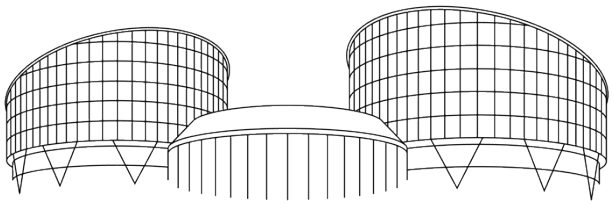

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GLADYSHEVA v. RUSSIA

(Application no. 7097/10)

JUDGMENT

STRASBOURG

6 December 2011

FINAL

06/03/2012

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

In the case of Gladysheva v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 7097/10) 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 Svetlana Mikhaylovna Gladysheva ("the applicant"), on 15 January 2010.

2. The applicant was represented by Mr I.F. Puzanov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that she had been dispossessed of her flat contrary to Article 1 of Protocol No. 1 to the Convention and that she faced eviction in violation of Article 8 of the Convention.

4. On 7 July 2010 the President of the First Section decided to grant the application priority under Rule 41 of the Rules of Court and to give notice of it to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Moscow.

6. On 28 September 2005 the applicant bought a 37.5 square metres flat in Moscow at 59 Novocheryomushkinskaya Street ("the flat") and has been

living there with her son born in 1998. The seller of the flat, Mr V., had bought it from Ms Ye., who had acquired it under the privatisation scheme. The facts relating to the ownership of the flat prior to the applicant's acquisition of it and the subsequent invalidation of her title may be summarised as follows.

A. Privatisation and sale of the flat

7. Before its privatisation the flat was owned by the City of Moscow. On 10 September 2004 the prefect of Yugo-Zapadnyy circuit allocated the flat to Mr M. as social housing. M. signed a social tenancy contract on 29 October 2004 and was registered as the flat's principal, and only, tenant on 12 November 2004. No family members were indicated in the moving-in order.

8. On 19 November 2004 the Department of the Interior of the Cheryomushki District of Moscow registered M.'s spouse Ye. at his address. The registration was effected upon M.'s written application, certified by public notary R. on 17 November 2004, and accompanied by Ye.'s and M.'s marriage certificate issued in Kaluga on 15 October 2004. Ye.'s identity was confirmed upon presentation of her passport.

9. On 19 December 2004 M. was found dead. The inquest found that he had fallen out of the window of his flat and concluded that he had committed suicide, as no evidence of any other person's involvement could be found. It was noted that M. was a former drug addict.

10. On 11 February 2005 Ye. issued a power of attorney to L., authorising him to represent her in all transactions related to the flat and in all privatisation and registration procedures before the property and residence registration authorities. The power of attorney was certified by public notary S., who had indicated in a standard clause that Ye. had signed the authority in her presence and that her identity and legal capacity had been confirmed.

11. On 30 March 2005 the Housing Policy and Housing Fund Department of the City of Moscow (*Департамент жилищной политики и жилищного фонда г. Москвы*, "the Moscow Housing Department") concluded a social tenancy contract with Ye. and on the same day signed a privatisation agreement in respect of the flat. Ye. was represented by L. in these transactions.

12. On 6 May 2005 the Moscow Office of the Federal Authority for Registration of Property (*Главное управление Федеральной регистрационной службы по г. Москве*) registered Ye.'s ownership of the flat in the Consolidated State Register of Real Estate Titles and Transactions (*Единый государственный реестр прав на недвижимое имущество и сделок с ним*, "the Land Register").

13. On 23 May 2005 Ye. sold the flat to V. On 6 June 2005 V.'s ownership was registered in the Land Register.

14. On 28 September 2005 V. sold the flat to the applicant. The terms of the purchase included the applicant's obligation to pay the seller 990,000.00 Russian roubles (RUB) in respect of the flat, an advance payment of 6,000 United States dollars (USD), plus a contribution of RUB 1,465,847 to renovation costs. It also included an undertaking by the seller to buy the applicant an equivalent flat in the event that the applicant lost the title for reasons relating to any defects of the title which pre-dated the purchase of the flat by the applicant.

15. The transfer of title was registered at the Moscow Office of the Federal Authority for the Registration of Property.

16. The applicant and her son moved into the flat and have been living there since.

17. On 3 May 2007 Ye. died, reportedly of natural causes.

B. Challenge to the applicant's ownership and eviction proceedings

18. On 30 January 2008 the Moscow Department of the Interior informed the Moscow Housing Department of suspected fraud in the privatisation of the flat.

19. On an unidentified date in 2008 the Moscow Housing Department brought an action against the applicant and the previous owners of the flat V. and Ye. They referred to a "check" that had revealed that no marriage had taken place between M. and Ye. and that Ye.'s passport used for the registration and privatisation procedures had been declared lost in 1996; they asked the court to establish that the flat had been fraudulently acquired by Ye. and to declare the privatisation and all the ensuing transactions in respect of the flat null and void. The applicant lodged a counterclaim to have her title to the flat recognised by the court.

20. On 25 July 2008 the Cheryomushkinskiy District Court of Moscow dismissed the authorities' claim and granted the applicant's counterclaim, recognising her as the legitimate owner of the flat. It noted, in particular, that the applicant had purchased the flat in good faith (a bona fide buyer) and paid a purchase price for it. Therefore there were no grounds to invalidate the transactions in question. No appeal was lodged within the ten-day statutory limitation period, and the judgment became final and enforceable.

21. On 11 August 2008 the applicant complained to the police that Mr A.B., an official at the Moscow Housing Department, was trying to extort USD 50,000 from her in return for a promise that the Department would not appeal against the judgment of 25 July 2008. On 12 August 2008 the police carried out a covert operation, during which A.B. was caught receiving the aforementioned sum of money from the applicant, who had

been primed by the police. On 10 December 2008 A.B. was convicted of embezzlement on account of that episode, and received a custodial sentence.

