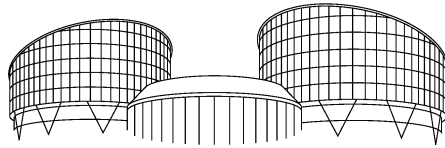

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF PYLAYEVY v. RUSSIA

(Application no. 61240/15)

JUDGMENT

STRASBOURG

17 July 2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Pylayevy v. Russia,

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

Alena Poláčková, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 26 June 2018,

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

PROCEDURE

1. The case originated in an application (no. 61240/15) 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 Ruslan Sergeyevich Pylayev (“the first applicant”) on his own behalf and in the name and on behalf of his mother, Mrs Valentina Fedorovna Pylayeva (“the second applicant”) – also a Russian national – on 2 December 2015.

2. The applicants were represented initially by the first applicant’s brother (the second applicant’s son), Mr D. Pylayev, and then by Mr U. Sommer, a lawyer practising in Germany. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 13 June 2016 the President of the Section decided that priority treatment should be given to the case, in accordance with Rule 41 of the Rules of Court.

4. On 3 February 2017 the complaints concerning the domestic courts’ failure to ensure the first applicant’s participation and the second applicant’s participation or her representation in the appeal hearing of 8 June 2015 and the complaint about the interference with their right to respect for their home were communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

5. The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1976 and is serving a sentence of imprisonment in the Sverdlovsk region. The second applicant was born in 1950 and lives in Vladivostok.

A. Background to the case

7. In July 2012 the first applicant's employer, the prosecutor's office of the Primorskiy Region, provided him with a flat and concluded a tenancy agreement with him. The second applicant was included in the agreement as a member of the first applicant's family.

8. In August 2012 the second applicant was classified as having a first-degree disability.

9. On 7 October 2014 the first applicant retired from the prosecutor's office. On the same date he applied to the General Prosecutor of the Russian Federation with a request for the transfer of the title to the flat in question to him.

10. On 8 October 2014 criminal proceedings were initiated against the first applicant in respect of a suspected criminal offence. On the same date he was arrested and on 10 October 2014 he was detained pending investigation. On an unspecified date in 2016 the first applicant was released and placed under house arrest.

11. On 21 November 2014 the first applicant's request for the transfer of the title to flat in question to him was refused.

B. Eviction proceedings

12. On 25 November 2014 the first applicant received notice to vacate the flat by 5 December 2014.

13. On 26 November 2014 the first applicant's brother received notice to vacate the flat (the notice was addressed by the prosecutor's office to the second applicant).

14. In December 2014 the prosecutor's office brought eviction claims against the applicants on the grounds that the first applicant no longer worked for the prosecutor's office and that therefore, he and his family had to vacate the flat.

15. The first applicant contested those claims. He submitted that it would be unlawful to evict him and his mother because he, as a retired prosecutor, had a right to acquire ownership of the flat in question. He and

his mother had no other housing. In addition, his mother was a retired person and had a first-degree disability.

16. On 27 February 2015 the Frunzenskiy District Court ("the District Court") dismissed the eviction claims. The prosecutor's office appealed against that judgment to the Primorskiy Regional Court ("the Regional Court").

17. On 8 June 2015 the Regional Court quashed the judgment of 27 February 2015 and delivered a new decision ordering the applicants' eviction, with no alternative accommodation being provided. The first applicant was represented by a lawyer, K. The second applicant was not present and was not represented in those proceedings. In particular, the Regional Court found that the first applicant and his mother had been provided with a flat for the period of the first applicant's service in the prosecutor's office. Under domestic law and the terms of the agreement, the tenants had had to vacate the housing after the termination of the agreement and in the event of their refusal they had had to be evicted with no alternative accommodation being provided. As at the date of the examination of the eviction claims the first applicant had not applied to the Prosecutor General of the Russian Federation for title to the flat in question to be transferred to him; therefore, the District's Court conclusion as to the absence of any obstacles to the transfer of ownership of the flat in question to the first applicant was in conflict with the circumstances established in the case. As at the date of the examination of the prosecutor's appeal the question regarding the transfer of ownership of the flat in question to the first applicant had not been decided.

18. The first applicant lodged a cassation appeal against that decision with the presidium of the Regional Court. He complained that the hearing of 8 June 2015 had been held in his absence and that as a result he had been evicted from the only accommodation he had had.

19. On 22 July 2015 a judge of the Regional Court refused to refer the first applicant's appeal to the Civil Chamber of the Regional Court for examination on the merits. The first applicant lodged a cassation appeal with the Supreme Court of the Russian Federation.

20. On 22 September 2015 the second applicant was evicted from the flat.

21. On 30 September 2015 a judge of the Supreme Court refused to refer the first applicant's cassation appeal to the Civil Chamber of the Supreme Court for examination.

C. Incapacitation proceedings

22. In June 2015 the first applicant's brother (Mr D. Pylayev) initiated court proceedings for the second applicant to be deprived of legal capacity and for him to be appointed as her guardian.

