



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

THIRD SECTION

CASE OF BELOVA v. RUSSIA

(Application no. 33955/08)

JUDGMENT

Art 1 P1 • Respect for property • Public property recovered by State years after purchase by applicant following unauthorised sale to intermediate acquirers • Acquirer's duty to investigate origin of property to avoid possible confiscation claims • Good faith thus not acknowledged • Applicant not deprived of seeking compensation from those responsible for her loss • Significant public interests in issue not outweighed by private ones
Art 6 § 1 (civil) • Lack of notification of appeal hearing

STRASBOURG

15 September 2020

FINAL

19/04/2021

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

In the case of Belova v. Russia,

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

Georgios A. Serghides, *President*,

Helen Keller,

Dmitry Dedov,

Alena Poláčková,

Gilberto Felici,

Erik Wennerström,

Lorraine Schembri Orland, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application 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 Nina Aleksandrovna Belova (“the applicant”), on 12 June 2008;

the decision to give notice to the Russian Government (“the Government”) of the application;

the parties’ observations;

Having regard to the decision to uphold the Government’s objection to the examination of the application by a Committee;

Having deliberated in private on 25 August 2020,

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

INTRODUCTION

The case concerns the recovery of State-owned property from a private person under the laws on purchase in good faith.

THE FACTS

1. The applicant was born in 1972 and lives in Sochi. She was represented by Mr M. Ioffe, a lawyer practising in Riga.

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

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

I. TRANSACTIONS LEADING TO THE APPLICANT’S ACQUISITION OF THE PROPERTY

4. In 1977, Southern Cultures, a State horticultural enterprise, dug an irrigation pond on Golubaya Street in Sochi. A bathhouse and a portable

cabin were erected on the pond's banks. The property was built on land which belonged to the State and was managed (*хозяйственное ведение*) by the enterprise.

5. The enterprise was indebted to K. for the maintenance of the pond. Litigation ensued, and in April 2003 the enterprise signed over the pond, the bathhouse, and the cabin to K. in partial settlement. K. registered the agreement with the Property Registration Authority (ЕГПИ) and was issued with the title deeds (*свидетельство о государственной регистрации права*, literally "certificate of State registration of title").

6. In November 2003 K. sold the property to M.

7. On 8 December 2003 M. registered his acquisition with the Registration Authority and was issued with the title deeds.

8. On 27 May 2004 the Presidium of the Krasnodar Regional Court set aside the settlement agreement between the enterprise and K.

9. On 28 May 2004 M. sold the property to the applicant. He proved his title with the deeds issued by the Registration Authority.

10. On 18 June 2004 the applicant registered her acquisition with the Registration Authority and was issued with the title deeds. She enclosed the property with four rows of barbed wire and put it to undisclosed personal use.

11. On 29 August 2004 K. was awarded a sum against the enterprise in payment of the debt.

II. ACTION FOR THE RECOVERY OF THE PROPERTY FROM THE APPLICANT

12. In 2012 the State Property Agency (*Агентство по управлению государственным имуществом*) sought to reclaim the property from the applicant, alleging that the enterprise had failed to seek authorisation before signing the property over.

13. On 20 July 2012 the district court dismissed the action as time-barred.

14. On 4 October 2012 the Krasnodar Regional Court reversed that decision and found against the applicant. The court found that the land on which the property was situated belonged to the State, that it had been designated for construction in preparation for the Olympics, and that the property could be recovered from the applicant under Articles 301 and 302 of the Civil Code (see paragraph 24 below) because the State had not agreed to the original transfer of the title. The court annulled the applicant's title deeds and ordered her to return the property to the State.

15. On 23 November 2012 the Regional Court refused the applicant leave to lodge a cassation appeal.

16. On 8 August 2013 the Supreme Court refused the applicant leave to lodge a cassation appeal. The court considered that the applicant was not a

good-faith acquirer because, had she exercised due care and diligence, she would have known that the property had been the subject of litigation and that the enterprise had lost possession of it against its will.

III. ACTION FOR THE BOUNDARY DELINEATION

17. In 2011, in related proceedings, the applicant sought an injunction against the State Property Agency to delineate on the cadastral map the plot of land on which her property was situated and to place it at her disposal.

18. On 5 October 2011 the Adler District Court granted the injunction.

19. On 17 November 2011 the Krasnodar Regional Court upheld that decision.

20. The Agency lodged a cassation appeal.

21. According to the Government, on 10 April 2012 the Regional Court notified both the applicant and her representative by post and telegraph that on 18 April 2012 it would hear the appeal.

