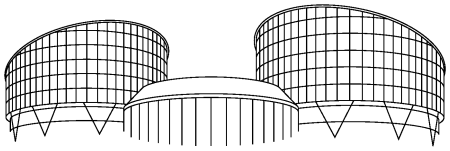

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DARSIGOVA v. RUSSIA

(Application no. 54382/09)

JUDGMENT

STRASBOURG

15 May 2018

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

In the case of Darsigova 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 10 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 54382/09) 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 Ruket Magomedovna Darsigova ("the applicant"), on 29 September 2009.

2. The applicant was represented by Mr S. Ye. Marakov, a lawyer practising in Grozny. 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 10 November 2016 the complaint concerning the applicant's eviction was communicated 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 1958 and lives in Grozny, Chechen Republic.

5. According to the applicant, on 7 February 1999 the administrative authorities of the Leninskiy District of Grozny provided her with a housing allocation order no. 842 entitling her to occupy a one-room municipal flat in Grozny.

6. In 2005 the applicant was registered as living in that flat.

7. In 2007 the authorities decided to conduct an examination of all allocation orders granting occupation of municipal accommodation. The

applicant's housing allocation order dated 7 February 1999 appeared suspicious to the authorities and they commissioned an expert to verify its authenticity. The expert concluded that the allocation order was a forged document. In particular, the order did not correspond to the date on which it had been issued and the impress of a seal on the order had been made with the help of an improvised cliché which in its turn had been made with a help of a computer on the basis of an impress of the authentic seal.

8. Upon receipt of this information the administration of Grozny brought court proceedings against the applicant seeking to declare the allocation order of 7 February 1999 null and void and to evict her from the flat in question.

9. The applicant contested those claims. She submitted that the administration had issued her with the housing allocation order because she had been on the housing list and she was subsequently registered as living in that flat. She had not been aware of the fact that the order had not been printed in the printing office. She also asked to dismiss the claims as time-barred because according to domestic law the housing allocation order could be declared null and void within three years after its delivery.

10. The administration of the Leninskiy District of Grozny asked to grant the claims submitted by the administration of Grozny. The administration could not say whether the order had been in fact delivered to the applicant, since the archives had not been preserved. However, according to the civil servants of the administration, commissions on allocation of housing had been meeting once a month. The order no. 842 was issued on 7 February 1999. That would mean that 842 orders were issued from the beginning of 1999 until 7 February 1999. However, the administration of the Leninskiy District could not deliver such a number of housing allocation orders during one month.

11. On 24 February 2009 the Leninskiy District Court of Grozny ("the District Court") declared the housing allocation order of 7 February 1999 null and void and issued an order to evict the applicant. In particular, the District Court held as follows:

> "...It follows from the materials of the case that the housing allocation order No. 842 of 7 February 1999 in respect of accommodation situated in Grozny...in the name of Darsigova Ruket Magomedovna has been issued as an assignment of housing.
>
> It follows from the expert certificate No. 11 of 11 April 2008 that the above order was sent for an expert examination and the experts concluded that the order no. 842 of 7 February 1999 ... did not correspond to the date on which it had been issued. The impress of a seal of the Leninskiy District of Grozny [on the order] had been made with the help of an improvised cliché which in its turn had been made with a help of a computer on the basis of an impress of the authentic seal.
>
> It follows from the expert report of 24 October 2008 no. 1397, 1398/1-2 that the formsheet of order No. 842 of 7 February 1999 had been made with the help of electrophotographic imaging on the copy machine. The colour used - dry toner.

> Therefore, the court has established that the title document order no. 842 of 7 February 1999 ...had not been made typographically.
>
> Those circumstances follow from the content of the statement of claim, parties' submissions in the court, they have not been contested by the parties and are confirmed by evidence submitted [to the court].
>
> The request by the Administration of Grozny for restauration of the three-year time-limit for lodging of their claim for declaring the order null should be granted.
>
> The court has assessed the whole of evidence submitted by the parties and finds that it is possible to grant the claimant's claim..."

12. In her appeal against the judgment of 24 February 2009 the applicant submitted that in taking the decision to evict her the District Court had not examined whether she had been in need of housing or not. In particular, the District Court had not taken into account that she had been provided with a one-room flat on the grounds that she had cumulated a very long term of service and had no other housing.

13. On 9 June 2009 the Supreme Court of the Republic of Chechnya ("the Supreme Court") upheld that judgment. In particular, the Supreme Court held as follows:

> "...
>
> It has been established in the court hearing that order No. 842 of 7 February 1999 issued by the administration of the Leninskiy District of Grozny to R.M. Darsigova and giving her the right to move in flat no. 40 at 42, Kadyrov street in Grozny was sent for an expert examination...The expert examination established that the order did not correspond to the date on which it had been issued. The impress of a seal of the Leninskiy District of Grozny [on the order] had been made with the help of an improvised cliché which in its turn had been made with a help of a computer on the basis of an impress of the authentic seal...
>
> ...
>
> Having regards to the above, the court of first instance had concluded that the claims submitted by the administration of Grozny had to be granted. In such circumstances, the civil chamber does not find any grounds for quashing the court decision ..."

14. After her eviction the applicant returned living to her mother's flat and on 26 July 2011 she was registered as living in that flat.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

15. The applicant complained under Article 8 of the Convention of a violation of her right to respect for her 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

16. 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

17. The Government submitted that there had been no violation of Article 8 of the Convention. The eviction order had been in accordance with the law; it had pursued a legitimate aim and had been necessary in order to protect the rights of individuals in need of housing. The Government also pointed out that the applicant had not brought any counter-claim against the administration of Grozny and had not submitted any claims for provision with alternative accommodation. Furthermore, the applicant had not applied to the state authorities with a request to help her with solving her housing problem. After her eviction the applicant had returned living to the flat in which she had been registered until 2005.

18. The applicant maintained her complaint.

19. The Court notes that the applicant had already lived in the flat in question for at least four years when her eviction was ordered. Therefore, that flat was her "home" for the purposes of Article 8 of the Convention.

20. It was common ground that the eviction order amounted to an interference with the applicant's right to respect for her home, as guaranteed by Article 8 of the Convention. The Court accepts that the interference had a 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".

21. 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 further 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 that, under domestic law, his right of occupation has come to an end."

22. In the present case the applicant raised the issue of her right to respect for her home before the domestic courts and presented arguments linked to the proportionality of her eviction (see paragraphs 9 and 12 above).

23. The Government claimed that the interference with the applicant's right to respect for her home had been necessary for the protection of rights of other individuals in need of social housing. However, those individuals were not sufficiently individualised to allow their personal circumstances to be balanced against those of the applicant. Therefore, the only interests that were at stake were those of the local authorities. However, the domestic courts did not weigh those interests against the applicant's right to respect for her home. Once they had found that the housing allocation order on the basis of which the applicant had moved in the flat had been null and void, they gave that aspect paramount importance, without seeking to weigh it against the applicant's arguments. The national courts thus failed to balance the competing rights and therefore to determine the proportionality of the interference with the applicant's right to respect for her home.

24. The foregoing considerations are sufficient to enable the Court to conclude that the interference complained of was not "necessary in a democratic society". There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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."

26. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 15 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Alena Poláčková
Deputy Registrar	President