

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 21 April 2003 No. 6-II

in the case concerning the review of the constitutionality of the provisions of Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation in connection with complaints of O. M. Marinicheva, A. V. Nemirovskaya, Z. A. Sklyanova, R. M. Sklyanova, and V. M. Shirayev.

Moscow, 21 April 2003

The Constitutional Court of the Russian Federation composed of Presiding Judge N. V. Seleznev and Judges Yu. M. Danilov, L. M. Zharkova, V. D. Zorkin, S. M. Kazantsev, M. I. Kleandrov, O. S. Khokhryakova,

in the attendance of attorney L. A. Borodin as O. M. Marinicheva's representative; A. V. Nemirovskaya, who submitted her constitutional complaint to the Constitutional Court of the Russian Federation, attorney A. E. Akopov as A. V. Nemirovskaya's representative; Z. A. Sklyanova, who submitted her constitutional complaint to the Constitutional Court of the Russian Federation, attorney Z. A. Galkina as representative of Z. A. Sklyanova and P. M. Sklyanova; V. M. Shirayev, who submitted his constitutional complaint to the Constitutional Court of the Russian Federation; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev,, Representative of the Council of the Federation N. M. Lavrova, PhD in Law; Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. A. Mityukov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in an open hearing, examined the constitutionality of the provisions of Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation.

The reason for the consideration of the case is complaints of O. M. Marinicheva, A. V. Nemirovskaya, Z. A. Sklyanova, R. M. Sklyanova and V. M. Shirayev against violation of their constitutional rights and freedoms by Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation regulating the legal consequences of an invalid transaction. The ground

for the consideration of the case is the discovered uncertainty of whether these provisions are in conformity with the Constitution of the Russian Federation.

Insofar as all the complaints concern essentially the same subject matter and pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur S. M. Kazantsev, statements by the parties and their representatives, the expert opinion of V. V. Chubarov, PhD in Law, interventions by Plenipotentiary Representative of the Government of the Russian Federation M. Yu. Barshchevsky for the Government of the Russian Federation, Judge V. L. Slesarev of the Supreme Arbitration Court of the Russian Federation for the Supreme Arbitration Court of the Russian Federation; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. Pursuant to Article 167 of the Civil Code of the Russian Federation, an invalid transaction entails no legal consequences other than those concerning invalidity itself, and it is invalid from the moment of its conclusion (Section 1); the parties to the invalidated transaction shall reinstate one another with any gains from the transaction, and if the reinstatement in kind is impossible (in particular, when possessions were used, a work was performed or a service was rendered under the transaction) to reimburse its cost in cash, unless other invalidity consequences of the transaction are provided by law (Section 2).

The above-mentioned provisions were applied by courts of general jurisdiction in deciding on the invalidity of the applicants’ transactions, the sale of living premises. Thus, on 31 January 2001, the Syktyvkar City Court of the Komi Republic invalidated the agreement for sale and purchase of a flat concluded by O. M. Marinicheva, and the decision was upheld by the Judicial Section on Civil Cases of the Supreme Court of the Komi Republic; on 23 November 2001, the Leninsky District Court of Yekaterinburg invalidated the agreement for sale and purchase of a flat, a party to which was V. M. Shiryayev; on 12 November 2001, the Angarsk City Court of the Irkutsk Region invalidated the agreement for sale and purchase of a flat upon a lawsuit filed against R. M. Sklyanova and Z. A. Sklyanova, and the decision was upheld by the Judicial Section on Civil Cases of the Irkutsk Regional Court. In all of the above-mentioned cases the courts acting on the basis of Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation, ordered the parties to reinstate each other with any gains from the transactions (mutual restitution).

In their complaints to the Constitutional Court of the Russian Federation, O. M. Marinicheva, A. V. Nemirovskaya, Z. A. Sklyanova, R. M. Sklyanova and V. M. Shiryayev state that the general provisions set out in Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation, providing for invalidity consequences of a transition to the extent that they force the parties to reinstate each other with any gains received from the transaction, do not allow *bone fide* purchasers to protect their proprietary rights. The applicants argue that their rights and freedoms protected under Articles 2, 8, 17 (Section 1), 18, 19 (Section 1), 35 (Section 2) and 40 (Section 1) of the Constitution of the Russian Federation, are violated.