22. In the meantime, the Moscow Housing Department submitted a request for an extension of the time-limit for appeal against the judgment of 25 July 2008, on the grounds that the prosecution of A.B., who had been in charge of the file, left the Department understaffed and unable to comply with the deadlines. On 14 November 2008 the District Court granted the request and extended the time-limit for the appeal. The appeal hearing took place on 18 December 2008 before the Moscow City Court, which quashed the judgment and remitted the matter back to the District Court for a fresh first-instance examination. It instructed the first-instance court to clarify whether the claims concerned the invalidation of the transactions regulated by Article 167 of the Civil Code, or the reclaiming of property under Article 302 of the Code.

23. On 15 December 2008 criminal proceedings against an "unidentified perpetrator" were instituted on suspicion of fraud in the process of privatisation of the flat. The applicant requested to be granted victim status in these proceedings, but this was refused on the grounds that the damage resulting from the fraud was caused to the Moscow Housing Department, not to the applicant. The decision refusing the applicant victim status was taken by the Moscow City Court on 27 July 2009.

24. On 9 July 2009 the District Court found that the privatisation of the flat by Ye. had been fraudulent. It established, in particular, that the civil act registration authority had found no record of a marriage between M. and Ye. and concluded that their marriage certificate had been forged. Therefore Ye. had had no right to be registered at M.'s address or to privatise his flat after his death. In respect of the applicant, it found that she was a bona fide buyer, within the meaning of Article 302 of the Civil Code. However, it found that the flat, having been fraudulently privatised, had left the possession of the City of Moscow, its lawful owner, without that body having the intention to divest itself of it. Thus, by application of Article 302 of the Civil Code and Constitutional Court ruling 6-P of 21 April 2003, the case fell under one of the two exceptions to the protection of a bona fide buyer's title, which required that precedence be given to the previous owner. The applicant's title to the flat was accordingly revoked and the City of Moscow declared the flat's lawful owner. The court ordered the applicant's eviction without compensation or an offer of alternative housing. The applicant appealed.

25. On 21 December 2009 the Moscow City Ombudsman wrote to the Mayor of Moscow, asking him to consider offering the applicant a social tenancy of the flat. However, on 19 January 2010 the Moscow Housing Department replied in the negative, stating that this would undermine the order of priority on the waiting list.

26. On 12 February 2010 the investigating authority decided to grant the applicant victim status in the criminal proceedings and questioned her in this capacity. On 23 March 2011, however, they overruled that decision as unfounded, following an order by the prosecutor that they should do so.

27. The criminal investigation of the suspected fraud was then suspended on the grounds that no culprit had been identified. The file, however, contained certain material on the basis of which the courts were able to establish that the privatisation had been carried out improperly. It included, in particular, the finding that all acts relating to Ye.'s registration as a resident of the flat, its privatisation and sale to V. had been carried out using Ye.'s passport, which had been declared lost in 1996. It also contained a reply from the municipal authorities of Kaluga that they had no record of Ye.'s and M.'s marriage having been registered in 2004. The Kaluga passport authorities had replied to the investigator that Ye. had been previously registered as a resident of Kaluga, and her registration there had not been removed until her death in 2007. There was also a reply from public notary R. that she had had no records of M.'s application in her register and she denied having certified it.

28. On 13 May 2010 the appeal against the judgment of 9 July 2009 was rejected in the final instance by the Moscow City Court.

29. The applicant requested a suspension of the execution of the judgment in so far as it concerned the eviction. On 22 July 2010 the court granted her request and adjourned the eviction until 1 February 2011. This term was later extended until 1 June 2011.

30. On 14 December 2010 the Deputy Prosecutor General requested the Supreme Court to examine the applicant's case in supervisory review proceedings. He considered the revocation of her ownership of the flat unlawful and unjustified. First, he argued that the rule contained in Article 302 § 1 of the Civil Code ordering reinstatement of ownership of the property which was removed from its owner's possession without the owner's intention to divest itself of it was inapplicable in her case. He pointed out that the Moscow Housing Department was a party to the transaction in which the flat had been privatised and could not be unaware of it; the Department had never claimed that the official in charge of the privatisation had gone beyond her authority or acted contrary to instructions. Hence it could not be said that the flat had been privatised without the Department having that intention. Therefore, the applicant, as a bona fide buyer, should not have been required to return the flat to its earlier owner, the City of Moscow. Secondly, the Deputy Prosecutor General considered that the judicial decisions had not balanced the interests of the municipality against the lawful rights and interests of the applicant, whereas the protection of individual citizens should have taken priority, in accordance with the Constitution. As a result of a third-party fraud, a single mother and her child faced eviction without compensation and without an

offer of alternative housing. He noted that she had no other housing and that all her savings had been put into the purchase of the flat and the costly litigation. Finally, he pointed out that the courts had exceeded their responsibility in applying Article 302 of the Civil Code, in lieu of Article 167 on which the plaintiff had relied, and had thereby granted the award beyond the scope of the claim.

31. On 24 December 2010 the Supreme Court refused the request by the Deputy Prosecutor General, declining to reconsider the case in supervisory-review proceedings. It noted that the applicant's status as a bona fide buyer had not been in doubt at any stage. However, the courts had correctly applied the law and granted the plaintiff's lawful claims. It added that the applicant remained free to sue V. for damages.

32. On 31 May 2011 the Cheryomushkinskiy District Court of Moscow rejected the applicant's application for further suspension of the execution of the judgment of 9 July 2009, noting that there had already been two extensions and there were no grounds for another.

33. On 30 June 2011 the Moscow City Ombudsman wrote to the Mayor of Moscow, alerting him to a growing number of cases of flats being repossessed by the City of Moscow against bona fide buyers on account of irregular privatisation by the previous owners of the flats; all of them were being denied any compensation or substitute housing. In his view, the incidents of fraudulent privatisation should not have been treated by courts as cases where property was removed from possession "without the owner's intention to divest" within the meaning of Article 302 § 1 of the Civil Code. He pointed out that privatisations were transactions entered into by the State, represented by its public officials, whose duty was to make all the necessary checks and to ensure the procedural integrity of the transaction. The responsibility of the State was thus engaged wherever they failed in this task. In any event, failure to identify documents as forged could not in such circumstances be classified as passage of title without the owner's intention to divest. He referred to the applicant's case as one flagrant example of a wrong and unjust outcome of the erroneous interpretation adopted by Moscow courts in such cases. On the same day he sent letters to the Moscow Prosecutor's Office and the head of the Moscow Department of the Interior, citing the applicant's case, calling for the thorough investigation of fraud cases of this type, and requesting that the applicant's victim status be reassessed in the relevant criminal proceedings.