23. On 11 May 2016 the District Court declared that the second applicant lacked legal capacity because she was suffering from illness. In particular, the District Court based its decision on an expert report dated 25 January 2016 which had established that she had been suffering from a mental handicap since 2010 and as a result had not been able to understand or control her actions. That judgment entered into force on 14 June 2016.

24. On 29 June 2016 the local public health department appointed the first applicant's brother as her guardian.

THE LAW

I. THE FIRST APPLICANT'S STANDING TO BRING THE APPLICATION IN THE NAME AND ON BEHALF OF THE SECOND APPLICANT

A. The parties' submissions

25. The Government submitted that the first applicant had had no standing to lodge the application with the Court in the name and on behalf of his mother. In particular, she was not indicated in the application forms as an applicant who was a direct victim of the alleged violations; at the time when the first applicant had submitted his application to the Court on 2 December 2015, his mother had been a capable person, which implied the ability to exercise procedural rights, perform procedural duties and instruct a representative to represent her. It was not until May 2016 that the domestic courts had found that she lacked legal capacity. There was no evidence to support that any physical or mental illness had prevented her from lodging the application with the Court in November and December 2015 by herself. There was no indication in the case file of the existence of a document confirming that the application has been filed with her consent.

26. The first applicant submitted that he had had standing to lodge the application in the name and on behalf of his mother. In particular, she had been unable to fill in the application form and to sign the power of authority owing to her state of health. It was true that when he had lodged the application with the Court, his mother had not been deprived of her legal capacity. However, by that time she had been already classified as having a first-degree disability because she was suffering from Alzheimer's disease and incapacitation proceedings had already been pending. An expert report dated 25 January 2016, ordered by the domestic courts, had established that she had been suffering from a mental handicap since 2010 and as a result had not been able to understand or control her actions.

27. The first applicant furthermore submitted that the authorities had tacitly acknowledged his mother's mental incapacity when they handed over notice of hearings in the eviction proceedings to his brother, Mr D. Pylayev, instead of his mother, after he had provided them with her disability certificate. The courts subsequently held the hearings in his mother's absence, having considered that she had been duly notified but had failed to appear. Lastly, the first applicant pointed out that under Russian civil law the recognition of mental incapacity had retroactive force.

B. The Court's assessment

28. In *Lambert and Others v. France* [GC] (no. 46043/14, §§ 93-95, ECHR 2015 (extracts)) the Court reviewed cases in which the Convention institutions had accepted that a third party (a close relative, an association or a legal professional), could, in exceptional circumstances, act in the name and on behalf of a vulnerable person who had not been able to lodge a complaint with the Court on account of his or her age, sex or disability, and identified the following criteria: the risk that the direct victim would be deprived of effective protection of his or her rights, and the absence of a conflict of interest between the victim and the applicant.

29. It is not disputed by the parties that the second applicant has never been in contact with the Court. The application in her name and on her behalf was lodged with the Court by the first applicant, her son, who also lodged an application on his own behalf. The first applicant claimed that his mother ("the second applicant") had not been able to lodge an application with the Court herself on account of her state of health.

30. The Court observes that in 2012 the second applicant was classified as having a disability of the first degree and that the expert report of 25 January 2016, referred to by the domestic court in the incapacitation proceedings, established that she had been suffering from a mental handicap since 2010 and as a result had not been able to understand or control her actions. The Court therefore considers that at the time when the first applicant lodged the application with the Court in December 2015, his mother was a vulnerable individual, who had not been able to lodge her application with the Court on account of her disability and mental handicap. It follows that the criteria established in *Lambert and Others,* cited above, can be applied to the present case.

31. The Court considers that there is a risk of the second applicant being deprived of effective protection of her rights if the complaints lodged by the first applicant in her name and on her behalf are not accepted for examination by the Court. In particular, the first applicant and his brother are her only close relatives, and even assuming that somebody else wished to protect her rights, such attempts would be belated. Furthermore, the

Court does not discern any conflict of interest between the first applicant and his mother.

32. Having regard to the above, the Court concludes that the first applicant had the standing to lodge complaints with the Court in the name of and on behalf of his mother.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicants complained under Article 8 of the Convention of a violation of their right to respect for their home. Article 8 of the Convention 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

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

B. Merits

35. The Government agreed that the eviction order of 8 June 2015 constituted an interference with the applicants' right to respect for their home. However, that interference had been in accordance with the law, had pursued the legitimate aim of the protection of other individuals in need of social housing and had been "necessary in a democratic society". In particular, the first applicant's tenancy agreement had come to an end after his retirement, and after the applicants' eviction the flat in question had been provided to Sh., an employee of the prosecutor's office. Therefore, there had been no violation of Article 8 of the Convention.

36. The applicants submitted that the eviction order had interfered with their right to respect for their home and that the domestic courts had not carried out any analysis as to the proportionality of their eviction.

37. The Court notes that the applicants had already lived in the flat in question for almost three years when their eviction was ordered. Therefore, that flat was their "home" for the purposes of Article 8 of the Convention.