Pursuant to the requirements of Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, only to this extent are Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation a subject of consideration by the Constitutional Court of the Russian Federation in the present case.

2. The Constitution of the Russian Federation guarantees the freedom of economic activities, the right of everyone to have property, possess, use and dispose of it both personally and jointly with other people, and recognition and protection of property, its protection by law (Article 8; Article 35, Sections 1 and 2).

The above-mentioned rights, as follows from Articles 1, 2, 15 (Section 4), 17 (Sections 1 and 2), 19 (Sections 1 and 2), 45 (Section 1) and 46 of the Constitution of the Russian Federation, are guaranteed as fundamental and inalienable rights and freedoms of man and citizen; their exercise shall be based on the general legal principles of legal equality, inviolability of property and freedom of contract presuming equality, autonomy of will and property autonomy of the participants in civil law relations, impermissibility of arbitrary interference into private affairs, necessity for free exercise of civil rights, restoration of infringed rights and their judicial protection, all of which are ensured as fundamentals of civil legislation (Judgment of the Constitutional Court of the Russian Federation of 1 April 2003 in the case concerning the review of the constitutionality of Section 2, Article 7 of the Federal Law “On Auditing”).

Within the meaning of Article 35 (Section 2) of the Constitution of the Russian Federation, taken together with its Articles 8, 34, 45, 46 and 55 (Section 2), the right to possess, use and dispose of property shall be guaranteed not only to the proprietors, but also to other participants in civil transactions. If any persons other than the proprietor has proprietary rights to a disputed object – the rights to use or possess – the protection of these rights by the State shall be equally guaranteed to these persons. The rights of *bona fide* purchasers are among such proprietary rights.

However, pursuant to Articles 15 (Section 2), 17 (Section 3), 19 (Sections 1 and 2) and 55 (Sections 1 and 3) of the Constitution of the Russian Federation and the general legal principle of fairness, protection of the right of property and other rights *in rem*, as well as protection of the rights and obligations of the parties to a contract, shall be based on the principle of proportionality so as to ensure a balance of rights and lawful interests of all participants in civil transactions – proprietors, parties to the contract, and third parties. Possible restrictions on the rights to possess, use and dispose of property, on the freedom of entrepreneurial activity and the freedom of contract, which may be imposed by federal laws, shall comply with the requirements of fairness, be appropriate and proportionate, be of general and abstract character, shall not have a retroactive effect and shall not infringe on the essence of these constitutional rights, i.e. they shall not restrict the scope and means of implementing the respective constitutional norms. The very possibility of imposing restrictions, as well as their character, shall be conditioned by the need to protect the constitutional values, namely the fundamentals of the constitutional order, morality, health, rights and lawful interests of others, to ensure defense of the country and the security of the State.

These rules correspond to the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which the right of every natural or legal person to peaceful enjoyment of his possessions and protection of this right (and the freedom to use possessions) shall not impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest (Article 1 of Protocol No. 1, as amended by Protocol No. 11).

The constitutional principles of freedom of economic activity and free movement of goods, services and financial resources presuppose that stability, predictability and reliability of the civil transaction are to be guaranteed and that they would not contradict the individual, collective and public rights and lawful interests of their participants. Therefore, in regulating, under Articles 71 (Sections “c” and “n”) and 76 of the Constitution of the Russian Federation the grounds for their acquisition and termination of the rights of property and other rights *in rem*., contractual and other obligations, the grounds for and the consequences of invalidating transactions, the federal legislator shall provide for means and mechanisms of implementing proprietary rights that ensure protection not only for the proprietors, but also for *bona fide* purchasers as participants in civil transactions.

Otherwise, a wide range of *bona fide* purchasers who acted in good will and with due caution would run the risk of having their possessions taken away as a result of restitution. This lack of protection contradicts the constitutional principles of freedom of economic activity and freedom of contract, destabilizes the civil transactions, harms the participants’ confidence in

each other. This is incompatible with the fundamentals of the constitutional order of the Russian Federation as rule of law state where an individual, his rights and freedoms, are the supreme value, and their recognition, observance and protection is the duty of the State.