34. According to the applicant's latest submissions, she has not yet been evicted but considers it imminent.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. The Civil Code provides for two different avenues by which one's property title may be challenged by a previous owner:

Article 167 General Provisions on Consequences of Invalidity of a Transaction

"1. An invalid transaction shall not entail legal consequences, with the exception of those connected with its invalidity, and shall be invalid from the moment of its conclusion.

2. If a transaction has been recognised as invalid, each of the parties shall be obliged to return to the other party all it has received as part of the transaction, and if return is impossible in kind (including where the transaction concerns the use of property, work performed or services rendered), its cost shall be reimbursed in money - unless other consequences of the invalidity of the transactions have been stipulated by law.

3. If it follows from the content of the disputed transaction that it may only be terminated for the future, the court, while recognising the transaction as invalid, shall terminate its operation for the future."

Article 302 Reclaiming property from a bona fide acquirer

"1. If the property has been purchased for a price from a person who had no right to alienate it, and the acquirer is unaware and could not have been aware (the bona fide acquirer, or the acquirer in good faith), the owner shall have the right to reclaim this property from the acquirer, if the said property was lost by the owner or by the person into whose possession the owner has passed the property, or if it was stolen from one or the other, or if it has left their possession in another way, in the absence of intention on their part to divest themselves of it.

2. If the property has been acquired without consideration from a person who had no right to alienate it, the owner shall have the right to reclaim the property in all cases.

3. Money and securities in respect of the property shall not be reclaimed from the bona fide acquirer."

36. By its ruling of 21 April 2003, 6-P, the Constitutional Court interpreted Article 167 of the Code as not allowing the first owner to reclaim his property from a bona fide buyer unless there is a special legislative provision to this effect. Instead, a claim vindicating prior rights (*виндикационный иск*) could be lodged under Article 302 of the Code if the conditions indicated in paragraphs 1 and 2 are met, in particular if the property has left the owner's possession in the absence of intention on the part of him or her to divest themselves of it, or if the property has been acquired without consideration.

37. Further interpretation of Article 302 of the Civil Code was provided by the Plenary of the Supreme Court of the Russian Federation and the Plenary of the High Commercial Court of the Russian Federation, contained in the second paragraph of item 39 of their joint ruling of 29 April 2010, no. 10/22 "On certain questions arising in judicial practice in respect of resolution of disputes connected with the protection of property rights and

other real rights" and in the Constitutional Court's ruling of 27 January 2011, 188-O-O. They held in particular that there was no automatic link between invalidity of a transaction and an owner's intention or otherwise, to divest themselves of it. The Constitutional Court's ruling held, in so far as relevant, as follows:

> "... the uncertainty of the legal provisions [including Article 302] challenged by the claimant is eliminated by the interpretation of the Plenary of the Supreme Court of the Russian Federation and the Plenary of the High Commercial Court of the Russian Federation, contained in the second paragraph of item 39 of the [ruling of 29 April 2010, no. 10/22]: 'the invalidity of the transaction in execution of which the transfer of property was effected does not by itself prove that it left the possession of the owner in the absence of intention to divest on their part; the courts need to establish whether the owner intended to transfer possession to another person'".

THE LAW

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

38. The applicant complained that she had been deprived of her possessions in violation of Article 1 of Protocol No. 1 to the Convention, which provides, in so far as relevant, as follows:

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

> "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. The parties' submissions

1. The Government

39. The Government contested the admissibility of this complaint, as well as the merits. They argued that the applicant's unfortunate situation had been caused by a private person, Ye., who had fraudulently privatised the flat and unlawfully sold it on to V. The privatisation had been carried out on

the basis of forged documents and the flat had therefore left the possession of the Moscow Housing Department in the absence of that body's intention to divest itself of it. The City of Moscow, like any owner, was entitled under Article 302 of the Civil Code to recover its property from subsequent acquirers. They pointed out that action to reclaim property is rooted in *rei vindicatio* known in Roman law, and is a well-established procedure under Russian law.

40. The Government claimed that Article 1 of Protocol No. 1 to the Convention was not applicable to the present case. They referred to the Court's case-law, which stated that that Article did not concern the regulation of civil-law rights between parties under private law. The domestic courts' decisions according to the rules of private law cannot be seen as an unjustified State interference with the property rights of one of the parties. They relied on the judgment *Zhukovskiye v. Russia* (no. 23166/04, 13 January 2011) and two cases cited therein, *Kuchař and Štis v. Czech Republic* ((dec.), no. 37527/97, 21 October 1998), and *S.Ö., A.K., Ar.K. and Y.S.P.E.H.V. v. Turkey* ((dec.) 31138/96, 14 September 1999)) and claimed that the subject matter of the present case was precisely a private-law dispute because it related to the contract between the applicant and V. They alleged that the State had not been involved in the sale and purchase contract and had not compelled the parties to conclude it. It was therefore up to the parties to bear the consequences of the transaction. The Government therefore requested that the Court dismiss this complaint as inadmissible *ratione materiae*.

