



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

SECOND SECTION

CASE OF ČETVERTAKAS AND OTHERS v. LITHUANIA

(Application no. 16013/02)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Četvertakas and Others v. Lithuania,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 16 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 16013/02) 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 Andrius Četvertakas, on 14 March 2002. Ms Ona-Danguolė Četvertakienė and Mr Viktor Četvertak, who are also Lithuanian nationals, joined this application on 26 September 2003.

2. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. On 5 November 2006 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The first applicant, Mr Andrius Četvertakas, was born in 1973. The second applicant, Ms Ona-Danguolė Četvertakienė, was born in 1941. The third applicant, Mr Viktor Četvertak, was born in 1943. The applicants live in Vilnius. The second and the third applicants are parents of the first applicant.

5. In 1993 the first applicant bought part of a building, including a cellar and warehouse, and a plot of land adjacent to the building. The seller of the property, R.R., had purchased it from the local authorities.

6. In 1994 the first applicant's neighbour, A.K., bought another flat in the same building. The privatisation agreement concluded with the local authorities stipulated that A.K. had also acquired part of the warehouse and the cellar.

7. On 18 July 1994 A.K. brought an action requesting annulment of the decisions whereby part of the land adjacent to the building had been sold to the first applicant.

8. On an unspecified date the parties brought new interlocutory claims regarding the ownership of the warehouse.

9. On 23 February 1995 the Vilnius City Third District Court granted the action of A.K. in part and ordered the local authorities to readjust the borders of the plot of land at issue.

10. On 7 November 1995 the Vilnius Regional Court quashed the decision and returned the case for examination *de novo*. It was established that the lower court had ruled on claims which had not been put forward by the parties and that the court had not assessed whether the rights of A.K. had been breached. Moreover, the local authority should have been invited to join the proceedings as a third party.

11. On 12 January 1996 several additional claims were brought by A.K.. The applicant submitted a new counterclaim, requesting non-pecuniary damages.

12. On 4 April 1997 the Vilnius City Third District Court dismissed the action of A.K., accepting the first applicant's claims in part. In particular, the court declared null and void the agreement whereby A.K. had acquired half of the warehouse.

13. On 11 May 1998 the Vilnius Regional Court quashed the decision due to various procedural flaws, in particular the failure to resolve the question of the amount of the court fee to be paid. It was also noted that the lower court had failed to request certain evidence and therefore had not established certain facts relating to the property at issue. It also failed to establish whether R.R. had acquired the land from the local authority lawfully. The case was remitted to the Vilnius City Third District Court for a fresh examination.

14. On an unspecified date in 2000, A.K. brought several new claims. He requested, *inter alia*, that the first applicant be obliged to grant him access to the cellar in the building. On 18 May 2000 the first applicant submitted a counterclaim.

15. On 20 September 2000 the Vilnius City Third District Court granted the action of A.K. It was established that R.R. had unlawfully obtained a bigger plot of land than the one she was entitled to, thereby breaching the rights of A.K. As R.R. had had no right to sell that plot to the first applicant,

the court annulled the contract between the first applicant and R.R. and ordered full restitution. The first applicant was also instructed not to obstruct access by A.K. to the cellar. The first applicant's counterclaims regarding the warehouse were dismissed as unsubstantiated. The local authority and the first applicant appealed.

16. On 21 February 2001 the Vilnius Regional Court upheld the decision.

17. On 5 September 2001 the first applicant lodged a cassation appeal asking the Supreme Court to quash the lower court's decision and to adopt a new decision without remitting the case for further examination.

18. On 10 October 2001 the Supreme Court dismissed the first applicant's cassation appeal and left the lower courts' decisions unchanged.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Article 30 of the Constitution stipulates:

"The person whose constitutional rights or freedoms are violated shall have the right to apply to court."

