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

THIRD SECTION

DECISION

Application no. 49068/18
INTERNATIONAL CENTRE OF ROERICHS
against Russia

The European Court of Human Rights (Third Section), sitting on 30 August 2022 as a Committee composed of:

María Elósegui*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 49068/18) against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 11 October 2018 by a Russian non-governmental organisation, International Centre of Roerichs ("the applicant"), which was represented by Mr D.V. Kravchenko, a lawyer;

the decision to give notice of the complaint concerning seizure and retention of the applicant's possessions to the Russian Government ("the Government"), represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov, and to declare inadmissible the remainder of the application;

the parties' initial and supplementary observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant is a non-governmental organisation (*общественная организация*) established under Russian law in 1991 with a purpose to save, exhibit and study the heritage of the Roerich family.

2. The applicant occupied the Lopukhiny's mansion (*усадьба Лопухиных*) ("the mansion") in Moscow where it held and exhibited numerous paintings by the members of the Roerich family as well as

documents and other items linked to their life and work ("the objects"). Some paintings were obtained by the applicant from the Soviet Roerich's Fund ("the Fund"), others were given – with or without donation contracts – by various persons, including Mr B., the chairman of a privately-owned Russian bank ("the bank"), and his wife.

3. In 2001 the Moscow Commercial Court dismissed the applicant's claim against the Ministry of Culture seeking vindication of 288 paintings by Roerichs, stating that the applicant had not been a successor to the Fund. On 20 June 2014 the Moscow City Court dismissed the applicant's claim seeking establishment of the title of inheritance in respect of numerous objects listed in two documents issued in 1990 and 1992 by S.N. Roerich in favour of the Fund (633 documents and letters, 318 books, 57 items of personal belongings and 777 paintings).

4. The applicant does not explain which of these objects, if not all, it continued to hold and exhibit after the mentioned judgments had become final.

5. In 2015 Mr B. was charged with aggravated fraud and fraudulent bankruptcy of the bank, but he fled Russia. The prosecution recorded that during many years Mr B. had financed the applicant's activities and was its main donor.

6. In March and April 2017 investigators of the Ministry of Interior conducted searches in the mansion and seized (*изъяли*) 202 paintings as being acquired by the applicant with the funds of the bank and its depositors. According to the applicant, these objects represented "about one third of the Roerich collection".

7. By two decisions of 17 March and 3 May 2017 the investigators listed, described and declared material evidence the seized objects, and then transferred them for safekeeping to the State Museum of Oriental Art. The applicant did not challenge these decisions.

8. On 29 April 2017, following termination of the contract on gratuitous use of the mansion by the Moscow authorities, the applicant was evicted therefrom, numerous objects remained inside. Later, the State Museum of Oriental Art moved into the mansion.

9. On 15 and 22 February 2018 the Tverskoy District Court of Moscow ("District Court") ordered attachment (*наложение ареста*) of the 202 seized objects and of further 241 objects remaining in the mansion as belonging in fact to Mr B. and his affiliates, with the view to secure the enforcement of a civil claim lodged in the context of criminal proceedings. There is no information that the applicant challenged these decisions.

10. On 13 July 2017 the applicant lodged a request with the investigator seeking to "return [its] property" without any further details. On 18 July the investigator dismissed the request stating that the objects could not be returned because they had been declared material evidence, and different evaluations were carried out.

11. On 11 April 2018 the Moscow City Court upheld on appeal the decision to reject the applicant's complaint against the investigator's decision.

12. Criminal prosecution of Mr B. was suspended as he had fled.

13. At some point, the applicant took repossession of nine paintings.

14. In 2020-2021 the applicant initiated numerous sets of proceedings against the State Museum of Oriental Art seeking to return *(истребовать)*, respectively, 188 and 518 paintings, 858 objects and paintings, Roerich family archive and library and certain documents. The commercial courts dismissed the applicant's claims, referring to the judgments of 2001 and 2014 (see paragraph 3 above) and refusing to recognise the applicant's title to the objects.

15. The applicant complained under Article 1 of Protocol No. 1 to the Convention that it had been *de facto* and unlawfully deprived of "the Roerich inheritance and collection" – 8,232 items representing all of the applicant's possessions – as a result of the seizure, eviction from the mansion and transfer of these objects to the State Museum of Oriental Art, while the majority of them had no connection with the criminal case.