41. The Government further expressed doubt as to whether the applicant had been a true bona fide buyer, as she had claimed throughout the domestic proceedings. They argued that one would suspect that a flat being resold so soon after its acquisition by V. would have some flaw in its provenance. They further suggested that the applicant must have acted in conspiracy with A.B., a former official at the Moscow Housing Department who was convicted of embezzlement for trying to extort a bribe from the applicant in return for keeping her clear of litigation with the Department (see paragraph 21 above). If so, the applicant must have been involved in unlawful machinations in connection with the flat and was not entitled to legal protection. In addition to that, the applicant's lack of good faith in entering this transaction was demonstrated, in the Government's view, by the way the parties defined the price of the flat, dividing it into three parts (see paragraph 14 above) so as not to reach the RUB 1,000,000 income tax threshold under Russian law. They alleged that the applicant had thus committed an offence of tax evasion and also demonstrated "malicious intent", which she shared with the other party to the transaction, and had thus rendered the whole deal unlawful, of which "all the gain ... shall be transferred into receipts for the Russian Federation".

42. The Government added that, in any event, the status of bona fide buyer would not have offered the applicant protection under Article 302 of the Civil Code, because there had been no doubt that the flat had left the possession of the Moscow Housing Department in the absence of intention to divest.

43. Furthermore, the Government indicated that the terms of the sale and purchase contract concluded between the applicant and V. foresaw a warranty against any loss of title on account of a defect of the seller's title (ibid.), which was pre-existing but not known to the parties. They described this clause as "very unusual and even strange" and invited the Court to interpret it as evidence of the applicant's prior knowledge of a potential flaw in the provenance of the title she was acquiring. They also claimed that the applicant had not exhausted domestic remedies by not using this contractual warranty against V.

44. As to the merits, the Government considered that the interference with the applicant's property rights pursued the legitimate aim of protecting the rights and interests of others, notably of people on the waiting list for social housing. They pointed out that the Member States enjoyed a generally wide margin of appreciation in social and economic matters such as housing. In the present case they considered it the Moscow Housing Department's obligation to reinstate the municipality's ownership and to allocate the flat to those in need. The dispossession in the present case was therefore necessary and did not place an individual excessive burden on the applicant, because the Prosecutor's Office had intervened in the proceedings on her behalf seeking a supervisory review of the judicial decisions. Moreover, the applicant had been granted victim status in the ongoing criminal proceedings concerning fraud, at least for some time. Finally, the applicant had benefited from a stay of execution proceedings, which had delayed her eviction.

2. The applicant

45. The applicant disagreed with the Government's submission and maintained her complaints. She insisted, in particular, that her Convention rights had been violated by the State, and not by private persons.

46. She further alleged that she had purchased the flat in good faith and referred to the domestic judicial decisions that had confirmed her status as a bona fide buyer. She claimed that she had been entitled to rely on the title conferred on Ye. by the public authorities under the privatisation procedure. She alleged that if the authorities, having examined Ye.'s file, had allowed Ye. to register at M.'s address as his wife and then to become its owner under the privatisation scheme she should not have been expected to assume that the title had any defects.

47. The applicant strongly denied having committed any offence or entered into conspiracy with any State officials, in particular with A.B., or

having conducted any illegal dealings with V., or having evaded tax. She had bought the flat for her own use and lived there with her son, having complied with all the requirements prescribed by law for her to become its lawful owner. The mere fact that the flat was being re-sold within a short period of time did not strike her as unusual, because many people buy real estate for investment and resell it as soon as it becomes commercially sound to do so. V. had been questioned in the criminal proceedings and this had not led the investigating authorities to suspect him of involvement in fraud. The applicant had no reason to doubt that he had bought and re-sold the flat in good faith. She has never been suspected of any illegal dealings and the Government's allegations of unlawful conduct on her part were unfounded.

48. Furthermore, she contested that the privatisation of the flat by Ye. had taken place against the intention of the Moscow Housing Department. Any fraud on the part of Ye., or another person acting under her name, had no link with the presence, or absence, of an intention on the part of the Moscow Housing Department to divest itself of the property. It had never been suggested that the official in charge of the privatisation file had exceeded her authority or that her signature had been forged. It was therefore wrong to apply Article 302 of the Civil Code and grant the Department's claim to the flat. In any event, she considered that the privatisation fraud must have involved acquiescence by State officials in charge of the file; the impugned forgery was easy to check, and that was what the relevant bodies were required to do under the existing rules; they must therefore have knowingly accepted forged documents. However, the possible involvement of State officials in the fraud was not properly investigated in the criminal proceedings, which impeded any recourse against them.

49. The applicant also insisted that the loss of the flat placed her under an excessive individual burden. Despite the intervention by the Prosecutor General's Office and the suspension of the execution proceedings she would still be required to vacate the flat in the near future. She considered it disproportionate that after paying the full market price for the flat she would be stripped of the property for no fault on her part and would have to pay for housing at the market rate, something she could not afford.

50. She finally contended that the criminal investigation into fraud offered her no prospects of relief, because following the death of M. and Ye. further possibilities of gathering evidence were scarce. Moreover, she had been stripped of victim status in these proceedings and was therefore prevented from participating in them effectively.

B. The Court's assessment

1. Admissibility

51. The Court notes that the Government put forward two reasons for this complaint to be declared inadmissible. The Court will examine them as follows.

(a) Applicability of Article 1 of Protocol No. 1 to the Convention

52. The Government claimed that the present case fell outside the scope of Article 1 of Protocol No. 1 to the Convention as it concerned a dispute between parties under private law. Indeed, the Court has previously underlined that it is not in theory required to settle disputes of a private nature. It will therefore examine if the applicant's litigation was of that kind.

53. It will first note that in so far as the Government indicated the dispute between the applicant and V. as the subject matter of this case, their argument was misguided. It is sufficiently clear from the decisions by the domestic courts that it was the Moscow Housing Department who sued the applicant on behalf of the City of Moscow; accordingly, the dispute at stake was between the applicant and the municipal body. The applicant's situation was therefore clearly distinct from the cases of *Zhukovskiye* and *Kuchař and Štis*, referred to by the Government and cited above, both of which concerned resolution of disputes between private individuals.