22. According to the applicant's representative, on 17 April 2012 he telephoned the court and learned of the hearing. Later the same day he faxed a letter to the court in which he stated that he and the applicant wished to attend but were unable to do so because they had not been notified of the hearing and did not know the contents of the appeal, and thus could not respond to it. He asked the court to send to him copies of the documents and to allow them time to prepare their response. The representative added that he could not attend the hearing on 18 April 2012 because of prior engagements in foreign courts.

23. On 18 April 2012 the Presidium of the Krasnodar Regional Court heard the Agency's cassation appeal. The hearing was attended by the respondent (the Agency) and two third-party respondents (the public Committee for the Preparation of the 2014 Winter Olympics and a private company which held a contract for construction on the disputed land). The Presidium noted that all the parties had been duly notified of the date and place of the hearing. The Presidium allowed the Agency's appeal, reversed the earlier decisions and rejected the applicant's claim. It held, in substance, that the disputed land belonged to the State and had been destined for use as a bird reserve and a 500-room five-star hotel which would accommodate representatives of the International Olympic Committee.

RELEVANT LEGAL FRAMEWORK

24. Articles 301 and 302 of the Civil Code 1994 provide as follows:

Article 301: Recovery of property from wrongful possession by another

"The owner may recover his property from wrongful possession by another."

Article 302: Recovery of property from a good-faith acquirer

“1. If property was acquired for value from a person who had no right to transfer it, and if the acquirer did not and could not have known this (a good-faith acquirer), the owner may recover the property from the acquirer if the property had been lost by him or his trustee, if it had been stolen from them, or if it had otherwise left their possession against their will....”

25. The relevant part of Article 385 § 2 of the Code of Civil Procedure 2002 provides as follows:

“Parties shall be notified of the time and place of the examination of a cassation appeal ... but their non-appearance shall not be an obstacle to such an examination.”

26. Section 2 of Federal Law no. 122-FZ of 21 July 1997 on State registration of rights to immovable property and related transactions, as in force at the material time, provided as follows:

Concept of State registration of rights to immovable property and related transactions

“1. The State registration of rights to immovable property and related transactions ... is a legal act by which the State recognises and confirms the existence, restriction (encumbrance), transfer or termination of rights to immovable property. ...

The State registration serves as the sole proof of the existence of a registered right. The registered right to immovable property may be contested only in court.”

THE LAW

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

27. The applicant complained that she had been wrongfully dispossessed of her property. The Court will examine this complaint under Article 1 of Protocol No. 1, which reads:

“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

1. Submissions by the parties

28. The Government submitted that the applicant’s complaint was manifestly ill-founded. In their opinion, the property had been taken from

the applicant in accordance with the law. They argued that the State had lost the property against its will, K. had never acquired title to it, and the applicant's purchase of it had therefore been null.

29. The applicant submitted that the confiscated buildings had never belonged to the State, and that her property had been appropriated by a company affiliated with a billionaire who was keen to profit from the construction taking place in preparation for the Olympics.

2. The Court's assessment

30. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

31. The parties' arguments are set out above.

2. The Court's assessment

32. The Court finds that the applicant's property – recoverable though it proved to be – should be considered her "possession" within the meaning of Article 1 of Protocol No. 1 because she had her title to it officially registered (see *Gladysheva v. Russia*, no. 7097/10, § 69, 6 December 2011).

33. The Court also finds that the order to return the applicant's property to the State was an interference with her right to the peaceful enjoyment of that possession (see, *mutatis mutandis*, *Gladysheva*, cited above, §§ 52–59).

34. The Court agrees with the Government that the interference was subject to the conditions provided for by law, namely Articles 301 and 302 of the Civil Code as interpreted by the domestic courts.

35. The Court further finds that the interference was in the public interest because, as explained by the domestic authorities and the Government, the State intended to regain the property it had lost through mismanagement and to use it for hosting a major international sporting event and protecting nature.

36. It remains to be determined whether the interference was proportionate to the above-mentioned interest and whether the applicant had to bear an excessive individual burden (*ibid.*, § 82).

37. The parties made no submissions on this point. For its part, the Court reiterates that an interference with the peaceful enjoyment of possessions must strike a fair balance between the general interests of the community and the individual's rights. This means that a measure must be both appropriate for achieving its aim and not disproportionate to that aim. The requisite balance will be upset if the person concerned has had to bear "an

individual and excessive burden” (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98). Authorities should be able to correct their mistakes, but not in a situation where the individual concerned is required to bear an excessive burden (see *Vukušić v. Croatia*, no. 69735/11, § 64, 31 May 2016, with case-law cited therein). The search for a balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, regardless of which paragraphs are concerned in each case; there must always be a reasonable relationship of proportionality between the means employed and the aim pursued. Ascertaining whether such a balance existed requires an overall examination of the various interests in issue (see *Perdigão v. Portugal* [GC], no. 24768/06, §§ 67-68, 16 November 2010), which may call for an analysis of such elements as the terms of compensation and the conduct of the parties to the dispute, including the means employed by the State and their implementation, such as the requirement for the authorities to act in good time, in an appropriate manner and with utmost consistency (see, *mutatis mutandis*, *Beyeler v. Italy* [GC], no. 33202/96, §§ 114 and 120, ECHR 2000-I).