20. The Civil Code, in force until 1 July 2001, provided:

Article 483. General liability grounds for causing damage

"The person who causes damage to a natural person or to his property ... must compensate it fully, except in cases prescribed by laws..."

A person who causes damage is exempted from liability if he proves that the damage was not caused through his fault.

Damage caused by lawful acts must be compensated only in cases established by law ..."

21. Article 6.272 §§ 2 and 3 of the Civil Code, in force since 1 July 2001, provides:

"2. The State shall be liable to full compensation for the damage caused by unlawful actions of a judge or the court trying a civil case, where the damage is caused through the fault of the judge himself or that of any other court official.

3. In addition to pecuniary damage, the aggrieved person shall be entitled to non-pecuniary damage."

22. The ruling of the Constitutional Court of 19 August 2006 stipulates:

"...by virtue of the Constitution, a person has the right to claim compensation for damage caused by the unlawful actions of State institutions and agents, even if such compensation is not foreseen by law; the courts adjudicating such cases ... have the power to award appropriate compensation by directly applying the principles of the Constitution ... as well as the general principles of law, while being guided *inter alia* by the principle of reasonableness, etc".

THE LAW

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

23. The applicants complained that the length of the civil proceedings had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

24. The Government contested that argument.

A. Admissibility

1. *The parties’ submissions*

25. The Government maintained that the second and the third applicants could not be regarded as victims of any Convention breach as they were not affected by the civil proceedings in which the first applicant had been involved.

26. The Government also argued that the first applicant had failed to exhaust all effective domestic remedies as he had not applied to the domestic courts claiming redress for the length of the civil proceedings, pursuant to Article 483 of the Civil Code, in force until 1 July 2001, and under Article 6.272 of the Civil Code, in force after that date. Relying on the Ruling of the Constitutional Court of 19 August 2006, the Government also argued that, even presuming that specific redress had not been enshrined in any law, the applicant could have claimed redress by directly relying on the Constitution or on the general principles of law.

27. The first applicant contested these submissions.

2. *The Court*

28. The Court agrees with the Government’s objection that the second and third applicants, who were not parties to the civil proceedings, cannot be considered victims of a violation of the Convention within the meaning of Article 34. Therefore their complaint under Article 6 § 1 is to be rejected as being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

29. As to the Government’s plea concerning exhaustion of domestic remedies, the Court recalls its conclusion in the case of *Baškiienė v. Lithuania* (no. 11529/04, §§ 68-72, 24 July 2007), where it decided that a claim for damages under Article 6.272 of the Civil Code did not satisfy the test of “effectiveness” in contexts of the present kind. The Court finds no

reason to depart from its existing case-law in this regard. It remains unconvinced that the possibility of claiming damages for the excessive length of proceedings under Article 6.272 of the Civil Code – at the moment of the introduction of the present application – had already acquired a sufficient degree of legal certainty requiring its exhaustion for the purposes of Article 35 § 1 of the Convention.

30. Finally, whereas the Government argued that the first applicant could have brought a claim based on Article 483 of the Civil Code, in force until 1 July 2001, or on the general principles of law or the Constitution, they have not adduced any evidence to demonstrate that such a remedy had any reasonable prospect of success, especially before the ruling of the Constitutional Court on 19 August 2006.

31. It follows that the Government's objection must be dismissed.

32. The Court considers 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

33. As regards the period to be taken into consideration, the Court first observes that the civil proceedings were instituted on 18 July 1994. However, the period to be taken into consideration began only on 20 June 1995, when the recognition by Lithuania of the right of individual petition took effect. It ended on 10 October 2001, when the Supreme Court took its decision. It therefore lasted nearly six years and four months at three levels of jurisdiction.

34. 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).

35. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Ožek v. Slovenia*, no. 1423/02, §§ 17-19, 13 April 2006).

