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Meeting: 1294th meeting (September 2017) (DH)

Communication from a NGO (29/05/2017) in the case of GLADYSHEVA v. Russian Federation (Application No. 7097/10)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1294e réunion (septembre 2017) (DH)

Communication d'une ONG (29/05/2017) dans l'affaire GLADYSHEVA c. Fédération de Russie (Requête n° 7097/10) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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Dear Ms. Mayer,

As a follow up of the communication submitted to the Department for the Execution of Judgments of the European Court of Human Rights under Rule 9.2 of the Rules of the Committee of Ministers for supervision of the execution of judgments and the terms of friendly settlements on 06 October 2016, the enclosed communication regarding the execution of the judgments on the cases of *Gladysheva v Russia* and *Stolyarova v. Russia* (nos. 70971/10 and 15711/13) is presented to your attention.

We would be grateful for this communication to be put before the Committee of Ministers for the upcoming Committee of Ministers Human Rights Meeting and to be added to the list of working documents. We also respectfully request to forward it to the Permanent Representative of the Russian Federation to the Council of Europe and the Office of the Representative of the Russian Federation at the European court of Human Rights.

Sincerely,

Karinna Moskalenko Svetlana Gladysheva Anna Maralyan

Communication under Rule 9.2 of the Rules of the Committee of Ministers for supervision of the execution of judgments and the terms of friendly settlements in the cases of Gladysheva v Russia and Stolyarova v. Russia

(Application nos. 70971/10 and 15711/13)

IN RESPONSE TO THE ACTION PLAN OF THE RUSSIAN FEDERATION dated 11 July 2016

The Committee of Ministers (hereinafter the Committee) would recall that Centre de la Protection internationale and ANO (hereinafter the NGOs) raised their concern on the non-execution of the cases of *Gladysheva v Russia* (no. 70971/10) and *Stolyarova v Russia* (no. 15711/13) in the part of general measures in their submission of 06 October 2016.

The NGOs stated that the situation remained largely the same and no effective measures were taken by the Russian Federation. They emphasized that the issues raised in the cases of *Gladysheva v Russia* and *Stolyarova v Russia* are those of systematic and the taken measures described in the Action plan of the Russian Federation on the enforcement of the judgments of the European Court of Human Rights in cases no. 7097110 Gladysheva v. Russia (judgment of 6 December 2011, final on 6 March 2012) and no. 15711/13 Stolyarova v. Russia (judgment of 29 January 2015, final on 29 April 2015) dated 11 July 2016 (hereinafter the Action plan) are just imitation and resolve no problem.

The NGO argue the statements of the Russian Government made in their Action plan in that a number of measures improving the situation were taken by the Russian authorities.

By this submission first of all the NGOs welcome the efforts of the Government of the Russian Federation to adopt national laws aimed at preventing further similar violations.

The NGOs note that a number of domestic laws were amended to fill in the gaps of the current national laws that caused violation of rights of bona fide acquirers guaranteed by the Convention. However, the NGOs raise their concerns regarding the effectiveness of the amendments.

This submission will provide the Committee of Ministers with the analysis of the effectiveness of the taken general measures in the part of amendments of the Russian legislation based on action reports prepared by "Institute for law and Public Policy" (http://ilpp.ru/en/) (Attachment 1) and well known Russian scholars of this field (Attachment 2).

The authorities noted in their Action plan on the enforcement of the judgments of the European Court of Human Rights in cases no. 7097110 Gladysheva v. Russia and no. 15711/13 Stolyarova v. Russia dated 11 July 2016 that "[c]urrently the work continues on preparation of the new Draft Federal Law, which provides for prohibition of revocation, under the claims of public authorities and local government bodies, of a previously privatized flats from a bona fide buyer - a citizen for whom it is the only habitable flat, as well as provides for the compensation of damage to the citizens - bona fide buyers out of the budgetary funds"

According to the experts the Draft Federal Law on Amendments of the Civil Code of the Russian Federation and other legislative acts of the Russian Federation (in the part of better protection of bone-fide acquirers) (hereinafter the draft law) does not comply with the findings of the European Court of Human Rights (hereinafter the Court) in the cases of *Gladysheva v Russia* and *Stolyarova v Russia*.

According to the amended draft law:

(a) Article 302 of the RF Civil Code prohibits to vindicate promises from a bona-fide buyers, if it is the only house for the owner and his family;
(b) Bona-fide acquirers who were dispossessed of their only house by the authorities have the right to turn to the domestic courts with a request of compensation.

The experts consider that:

(a) It is of no importance whether bona-fide purchasers and their family members possess one or several premises. The existence of another accommodation does not justify the eviction

of bona fide acquirers and their family members from their home. Most importantly, in the case of existence of another dwelling, such important issues as the habitability of the flat, worsening of living conditions of a bona fide buyer and his/her family, different obstacles for enjoyment of social and economic rights of a bona fide purchaser and his/her family members as well as other issues should be considered.

