



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

1959 · 50 · 2009

SECOND SECTION

CASE OF VORONA AND VORONOV v. LITHUANIA

(Application no. 22906/04)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Vorona and Voronov 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,

Nona Tsotsoria, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 22906/04) 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 two Lithuanian nationals, Mr Aleksandr Voronov and Mr Sergej Vorona (“the applicants”), on 2 June 2004.

2. The applicants were represented by Mr Leonidas Zubanovas, a lawyer practising in Klaipėda. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. On 11 May 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 Aleksandr Voronov, was born in 1958. The second applicant, Mr Sergej Vorona, was born in 1966. Both of them live in Klaipėda.

5. On 3 December 1993 the applicants concluded agreements with the Klaipėda city council whereby each applicant would acquire an apartment in a building that the local authority was obliged to build by 1 May 1994. The applicants undertook to cover the costs of construction by paying the sums

specified in the agreement. They paid their respective contributions by the date agreed in the contract.

6. On 25 July 1994 the applicants brought a court action, alleging that the local authorities had failed to complete the construction in time. They requested an order obliging the defendant to complete the works and provide them with property certificates. After the completion of the construction works on 20 October 1994, the applicants withdrew the former claim.

7. The Klaipėda city council lodged a counter-claim, requesting annulment of the agreements concluded with the applicants, claiming that its administrative division had lacked competence to enter into a contract with the applicants and that the costs of the construction had been incorrectly estimated. The local authority did not request restitution, but suggested that the applicants should cover the additional building costs.

8. On 11 October 1995 the Klaipėda City District Court dismissed the applicants' case.

9. On 7 December 1995 the Klaipėda Regional Court quashed the decision, returning the case for a fresh examination. It was noted that the lower court had failed to summon all the parties and that not all the relevant circumstances of the case had been properly established.

10. On 1 August 1997 the court ordered an expert examination (documentary audit) regarding the municipality's actions when accepting the contributions from the applicants for the construction of the apartments.

11. On 6 April 2000 one of the applicants addressed the Klaipėda City District Court requesting it to urge the experts to finish the examination and produce their conclusions.

12. The expert examination was completed on 20 September 2000. The next hearing took place on 13 February 2001.

13. On 11 February 2003 the Klaipėda City District Court allowed the counter-claims of the local authorities in part. The applicants were ordered to cover the additional construction costs. Upon receipt of the payment, the Klaipėda city council was obliged to issue the applicants the documents allowing them to register their titles to the apartments.

14. On 22 May 2003 the Klaipėda Regional Court partly amended the decision.

15. On 10 December 2003 the Supreme Court amended the decisions of the lower courts, fully allowing the applicants' claims. It was established that the Klaipėda city council was not entitled to require the applicants to cover the additional costs. It was ordered to perform the agreement by issuing the applicants the documents which would allow them to register the apartments in their names.

16. On 31 December 2003 and on 13 January 2004 the Klaipėda city municipality issued the documents attesting that the applicants had paid the

full amount for the apartments constructed under the agreement of 3 December 1993.

17. On 19 January and 13 February 2004 the applicants registered their titles to the apartments and, under domestic law, became their owners.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. Article 149 § 1 of the Civil Code, in force until 1 July 2001, stipulated that, subject to any contrary legal provision, the purchaser acquired the right of ownership to property from the time of transfer. As regards real estate, the transfer agreement had to be registered in the Real Estate Register and the time of registration was regarded as the time from which the acquirer acquired title to the property.

19. Article 6.246 of the Civil Code, in force since 1 July 2001, provides that civil liability arises from non-performance of a statutory duty or from a violation of the general duty of care. The remaining relevant domestic law as concerns domestic remedies for the excessive length of civil proceedings is reproduced in the judgment of *Četvertakas and Others v. Lithuania* (no. 16013/02, §§ 21-22, 20 January 2009).

THE LAW

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

20. The applicants complained that the length of the civil 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...”

A. Admissibility

1. The parties’ submissions

21. The Government argued that the applicants had failed to exhaust all effective domestic remedies as they had not applied to the domestic courts claiming redress for the length of the civil proceedings under Articles 6.246 and 6.272 of the Civil Code. Relying on the Ruling of the Constitutional Court of 19 August 2006, the Government also argued that, even assuming that specific redress had not been enshrined in any law, the applicants could

have claimed redress by relying directly on the Constitution. Moreover, having regard to the fact that the Convention was a legal act of direct applicability and had precedence over Lithuanian laws, the applicants could have relied on it, alleging the unlawfulness of the State authorities' inaction and requesting redress at the domestic level. The Government maintained, lastly, that the length of the civil proceedings had been reasonable and therefore this complaint was manifestly ill-founded.

22. The applicants contested these submissions.

2. The Court

23. As to the Government's plea concerning exhaustion of domestic remedies, the Court refers to its conclusion in the case of *Baškienė 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 had – at the time of 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.

24. Next, whereas the Government argued that the applicants could have brought a claim based on Article 6.246 of the Civil Code 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. Neither have the Government provided the Court with practical examples showing that the applicants could have relied effectively on the Convention at the domestic level.

25. It follows that the Government's objection as to non-exhaustion of domestic remedies must be dismissed.

26. The Court also 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

27. As regards the period to be taken into consideration, the Court observes that the civil proceedings were instituted on 18 July 1994. However, the period to be taken into consideration only began on 20 June 1995, when the recognition by Lithuania of the right of individual petition took effect. It ended on 10 December 2003, when the Supreme Court took its decision. It therefore lasted nearly eight years and six months at three

levels of jurisdiction. However, in assessing the reasonableness of the length of the proceedings, the Court also takes into account that, before the Convention came into force with regard to Lithuania, they had been pending for almost a year.

28. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

29. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Krzewski v. Poland*, no. 11700/04, 2 December 2008).

30. Turning to the case at hand, the Court cannot hold that the proceedings were particularly complex or that the applicants' conduct contributed to their length. At the same time 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 Klaipėda Regional Court on 7 December 1995 because the lower court had failed to summon all the parties and had not properly established and assessed all the circumstances of the case (see paragraph 9 above). Neither can the Court overlook the fact that it took more than three years for the experts to produce their conclusions (see paragraphs 10-12 above).

31. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings complained of was excessive and failed to satisfy the reasonable-time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

32. In their original application of 2 June 2004 the applicants also submitted that, having no documents attesting their property rights in the course of the impugned civil proceedings, they were prevented from selling or letting their apartments or from exercising their property rights in any other form. On 8 November 2006, replying to the Government's observations as to the admissibility and the merits, the applicants expanded that claim, arguing that due to the length of the proceedings they could not enjoy either the apartments or the money they had paid for them. They contended that the length of the proceedings complained of had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

33. The Government noted at the outset that this complaint was inadmissible as incompatible *ratione materiae* since, during the civil proceedings, the applicants had not been the owners of the apartments at issue, as their title had been recognised only on 19 January and 13 February 2004, whereas the civil proceedings had ended on 10 December 2003. Next, even assuming that there had been a certain degree of interference with the applicants’ property rights, the Government nonetheless maintained that it had been proportionate in view of the general interest in protecting the right of the public to certainty that the local authorities had acted responsibly and within their powers.

34. The Court notes that, according to Lithuanian law, the applicants indeed became the owners of the apartments in question only after the civil proceedings had terminated (see paragraph 17 above). Consequently, the Court accepts the Government’s objection to the effect that the applicants cannot allege a violation of their property rights as the owners of the apartments. However, the Court notes that the applicants could be understood as having complained of their inability to enjoy their possessions in the form of the money which they had paid for those apartments. Indeed, they explicitly raised this aspect of the complaint in their reply to the Government’s observations as to the admissibility and merits. It follows that the applicants’ complaint falls within the Court’s competence *ratione materiae*.

35. The Court further observes that the complaint under Article 1 of Protocol No. 1 is linked to the complaint concerning the excessive length of proceedings examined above, and must therefore likewise be declared admissible.

36. However, the Court notes that the applicants obtained their title to the apartments only a month and two months respectively after the impugned civil proceedings were over. In such circumstances the Court considers that, having found a violation of the applicants’ right to a hearing within reasonable time, no separate issue on the merits arises in respect of the complaint regarding the peaceful enjoyment of possessions and that it must be regarded as having been absorbed by the preceding complaint.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicants also complained under Article 6 § 1 of the Convention that the domestic courts were biased, and that the Klaipėda City District Court had neglected the relevant circumstances of the case.

38. On the basis of the materials submitted by the applicants, the Court notes that the decisions of the Lithuanian courts do not appear arbitrary. It follows that the complaint about the alleged partiality of the domestic courts is unsubstantiated and must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

39. As regards the second part of the complaint, it should be noted that on 10 December 2003 the Supreme Court allowed the applicants' property claims in full (see paragraph 15 above). Accordingly, in respect of their complaint of an unfair hearing, the applicants can no longer claim to be victims within the meaning of Article 34 of the Convention and this part of the application must be rejected for being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

40. Finally, the applicants alleged that their freedom of movement was restricted on account of the fact that they could not leave Lithuania without a "registration" stamp attesting their permanent place of residence in their passports. In this respect the applicants invoked Article 2 of Protocol No. 4 to the Convention.

41. In the context of the present case the Court notes that the applicants failed to produce any proof that they had ever attempted to leave Lithuania, had been prevented from doing so because they had no "registration" stamp or had complained about it on the domestic level. Moreover, the civil proceedings lasted more than eight years in all and it can be presumed that during that time the applicants had a place of residence which they could have used for the purposes of obtaining such a stamp. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicants claimed 100,000 euros (EUR) each in respect of non-pecuniary damage.

44. The Government contested these claims as unsubstantiated and excessive.

45. The Court considers that the applicants have suffered certain non-pecuniary damage as a result of the excessive length of the civil proceedings, which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 3,000 under this head.

B. Costs and expenses

46. The first applicant claimed 234 Lithuanian litas (LTL; approximately EUR 68) for costs and expenses in respect of the Convention proceedings. The second applicant claimed LTL 303.25 (approximately EUR 88).

47. The Government contested these claims.

48. 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 and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to grant the applicants' claims in full.

C. Default interest

49. 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* admissible the applicants' complaints concerning the excessive length of civil proceedings and an inability to enjoy their possessions;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that no separate issue arises under Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the

Convention, the following sums, to be converted into the currency of the respondent State at the rate applicable on the date of settlement:

- (i) EUR 3,000 (three thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 68 (sixty-eight euros) to the first applicant, plus any tax that may be chargeable to this individual, in respect of costs and expenses;
- (iii) EUR 88 (eighty-eight euros) to the second applicant, plus any tax that may be chargeable to this individual, in respect of costs and expenses;
- (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;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President