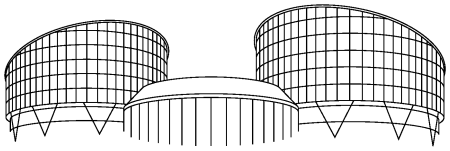

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF YEVGENIY ZAKHAROV v. RUSSIA

(Application no. 66610/10)

JUDGMENT

STRASBOURG

14 March 2017

FINAL

18/09/2017

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

In the case of Yevgeniy Zakharov v. Russia,

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

Helena Jäderblom, *President,*
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 21 February 2017,

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

PROCEDURE

1. The case originated in an application (no. 66610/10) 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, Mr Yevgeniy Nikolayevich Zakharov ("the applicant") on 16 October 2010.

2. The applicant was granted leave to present his own case under Rule 36 § 2 *in fine* of the Rules of Court. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that his right to respect for his home had been violated.

4. On 5 November 2015 the complaint concerning the alleged violation of the applicant's right to respect for his home 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Kaliningrad.

6. Until 1999 the applicant was married to Z. and was living with her in a state-owned flat which had been provided to Z.'s parents. The applicant was registered as living in that flat.

7. In 1999 the applicant and Z. divorced and the applicant moved in with his new partner, B. At that time he did not apply for deregistration from the flat which he had occupied with his former wife. Later Z. privatised that flat, and the applicant lost occupational right to it.

8. B. occupied a room in a three-room communal flat under a social tenancy agreement. The other two rooms were occupied by her neighbours. The applicant and B. lived together in that room for the following ten years. They never married and the applicant was not registered as living in the room.

9. In May 2009 B. died and her neighbours locked the applicant out of the flat. The local housing authority informed the applicant that he had to vacate the room, since he had no legal right to occupy it.

10. On 28 September 2009 the applicant instituted court proceedings against the local administration, seeking recognition of his right to occupy the room as B.'s family member. He submitted that he and B. had been living in the room as husband and wife since 1988, but that after her death her neighbours had locked him out of the room. He considered that despite the fact that he had not been married to B. and had not been registered as living in the room, he should be regarded as a member of her family who had acquired the right to occupy her room. In particular, he raised the following arguments:

- he had shared a common household with B.;
- he had paid for the maintenance of the room;
- he had assumed the cost of B.'s burial;
- he had no other housing: he could not return to the flat of his former wife Z. since she had become the owner of that flat and lived there with her new family;
- on 8 September 2009 he had asked the authorities to deregister him from the flat of his former wife Z.;
- since his eviction, he had been obliged to live in the school in which he was working as a night watchman.

11. The local administration submitted that the applicant had not been registered as living in B.'s room, he was not a member of B.'s family and, therefore, he had not acquired any right to occupy her room.

12. B.'s neighbours were invited to participate in the proceedings as third parties. They confirmed that between 1999 and 2009 the applicant had lived in the room with B. and had provided her with financial support. However, they considered that B.'s room should be allocated to them and not to the applicant, since there were six of them living in two rooms and they needed to upgrade their living conditions.

13. On 6 May 2010 the Leninskiy District Court ("the District Court") of Kaliningrad granted the applicant's claim with reference to Articles 69 and 70 of the Housing Code (see Relevant domestic law and practice below). The District Court established, in particular, that between 1999 and 2009 the

applicant had cohabited with B. in the room in question, had shared a common household with her and had been removed from the register at his previous place of residence. The District Court considered that the above circumstances should be regarded as exceptional within the meaning of Article 69 of the Housing Code and that the applicant should therefore be regarded as a member of B.'s family who had acquired the right to reside in the room previously occupied by her.

14. The local administration did not appeal against the judgment of 6 May 2010.

15. The third parties appealed against that judgment to the Kaliningrad Regional Court ("the Regional Court"). They submitted that B. had on several occasions chased the applicant away. She had not applied to the authorities with a request to register him as living in her room, and had not asked that his name be added to the social tenancy agreement as a member of her family. The applicant had not paid any utility charges for the room and had been registered as living elsewhere until B.'s death.