3. The Civil Code of the Russian Federation, pursuant to the fundamentals of the civil legislation stemming from the Constitution of the Russian Federation (Section 1, Article 1 of the Civil Code of the Russian Federation), does not restrict the individual's choice of remedies to be used to protect the violated right and does not condition the possibility to use general civil-law remedies to the use of specific proprietary remedies; individuals and legal persons under, Article 9 of the Civil Code of the Russian Federation, are entitled to make this choice at their sole discretion.

Pursuant to the Civil Code of the Russian Federation, if a person believes that his rights *in rem* are violated, he is entitled either to file a lawsuit aimed at invalidating the transaction (Articles 166–181) or to lodge an action of detinue (Articles 301–302). However, as follows from the submissions considered in the present case, courts of general jurisdiction interpret and apply the norms establishing the above-mentioned remedies, in particular Articles 167 and 302 of the Civil Code of the Russian Federation, in an ambiguous and inconsistent manner, causing a conflict between the constitutional rights of proprietors and *bona fide* purchasers.

As follows from Article 120 (Section 2) of the Constitution of the Russian Federation taken together with its Articles 76 (Sections 3, 5 and 6), 118, 125, 126 and 127, courts of general jurisdiction and commercial courts decide at their sole discretion which norms are to be applied in each case. However, the judicial practice should ensure constitutionally based interpretations of the normative provisions to be applied. Therefore, in cases where an ambiguous and inconsistent interpretation results in a conflict of the constitutional rights, the matter related to eliminating such inconsistency acquires a constitutional aspect and thus falls within the jurisdiction of the Constitutional Court of the Russian Federation. The latter, considering not only the literal meaning of the normative act under review, but also the meaning these norms acquire from law-enforcement practice and their place within the hierarchy of legal acts (Section 2, Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”) ensures that the constitutional meaning of law in force is revealed.

3.1. The Civil Code of the Russian Federation establishes that the proprietor is entitled to lodge an action of detinue (Article 301). Under Section 1 of Article 302, if property is received for value from a person who had no right to alienate it, which fact the purchaser was not and could not be aware of (a *bona fide* purchaser), the proprietor is entitled to lodge an action of detinue if the property was lost by the proprietor or by anyone to whose possession it had been

transferred by the proprietor, or stolen from those persons, or withdrawn from their possession against their will.

Within the meaning of the above-mentioned provisions, a court shall establish that the property was withdrawn from the possession of the proprietor or anyone to whose possession it had been transferred by the proprietor, on the grounds mentioned above, that the purchaser received the property for value, and that he was not and could not be aware of the fact that the property was purchased from someone who had no right to alienate it; the purchaser shall not be considered as a *bona fide* purchaser if, by the moment the transaction for value was entered into, there had been any claims in respect of the disputed property filed by any third party, and if these claims were afterwards recognized lawful.

When property is purchased for value from a person who had no right to alienate it, the proprietor is entitled to lodge an action of detinue under Article 302 of the Civil Code of the Russian Federation. If, instead, the proprietor files a lawsuit for invalidation of the sale-and-purchase transaction and for restitution of the property which had been transferred to the purchaser, and if, in deciding the case, the court establishes that the purchaser is a *bona fide* one, the lawsuit, pursuant to Article 167 of the Civil Code of the Russian Federation, shall be dismissed.

Pursuant to Section 1, Article 166 of the Civil Code of the Russian Federation, a transaction shall be invalid on grounds determined by the Code either if it is declared invalid by court (voidable transaction) or irrespective of such declaration (void transaction). Pursuant to Article 167 of the Civil Code of the Russian Federation, it shall be invalid from the moment of its conclusion and does not cause the legal consequences at which it was aimed, in particular, it does not result in the transfer of the title of ownership to the purchaser; normally, the invalidity consequences in the form of mutual restitution are not conditioned by the *bona fides* status of the parties.

At the same time, as follows from Article 168 of the Civil Code of the Russian Federation (pursuant to which the transaction that is inconsistent with the law shall be void unless the law prescribes that this transaction is voidable or provides for any other consequences of such inconsistency), a transaction which is inconsistent with law is not covered by the general provisions concerning the invalidity consequences of a transaction if any “other consequences” of such inconsistency are expressly provided by the law itself.

While a *bona fide* purchase, as described in Article 302 of the Civil Code of the Russian Federation, takes place only as a result of a purchase from anyone who had no right to alienate the property, not a direct purchase from the proprietor, it is not mutual restitution but an action of detinue (recovery) that shall be the consequence of such transaction.

