



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

FIFTH SECTION

CASE OF SHCHIGLITSOV v. ESTONIA

(Application no. 35062/03)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shchiglitsov v. Estonia,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 11 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 35062/03) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Aleksandr Shchiglitsov ("the applicant"), on 15 October 2003.

2. The Estonian Government ("the Government") were represented by their Agent, Ms M. Hion, Director of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs.

3. On 6 October 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in Narva.

5. In 1983 the applicant married N. The marriage was dissolved on 7 February 1997.

6. On 26 May 1997 N. lodged an action with the Narva City Court (*linnakohus*), requesting that the joint property, including an apartment, be divided.

7. On 30 January 1998, the Narva City Court scheduled a preliminary hearing for 12 February 1998. However, on 11 February 1998 the applicant

requested that the hearing be postponed as his lawyer had to participate in a hearing of a criminal case at the same time. The City Court adjourned the hearing.

A new preliminary hearing was scheduled for 19 August 1998. On the same day, N. requested that the hearing be adjourned because of her lawyer's absence. She requested that the hearing be scheduled for a date after 10 September 1998.

The third preliminary hearing took place on 13 October 1999 and a trial hearing on 31 August 2000. On 11 September 2000 the court delivered the judgment by which the marital property was divided. According to the City Court, the apartment was in the ownership of an apartment cooperative (*korterühistu, kooperatiiv*). The applicant and N. had possessed a share in the cooperative. The City Court considered the sum they had paid for the share as a part of the joint property.

8. On 5 June 2001, after an appeal by N., the Viru Court of Appeal (*ringkonnakohus*) quashed the rulings of the City Court and referred the case back to it. The Court of Appeal noted, *inter alia*, that the actual market value of the apartment at the time of the division of the property (as opposed to the construction costs) had to be taken into account for the determination of the value of the property.

9. A hearing before the Narva City Court, scheduled for 13 June 2002, was adjourned in order to enable the parties to adduce additional evidence. In September, the parties submitted additional pleadings.

On 10 October 2002 the Narva City Court, following a hearing, delivered the judgment. It found that the applicant and N. had not been the owners of the apartment during their marriage. They had owned a share in the apartment cooperative. The City Court decided that the share had to be divided between the applicant and N.

10. N. lodged an appeal with the Viru Court of Appeal, which, on 28 January 2003, quashed the City Court's judgment. It found that the apartment had been acquired by the applicant and N. jointly during their marriage. According to an expert opinion the current value of the apartment was 119,337 kroons (EEK) (corresponding approximately to 7,700 euros (EUR)). Proceeding from the above, the Court of Appeal divided the property. According to the judgment, the applicant had to pay EEK 61,698.5 (approximately EUR 3,900) to N.

11. On 16 April 2003 the Supreme Court (*Riigikohus*) refused the applicant leave to appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE PROCEEDINGS

12. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

13. The Government contested that argument. They submitted that there had been several vacancies in the Narva City Court at the material time and that the judges of that court had had particularly high workload.

14. The period to be taken into consideration began on 26 May 1997 and ended on 16 April 2003. It thus lasted more than five years and ten months for three levels of jurisdiction, whereby both of the lower courts examined the matter twice.

A. Admissibility

15. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

17. As concerns the present case, the Court notes that it related to the division of the parties' marital property, including an apartment. As such, the applicant would have had a considerable interest in the speedy resolution of the dispute. The Court furthermore considers, on the one hand, that it involved some degree of complexity on account of the interpretation of domestic law, in particular, whether the parties' marital property included an apartment or a share in the housing cooperative. On the other hand, the facts of the case and the main substance of the dispute – division of marital

property – were not in themselves complex. The Court considers that the length of the proceedings in the present case cannot be justified by the complexity of the case.