54. The Court further notes that in certain circumstances it may regard a dispute between the State or municipality and an individual as a civil-law matter, as was the case in *S.Ö., A.K., Ar.K. and Y.S.P.E.H.V.*, also referred to by the Government and cited above. In that case the litigation concerned a succession dispute to which the State Treasury was a party as one of the contending heirs, and the Court concluded that the Treasury's standing in these proceedings was equal to that of an individual heir. It therefore decided that the domestic courts went no further than applying the rules of private law to a civil dispute, and, having noted that the impugned proceedings had not been arbitrary or unfair, declared the complaint under Article 1 of Protocol No. 1 to the Convention inadmissible.

55. In the present case, on the contrary, the Court cannot describe the dispute as a purely civil matter. The essential part of the judgment of 9 July 2009 concerned the finding of fraud in Ye.'s files concerning her residential registration, social tenancy and privatisation. That finding alone was enough for the court to recognise the City of Moscow's right to reclaim the flat. In other words, the applicant's dispossession was a direct consequence of the domestic courts' finding of a defect in the procedure by which the flat was originally alienated by the municipality.

56. The Court observes that the domestic court established that Ye., or another person acting under her name, had registered in the flat, acquired it under a social tenancy and, ultimately, privatised it using forged documents.

57. It notes that in so far as the fraud concerned residential registration, it was an administrative-law matter within the competence of the passport authorities of the Interior. Likewise, the grant of the social tenancy fell within the domain of public welfare regulated by the Housing Code, not the Civil Code, and was administered by the Moscow Housing Department, a structural unit of the Moscow municipal authority. The same body oversaw the privatisation of social housing under the national privatisation scheme, which was a complex regulatory area, comprising legislative provisions of both a public- and a private-law nature. In the context of the present case its function was to apply State regulations to check eligibility to receive and to privatise social housing and to ensure that the passage of title from the State to an individual complied with the procedure prescribed by law. In so doing it exercised the authority of the State, as opposed to entering into private-law contracts on an equal footing with private counterparts.

58. The Court therefore considers that the subject matter of the dispute and the substantive provisions applied in the instant case, comprised, *inter alia*, significant elements of public law and implicated the State in its regulatory capacity, and not as a private party to a civil-law transaction.

59. In the light of the above the Court is unable to conclude that the proceedings in the present case could be regarded as a resolution of a dispute between parties under private law. Accordingly, it dismisses the Government's objection as regards the applicability of Article 1 of Protocol No. 1 to the Convention in the present case.

(b) Alleged non-exhaustion of domestic remedies

60. The Government's second objection concerned the applicant's alleged failure to exhaust domestic remedies, as she had not sued V. for damages caused to her by the loss of title.

61. The Court notes that the applicant claimed to be a victim of a violation of her right to peaceful enjoyment of her possession as a result of the revocation of her title by a judgment which has become final and enforceable. It observes that no further recourse that may potentially lead to reinstatement of her title lies against that judgment under Russian law

62. It further notes that it is not in possession of any information as to whether the applicant has sought damages from V., or whether she intends to do so. However, it considers that the existence of this possibility cannot deprive her of victim status for the purposes of her complaint under Article 1 of Protocol No. 1 to the Convention; neither may it be regarded as necessary for compliance with the rule of exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. Any damages that she might be able to recover against V. may 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 is found by the Court, and if just satisfaction is awarded under Article 41 of the Convention.

(c) Conclusion

63. The Court finds 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.

2. Merits

(a) General principles

64. The Court refers to its established case-law on the structure of Article 1 of Protocol No. 1 and the manner in which the three rules contained in that provision are to be applied (see, among many other authorities, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 52, ECHR 2007-..; *Bruncrona v. Finland*, no. 41673/98, §§ 65-69, 16 November 2004; and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

65. It reiterates that in order to be compatible with the general rule of Article 1 of Protocol No. 1, an interference must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, *Beyeler v. Italy* [GC], no. 33202/96, §§ 108-14, ECHR 2000-I).

66. An interference with the peaceful enjoyment of possessions must therefore strike a “fair balance” between the demands of the public or general interest of the community and the requirements of the protection of the individual’s fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions or controlling their use. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance, and, notably, whether it imposes a disproportionate burden on the applicant (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII).

67. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of

Protocol No. 1. This provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate "public interest" objectives may call for reimbursement of less than the full market value (see, among other authorities, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II).

68. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the proceedings at issue must also afford the individual a reasonable opportunity to put his or her case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see, among other authorities, *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV).

(b) Application of these principles in the present case

(i) The existence of "possessions"

69. The Court observes that the applicant settled in the flat after buying it from V. under the conditions and procedure provided for by law. She was recognised as its lawful owner by the State, including the property registration authorities, as well as housing and residence registration bodies. It therefore constituted a "possession" for the purposes of Article 1 of Protocol No. 1.

(ii) The existence and the nature of interference

70. In so far as the Government may be understood as claiming that the judicial decisions in the present case did not constitute an interference with the applicant's rights guaranteed by Article 1 of Protocol No. 1 to the Convention, as it was a mere resolution of a dispute between parties under private law, this argument was examined and dismissed by the Court under the head of preliminary objection (see paragraphs 52-59 above). It considers that the situation complained of leaves no doubt of the existence of an interference.

71. As to the nature of the interference, the Court finds that the complexity of the legal situation in the present case prevents its being classified in a precise category: on the one hand, the applicant was regarded as the lawful owner of the flat from the moment of its purchase, and her title was not disputed for nearly three years; on the other the courts have established that, in retrospect, the City of Moscow has always remained the owner, to the exclusion of any other title-holders. In any event, the Court does not consider it necessary to rule on whether the second sentence of the first paragraph of Article 1 of Protocol No. 1 applies in this case. It is the Court's long-standing view that the situation envisaged in the second sentence of the first paragraph of Article 1 is only a particular instance of

interference with the right to peaceful enjoyment of property, as guaranteed by the general rule set forth in the first sentence. The Court therefore considers that it should examine the situation complained of in the light of that general rule (see *Beyeler*, cited above, § 106; *Gashi v. Croatia*, no. 32457/05, §§ 27-31, 13 December 2007, and *Đokić v. Bosnia and Herzegovina*, no. 6518/04, §§ 57-58, 27 May 2010).