Consequently, the rights of a person who believes himself to be the proprietor shall not be protected by a lawsuit against a *bona fide* purchaser through the legal mechanism set out in Sections 1 and 2 of Article 167 of the Civil Code of the Russian Federation. These rights shall be protected by action of detinue if the requirements for taking the property from the *bona fide* purchaser, set out in Article 302 of the Civil Code of the Russian Federation, are met (i.e. if the property had been received by a *bona fide* purchaser not for value, the property had been withdrawn from the proprietor's possession against his will, etc.).

Any other interpretation of the provisions of Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation would allow the proprietor to seek invalidation of the whole range of transactions for sale of his property, i.e. to seek the restitution in kind not only in respect of one (the first) transaction inconsistent with the law, but also in respect of all the subsequent (second, third, fourth etc.) transactions. The protection of the rights and lawful interests of the *bona fide* purchaser, guaranteed by the legislator pursuant to the Constitution of the Russian Federation, would be thereby violated.

3.2. Thus, the general provisions set out in Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation, regarding the consequences of an invalid transaction, to the extent that they force the parties to reinstate each other every gain from the transaction – within their constitutional meaning, taken together with Articles 166 and 302 of the Civil Code of the Russian Federation – cannot be regarded as applicable to *bona fide* purchasers except as otherwise is expressly provided by law, and thus, are in conformity with the Constitution of the Russian Federation.

The above-mentioned legal regulation suffices for the purpose of ensuring stability of civil transactions, the rights and lawful interests of its participants, and the protection of moral principles of society, and thus cannot be considered excessive restriction on the right of property of a *bona fide* purchaser, as the proprietor has the right to recovery of the property from the *bona fide* purchaser on the grounds set out in Sections 1 and 2, Article 302 of the Civil Code of the Russian Federation. Moreover, a proprietor who has lost his property is entitled to some other remedies provided for by civil legislation.

4. The review of legality and validity of the enforcement practice does not fall within the jurisdiction of the Constitutional Court of the Russian Federation, as the Constitutional Court of the Russian Federation is not entitled, within the meaning of Article 125 of the Constitution of the Russian Federation, to substitute law-enforcement authorities with itself. However, as follows from Article 125 (Sections 4 and 6) of the Constitution of the Russian Federation and Articles 6, 36 (Section 2), 74 (Section 2), 75 (Section 1, Subsection 9), 79, 80, 81, 86, 96, 97, 99 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian

Federation” providing detailed regulation, the recognition of a challenged norm as conforming or non-conforming to the Constitution of the Russian Federation given by the Constitutional Court of the Russian Federation, and the constitutional meaning of a norm revealed by it, are binding both for the legislator and for the law-enforcement authorities and shall not be rejected or overridden by legislative or law-enforcement practices.

Therefore, as courts decide on specific cases they shall not attach to Sections 1 and 2, Article 167 of the Constitution of the Russian Federation any meaning other than the one revealed by the Constitutional Court of the Russian Federation in the present case.

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 75, 79 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the general provisions of Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation, regarding the consequences of invalid transactions, to the extent that they force the parties to reinstate each other with every gain from the transaction, to the extent these provisions, within their constitution meaning and taken together with Article 302 of the Civil Code of the Russian Federation, are not applicable to a *bona fide* purchaser except as otherwise expressly provided by law, as conforming to the Constitution of the Russian Federation.

2. The constitutional meaning of the provisions of Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation revealed by the Constitutional Court of the Russian Federation in the present Judgment shall be generally binding and shall preclude any other interpretation in the law-enforcement practice.

3. The court judgments delivered in the cases of O. M. Marinicheva, A. V. Nemirovskaya, Z. A. Sklyanova, R. M. Sklyanova and V. M. Shiryayev on the basis of the provisions of Sections 1 and 2, Article 167 of the Civil Code of the Russian Federation, which are recognized as unconstitutional by this Judgment, are to be reconsidered by courts according to the established procedure.

4. This Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable, and shall not require confirmation by other authorities and state officials.

5. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” this Judgment shall be published in *Rossiyskaya Gazeta* and the

Collection of Laws of the Russian Federation. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 6-II