16. On 22 September 2010 the Regional Court quashed the judgment of 6 May 2010 and dismissed the applicant's claims. The relevant part of the decision of 22 September 2010 reads as follows:

> "When granting the claims of Mr Zakharov Ye. N. [the applicant], the court [the District Court] proceeded from the premise that there existed exceptional circumstances allowing it to recognise him as a member of Ms Brazhnikova's [B.'s] family in accordance with Article 69 § 1 of the Housing Code.
>
> The Civil Chamber [of the Kaliningrad Regional Court] cannot agree with such a decision.
>
> The court [the District Court] established on the basis of the plaintiff's and witnesses' submissions that the plaintiff had lived together with Ms Brazhnikova L.P. [B.] since 1999 and had shared a common household with her.
>
> The above circumstances are not in themselves exceptional, in particular given that no irrefutable evidence had been submitted to the court to prove that Ms Brazhnikova L. P. had let Mr Zakharov live in the flat as a family member rather than as a temporary resident. Throughout the period in which he lived together with Ms Brazhnikova L.P., the plaintiff had been registered as living in house no. 6, Pionerskaya street in the village of Aleksandrovka in the Zelenogradskiy district. He asked to be removed from the register on 8 September 2009 after the death of Ms Brazhnikova and just before applying to the court.
>
> Therefore, the circumstances of the case do not allow the court to recognise Mr Zakharov Ye. N. as a family member of the social tenant Ms Brazhnikova L.P. as well as acknowledging his right to occupy the flat in question. It follows that the court judgment should be quashed and a new decision should be taken dismissing those claims."

17. On 3 March 2011 a judge of the Supreme Court of Russia ("the Supreme Court") refused to refer the applicant's application for supervisory review of the decision of 22 September 2010 to the Civil Chamber of the

Supreme Court for examination, finding no grounds for such review and relying on the principle of legal certainty.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

18. Article 40 of the Constitution provides that everyone has the right to a home. Nobody may be arbitrarily deprived of his or her home.

B. Housing Code of the Russian Federation of 29 December 2004, in force since 1 March 2005

19. Article 69 § 1 of the Code provides that members of a tenant's family include his or her spouse, children and parents if they live together with the tenant. Other relatives and disabled dependants may be recognised as the tenant's family if the tenant accommodates them as such and if they share a common household with the tenant. In exceptional cases a court may recognise other persons as members of the tenant's family.

20. Article 70 provides that a tenant is entitled to share his home with his spouse, children and parents or other persons living with him as members of his family.

C. Case-law of the Supreme Court of the Russian Federation

21. In its Ruling No. 8 of 31 October 1995 on certain questions relating to the application by courts of the Constitution of the Russian Federation in the administration of justice, the Supreme Court of Russia held as follows (paragraph 13):

> "When adjudicating on housing disputes, the courts shall take into account that the Constitution of the Russian Federation provides everyone who is legally present on the territory of the Russian Federation with the right to travel freely and freely to choose their place of temporary or permanent residence. It also provides everyone with the right to a home (Article 27 § 1, Article 40 § 1[of the Constitution]).
>
> Having regard to these provisions of the Constitution, it should be borne in mind that the absence of *propiska* or registration, which has replaced *propiska*, cannot in itself serve as grounds for restricting people's rights and freedoms, including the right to home. When adjudicating on claims concerning the recognition of the right to use housing premises, it should be taken into account that information about the existence or absence of *propiska* (registration) is only one item of evidence to be examined in order to see whether there was an agreement between the tenant (owner) of the premises, or his family members allowing the person to live in their housing and under which conditions ..."

22. In its Ruling No. 14 of 2 July 2009 on certain questions arising in judicial practice with regard to the application of the Housing Code of the Russian Federation, the Supreme Court of Russia held as follows (paragraph 25):

> "...
>
> In accordance with Article 69 § 1 of the Housing Code, in exceptional cases a court may recognise other persons [apart from the spouse, children or parents of the tenant living with him and other close relatives and dependants] as the tenant's family members. In taking a decision regarding the possibility of recognising other persons as the tenant's family members (for example, a person who is living together with the tenant without being married), the court should find out whether those persons were let in as the tenant's family member or in some other capacity, whether they shared a common household with the tenant, for how long they were living in the housing in question and whether they had a right to other housing and had not lost that right."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained under Article 8 of the Convention of a violation of his right to respect for his 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. The parties' submissions

24. The Government submitted that there had been no violation of Article 8 of the Convention in the present case. The Regional Court's refusal to recognise the applicant's right to occupy the room previously occupied by his partner had been in accordance with the law, and had pursued the legitimate aim of protection of public interests, namely the rights of the municipal authority. It had been necessary in a democratic society, since the vacant room had to be reallocated to persons in need of housing.

