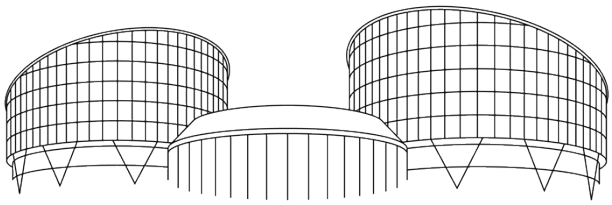

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ESERTAS v. LITHUANIA

(Application no. 50208/06)

JUDGMENT

STRASBOURG

31 May 2012

FINAL

31/08/2012

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

In the case of Esertas v. Lithuania,

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

Françoise Tulkens, *President,*
Danutė Jočienė,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Registrar,*

Having deliberated in private on 10 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 50208/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Tomas Esertas ("the applicant"), on 8 December 2006.

2. The applicant was represented by Ms R. A. Kučinskaitė, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged that his rights under Article 6 § 1 of the Convention had been breached by the fact that the court's decision made in his favour was set aside in violation of the *res judicata* principle.

4. On 3 June 2009 the application was communicated 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 1978 and lives in Kaunas.

6. The applicant owned a flat together with another person, I.B. On 15 May 2001 the applicant and I.B. disconnected the flat from the central heating system provided by the company "Litesko Ltd." (hereinafter – *Litesko*), and signed a contract with an alternative heating provider. On

15 June 2001 the new provider's heating system was installed in the flat. On 6 August and repeatedly on 17 October 2001 the applicant informed *Litesko* about the termination of their old agreement. According to the applicant, in the following months they received no bills from the old heating provider. In February 2002, however, *Litesko* sent a bill for heating to the applicant and I.B.

A. First set of civil proceedings

7. Following the refusal by the applicant to pay the bill, *Litesko* filed a civil claim for payment for the period from 1 January 2002 to 1 September 2003.

8. On 7 June 2004 the Palanga City District Court (hereinafter - the Palanga Court) dismissed the claim by *Litesko*. The court observed that the owners of the flat were free to choose their heating provider and they had informed the plaintiff about the termination of the agreement and properly disconnected from the heating system. The court concluded that the plaintiff itself had acknowledged that it no longer supplied heating to the flat. It was also established that the applicant together with I.B. and *Litesko* were no longer in a contractual relationship for heat consumption. The Palanga Court noted that the claim filed by the plaintiff was an unsubstantiated attempt to enrich itself at the expense of the other party.

9. *Litesko* missed the time-limit for lodging an appeal and its request to renew it was dismissed. Neither of the parties requested re-opening of the proceedings.

B. Second set of civil proceedings

10. In 2006 *Litesko* brought a new claim against the applicant and I.B., requesting payment for heating for the period 1 April 2004 to 1 September 2005.

11. On 20 March 2006 the Kaunas City District Court upheld the claim and awarded *Litesko* 490 Lithuanian litai (LTL; approximately 142 euros (EUR)) against each of the owners. Having re-interpreted the domestic law, the court ruled that the applicant and I.B. were still in a contractual relationship with *Litesko* because they had arbitrarily disconnected the heating system and thus they had to pay for the heating. The court found that the 7 June 2004 court decision did not have *res judicata* effect as the new claim concerned a different period of time, and that this situation was therefore not identical to the one ruled upon earlier by another District Court.

12. On 20 June 2006 the Kaunas Regional Court upheld the decision, having found that the lower court had correctly assessed all the circumstances of the case and made a reasonable conclusion as to the

existence of a contractual relationship between the parties and the supply of heating to the flat.

13. The applicant did not have the right to lodge a cassation appeal as the amount of the claim was smaller than the minimum required by domestic law for the lodging of such an appeal.

II. RELEVANT DOMESTIC LAW

14. Article 279 § 4 of the Code of Civil Procedure provides that once a judgment, decision or ruling becomes effective, the parties or other persons to the proceedings as well as the successors to their rights may not raise once again the same claims on the same grounds, and may not contest the facts and legal relations that had been established by a court in another case.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

15. The applicant complained that his right to a fair hearing was violated in the second set of civil proceedings when the domestic courts granted the plaintiff's claim by overruling the binding court decision and the facts established thereby.

16. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

17. The applicant complained that the overruling of the final and enforceable decision and the determination of the same facts and legal relations differently was in breach of the *res judicata* principle. He noted that the Palanga Court had established the fact that no contractual relationship existed between him and the old heating provider. It was also concluded that there was no dispute between the parties that no heating was supplied by *Litesko* to the apartment. Since the courts in the second proceedings ignored the above-mentioned conclusions concerning the same parties and issues, they delivered decisions that were favourable to the plaintiff and not the applicant. The applicant pointed out that the lawfulness

and validity of the Palanga Court's decision could have been assessed only by a court of higher instance, deciding an appeal against that decision.

18. The Government contested that argument and submitted that the two civil claims were not identical. Besides, in the first proceedings the court had not followed well established case-law of the Supreme Court in analogous cases, therefore overruling the decision of 7 June 2004 could be considered necessary in view of an "error" committed by the Palanga Court.

B. The Court's assessment

1. Admissibility

19. The Court 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

20. As the Court has stated in previous cases, the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of rule of law and legal certainty, encompasses the requirement that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, § 61, 12 January 2006).

21. The principle of *res judicata* requires that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Any review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination (see *Shchurov v. Russia*, no. 40713/04, § 18, 29 March 2011).

