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

SECOND SECTION

DECISION

Application no. 67467/17
Darius GLIAUBERTAS and Mindaugas GLIAUBERTAS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 28 January 2020 as a Committee composed of:

Ivana Jelić, *President,*
Egidijus Kūris,
Darian Pavli, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 September 2017,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Darius Gliaubertas and Mr Mindaugas Gliaubertas, are Lithuanian nationals who, respectively, were born in 1974 and 1973, and live in Vilnius and Visaginas. They were represented before the Court by Mr M. Vaivada, a lawyer practising in Vilnius.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms Lina Urbaitė.

A. The circumstances of the case

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

4. In March 2013 the applicants initiated civil court proceedings for the annulment of the will of their father. When lodging their civil claim with the Vilnius City District Court, they also submitted an agreement with a lawyer to represent them in that case.

5. The Vilnius City District Court then held a number of hearings in respect of the applicants' case, at which they and their lawyer were present. Eventually, on 2 December 2015 that court dismissed the applicants' civil claim as unfounded, having established that their father had drawn up his will while being of clear and sound mind. A number of witnesses – including medical experts and a notary – were questioned in court in the course of those proceedings.

6. The applicants then lodged an appeal with the Vilnius Regional Court, which examined it in written proceedings. On 29 November 2016 that court made a public announcement, published on the Lithuanian courts' dedicated Internet site, that the applicants' case would be decided on 7 December 2016.

7. By a ruling of 7 December 2016 the Vilnius Regional Court upheld the first-instance court's decision as sound and reasoned. That ruling was pronounced the same day. As acknowledged by the Government in their observations, the following day a copy of that ruling was sent to the applicants, but to the wrong postal address.

8. On 6 March 2017 both applicants lodged an appeal on points of law with the Supreme Court. They referred to a number of rulings by the Supreme Court in respect of inheritance-related cases and asserted that in the applicants' case the appellate court had erred in its assessment of the evidence. The applicants made no mention of having received the appellate court's ruling belatedly.

9. By a ruling of 8 March 2017 the Supreme Court refused to examine the applicants' appeal on points of law, holding that it raised only questions of fact and failed to mention any issues which might have an impact on the Supreme Court's interpretation of law and which as a result would merit examination by a court of cassation.

10. On 14 March 2017 the second applicant lodged a new appeal on points of law. This time he also argued that he had not been informed of the appellate court's ruling in due time, but had learned of its existence only "incidentally, at the beginning of March 2017, when only a few days remained in which to appeal against the [Vilnius Regional Court's ruling]". The second applicant also asserted that in that civil case "the rules governing the evaluation of evidence [had been] breached, which [had] led to the adoption of an unjust court decision". He asked that the time-limit for lodging an appeal on points of law be renewed.

11. On 21 March 2017 the Supreme Court refused to renew the time-limit for lodging the appeal on points of law. It pointed out that the appellate court's ruling had come into force on the day on which it had been adopted – that is to say on 7 December 2016 – and that the three-month time-limit for contesting it had expired on 7 March 2017. In the instant case it was important that the applicants had submitted the first appeal on points of law within the prescribed time-limit.

The Supreme Court also pointed out that the content of the new appeal on points of law was essentially identical to that of the first appeal on points of law, which it had already refused to examine.

B. Relevant domestic law and practice

12. For the relevant domestic law regarding summonses and the right to participate in civil proceedings, see *Švenčionienė v. Lithuania*, no. 37259/04, §§ 13-18, 25 November 2008.

13. The Code of Civil Procedure, as applicable at the material time, also read:

Article 117. Means of delivery

"1. A court shall deliver court documents by registered post, through bailiffs, couriers, or other means referred to in this Code ..."

Article 133. Summons and notices of the court

"3. In substantive proceedings under the written procedure, the date, time and place of a hearing, as well as the composition of the court [in question], shall be published on a dedicated Internet site not later than seven days before the hearing [concerned] ..."

Article 325. Reaching and pronouncing a judgment or ruling

"5. Parties to proceedings shall be informed of a judgment or ruling given by a court of appeal in the course of written proceedings, and of a judgment or ruling given by a court of appeal in the course of oral proceedings, when the parties to such proceedings were not present at the pronouncement of such a judgment or ruling ..."

Article 345. Terms of lodging an appeal of points of law

"1. An appeal on points of law can be lodged within three months of the day on which the [relevant] judgment or ruling being appealed against became final.

2. An expired term may be extended for persons who miss the time-limit for lodging an appeal on points of law for reasons that the court [in question] acknowledges as being important ..."

14. It stems from Article 346 of the Code of Civil Procedure, that the Supreme Court does not examine questions of fact.

Grounds for a review of the case by the Supreme Court are: (i) a violation of substantive or procedural law that is of crucial significance for the uniform interpretation and application of law; (ii) situations in which a court decision deviates from the existing practice of the Supreme Court; or (iii) situations in which the Supreme Court's practice on a certain issue is not uniform.