25. The Government further submitted that in taking its decision, the Regional Court had had regard to the fact that no irrefutable evidence had

been submitted to prove that B. had let the applicant live in the flat as a family member rather than as a temporary resident. It had been decisive that throughout the period in which the applicant had lived together with B., he had been registered as living in a different place and had not asked to be removed from the register until after B.'s death, just before lodging his claims with the court. The Government claimed that such an approach had been based on the guidelines provided by the Supreme Court of the Russian Federation in its rulings of 31 October 1995 and 2 July 2009 (see Relevant domestic law and practice above).

26. In addition, the Government submitted that there had been further indicators that B. had not let the applicant live in her room as a family member: the social tenancy agreement had not been modified to insert the applicant as B.'s family member, and they had never married throughout the period in which they had lived together.

27. The applicant submitted that after the death of his partner he had been deprived of his only home. The place where he had been registered was not his home; it was the home of his former wife and her new family. In any event, the fact that a person was registered at a particular place did not automatically mean that he or she lived there.

B. The Court's assessment

1. Admissibility

28. The Court notes that the application 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

29. The first question the Court has to address is whether the applicant may arguably claim that he had a right protected by Article 8 and – more specifically in the present case – whether the room in question may be considered as his home.

30. The concept of "home" within the meaning of Article 8 is not limited to premises which are lawfully occupied or which have been lawfully established. It is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular premises constitutes a "home" which attracts the protection of Article 8 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see *Buckley v. the United Kingdom*, 25 September 1996, § 54, *Reports of Judgments and Decisions* 1996-IV; *Prokopovich v. Russia*, no. 58255/00, §§ 36-39, ECHR 2004-XI (extracts); and *McCann v. the United Kingdom*, no. 19009/04, § 46, ECHR 2008).

31. In the present case the first-instance court found in its judgment of 6 May 2010 that the applicant had lived in B.'s room for ten years. When quashing that judgment the Regional Court did not call that conclusion into question, but stated that no irrefutable evidence had been submitted to the court to prove that B. had let the applicant live in the flat as a family member rather than as a temporary resident. It was decisive for the Regional Court that throughout the period in which he had lived together with B., the applicant had been registered as living in a different place.

32. The Court considers that the sole fact that the applicant remained registered as living in the flat of his former wife is not sufficient to conclude that he had established his home there. On the other hand, the Court considers that by living in B.'s room for ten years, the applicant had developed sufficient and continuous links with that room for it to be considered his "home" for the purposes of Article 8 of the Convention. The refusal to recognise the applicant as B.'s family member and to acknowledge his right to occupy her room amounted to an interference with his right to respect for his home, as guaranteed by Article 8 of the Convention.

33. The Court accepts that the interference had a legal basis in domestic law (see paragraph 19 above) and pursued the legitimate aim of protecting the municipality as the owner of the flat and the rights of persons 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".

34. 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 Roma 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."

35. In the present case the applicant raised the issue of his right to home before the domestic courts and presented arguments linked to the proportionality of the refusal to acknowledge his right to reside in the room in question. The court of first instance granted his claims with regard to the fact that he had been cohabiting with B. in the room in question for ten

years, had been sharing a common household with her and had been removed from the register at his previous place of residence. However, the Regional Court quashed that judgment and dismissed the applicant's claims, having found that no irrefutable evidence had been submitted to prove that B. had let the applicant live in the room as a family member rather than as a temporary resident. That conclusion was based exclusively on the fact that throughout the period in which he had been living with B., the applicant had been registered as living in a different place and had not asked to be removed from the register until after B.'s death, just before lodging his claims with the court.

36. The Government claimed that the interference with the applicant's right to respect for his home was "necessary in a democratic society" because the room in question had had to be reallocated to other persons in need of housing. In that connection, the Court observes that the local administration, which was the owner of the room, did not appeal against the judgment of the first-instance court and thus ceased to defend the interests of persons on the municipal housing list. Therefore, the only interests that were at stake were those of the third parties (B.'s neighbours). However, the Regional Court did not weigh those interests against the applicant's right to respect for his home. Once it had found that throughout the period in which the applicant had lived with B., he had been registered as living elsewhere, it gave that aspect paramount importance, without seeking to weigh it against the applicant's arguments concerning his need for the room. The Regional Court thus failed to balance the competing rights and therefore to determine the proportionality of the interference with the applicant's right to respect for his home.

37. 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

38. 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

39. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government contested that claim.

41. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

43. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Done in English, and notified in writing on 14 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President