(b) The proper execution of the referred cases where the Court found violation of the right to peaceful enjoyment of the property guaranteed by Article 1 of Protocol 1 of the Convention requests *restitutio in integrum* and compensation cannot be considered as a *restitutio in integrum.* The experts emphasize that bona fide acquirers should not bear the burden of the loss of their title of ownership to their property for no fault from their side and it is impermissible to terminate bona fide buyers' right to property in these cases and no exceptions should be allowed. The experts also highlight the risk of awarding compensations that are not compatible with the market values of the vindicated properties. In this regard it should be noted that Article 68 of the Federal Law No. 218 on State Registration of Real Estate grants bona fide acquirers the right to turn to the national courts with a request of compensation in the sum of maximum 1 000 000 Russian rubles[1], if their right to property was violated by the competent authorities.

The experts also emphasize the necessity of a retro-activity of the law for those bona-fide acquirers who were dispossessed of their property before the law enter into force (the retroactivity clause was initially included into the draft law, however it was taken out as requested by the head of the City of Moscow (Attachment 3)). The experts state that if the legislative body considers it impossible to grant the law retroactivity they should make it sure that the rights of bona fide acquirers, whose property was vindicated before the entry into force of this law, should be respected by other means proscribed by law (e.g. provision of an alternative housing)

Further, according to the experts, for effective execution of the judgments in the cases of *Gladysheva v Russia* and *Stolyarova v Russia* in the part of general measures the respondent State should introduce such legislation that will prohibit the dispossession of bona fide acquirers of their property as well as their eviction. The experts also believe that the State could

[1] It is of utmost importance to note that the average price of a one room flat is much higher than RUB 1 000 000 in big cities of Russia, where the vast majority of violations took place.

claim compensation from perpetrators who caused the State's loss of the right to property. It is also highlighted that the quality of authentication of the documents submitted for the registry of the title to ownership should be improved. It is also stated that criteria of a bona fide purchaser should be clearly defined by the national legislation. Experts also point to contradictions of the amendments with other laws (Attachment 2). The experts also express their concerns regarding the possibility of application of norms set up by Article 58[2] of the Federal Law No. 218 on State Registration of Real Estate against bona fide purchasers to annul their right to property.

Thus, the experts conclude that (a) there should be certain criteria that would permit to define the notion of "a bona fide acquirer"; (b) the only effective mean in this case is adoption of legislative acts that prohibit dispossession of bona fide acquirers of their estates as well as ban their eviction from their houses. They also emphasize that the compensation for the loss of property could not be regarded as effective, because the only remedy that meets the requirement of *restitutio in integrum* is restoration of the right to property of the bona fide acquirers and quashing of decisions on vindication of bona fide acquirers and orders on their evictions from their homes. The experts also note that the fact that the real state at stake is not the only home for bona fide buyers, should not play a decisive role.

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[2] Article 58

"1. Права на недвижимое имущество, установленные решением суда, подлежат государственной регистрации в соответствии с настоящим Федеральным законом.

2. При отсутствии причин, препятствующих государственной регистрации перехода права и (или) сделки с объектом недвижимости, наличие судебного спора о зарегистрированном праве не является основанием для отказа в государственной регистрации перехода такого права и (или) сделки с объектом недвижимости.

3. В случае, если решением суда предусмотрено прекращение права на недвижимое имущество у одного лица или установлено отсутствие права на недвижимое имущество у такого лица и при этом предусмотрено возникновение этого права у другого лица или установлено наличие права у такого другого лица, государственная регистрация прав на основании этого решения суда может осуществляться по заявлению лица, у которого право возникает на основании решения суда либо право которого подтверждено решением суда. При этом не требуется заявление лица, чье право прекращается или признано отсутствующим по этому решению суда, в случае, если такое лицо являлось ответчиком по соответствующему делу, в результате рассмотрения которого признано аналогичное право на данное имущество за другим лицом.

Hence, the taken general measures could not be regarded as effective, because they fail to prevent further similar violations.

It is noteworthy that the lack of effective general measures results in the numerous applications to the Court (e.g. Titova and Ivanova v Russia, Filimonov and others v Russia, Deminy v Russia, Sergeyevy v Russia, Dubovets v Russia, Chugunova v Russia, Andriyakhiny v Russia, Olkhovik v Russia, etc.), which will be added to the Court's backlog, while it could have been prevented if the Russian Government had taken effective general measures in the referred cases.

Taking into consideration the fact that that the respondent State is reluctant to take effective general measures that would eliminate further similar violations and the fact that this is a systemic problem in the Russian Federation, we respectfully request the Committee:

1. To request the respondent State to effectively abide by the conclusions and spirit of the referred judgments of the Court;
2. To examine the referred cases under enhanced procedure as set by point 8 of the Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action plan – Modalities for a twin-track supervision system, as the referred judgments raise structural problems;
3. To adopt an interim resolution on non-execution of the referred judgments in the part of general measures.

We urge the Committee to exercise any and all available options exert any necessary pressure on the Government of the Russian Federation for the purposes of ensuring the due execution of the judgments in question.

We thank you in advance for your cooperation and remain at your disposal for any clarifications and assistance you may require.

Sincerely,

Karinna Moskalenko Svetlana Gladysheva Anna Maralyan