38. The Court also reiterates that “the attenuation of past injustices [should] not create new wrongs” and “persons who acquired their possessions in good faith [should not be] made to bear the burden of responsibility which is rightfully that of the State” (see *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 58, ECHR 2002-VIII).

39. The Court notes in that regard that it is hardly open to the State to claim that it did not know that its property had been lost due to mismanagement. The Registration Authority had registered three transfers of the property and had issued three sets of title deeds. Under the terms of the Law of 21 July 1997, those deeds served as the State’s recognition and confirmation of the transfer (see paragraph 26 above).

40. Nevertheless, the most recent domestic decision given in the case denied the applicant the status of a good-faith acquirer (see paragraph 16 above).

41. The Court considers that an acquirer of property should carefully investigate its origin in order to avoid possible confiscation claims. The Court agrees with the Supreme Court that, had the applicant done this, she would have discovered that the property she was buying was the subject of a dispute and that on the eve of the purchase the Presidium of the Regional Court had set aside the agreement between the enterprise and K. Furthermore, the applicant should have been put on her guard by the fact that the property was changing hands for the third time in a year.

42. In addition, although the State did not compensate the applicant, there is nothing to suggest that she would not be able to claim compensation for her loss from those responsible for it (contrast *Gladysheva*, cited above, § 81).

43. Finally, the applicant has not explained how she used the property and the Court cannot therefore conclude that her private interests outweighed the self-evidently significant public interests of hosting the Olympics and protecting nature.

44. It follows that the applicant did not have to bear an excessive individual burden.

45. There has accordingly been no violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

46. The applicant alleged a violation of Article 6 § 1 of the Convention in that the Presidium of the Krasnodar Regional Court had failed to notify her of its hearing and had examined her cassation appeal in her absence. The relevant part of Article 6 § 1 reads:

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

A. Admissibility

1. Submissions by the parties

47. Referring to their version of the events (see paragraph 21 above), the Government submitted that the Krasnodar Regional Court had duly notified both the applicant and her representative. As proof, the Government provided copies of the notifications.

48. The applicant argued that this proof was untrustworthy. The notifications did not have postmarks and the representative's address on them differed from the one on file at the court.

2. The Court's assessment

49. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

50. The parties' arguments are set out above.

2. The Court's assessment

51. The Court reiterates that Article 6 § 1 of the Convention does not guarantee the right to appear in person in a civil court but rather a more

general right to plead effectively and on an equal footing with the opponent (see *Khuzhin and Others v. Russia*, no. 13470/02, § 104, 23 October 2008). This means, among other things, that a litigant must be notified of a hearing in a way which allows him or her enough time to prepare and to attend (see *Zagorodnikov v. Russia*, no. 66941/01, § 30, 7 June 2007, and *Shandrov v. Russia*, no. 15093/05, § 29, 15 March 2011). To confirm that the litigant has been notified, proof of delivery is required, proof of dispatch does not suffice (see *Shandrov*, cited above, § 28).

52. The Court has no reason to doubt the authenticity of the notifications furnished by the Government in the present case. They do not, however, provide any indication that they were delivered to either the applicant or her representative.

53. Furthermore, they were sent only eight days before the hearing, which was not enough notice given that the applicant and her lawyer lived in different cities to where the court was located (compare *Shandrov*, cited above, § 29).

54. In addition, nothing shows that the Presidium had duly considered the postponement request which had been faxed by the applicant's lawyer on the eve of the hearing and which contained seemingly valid reasons for the postponement (see paragraph 22 above).

55. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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.”

57. The applicant claimed compensation in respect of non-pecuniary damage. She left it to the Court to determine the sum.

58. The Government objected to this claim as unsubstantiated and abstract.

59. The Court awards the applicant EUR 5,200 (five thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable.

60. 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

1. *Declares*, by a majority, the application admissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 1 of Protocol No. 1;
3. *Holds*, by six votes to one, that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*, by five votes to two,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,200 (five thousand two hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) 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.

Done in English, and notified in writing on 15 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Georgios A. Serghides
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Statement of dissent of Judge Serghides;
- (b) Dissenting opinion of Judge Dedov.