(iii) As to whether the interference was lawful

72. The Court notes that the applicant contested the lawfulness of the revocation of her title to the flat. She challenged, in particular, the application of Article 302 § 1 of the Civil Code, and contested that the flat had left the City of Moscow's possession without intention to divest on the part of the Moscow Housing Department. Had this provision not been applied she would have enjoyed protection as a bona fide buyer.

73. The Court observes that Article 302 § 1 of the Civil Code allows property to be reclaimed from a bona fide buyer on condition that it left the possession of its owner, or holder, without that person having the intention to divest itself of it. The interpretation by the Plenary Supreme Court and High Commercial Court, as well as the Constitutional Court (see their rulings of 29 April 2010 and of 27 January 2011, cited in paragraph 37 above), is that for the property to be reclaimed from a bona fide buyer, the original owner had to prove that the property had been alienated without intention to divest on their part . The highest courts explicitly instructed the courts of general jurisdiction to examine the intentions of the owner as a matter separate and distinct from the issue of whether or not the property transfer contract was a valid one.

74. However, neither the Cheryomushkinskiy District Court nor the Moscow City Court examined the intentions of the Moscow Housing Department as regards the transfer of property title. As soon as the courts had established the existence of privatisation fraud, which invalidated that transaction, they automatically concluded that the flat had left the City of Moscow's possession without intention to divest on its part. In fact, this omission was pointed out in the submissions by the Moscow Ombudsman and the Deputy Prosecutor General, both of whom regarded the approach chosen by the courts in the present case as controversial, but the Supreme Court did not consider the matter worth reopening.

75. In view of the above, the Court cannot rule out that there may have been a certain deficiency, either in the application of the domestic law or in the quality of the law, in that it was not sufficiently clear. However, the Court may dispense with resolving this point because, irrespective of the domestic lawfulness of the interference, it fell short of the requirement of proportionality, as will be set out below.

(iv) Legitimate aim

76. For the same reason the Court will assume that the impugned measure pursued the public interest, in that it catered for the needs of those on the waiting list for social housing, as maintained by the respondent Government. In any event, the Court will generally respect, in spheres such as housing, the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 49, ECHR 1999-V).

(v) Proportionality of the interference

77. The Court reiterates that any interference with property must, in addition to being lawful and having a legitimate aim, also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

78. As noted above, the applicant's title was invalidated because of fraud in the procedures in which the flat was privatised by a third party, following the discovery of forged documents (see paragraphs 24 and 55 above). The Court has already pointed out that these procedures were conducted by official bodies in the exercise of the authority of the State (see paragraph 57 above). It further notes that it is not clear from the Government's submissions why the forgery of documents was discovered in 2008, and not in 2004-05 when the relevant authorities dealt with Ye.'s requests for residential registration, allocation of social housing and privatisation. It appears from the file that the forgery could be, and eventually was, established by making simple enquiries at the Kaluga civil registry, whose stamp was used for the forged marriage certificate, and with the notary in Moscow who had supposedly attested the application by M. Likewise, it would have been a straightforward task for the Moscow passport authorities to identify if a passport had been declared lost, through a basic database check. A further enquiry could also have been made to the passport authorities in Kaluga to confirm the validity of Ye.'s passport and check her residential registration status.

79. In the Court's view, nothing prevented the authorities in charge of Ye.'s registration, social tenancy and privatisation files from authenticating her documents before granting her requests. It was within the State's exclusive competence to define the conditions and procedures under which it alienated its assets to persons it considered eligible and to oversee compliance with those conditions. Moreover, the subsequent transactions in

respect of the flat were also subject to legalisation by the State, in this case by the Moscow Office of the Federal Authority for Registration of Property, a procedure specifically aimed at providing extra security to the title holder. With so many regulatory authorities having granted clearance to Ye.'s title it was not for the applicant, or any other third-party buyer of the flat, to assume the risk of ownership being revoked on account of defects which should have been eliminated in procedures specially designed to do so. The authorities' oversight could not justify subsequent retribution against a bona fide buyer of the property in question.

80. The Court further notes that the applicant has been stripped of ownership without compensation, and that she has no prospect of receiving replacement housing from the State. It rejects the Government's allegations that she was somehow responsible for her situation because of lack of due diligence, or bad faith, or unlawful behaviour, as unsubstantiated and inconsistent with their other submissions and the findings of the domestic courts. The Court reiterates that that the mistakes or errors of the State authorities should serve to the benefit of the persons affected, especially where no other conflicting private interest is at stake. In other words, the risk of any mistake made by the State authority must be borne by the State and the errors must not be remedied at the expense of the individual concerned (see *Gashi*, cited above, § 40, and, *mutatis mutandis*, *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007). It therefore concludes that dispossessing her of her flat placed an excessive individual burden on her, and that the public interest was not sufficient justification for doing so.

81. The Government argued that the effects of the applicant's dispossession could be mitigated if she sued V. for damages. Indeed, the Court accepts that this opportunity is open to her. However, in the particular circumstances of the case it is clear that the payment of damages could not be pushed back as far as the fraudulent party, because the criminal investigation had not yet established the identity of the culprit and the chances of that culprit being found are virtually non-existent at this stage, in particular because the main witnesses, M. and Ye., are deceased. The Government essentially suggest that the applicant pass her excessive individual burden on to another bona fide individual buyer, and it is hard for the Court to see how that would improve the balance between the public interest and the need to protect individuals' rights. It reiterates, however, that any compensation the applicant might receive from V. would be relevant for the evaluation of her losses, potentially for the purposes of Article 41 of the Convention (see paragraph 62 above).

82. The foregoing considerations are sufficient to enable the Court to conclude that the conditions under which the applicant was stripped of title to the flat imposed an individual and excessive burden on her and that the authorities have failed to strike a fair balance between the demands of the

public interest on the one hand and the applicant's right to the peaceful enjoyment of her possessions on the other.

83. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

84. The applicant complained that the eviction is a violation of her right to respect for home. She relied on Article 8 of the Convention which 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. The parties' submissions

1. The Government

85. The Government's submissions under Article 8 were essentially the same as those under Article 1 of Protocol No. 1 to the Convention. They considered that the applicant's eviction was lawful, pursued a legitimate aim of protection of rights of persons eligible to social housing and that it was proportionate to that aim. They stressed that the applicant had already been granted a number of extensions of the deadline for moving out and that she would not have to be put on to the street, because she could move in with her parents, who also lived in Moscow.

2. The applicant

86. The applicant maintained her complaints, claiming that her eviction would not be in the public interest. From being self-sufficient she would become a welfare case, except that the authorities have already declined to provide her with social housing. She also pointed out that the Moscow Housing Department had refused to allow her to live in the flat under social tenancy conditions; having lost in the eviction proceedings she was no longer considered to be lawfully residing in Moscow and would therefore not even qualify for social housing there. Moreover, even if she somehow became eligible to be placed on a waiting list she would have to wait for at least ten years for a vacancy.

87. She further alleged that with her monthly income of about 250 euros (EUR) she would not be able to afford another flat, because the cheapest one-room flat in Moscow was about EUR 150,000, while renting it would cost no less than EUR 500 per month. She would not consider moving to another region, because she could not afford accommodation there either, although it was cheaper than Moscow, and in any event all her family and friends, as well as her job, were in Moscow, and she had no connections elsewhere.

88. Finally, the applicant contended that the extensions granted to her before the eviction did not significantly alter her situation, because the eviction was nonetheless imminent, especially since her latest request for extension had been refused.

B. The Court's assessment

1. Admissibility

89. The Government did not put forward any objections to the admissibility of this complaint other than those already examined and rejected under Article 1 of Protocol No. 1 to the Convention. The Court considers that these findings apply equally in the context of this complaint under Article 8. It 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.

2. Merits

90. The Court first notes that the applicant has been living in the flat with her minor son since purchasing it from V. in September 2005. Her ownership had been duly registered and recognised by all the regulatory bodies. Her right to live there derived from her title to the property. It is thus undeniably her home, and the Government have never claimed otherwise.

91. The Court will next consider whether there has been an interference with the applicant's right to respect for her home. It notes that the judgment which revoked her title also ordered her eviction from the premises, and this judgment became final and enforceable. As matters stand, the applicant has no further recourse against the decision that she must vacate the flat, and the courts will grant her no further suspension of the enforcement. The Court reiterates that once the eviction order has been issued it amounts to an interference with one's right to respect for home, irrespective of whether it has yet been carried out (see *Stanková v. Slovakia*, no. 7205/02, 9 October 2007; *McCann v. the United Kingdom*, no. 19009/04, 13 May 2008; and *Ćosić v. Croatia*, no. 28261/06, 15 January 2009). In the present case, the

Government did not expressly contest that there has been an interference with the applicant's right under Article 8, and, in circumstances such as these, the existence of an interference is beyond doubt.

92. The Court further notes that the lawfulness of the eviction is not in dispute. Under the domestic law it is an automatic consequence of termination of ownership. It will thus consider it lawful. Turning to the existence of a legitimate aim, the Court will accept that the applicant's eviction is aimed at protecting the rights of welfare recipients, to whom the flat should be reallocated, as the Government claim.

93. It will therefore proceed to the question of whether the interference was "necessary in a democratic society". In making this assessment the Court will have to examine if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. It has previously held that the margin of appreciation in housing matters is narrower when it comes to the rights guaranteed by Article 8 compared to those in Article 1 of Protocol No. 1, regard had to the central importance of Article 8 to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see *Connors v. the United Kingdom*, no. 66746/01, §§ 81–84, 27 May 2004, and *Orlić v. Croatia*, no. 48833/07, 21 June 2011, §§ 63-70).

94. The Court observes that an order was made for the applicant's eviction automatically by the domestic courts after they had stripped her of ownership. They made no further analysis as to the proportionality of the measure to be applied against the applicant, namely her eviction from the flat they declared to be State-owned. However, the guarantees of the Convention require that any interference with an applicant's right to respect for his or her home not only be based on the law but should also be proportionate, under paragraph 2 of Article 8, to the legitimate aim pursued, regard being had to the particular circumstances of the case. Furthermore, no legal provision of domestic law should be interpreted and applied in a manner incompatible with the respondent State's obligations under the Convention (see *Stanková,* cited above, § 24, 9 October 2007).

95. The Court also attaches weight to the fact that the applicant's home has been repossessed by the State, and not by another private party whose interests in that particular flat would have been at stake (see *Orlić*, cited above, § 69). The allegedly intended beneficiaries on the waiting list were not sufficiently individualised to allow their personal circumstances to be balanced against those of the applicant. In any event, no individual on the waiting list would have had the same attachment to the flat as the applicant, or would hardly have had a vested interest in that particular dwelling, as opposed to a similar one.

96. Finally, the Court takes into account that the applicant's circumstances did not make her eligible for substitute housing, and no

goodwill had been shown by the Moscow Housing Department in that it would not provide her with permanent, or even temporary, accommodation when she had to move out. The Government's suggestion that the applicant move in with her parents aside, the authorities made it clear that they would not contribute to a solution of her housing need. It follows that the applicant's rights guaranteed by Article 8 were entirely left out of the equation when it came to balancing her individual rights against the interests of the City of Moscow.

97. There has therefore been a violation of Article 8 of the Convention in the instant case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant claimed 249,547 United States dollars (USD) in respect of pecuniary damage, a sum for which she would be able to purchase a comparable flat to the one she lost. She also claimed 60,000 euros (EUR) in respect of non-pecuniary damage she and her son had suffered (EUR 30,000 each), referring to the anxiety she endured because of the imminent loss of her home. She alleged that she herself and her son were under stress because of the obligation to move out and find a new home, because she had no means to pay for a new home, and because of the litigation she had to conduct over years in order to challenge the repossession and eviction.

