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

SECOND SECTION

DECISION

Application no. 13039/11
Vladimir Andreevich KOLOSOV
against Montenegro

The European Court of Human Rights (Second Section), sitting on 5 September 2017 as a Chamber composed of:

Robert Spano, *President,*
Julia Laffranque,
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 February 2011,

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, Mr Vladimir Andreevich Kolosov, is a Russian national who was born in 1961 and lives in Aprelevka (Russian Federation). He was represented before the Court by Mr Y. Aksaev, a lawyer practising in Moscow (Russian Federation).

2. The Montenegrin Government ("the Government") were represented by their Agent, Ms V. Pavličić.

3. Notified under Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court of their right to intervene in the present case, the Russian Government expressed no wish to do so.

A. The circumstances of the case

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

5. On an unspecified date the applicant's wife filed divorce papers with the competent court in Moscow, also seeking the division of property.

6. On 27 January 2011 she applied to the Court of First Instance (*Osnovni sud*) in Kotor (Montenegro) for an interim measure prohibiting the applicant from disposing of two apartments (*zabranjuje otuđenje i opterećenje nepokretnosti*) in Budva (Montenegro) until the proceedings in Moscow had ended.

7. On 1 February 2011 the court, in the absence of both the applicant and his representative, approved the measure, which was duly registered in the Budva real estate register. On 18 February 2011 the applicant received the relevant decision, which also contained information that he could appeal to the High Court, through the court in Kotor, within three days.

8. On 21 February 2011 the applicant allegedly sent his appeal by express mail and it was received at the High Court (*Viši sud*) in Podgorica on 28 February 2011 by a named court officer. The applicant submitted a copy of a Pony Express delivery company envelope to the Court with a date of 21 February 2011. It was addressed to the High Court in Podgorica, with a waybill number of 11-8895-0367 marked on it.

9. On 18 March 2011 the High Court found that the applicant had sent his appeal on 22 February 2011 and rejected it (*odbacio*) as out of time.

10. On 17 June 2011, the proceedings in Moscow ended with a friendly settlement.

11. On 22 June 2011 the applicant wrote to the High Court, maintaining that he had appealed on 21 February 2011 and had therefore been in time. He enquired about the basis for the High Court's conclusion that the appeal had been sent on 22 February 2011.

12. On 7 September 2011 one of the three High Court judges dealing with the applicant's case informed the president of the High Court that there was proof in the case file that the appeal had been sent on 22 February and that the High Court had not taken other documents submitted by the applicant into account, namely "a receipt, a bill and a fax sent on 21 February 2011".

13. On 30 November 2011 the applicant's ex-wife waived her rights in respect of the property in Montenegro and requested that the interim measure be revoked and deleted from the real estate register.

14. On 16 December 2011 the applicant informed the courts in Kotor and Podgorica about the termination of the proceedings in Moscow and requested that the interim measure be revoked.

15. On 10 January 2012 the court in Kotor revoked the measure (*ukida se privremena mjera*).

16. On 30 April 2012 the applicant tried to sell his property in Budva, but could not as the interim measure was still in the register. It transpired that the court in Kotor had not transmitted the relevant decision to the Budva real estate registry.

17. On 15 May 2012 the Court of First Instance in Kotor requested that the real estate registry in Budva delete the measure.

18. On 25 May 2012 the registry issued a decision to strike out the interim measure in respect of one of the apartments, which was executed on 3 December 2013. On 10 July 2014 the registry issued a decision to strike out the interim measure in respect of the other apartment, which was executed on 4 August 2014.

B. Relevant domestic law

19. Section 108(2) of the Civil Procedure Act (*Zakon o parničnom postupku*; published in the Official Gazette of the Republic of Montenegro nos. 22/04, 28/05 and 76/06, and Official Gazette of Montenegro no. 73/10) provides, *inter alia*, that submissions sent by post are considered as having been lodged with the relevant court on the day of posting.

COMPLAINTS

20. The applicant complained under Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 thereto of a lack of access to court, a breach of his right to a fair trial and an interference with his property rights. Being the master of the characterisation to be given in law to the facts of any case before it (see *Tarakhel v. Switzerland* [GC], no. 29217/12, § 55, ECHR 2014 (extracts)), the Court considers that the applicant's complaints fall to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which read as follows:

Article 6

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

Article 1 of Protocol No. 1

"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."

21. The Government contested the complaints.

THE LAW

A. The parties' submissions

22. The Government maintained that the applicant had lodged his appeal on 22 February 2011. More precisely, on 28 February 2011 the High Court in Podgorica had received an envelope postmarked 22 February 2011 with a waybill number of 11-8895-0367. The envelope had contained the applicant's appeal and the court had accordingly rejected it as belated. In support of their statement the Government submitted a copy of an envelope postmarked 22 February 2011, addressed to the High Court in Podgorica, with the above waybill number. It had apparently been sent via a company providing "express courier and freight services". The Government also submitted an accompanying letter from the High Court to the court in Kotor forwarding the applicant's appeal, "which had mistakenly been sent directly to the High Court" (see paragraph 7 above).

23. The applicant reaffirmed his complaint. He maintained, in particular, that the Government had submitted a copy of a UPS postal document, which was not relevant to the case. They had also submitted only a copy of the envelope, where there was no postal stamp, and not the envelope itself.

B. The Court's conclusion

1. Access to court

24. The relevant principles on this issue are set out, for example, in *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18; *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 229-230, ECHR 2012; and *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, §§ 43-45, *Reports of Judgments and Decisions* 1998-VIII.

25. The Court reiterates, in particular, that the requirement to lodge a judicial claim within a statutory time-limit is not in itself incompatible with Article 6 § 1 of the Convention. The Court has held on numerous occasions that such a requirement pursued a legitimate aim of the proper administration of justice and of compliance, in particular, with the principle of legal certainty (see, for example, *Pérez de Rada Cavanilles*, cited above, § 45, and *Novaković v. Croatia*, no. 32096/12, § 21, 23 July 2015).

26. Turning to the present case, the Court notes that the parties agree that the statutory time-limit for lodging an appeal in the applicant's case expired on 21 February 2011. What they disagree on is when exactly the applicant dispatched his appeal, on 21 February 2011 or the day after.

27. The Court also notes that the applicant submitted a copy of a Pony Express envelope dated 21 February 2011, addressed to the High Court in Podgorica with a waybill number of 11-8895-0367. He has submitted nothing, however, that would show that he indeed sent an appeal on that date and that the High Court's conclusion was thus arbitrary. The Court reiterates in that regard that it is not within its province to substitute its own assessment of the facts for that of the domestic courts and that, as a general rule, it is for those courts to assess the evidence before them (see *Edwards v the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B). Given that the Government provided the evidence which was used as the basis for rejecting the applicant's appeal as belated, the Court considers that the High Court's decision to that effect was not arbitrary or manifestly unreasonable. The applicant's complaint in that regard is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The right to a fair trial and the alleged interference with the applicant's property rights

28. The relevant principles in this regard are set out, for example, in *Vučković and Others v. Serbia* (preliminary objection) ([GC], nos. 17153/11 and 29 others, § 69-77, 25 March 2014).

29. Given that the applicant failed to make use of an appeal to the High Court within the statutory time-limits, these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President