



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

FOURTH SECTION

DECISION

Application no. 39045/02
Zenta RUTKA
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 29 January 2013 as a Chamber composed of:

David Thór Björgvinsson, *President*,
Ineta Ziemele,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano,
Paul Mahoney,
Faris Vehabović, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 4 October 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mrs Zenta Rutka, is a Latvian national who was born in 1942 and lives in Rīga. She was represented before the Court by Ms L. Cakare, a lawyer practising in Rīga.

2. The Latvian Government (“the Government”) were represented by their Agents, Mrs I. Reine and, subsequently, Mrs K. Līce.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. Since 1932 the applicant's father (A.B.) had rented the "Buļļi" farm, which at the time was located in the Rīga district and is now located within the city limits of Rīga.

5. According to the applicant, in December 1939 her father concluded a contract with the owner of the "Buļļi" farm (B.Z.) for its purchase. The contract was concluded in writing in the presence of two official witnesses (J.M. and J.A.). The purchase price was paid in cash at the time of the conclusion of the contract. The applicant's father and B.Z. did not manage to register the purchase in the land register because B.Z. fell ill and died on 5 February 1940.

6. In 1941 the People's Commissariat for Internal Affairs ("the NKVD") searched the applicant's father's home and took away a number of documents, including the purchase contract.

7. After 1948 the farm was nationalised by the State institutions of the Soviet Socialist Republic of Latvia.

8. After Latvia regained independence, the applicant's mother requested the Rīga City Land Commission (*Rīgas pilsētas zemes komisija*) to restore her property rights to the farm land. On 19 June 1997 that request was refused.

9. On 27 January 1998 the Rīga municipality (*Rīgas dome*) rejected a request by the applicant's mother for the denationalisation of the farm buildings.

10. The applicant's mother died in 1999 and on 12 March 2001 the applicant lodged an action with the Rīga Regional Court against the Rīga municipality and the Rīga City Land Commission, requesting the court to call two witnesses (A.M. – the son of the witness to the contract, J.M. – and I.A. – the wife of the witness to the contract, J.A.) to establish the fact that a purchase contract had been concluded, and to restore her property rights to the land and buildings of the "Buļļi" farm.

11. The applicant alleges that in 2001 the health of the witness I.A. declined; therefore, on 20 June 2001, in the presence of a sworn notary, she gave a written statement regarding her knowledge about the conclusion of the contract. The written statement, in its relevant part, states as follows:

"In 1939 [B.Z.] sold [the] property to [A.B.]. That happened at Christmas in the residential building of the Buļļi farm, where a written contract of sale was concluded between [B.Z.] and [A.B.]. My husband [J.A.] took part in this event; [I] saw money being counted. I had come along with my husband and, together with [A.B.'s wife], was working in the kitchen. I remember that a fire was burning in the stove [and] there was a round table. At the table was seated [B.Z.], an elderly corpulent man with a walking stick in his hands. This contract of sale was signed by my husband [J.A.]."

12. During the hearing before the Rīga Regional Court on 25 June 2001 two witnesses were heard: A.M., who testified that he had been present when the contract was concluded, and the applicant's cousin, J.B., who testified that he had heard about the conclusion of the purchase contract from his father, who had helped the applicant's father financially. The hearing was adjourned because I.A. had not attended the hearing due to medical problems.

13. I.A. also failed to appear at the following two hearings. The parties disagree as to whether the applicant or her counsel requested the court to accept I.A.'s written statement as evidence. The applicant alleged that the Regional Court had refused to accept the written statement, arguing that I.A. was alive and there was no legal basis for accepting her written statement as evidence. The Government argued that no such request had been made. The verbatim record of the hearing held on 15 October 2001 records the applicant's request to the court to include unspecified documents in the case file. The court appears to have agreed to include some tax statements but to have refused the inclusion of other, unspecified documents.

14. In its judgment of 15 October 2001, the Rīga Regional Court decided to reject the applicant's request for the establishment of the fact that a purchase contract had been concluded and for the restoration of her property rights to the land and the buildings of the "Bulīši" farm, since it found that the applicant had not proved that the property had belonged to her father prior to 21 July 1940. The judgment does not mention the written statement of I.A. With regard to the testimony of J.B., the court held: "[I]t cannot be taken into account as evidence in the case because it is based on information obtained from other persons". Regarding A.M.'s testimony, it was concluded that it was not "corroborated by other evidence in the case".

