

Shesti Mai Engineering OOD and Others v. Bulgaria - 17854/04

Judgment 20.9.2011 [Section IV]

Article 1 of Protocol No. 1

Positive obligations

Lack of adequate procedures to protect shareholders from fraudulent takeover of their company: *violation*

Facts – The applicants held almost 50% of the shares in a limited liability company MTFU. In 1999 a city-court judge, acting on her own initiative, acceded to a request by the representative of a third-party company to enter the names of five members of a new board of directors in the register of companies. Several days later, the new management took control of MTFU's premises evicting by force the former management. It called and conducted two general meetings of MTFU's shareholders to which the applicants were denied access and which were attended by only 8% of MTFU's share capital. The meetings resolved to cancel all existing shares and issue a new share register from which the applicants' names were omitted. The applicants then issued court proceedings seeking to have the city-court judge's decision and all corresponding entries in the register of companies set aside. Their application was ultimately granted in 2003. Meanwhile, the new MTFU management had increased the company's share capital by more than twenty times without the applicants being allowed to subscribe for any of the new shares.

Law – Article 1 of Protocol No. 1: The Court reiterated that in certain situations the effective enjoyment of property rights might entail the adoption of positive measures by the State, even in cases involving litigation between private individuals. In this connection, the States were under an obligation to afford judicial recourse offering the necessary procedural guarantees and enabling the domestic courts to adjudicate effectively and fairly on any disputes between private persons. In the applicants' case the chain of events leading to the dilution of their shareholding in MTFU had been triggered by the city-court judge's decision to enter new members of the board of directors in the register of companies. The decision had been taken on the judge's own initiative without any resolution by the company's bodies and had grossly distorted the rules of procedure. The consequences for the applicants had therefore been linked to the actions of the State to a degree sufficient to justify the conclusion that the authorities had interfered with the applicants' property rights. The applicants had almost immediately sought the annulment of that decision, but to no avail. Their claims, even though of the utmost urgency, were examined under the normal court procedure, which had lasted for over four years. During that time the applicants had had no effective means of opposing the multitude of steps that had been taken by the new management or to prevent damage to their shareholdings. The precariousness and blatant unlawfulness of the situation caused by the judge's decision had called for the availability of urgent measures to prevent potentially irrevocable harm to the applicants' interests, but the procedures available under Bulgarian law had failed to provide effective redress

to the applicants or to give them adequate protection from the consequences of the registration decision that had enabled private persons to fraudulently take control of their company.

Conclusion: violation (unanimously).

Article 41: Awards ranging between EUR 500 and 12,100 in respect of pecuniary damage and between EUR 4,000 and 6,000 in respect of non-pecuniary damage.

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