100. The Government contested these sums as unmerited, unsubstantiated and excessive. They reiterated that the Court should be sensitive to its subsidiary role and that it should not substitute itself for the domestic courts' rulings in a civil dispute. They also reiterated that the applicant may still sue V. for damage incurred as a result of her loss of title.

101. The Government further suggested that if the Court is to make an award in the applicant's favour she should only be eligible for 998,000 Russian roubles (RUB), a sum indicated as the principal amount under the sale contract between the applicant and V. They alleged that the fair market price was intentionally omitted by the parties to avoid taxation. However, if the Court is to decide to make an award on the basis of the current market price, they submitted the official estimates of the Moscow

Mayor's office that the market price at the flat's location was between RUB 145,000 and RUB 155,000 per square metre in December 2010; accordingly the flat of 37.6 square metres would cost between RUB 5,452,000 and RUB 5,828,000.

102. They also contested the applicant's claims for non-pecuniary damage. Firstly, the Government pointed out that the applicant's son was not a party to this application, and therefore no award should be called for on account of his alleged sufferings. They also pointed out that the claim was out of line with awards previously made by the Court in similar cases.

103. As regards the Government's argument as to the Court's subsidiary role in civil law matters, the Court has already addressed it under the head of a preliminary objection (see paragraphs 52-59 above) and concluded that the proceedings in the present case could not be regarded as a resolution of a dispute between parties under private law. This finding equally applies here.

104. Turning to the Government's claim that the applicant might still sue V. for damages, it reiterates its finding above that any compensation received by the applicant from V. would indeed be taken into account for the purposes of calculating pecuniary damage under Article 41 of the Convention. However, the parties made no mention of any compensation received by the applicant, and the Court is not aware of any such claims pending before the domestic courts. It will accordingly assume that as matters stand the applicant has not received any compensation from V. It considers, moreover, that if any related claims come before the domestic courts in future the latter will be entitled to take into account the award made by the Court in this judgment. It will therefore proceed to examine the issue of just satisfaction.

105. The Court refers to its finding above that the authorities violated the applicant's right to peaceful enjoyment of her possessions guaranteed by Article 1 of Protocol No. 1 to the Convention, having stripped her of the title to the flat (see paragraph 83 above). It also refers to its finding that the applicant's eviction from the flat, following her dispossession, violated her right to respect for home enshrined in Article 8 of the Convention (see paragraph 97 above). In making this finding the Court has stressed the central importance of the right to home in the Convention hierarchy of rights (see paragraph 93 above), and has taken into account the applicant's attachment to this particular flat (see paragraph 95 above). It considers that there is a clear link between the violations found and the damage caused to the applicant.

106. 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 existing 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 in particular having noted the absence of a competing third-party interest or other obstacle to the restitution of the applicant's ownership, the Court considers that the most appropriate form of redress would be to restore the applicant's title to the flat and to reverse the order for her eviction. Thus, the applicant would be put as far as possible in a situation equivalent to the one in which she would have been had there not been a breach of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

107. In addition, the Court has no doubt that the applicant suffered distress and frustration on account of the deprivation of her possessions and the imminent eviction from her home. The Court has already noted above that the authorities have done nothing to mitigate her anxiety in the face of the loss, even though they recognised her as a party in good faith. While the Court upholds the Government's argument that as the applicant's son is not a party to these proceedings no award may be made in his name, it considers that the applicant's status as the single parent of a minor is a relevant factor, aggravating her anxiety and fear of eviction. The resulting non-pecuniary damage would not be adequately compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,000 under this head.

B. Costs and expenses

108. The applicant claimed EUR 10,000 and RUB 23,343 for costs and expenses incurred in the proceedings before the Court and RUB 224,936 for costs and expenses incurred in the domestic proceedings, comprising court fees, lawyer's fees, notary charges and technical inventory charges. She also claimed compensation for the following expenses: postal services, consisting of RUB 583 and RUB 2,611; RUB 5,150 for the expert valuation of the flat, and RUB 15,000 for translation services. In total, she claimed EUR 10,000 and RUB 271,623. She provided receipts and copies of service agreements in support of her claims under this head.

109. The Government submitted that the applicant had claimed costs and expenses incurred in her own name as well as in the name of her son. They requested the Court to reject the latter, as he was not a party to the proceedings before the Court. In any event, they claimed that the costs and expenses had not been actually and necessarily incurred, and were not reasonable. Finally, Mr Puzanov, the applicant's lawyer, did not affix his advocate's stamp confirming his right to practice.

110. The Government requested the Court to reject the claim of RUB 224,936 as regards legal costs incurred by the applicant in the

domestic proceedings, as they considered it irrelevant to her case before the Court.

111. They agreed, however, to the claims related to the translation of documents, commission of an expert report and postal expenses.

112. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that Mr Puzanov signed two legal services agreements, one to represent the applicant in the proceedings before the Court and an identical one to represent her son. However, as the Government correctly pointed out, only one applicant, Ms Gladysheva, had lodged this case, and not her son. The Court therefore finds that the part of the claims related to the service agreement on behalf of the applicant's son, which amounted to EUR 5,000 of her claims for costs and expenses, must be rejected. As to the remaining sums relating to Mr Puzanov's legal services, the Court acknowledges that he had made substantial submissions on the applicant's behalf, leaving no doubt that he had rendered her the legal services, as alleged. The Court considers that the applicant must be reimbursed for his services under the agreement with her, irrespective of whether he was in possession of the advocate's stamp required by the Government.

113. Finally, the Court considers that the costs and expenses incurred in the domestic proceedings were directly relevant to this case and must also be reimbursed, as well as the remainder of the costs and expenses claimed by the applicant.

114. Having regard to the above, the Court awards the applicant EUR 11,245 for costs and expenses.

C. Default interest

115. The Court considers it appropriate that the default interest 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* that there has been a violation of Article 8 of the Convention;

4. *Holds*

(a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the full restitution of the applicant's title to the flat and the annulment of her eviction order;

(b) that the respondent State is to pay the applicant, within the same three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 11,245 (eleven thousand two hundred and forty five euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

(c) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President