38. The Court considers that the eviction order amounted to an interference with the applicants' right to respect for their home, as

guaranteed by Article 8 of the Convention. The Court accepts that the interference had a legal basis in domestic law and pursued the legitimate aim of protecting the rights of individuals in need of housing. The central question in this case is, therefore, whether the interference was proportionate to the aim pursued and thus "necessary in a democratic society".

39. The Court set out the relevant principles in assessing the necessity of an interference with the right to "home" in the case of *Connors v. the United Kingdom*, (no. 66746/01, §§ 81-84, 27 May 2004), which concerned the eviction of a Roma family from a local-authority caravan site. Subsequently, in *McCann v. the United Kingdom* (no. 19009/04, § 50, ECHR 2008), the Court held that the reasoning in the case of *Connors* was not confined to cases involving the eviction of Roma or to cases where the applicant had sought to challenge the law itself (rather than its application in his particular case), and furthermore held as follows:

> "The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding the fact that, under domestic law, his right of occupation has come to an end."

40. In the present case the first applicant raised before the domestic courts the issue of his and his mother's right to respect for their home and submitted arguments questioning the proportionality of their eviction (see paragraph 15 above).

41. The Government claimed that the interference with the applicants' right to respect for their home had been necessary for the protection of the rights of other individuals in need of housing. However, in the domestic eviction proceedings those individuals were not sufficiently individualised to allow their personal circumstances to be balanced against those of the applicants. Therefore, the only interests that were at stake were those of the prosecutor's office. The domestic courts did not weigh those interests against the applicants' right to respect for their home. Once they had found that the applicants' right to reside in the contested flat had come to an end following the termination of the tenancy agreement, they gave that aspect paramount importance, without seeking to weigh it against the applicants' arguments. The national courts thus failed to balance the competing rights and therefore to determine the proportionality of the interference with the applicants' right to respect for their home.

42. The Court has already found violations of Article 8 of the Convention in other cases where the applicants did not have the benefit, in the context of eviction proceedings, of an examination of the proportionality of the interference in question (see, among other authorities, *McCann*, cited above, §§ 50-55; *Ćosić v. Croatia*, no. 28261/06, §§ 20-23, 15 January

2009; *Kryvitska and Kryvitskyy v. Ukraine*, no. 30856/03, §§ 50-52, 2 December 2010; and *Yevgeniy Zakharov v. Russia*, no. 66610/10, §§ 35-37, 14 March 2017). It finds no reason to arrive at a different conclusion in the present case. The Court therefore concludes that there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

43. The first applicant complained under Article 6 of the Convention that his right to a fair hearing was breached because the appeal court dismissed his application to appear in person at the hearing of 8 June 2015 and that his mother's right to a fair hearing was breached because she did not take part in the hearing of 8 June 2015 in person and was not represented.

44. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 8 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the complaints under Article 6 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicants submitted the following claims in respect of pecuniary damage:

- 75,000 euros (EUR), which represented the cost of a flat equivalent to the one from which they had been evicted,
- EUR 2,904, which represented the costs of household appliances and equipment that had been taken away by the bailiffs from the flat during their eviction on 21 and 22 September 2015,
- 4,200 Russian roubles (RUB) in respect of the second applicant's medical assistance costs incurred on the date of her eviction,
- reimbursement of the salary paid to the second applicant's nurse between 1 October 2015 and 1 February 2017 (RUB 25,000 per month),
- RUB 180,000 for renting a house for the second applicant between 12 November 2015 and 12 February 2016;

47. The applicants claimed EUR 50,000 in respect of non-pecuniary damage.

48. The Government contested those claims.

49. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards EUR 7, 500 to the two applicants jointly in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicants submitted the following claims for the costs and expenses incurred before the domestic courts and the Court:

- EUR 705 for the legal assistance provided by N. Kirilovich, the first applicant's lawyer, during the proceedings before the first-instance court,
- EUR 650 for the legal assistance provided by A. Litvinov, the first applicant's lawyer, in lodging the cassation appeal,
- EUR 827 for the legal assistance provided by A. Litvinov for lodging the application to the Court,
- RUB 15,000 for the legal assistance provided by Mr Ramadayev, a lawyer.
- RUB 10,000 for the legal assistance provided by Mr Svinaryev, a lawyer.
- RUB 9,200 for the legal assistance provided by D. Kuzmin, a lawyer.
- EUR 3,500 for the legal assistance provided by U. Sommer for the applicants' representation before the Court;
- RUB 26,307 for postal expenses.

51. The Government contested those claims.

52. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 2,000, covering costs under all heads.

C. Default interest

53. 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. *Holds* that the first applicant had standing to bring the application in the name and on behalf of his mother;

2. *Declares* the complaint under Article 8 of the Convention admissible;

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

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

5. *Holds*
   (a) that the respondent State is to pay to the two applicants jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable 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 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı — Deputy Registrar

Alena Poláčková — President