15. On 14 November 2001 the applicant submitted an appeal against the judgment of the Rīga Regional Court, in which she argued, *inter alia*: "The court, without giving proper reasons, did not summon to the hearing and did not hear the witness [I.A.]". In that regard she referred to a violation of the principle of equality of arms.

16. On 8 March 2002, before the beginning of the appellate proceedings, the applicant submitted a written application to the Supreme Court stating that the conclusion of the contract and the payment of the purchase price could be confirmed by witnesses A.M., B.P. and E.L. She asked the Supreme Court to summon those witnesses.

17. During a hearing before the Supreme Court held on 19 March 2002 the applicant's lawyer on two occasions requested the court to obtain the testimony of I.A. at her place of residence on account of her poor health. The court refused that request, since it had been established that I.A. had not been present when the contract was concluded. The applicant then requested the court to include the written statement of I.A. in the case file. The

respondents were given an opportunity to read the statement and the court decided to include the statement in the case file.

18. In its judgment of 19 March 2002 the Supreme Court dismissed the applicant's appeal. It took into account the statements of A.M. and B.P., I.A.'s daughter, who testified that she had heard about the conclusion of the purchase contract from her mother. The court did not explicitly address the applicant's complaint about the first-instance court's refusal to hear the testimony of I.A. Nor was the written statement of I.A. examined as evidence. Referring to section 9 (3) of the Law on Land Reform in the Cities of the Republic of Latvia (*Likums par zemes reformu Latvijas Republikas pilsētās*, see paragraph 23 below), the Supreme Court held that since a written real estate purchase contract should have been submitted to the court, then "if a written contract document [had] not been submitted, the testimony of the witnesses [had] no substantial meaning".

19. I.A. died on 22 April 2002.

20. On 24 April 2002 the applicant filed an appeal on points of law in which she complained, *inter alia*, that the Supreme Court had rejected the request for I.A.'s testimony to be obtained at her place of residence. She also referred to I.A.'s written statement.

21. On 14 August 2002 the Senate of the Supreme Court decided to reject the applicant's cassation complaint. The Senate endorsed the conclusion of the appeal court that the testimony of the witnesses was not decisive. The Senate stated that even if the existence of the purchase contract could have been proved by witness testimony, in the absence of a written contract its legality could not have been verified, which the court had a duty to do in accordance with the applicable legislation.

22. In 2002 the applicant's son concluded a rental agreement for the residential building and secondary buildings of the "Bulīi" farm. He later obtained the privatisation of the buildings but was unable to obtain the privatisation of the land and two cellars belonging to the farm. On 10 January 2005 the applicant submitted a civil claim to the Rīga Regional Court against the Rīga municipality and the Land Commission, requesting that court to recognise that she had acquired property rights to the land and cellars by prescription. The applicant specifically referred to the first set of proceedings and asked the court to call some of the witnesses who had testified in those proceedings. On a later date the applicant requested a stay in the proceedings while her application before the Strasbourg Court was pending. When the Government submitted their observations on the admissibility and merits of the present application those proceedings were pending on appeal.

B. Relevant domestic law

23. The specific regulation concerning the restoration of property rights over property that had been nationalised, in so far as it is relevant in the present case, is the Law on Land Reform in the Cities of the Republic of Latvia, which in section 9 (3) provides:

“If land ownership rights as at 21 July 1940 are not confirmed by statements from the State archives, court adjudications or other documents confirming land ownership rights, including Land Register deeds drawn up before 21 July 1940, or notarially certified contracts regarding the purchase of land, a court shall recognise ownership rights on the basis of a contract for the alienation of land (*noslēgtā zemes atsavināšanas līguma*) [...] if it has been determined that such a transaction was legal [...]”

COMPLAINT

24. The applicant complained under Article 6 § 1 of the Convention that by not accepting the written testimony of I.A. as evidence and by refusing to obtain her testimony at her place of residence, the national courts had violated the principle of equality of arms and, therefore, also the applicant's right to a fair trial.

THE LAW

25. The Government argued that the application should be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. They submitted that the second set of proceedings initiated by the applicant was closely and directly related to the first set of proceedings, in particular because the applicant had sought to rely on witness statements given during the first set of proceedings and because the applicant herself had requested the stay of proceedings on account of the proceedings pending before the Strasbourg Court.

26. The applicant disagreed with the Government's position. She submitted that the second set of proceedings had a different legal basis, namely, the acquisition of property by prescription. Furthermore, she considered that her wish to use the same statements in two different sets of proceedings could not be held against her.

