the rate applicable at the date of settlement;

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

4.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 9 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Alena Poláčková
 Deputy Registrar President