G.A.S
M.B.

STATEMENT OF DISSENT BY JUDGE SERGHIDES

1. This is not a fully-fledged partly dissenting opinion but rather a statement of dissent (see Rule 74 § 2 of the Rules of Court), to express very briefly my disagreement with the finding that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

2. To my mind, the right or proper application of the fundamental principles of the Convention, namely, the principle of effectiveness (or effective protection of human rights) and the principle of proportionality, to the facts of the case, would necessarily result in finding a violation of Article 1 of Protocol No. 1.

3. Based on my conclusion, I would award a higher amount of non-pecuniary damage to the applicant than the award made in the judgment (paragraph 59 and point 4 (a) of the operative part). I will refrain, however, from determining that amount since I am in the minority.

DISSENTING OPINION OF JUDGE DEDOV

1. I completely understand and accept the reasons behind the decisions made by my colleagues in the majority and by the Russian Supreme Court regarding the issue of the bona fide purchaser. I decided to write an opinion because of the absence of any established case-law and standards of the Court on this issue by which to assess whether or not the national authorities imposed an excessive burden on the bona fide purchaser of the property in the present case.

2. The general civil law doctrine is the following: the purchaser buys at his or her own risk in respect of title, and, to ensure that it is safe, must make enquiries; he or she may not with certainty accept the fact of prior possession at face value, but must ascertain how possession has been acquired. In other words, the purchaser is obliged to comply with the reasonable duty of care to verify the validity of the transaction. The position of the Court is that the applicant should have verified whether the property was subject to a dispute. However, the doctrine is limited and it works primarily for a purchase from a thief. If there is a chain of transactions, the burden to ensure the validity of all previous transfers of ownership becomes increasingly excessive.

3. In my view the Court should not overlook the presumption of good faith in civil matters, although this doctrine is more complex and less protective than the presumption of innocence in the field of criminal law. Indeed, there is a presumption that the purchaser was acting in good faith (i.e. was genuinely unaware that the vendor was not authorised to sell the property), unless there are objective circumstances which prove otherwise, or which shift the burden to the purchaser to prove that he or she was acting in good faith. The objective circumstances relate to the possibility for the purchaser to know about the vendor's lack of title. Such circumstances may include the existence of close relations between the parties or a conflict of interest.

4. In the present case, the State enterprise and K. had entered into an amicable agreement to settle the debt owed to K. by the enterprise. The agreement was approved by the national court. I am not sure that the court proceedings against K. could amount to such objective circumstances. While the Presidium of the Regional Court was acting as a supervisory authority to examine the validity of the amicable agreement, K. sold the property to M. Neither M. nor the applicant were parties to the court proceedings in question. It was not proven that K., M. and the applicant were connected in any way. At that time there was no free access to a database of judicial acts, and such a database did not even exist. When the State Property Agency challenged the amicable agreement, it did not take the necessary action to impose interim measures to prevent the ensuing sale of the property to third parties by indicating those measures in the property

register, so that the applicant could have known about the court proceedings. As a result of such omissions on the part of the State, the applicant did not have the possibility of making a full-scale inquiry and she objectively had to rely on the ownership certificate presented by M. Moreover, the validity of the transaction was not verified by the public notary, and I cannot blame the applicant for such an “omission” because at that time the State had annulled the requirement to notarise immovable property transactions. However, the Supreme Court did not take all those factors into consideration and it concluded that since the court proceedings were extant, it was the applicant’s duty to take cognisance of them and to refrain from purchasing the property.

5. I believe that the burden imposed on the applicant was excessive. It appears that, according to the national courts, the State authorities did not know for more than 8 years about the ensuing transactions (sale of property from K. to M. and then from M. to the applicant), although those transactions were registered in the immovable property register. The national court refused to apply the three-year prescription rule and to find that the State had lost the right to claim the property from the applicant. At the same time, the applicant was obliged by the national court to exercise due diligence in order to obtain the information about pending proceedings against K., even though she was not in contact with him. I am not sure that the whole proceedings against the applicant were fair, or that the authorities sought to strike a fair balance between individual and general interests. The issue of the bona fide purchaser, as the key decisive factor in deciding the case against the applicant was adjudicated by a single judge at the level of the highest national court without any public hearings or adversarial proceedings which could have allowed the applicant to prove that she had acted in good faith and had exercised her duty of care. She was thus deprived of procedural safeguards. Otherwise, her case should have been referred back by the Supreme Court for a new examination.

6. I also voted against the finding of a violation of Article 6 because the boundary delineation proceedings were not directly decisive for the property right of the applicant, and therefore, the application in this part should have been declared inadmissible *ratione materiae*.