36. Turning to the case at hand, the Court notes that the proceedings involved many parties and were therefore of a certain complexity. However the Court finds that extensive delays in the proceedings were occasioned by mistakes or inertia on the part of the domestic authorities. In particular, the case was returned for re-examination by the Vilnius Regional Court on 7 November 1995, because of a number of deficiencies on the part of the first-instance court (see paragraph 10 above). The Vilnius Regional Court pointed out that the lower court had failed to examine whether the rights of

A.K. had been breached, had ruled on claims which had not been raised by the parties, and had failed to invite the local authority to join the proceedings as a third party.

37. Furthermore, on 11 May 1998 the Vilnius Regional Court quashed the decision of the first-instance court for the second time due to various procedural flaws and the lower court's failure to establish certain facts and to obtain certain evidence which had not been examined during the hearings (see paragraph 13 above). The case was again remitted for a fresh examination.

38. Having regard to all the material submitted to it and to its case-law on the subject, the Court considers that in the instant case the length of the civil proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The first applicant further alleged that the annulment of the land-purchase contract amounted to a violation of Article 1 of Protocol No. 1 to the Convention. The Court agrees that there has been an interference with the first applicant's property rights. However, in quashing the land-purchase contract, the courts sought to protect the legitimate rights of his neighbour A.K.. In addition, the court ordered full restitution (see paragraph 15 above). It follows that this part of application must be rejected as being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

40. The first applicant also complained under Article 6 § 1 of the Convention that the courts were unfair and incorrectly assessed evidence in his case.

41. In this respect the Court reiterates that it is not a court of appeal from the decisions of domestic courts and that, as a general rule, it is for the latter to assess the evidence before them. The Court's task under the Convention is to ascertain whether the proceedings as a whole were fair (see, among many authorities, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I). On the basis of the materials submitted by the first applicant, the Court notes that within the framework of the civil proceedings the applicant was able to introduce all necessary arguments in defence of his interests, and that the judicial authorities gave them due consideration. His claims were examined at three levels of jurisdiction and dismissed as having no grounds in domestic law. The decisions of the domestic courts do not appear unreasonable or arbitrary. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

42. The first applicant also complained that his rights had been infringed under Articles 8, 13 and 14 of the Convention, which guarantee,

respectively, the right to respect for the home, the right to an effective domestic remedy and the prohibition on discrimination.

43. In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court considers that the present case does not disclose any appearance of a violation of any of the above Convention provisions. It follows that these complaints are inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

44. Invoking Article 1 of the Convention, the second and the third applicants complained that the domestic courts were unjust. However, the Court recalls that, apart from the fact that this provision is of a framework character, which cannot be the subject of a separate breach, it has already held, above, that these applicants cannot claim to be victims of any violation of the Convention (see paragraph 28).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The first applicant claimed 585,000 Lithuanian litai (LTL, approximately 169,428 euros (EUR)) in respect of pecuniary damage and 1,205,000 LTL (approximately EUR 348,992) in respect of non-pecuniary damage.

47. The Government contested these claims as unreasoned and excessive.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the first applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

49. The first applicant claimed LTL 1,464 (approximately EUR 423) for costs and expenses related to the revision of the cadastral data and evaluation of the plot of land as well as LTL 393 (approximately EUR 113) for translation costs.

50. The Government argued that this costs claim was not relevant to the alleged violation of the reasonable time requirement, and thus should be dismissed.

51. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred, were reasonable as to quantum and were incurred in an attempt to redress the Convention grievance subsequently made to the Court. In the present case the Court finds that the sum of EUR 423 is not related to the established violation of the first applicant's right to a "hearing within a reasonable time". Therefore the Court only awards this applicant the sum of EUR 113 for the translation costs.

C. Default interest

52. 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 first applicant's 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 first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the currency of the responded State at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and
 - (ii) EUR 113 (one hundred and thirteen euros) in respect of costs and expenses, plus any tax that may be chargeable to this applicant;
 - (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 first applicant's claims for just satisfaction.

Done in English, and notified in writing on 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President