THE COURT'S ASSESSMENT

16. The Government argues that the application is inadmissible because, on the one hand, the applicant was not the "owner" of the majority of the objects (paragraph 3 above) and, on the other hand, the seizure and retention of the items donated by Mr B. and his affiliates were necessary for the needs of the criminal prosecution.

17. The Court observes at the outset that there were at least two categories of the objects at stake: those obtained from the Fund and those obtained from private donors.

18. In respect of the first category, the Court considers that the applicant failed to clearly define these items, as well as to substantiate his "owner" status in the meaning of Article 1 of Protocol No. 1.

19. It observes to this purpose that the domestic courts in their final decisions adopted years before the lodging of the present application (in 2001 and 2014) denied the "owner" status to the applicant (paragraph 3 above). The Court has no reason to question these final decisions. While it could be admitted that the applicant could have enjoyed a substantive interest in lengthy possession of the disputed objects even after those final decisions (*Hamer v. Belgium*, no. 21861/03, § 76, ECHR 2007-V (extracts)), the Court notes incoherent and contradictory character of the applicant's submissions concerning the number, the nature, the origin and the way of acquisition of the objects. Indeed, claiming to be deprived of 8,232 items before the Court, the applicant sought repossession of 202, 188, 518, 858 objects, or asked to recognise inheritance in respect of about 1,700 objects before the domestic

courts (compare paragraphs 3 and 14 above), that never made 8,232 items in total. Furthermore, after introduction of the present application (in 2021-2022), the courts refused to recognise the applicant as the owner of the objects, although from the latter's submissions and from the documents before the Court it is impossible to understand whether there were the same objects that in the proceedings in 2001 and 2014 (see paragraphs 3 and 14 above). Lastly, the Court notes that the applicant's request of 13 July 2017 seeking to "return [its] property" was formulated without any inventory and precision, and without clear indication of the origin of the objects (paragraph 10 above), that does not help either to establish its ownership.

20. In view of the above, the Court concludes that the part of the application pertaining to the first category of the objects is inadmissible *ratione materiae* (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 50-52, ECHR 2004-IX; *mutatis mutandis*, *Wysowska v. Poland* (dec.), no. 12792/13, §§ 48-52, 23 January 2018, and, for a more recent examples, *Protasov v. Russia* (dec.) [committee], no. 68429/13, §§ 35-38, 11 September 2018, with further references, and *Karakeçili v. Turkey* (dec.) [committee], no. 48997/11, §§ 13-17, 2 July 2019).

21. As regards the second category of the objects, the Court observes that the seizure and attachment are instantaneous measures which were taken in 2017 and in February 2018, whereas the application was lodged in October 2018. This part of the application is thus belated (see *OOO SK Stroykompleks and Others v. Russia*, nos. 7896/15 and 48168/17, § 72, 17 December 2019, with further references).

22. Finally, as regards the continued retention of the seized objects of this second category, even assuming that the complaint fulfils all other requirements of admissibility, in the Court's view, it is manifestly ill-founded. Indeed, the measure has a clear basis in the domestic law (in particular, Article 115 of the Code of Criminal Procedure; for more details see *OOO SK Stroykompleks and Others*, cited above, § 53), pursues a public interest of prevention of crimes and is proportionate. The Court notes in this last regard that according to the case-file, Mr B., who had fled Russia, had been the main applicant's donor. The domestic courts established that these objects had had a clear link with the activities for which Mr. B. was criminally prosecuted. In the present circumstances the Court does not have sufficient reasons to substitute its own view for that of the domestic courts which are better placed than the Court to establish the facts. Moreover, the measure has not been lasting indefinitely, is limited in time by the duration of the criminal proceedings, and the applicant disposes of a right to request its lift (see, *mutatis mutandis*, *Benet Czech, spol. s r.o. v. the Czech Republic*, no. 31555/05, §§ 34-51, 21 October 2010, with further references, and *Piras v. San Marino* (dec.), no. 27803/16, §§ 46-62, 27 June 2017).

23. It follows from all the foregoing that the application is inadmissible and must be rejected in accordance with Article 35 §§ 1 and 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 September 2022.

Olga Chernishova Deputy Registrar	María Elósegui President