22. The Court observes that in all legal systems the *res judicata* effects of judgments have limitations *ad personam* and as to material scope (see *Kehaya,* cited above, § 66).

23. Turning to the present case, the Court notes that although both sets of proceedings concerned the same parties – the heating provider and the applicant – and the core of the dispute was the same, the time period for which the plaintiff claimed payments was different (see paragraphs 7-10 above). Therefore, the Court shares the Government's view that the two civil claims were not identical. However, it cannot be ignored that both civil proceedings concerned exactly the same legal relations and the same circumstances, which were crucial for deciding the dispute.

24. In the present case, unlike in *Brumărescu*, the 2004 final decision was not quashed. A significant part of it was rendered devoid of any legal effect, however, as in new separate proceedings the question concerning contractual relations and the supply of the heating was re-examined and decided differently.

25. The Court considers that a situation where the facts already determined by a final decision in one case are later overruled by the courts in a new case between the same parties, is similar to the one where, following a re-opening of the proceedings, a binding and enforceable decision is quashed in its entirety. Consequently, such a situation may also amount to a breach of the principle of legal certainty in violation of Article 6 § 1 of the Convention.

26. In the instant case there is no doubt that the decisive circumstances established by the final decision of 7 June 2004 of the Palanga Court were reassessed and overruled by the courts in the second proceedings. The Court observes that such a situation was also in breach of the domestic law, namely Article 279 § 4 of the Code of Civil Procedure which provides that the facts and legal relations that had been established by a court in one case may not be contested in another case (see paragraph 14 above).

27. Having examined the materials submitted by the parties, the Court finds that there was no justification for requiring the applicant to prove again, in the second proceedings, the fact that he was not in contractual relations with *Litesko* or that no heating was supplied to the flat. These circumstances had been established in the first set of proceedings. It should also be noted that no new factual circumstances were invoked during the second set of proceedings.

28. The Court also recalls that the departure from the principle of legal certainty would be compatible with requirements of Article 6 § 1 of the Convention only if it is justified by considerations of a pressing social need as opposed to merely legal purism (see *Sutyazhnik v. Russia*, no. 8269/02, § 38, 23 July 2009). The Court has held that, as a matter of principle, a judgment may be quashed exclusively in order to rectify an error of truly fundamental importance to the judicial system (*ibid.*).

29. The Government have argued that the overruling of the court's decision of 7 June 2004 was necessary for the correct interpretation and application of the domestic law regulating consumers' agreements with heating providers. The circumstances established in the decision of the Palanga Court, namely that the applicant was not in a contractual relationship with *Litesko* and that his flat was not provided with heating by the latter, were disregarded on the basis merely of a different interpretation and application of the domestic law and on the apparently factual argument that the new claim concerned a different period of time. That ground was not a fundamental defect within the meaning of the Court's case-law and could not justify a departure from the principle of legal certainty (see

Luchkina v. Russia, no. 3548/04, § 21, 10 April 2008). The Court also does not find that the first set of proceedings had been tarnished by a fundamental defect, such as, in particular, a jurisdictional error, serious breaches of court procedure or abuses of power. There was, therefore, no pressing social need shown for disregarding the judgment in question.

30. The Court is therefore of the opinion that departure from the principle of legal certainty was unjustified in the second set of the proceedings.

31. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's rights under Article 6 § 1 of the Convention were prejudiced as the courts in the second set of proceedings ignored the previous judicial process. By depriving of *res judicata* effect the final decision of 7 June 2004, the national courts acted in breach of the principle of legal certainty inherent in Article 6 § 1 of the Convention.

32. It follows that there has been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 1,741.47 euros (EUR) in respect of pecuniary damage. It consisted of the amount the Kaunas City District Court had ordered the applicant to pay by the decision of 20 March 2006 (EUR 142.47) plus the amount he had spent for installation of an autonomous heating system (EUR 1,599). He further claimed EUR 5,000 in compensation for non-pecuniary damage.

35. The Government held that as concerns the pecuniary damage only the amount that was adjudged by the domestic court was reasonable, while his claim for non-pecuniary damage was excessive and unjustified.

36. The Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention on the ground that by the disregarding of the final decision the applicant was ordered to fulfil the obligation which he had been previously relieved of. The Court considers that the most appropriate form of redress in respect of a violation of Article 6 § 1 is to ensure that the applicant is put as far as possible in the position he would have been if had the requirements of that provision not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A

no. 85, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violation found. The applicant had to pay the money according to the decision of 20 March 2006. The Court accepts the applicant's claim and awards him the sum of EUR 142.47 under this head, plus any tax that may be chargeable on that amount.

37. As regards the pecuniary damage related to the installation of the heating system, the Court does not discern any causal link between the violation found and the expenses claimed; it therefore rejects this part of the claim.

38. The Court further considers that the applicant suffered some distress and frustration resulting from not taking into account of the final and binding judicial decision in his favour. However, it finds the amount claimed by the applicant excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

39. The applicant also claimed EUR 10.94, plus any tax that may be chargeable to the applicant, for the costs and expenses incurred before the Kaunas City District Court, the sum being indicated in the above-mentioned court decision.

40. The Government found that sum reasonable.

41. The Court considers it reasonable to award the sum of EUR 10.94, plus any tax that may be chargeable on this amount to the applicant, for costs and expenses in the domestic proceedings.

C. Default interest

42. 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 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within 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 Lithuanian litas at the rate applicable at the date of settlement:

(i) EUR 142.47 (one hundred and forty-two euros and forty-seven cents), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) EUR 10.94 (ten euros and ninety-four cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 31 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President