



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

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1959 · 50 · 2009

SECOND SECTION

**CASE OF NAUGŽEMYS v. LITHUANIA**

*(Application no. 17997/04)*

JUDGMENT

STRASBOURG

16 July 2009

**FINAL**

***16/10/2009***

*This judgment may be subject to editorial revision.*



**In the case of Naugžemys 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 Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

## PROCEDURE

1. The case originated in an application (no. 17997/04) 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 a Lithuanian national, Antanas Naugžemys (“the applicant”), on 9 May 2004.

2. 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

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Kaunas.

5. On 28 November 1995 the applicant brought a civil action, requesting annulment of a number of agreements concluded in 1987 whereby ZD, a third person, had acquired a house and certain other items of real property. The applicant alleged in particular that he had been the actual buyer, and that ZD had only acted in a formal capacity. Six other persons were defendants in the proceedings.

6. ZD lodged a counter-claim.

7. Given certain evidence that in the past the applicant had suffered from schizophrenia, on 30 April 1997 the court ordered a psychiatric expertise in order to establish whether the applicant was capable of participating in the court proceedings due to his state of mental health.

8. On 15 September 1997 the State Legal Psychiatry Service informed the court that the applicant had failed to appear before it for the expertise to be conducted. The expertise was carried out on 14 October 1997.

9. On 23 December 1997 the Pasvalys District Court dismissed the applicant's case as unsubstantiated.

10. On 20 May 1998 the Panevėžys Regional Court quashed the decision, returning the case for examination *de novo*. It was established that the first-instance court had failed to examine certain claims of the parties.

11. On 1 February 1999 the Kėdainiai District Court again dismissed the applicant's case.

12. The applicant appealed. He also requested the Kėdainiai District Court to exempt him from the obligation to pay stamp duty. On 17 February 1999 that court allowed his request.

13. On 9 March 1999 the Panevėžys Regional Court quashed the ruling by which the applicant had been exempted from paying the stamp duty.

14. On 25 May 1999 the Panevėžys Regional Court dismissed the applicant's appeal on the merits and upheld the decision of 1 February 1999.

15. On 10 February 2000 the Supreme Court quashed the decisions of the lower courts on account of the fact that they had failed to establish all the relevant circumstances. The case was returned for a fresh examination at first instance.

16. On 27 November 2000 the Kėdainiai District Court allowed the applicant's action in full.

17. On 16 January 2001 the Panevėžys Regional Court upheld the decision.

18. On 20 June 2001 the Supreme Court quashed the decisions of the lower courts and remitted the case to the first instance court for a new examination. It was established that the lower courts had again failed to establish and assess all the relevant circumstances of the case, despite having been instructed to do so in the Supreme Court's ruling of 10 February 2000.

19. On 14 August 2002 the Panevėžys City District Court dismissed the applicant's claims.

20. On 27 August 2002 the applicant appealed. However the Panevėžys City District Court decided to return the appeal to the applicant unexamined for failure to pay stamp duty. The applicant's objection to the latter decision was dismissed on 1 October 2002. It was established that the applicant had been and still was a wealthy man, given that he owed numerous real estates. Consequently, there was no ground to exempt him from stamp duty.

21. On 14 February 2003 the Panevėžys Regional Court upheld the decision of 14 August 2002.

22. On 11 November 2003 the Supreme Court dismissed a cassation appeal lodged by the applicant.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

23. Article 6.246 of the Civil Code 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

24. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement of 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*

25. The Government argued that the 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 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 applicant 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 law, the applicant could have relied on it, alleging the unlawfulness of the State authorities’ inaction and requesting redress in the domestic courts. Lastly, the Government

maintained, that the length of the civil proceedings had been reasonable and therefore this complaint was manifestly ill-founded.

26. The applicant contested these submissions.

## *2. The Court*

27. 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 – already acquired a sufficient degree of legal certainty requiring its exhaustion for the purposes of Article 35 § 1 of the Convention.

28. Next, whereas the Government argued that the applicant 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. Nor have the Government provided the Court with practical examples showing that the applicant could have relied effectively on the Convention at the domestic level.

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

30. 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**

### *1. The parties' submissions*

31. The Government argued that the applicant had himself contributed to the length of proceedings by failing to act with due diligence. In particular, on numerous occasions the applicant and his lawyer asked the courts to adjourn hearings for different reasons. Moreover, the applicant failed to appear promptly before the expert psychiatric commission for an examination of his mental health and, being unwilling to pay stamp duty, he deliberately misled the domestic courts as to his financial situation.

32. The applicant contested the Government's arguments.

## 2. The Court

33. As regards the period to be taken into consideration, the Court first observes that the civil proceedings were instituted on 28 November 1995. They ended on 11 November 2003, when the Supreme Court took its decision. The proceedings therefore lasted nearly eight years 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, among many authorities, *Frydlender*, cited above; *Pachman and Mates v. the Czech Republic*, no. 14881/02, §§ 28-24, 4 April 2006; *Csősz v. Hungary*, no. 34418/04, § 29, 29 January 2008).

36. Turning to the case at hand, the Court notes that the proceedings involved many parties and were therefore of a certain complexity. Whilst accepting the Government's arguments that, to a certain extent, the applicant himself had contributed to the length of proceedings (see paragraphs 7, 8 and 20 above), the Court cannot fail to observe 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 Panevėžys Regional Court on 20 May 1998 because the lower court had failed to examine certain claims of the parties (see paragraph 10 above). Furthermore, since the lower courts had failed to properly establish and assess all the circumstances of the case, the Supreme Court had to remit it twice for a fresh examination at first instance (see paragraphs 15 and 18 above).

37. 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

38. The applicant also complained under Article 6 § 1 of the Convention that the courts were biased, and that they had neglected the relevant circumstances of the case.

39. In this connection 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 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 being unfounded. 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.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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**

41. The applicant claimed 100,000 Lithuanian litas (LTL, approximately 28,960 euros (EUR)) in respect of both pecuniary and non-pecuniary damage.

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

43. 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 applicant EUR 1,500 in respect of non-pecuniary damage.

#### **B. Costs and expenses**

44. The applicant did not claim any costs or expenses. Consequently, the Court makes no award under this head.

#### **C. Default interest**

45. 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 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, this sum being converted into the national currency of that State at the rate applicable on the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 claims for just satisfaction.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé  
Registrar

Françoise Tulkens  
President