27. The Court is not persuaded by the Government's argument. It notes that the subject matter of the two sets of proceedings is different, albeit with a certain overlap. That is particularly so since in 2002 the applicant's son successfully obtained the privatisation of the residential building and

secondary buildings of the “Buļļi” farm. Moreover, the applicant is correct in pointing out the different legal basis for the two sets of proceedings; the first one concerned the hypothesis that her father had purchased the “Buļļi” farm in 1939, while the second concerned the acquisition of property rights by continuous possession. The Court is unable to conclude that a hypothetically successful outcome to the second set of proceedings would sufficiently remedy the applicant’s complaint that the first proceedings had not been conducted fairly (see, *mutatis mutandis*, *Samsonnikov v. Estonia*, no. 52178/10, § 60, 3 July 2012), particularly in the light of the undisputed fact that the applicant’s son had to use his privatisation certificates in order to become the owner of the buildings of the “Buļļi” farm, which he would not have had to do if the first proceedings had ended with a decision favourable to the applicant.

28. For these reasons, the Court dismisses the Government’s argument concerning non-exhaustion of domestic remedies.

29. As to the substance of the applicant’s complaint, the Government submitted that nothing in the Convention or the Court’s case-law indicated that the principle of equality of arms imposed an obligation on domestic courts to automatically accept all evidence submitted by the parties or to summon all the witnesses requested by them. Domestic courts had a right to refuse to accept irrelevant or superfluous evidence.

30. The Government noted that the appeal court had refused to obtain I.A.’s testimony at her place of residence partly because during the trial it had been established that I.A. had not been present when the purchase contract was concluded (see paragraph 17 above). In addition, the appeal court had found that the witness statements concerning the circumstances of the alleged conclusion of the contract in 1939, including those of I.A., were of no significance since the written contract had not been submitted to the court.

31. The applicant maintained her earlier submissions.

32. The Court reiterates that it is not within the province of the Court to substitute its own assessment of the facts for that of the national courts. The Court’s task is to ascertain whether the proceedings in their entirety, including the way in which evidence was permitted, were “fair” within the meaning of Article 6 § 1 (see *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 31, Series A no. 274).

33. The requirements inherent in the concept of “fair hearing” are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge. This is borne out by the absence of detailed provisions such as paragraphs 2 and 3 of Article 6 applying to cases of the former category. Thus, although these provisions have certain relevance outside the strict confines of criminal law, the Contracting States have greater latitude when

dealing with civil cases than they have when dealing with criminal cases (*Dombo Beheer B.V.*, cited above, § 32).

34. Turning to the present case, the Court notes that the applicant sought to submit I.A.'s written statement or to have her testify in court in order to prove her allegation that in 1939 her father had purchased the "Bulļi" farm from B.Z. The first-instance court accepted that in theory the existence of a purchase contract could be proved by witness statements. The appeal court disagreed. It considered that the Civil Law required that contracts for the sale of immovable property be concluded in writing. According to the appeal court's interpretation, section 9 (3) of the Law on Land Reform in the Cities of the Republic of Latvia (see paragraph 23 above) required the contract to have been registered, or a copy of the written contract to have been submitted to the court. Since the applicant was unable to submit such a copy, the appeal court ruled that the witness statements were without direct relevance.

35. The Court does not find the appeal court's interpretation of the relevant provision of the Law on Land Reform manifestly arbitrary. Furthermore, the parties have not disputed that the Supreme Court eventually decided to include the written statement of I.A. in the case file, and it was thus at the disposal of that court.

36. The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII, and *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011). It is also recalled in this context that the admissibility of evidence is a matter for regulation by national law and the national courts and that the Court's only concern is to examine whether the proceedings have been conducted fairly (see *Dombo Beheer B.V.*, cited above, § 31). In the present case, the Supreme Court decided that the written statement of I.A., which was undoubtedly available to the Supreme Court, did not have any evidentiary value, unless the law required that a copy of the written contract be presented to court. In the light of the reasoning of the Supreme Court, and taking into account that it is primarily for the domestic courts to resolve questions of admissibility of evidence, the Court finds that it has not been presented with any arguments capable of persuading it that the domestic proceedings were unfair on the grounds alleged.

37. Having regard to the foregoing, the Court finds that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Lawrence Early
Registrar

David Thór Björgvinsson
President