If an appeal on points of law does not meet one or more of the aforementioned requirements, it will not be accepted for examination (Article 350 of the Code of Civil Procedure).

COMPLAINT

15. The applicants complained under Article 6 § 1 of the Convention that they had not been informed in a timely manner of the Vilnius Regional Court's ruling, which in their view had affected their right to effectively submit an appeal on points of law to the Supreme Court.

THE LAW

16. The applicants complained that they had not had a right to a fair hearing, this being in breach of Article 6 § 1 of the Convention. That provision, in so far as relevant, reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

17. The Government admitted that because of a clerical error the Vilnius Regional Court's ruling had been sent to the wrong address. However, the applicants had been duly informed of the date of the hearing that had led to that ruling. Moreover, they had been able to lodge their initial appeal on points of law within the prescribed three-month time-limit. It also had to be underlined that the applicants' claim that owing to time constraints they had not been able to prepare a proper appeal on points of law was refuted by the fact that they had re-submitted the appeal on points of law, which had raised the same questions regarding the interpretation of facts – even though those questions had already been dismissed by the Supreme Court. Thus, having regard to the process as a whole, in the light of the circumstances of the case at issue, the essence of the applicants' right to court had not been impaired.

18. The applicants complained that they had not been informed of the Vilnius Regional Court's ruling of 7 December 2017 in due time, and that, as a result, they had been unable to effectively exercise their right to lodge an appeal on points of law with the Supreme Court. The applicants pointed out that the Vilnius Regional Court had sent a copy of its ruling to the wrong postal address, and that the applicants had learned of the existence of that ruling only a few days before the expiry of the time-limit for lodging an appeal on points of law. Such a short time had been insufficient for them to properly prepare their appeal on points of law, which had then been rejected by the Supreme Court.

B. The Court's assessment

19. The Court notes that the parties have not disputed that, owing to mistakes attributable to the State authorities, the appellate court's ruling was

not sent to the applicants' address. Be that as it may, for the following reasons it is unable to find that the applicants did not have a fair hearing in the civil proceedings for the annulment of their father's will.

20. Firstly, the facts of the instant case are different from those very recently scrutinised by the Court in *Lishnyak v. Russia* (dec.) (no. 9964/06, §§ 66-69, 17 September 2019), where the Court examined the question of whether the applicant had been placed in a disadvantageous position *vis-à-vis* the opposing party during a court hearing because he had not been notified of that hearing and because the court had examined his case in his absence. In the present case, however, no other party, except for the applicants, lodged an appeal on points of law with the Supreme Court, thus placing them in a disadvantageous situation (also compare and contrast *Švenčionienė v. Lithuania*, no. 37259/04, §§ 27-29, 25 November 2008), on account of their submission that, owing to the fact that they had only belatedly received the appellate court's ruling, they had been unable to lodge a proper appeal on points of law.

21. Secondly, on the facts of the case it is clear that in their first appeal on points of law the applicants raised only questions of fact, which do not fall within the scope of the grounds for examination by the Supreme Court (see paragraphs 8 and 14 above). It was precisely for that reason that their first appeal on points of law was dismissed (see paragraph 9 above). Although in their second appeal the applicants did note the fact that they had obtained the Vilnius Regional Court's ruling belatedly, the main thrust of their argument still remained erroneous interpretation of facts. At the same time, they failed to raise any questions of law in order that their appeal on points of law might qualify for examination by the Supreme Court (see paragraphs 10 and 11 above). Accordingly, the Court cannot find that the fact that the Vilnius Regional Court's ruling was not sent to the applicants in due time affected the outcome of their civil case in such a way as to make an impact on their right to a fair hearing, guaranteed by Article 6 § 1 of the Convention.

22. Lastly, the Court has regard to the Government's argument that, in order to achieve the objective of expeditious proceedings, the applicants were required to follow the course of the proceedings actively (ibid., § 26). Indeed, the authorities made a public announcement that the Vilnius Regional Court would convene on 7 December 2017, but the applicants made no effort to attend that hearing (see paragraph 6 above).

23. The foregoing considerations are sufficient to enable the Court to conclude that the mere fact, in and of itself, that the applicants received the appellate court's ruling belatedly did not render the civil proceedings in their case unfair.

24. Accordingly, it follows that the applicants' complaint under Article 6 § 1 of the Convention concerning the fact that they were not properly notified of the above-mentioned ruling and their alleged inability to

effectively lodge an appeal on points of law with the Supreme Court 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, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 20 February 2020.

Hasan Bakırcı	Ivana Jelić
Deputy Registrar	President