18. As regards the conduct of the applicant, the Court notes that he requested the postponement of the hearing once, on 11 February 1998, as his lawyer had another hearing in a criminal case at the same time. Another hearing was adjourned in 1999 for a similar reason at N.'s request. In 2002, the City Court adjourned a hearing to enable the parties to adduce additional evidence.

The Court notes that the City Court rescheduled the first two adjourned hearings after considerable periods of delay (six months and one year and two months, respectively). Moreover, the very first preliminary hearing had been scheduled nine months after the action had been brought by N. and there was a delay of more than ten months between the last preliminary hearing and the trial hearing. The Court takes note of the Government's argument that these delays were caused by the difficult situation in the Narva City Court at the material time. However, it recalls that Article 6 § 1 of the Convention imposes on the contracting States the duty to organise their legal systems in such a way that their courts can meet each of its requirements (see, *inter alia*, *Tusa v. Italy*, judgment of 27 February 1992, Series A no. 231-D, p. 41, § 17, and *Vocaturo v. Italy*, judgment of 24 May 1991, Series A no. 206-C, p. 32, § 17).

The Court finds that between 1997 and 2000 considerable periods of inactivity, attributable to the authorities, occurred in the domestic proceedings. Although thereafter the Court of Appeal and the Supreme Court dealt with the case speedily, the Court considers that this did not in the circumstances of the present case remedy the earlier delays. At the same time, the length of the proceedings was only to a minute extent attributable to the applicant.

19. In the light of the above, the Court finds that the applicant's case was not heard within a reasonable time.

There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Alleged violation of Article 6 § 1 of the Convention on account of unfairness of the proceedings

20. Under Article 6 § 1 of the Convention the applicant also complained that he was not given a fair trial, as the Court of Appeal's judgment of 28 January 2003 had been unfair and its reasoning had been insufficient.

21. The Court considers that there is nothing in the case file indicating that the courts lacked impartiality or that the proceedings, devoid of any

sign of arbitrariness, were otherwise unfair. The impugned Court of Appeal's judgment was sufficiently reasoned. The Court finds that the applicant's submissions do not disclose any appearance of a violation of his rights under Article 6 § 1 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

22. The applicant further complained under Article 1 of Protocol No. 1 to the Convention that the judgments infringed his property rights, since he had to pay to his former wife compensation for the apartment which had not been in the ownership of the couple at the time when their marriage had been dissolved. He also complained that the sum of compensation he had to pay to his wife had been calculated incorrectly by the Court of Appeal.

23. The Court recalls that it is not its task to substitute itself for the domestic jurisdictions. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I). In the present case, the Court considers that there is nothing to show that the Court of Appeal reached any arbitrary conclusions in striking a balance between the property rights of the applicant and N. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Alleged violation of Article 8 of the Convention

24. Finally, the applicant complained that, as a result of his new wife's decision to be sterilised because of the prolonged uncertainty caused by the length of the court proceedings and lack of proper living space, they could not have children. He alleges that he was deprived of the right to family life in violation of Article 8 of the Convention.

25. The Court finds that the applicant's submissions do not disclose any appearance of a violation of his right to family life, as guaranteed by Article 8 of the Convention (see, *mutatis mutandis*, *Velosa Barreto v. Portugal*, judgment of 21 November 1995, Series A no. 334, pp. 10-12, §§ 21 and 29-30). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed EEK 151,898.95 (corresponding approximately to EUR 9,700) in respect of pecuniary damage and EEK 1,600,000 (approximately EUR 100,000) in respect of non-pecuniary damage.

28. The Government contested these claims.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained certain non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 900 under that head.

B. Costs and expenses

30. The applicant also claimed EEK 100,000 (approximately EUR 6,400) for the costs and expenses incurred before the domestic courts and EEK 70,000 (approximately EUR 4,500) for those incurred before the Court.

31. The Government contested these claims.

32. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 300 for the proceedings before the Court.

C. Default interest

33. The Court considers it appropriate that the default interest 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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, EUR 900 (nine hundred euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) 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 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President