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

FOURTH SECTION

DECISION

Application no. 76618/16
Algirdas ŠULIJA
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 29 January 2019 as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Antoanella Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 December 2016,

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 Algirdas Šulija, is a Lithuanian national, who was born in 1949 and lives in Vilnius. He was represented before the Court by Mr E. Plešak, a lawyer practising in Vilnius.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms Karolina Bubnytė-Širmenė.

A. The circumstances of the case

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

4. The applicant was born in 1949 and lives in Vilnius.

5. The applicant is a member of a community gardens association (*sodų bendrija*). It holds regular meetings and carries out its functions through its board (see paragraph 18 below).

6. In 2006 the community gardens association held a meeting where it decided to pay the president of its board a salary of 380 Lithuanian litai (LTL – approximately 110 euros (EUR)) per year. It was decided after a year to pay EUR 72 a month to cover the president's fuel and telephone expenses as well as EUR 43 a month to cover fuel, telephone and other expenses of the treasurer of the community gardens association. It was further decided to elect V.S. as the president of its board.

7. In 2009 the community gardens association adopted several decisions, including the decision to pay EUR 72 a month for the fuel and telephone expenses of the president of its board and EUR 43 for those of its treasurer. S.S. was elected president of its board.

8. The applicant lodged a complaint with the domestic courts, asking to have the decisions adopted by the community gardens association in 2009 annulled (see paragraph 7 above). On 2 November 2010 the Vilnius City 1st District Court dismissed the applicant's claim; however, on 19 January 2012 the Vilnius Regional Court allowed it. The court held that the members of the community gardens association had not been informed of the meeting in accordance with domestic law. Also, there was no information that the members who had not participated in the meeting had expressed their opinion and their votes in writing. The court thus held that the breach of procedural requirements rendered the decisions adopted in the meeting in 2009 null and void.

9. In 2010 the community gardens association held a meeting where it decided to pay EUR 72 a month for the fuel and telephone expenses of the president of its board and EUR 43 for those of the treasurer. M.A. was elected as the treasurer.

10. The applicant lodged a complaint with the domestic courts, asking to have these decisions annulled. He claimed that the meeting had been organised by an illegal composition of the board because its president, S.S., had not been a board member but had voted at the meeting. Moreover, the applicant thought that the monthly compensation for the fuel and telephone expenses of the president was excessive because it amounted to almost half of the community gardens association's budget.

11. On 11 May 2011 the Vilnius City 1st District Court satisfied the applicant's complaint, adopting a default judgment. The court observed that by adopting a default judgment it was carrying out only a formal assessment of evidence (see paragraph 22 below). The court held that the applicant's right to express his opinion in writing had been breached and that the decision to pay EUR 72 every month for the fuel and telephone expenses of the president of the board had been unjustified because this amount was almost half of the community gardens association's budget and it was contrary to the purposes of the community gardens association established in domestic law (see paragraph 17 below). The court noted that the community gardens association had not submitted any objections and

decided that its decisions of 2010 had to be declared null and void from the date of their issue. The court prohibited the community gardens association from paying money for the fuel and telephone expenses of its president of the board from the date the court's decision became final.

12. In 2012 the community gardens association held a meeting where it decided to increase the membership fee from EUR 29 to EUR 38 for every member and it also decided to cover the president of the board's fuel and telephone expenses in the amount of EUR 72 monthly, and EUR 43 for those of the treasurer. S.S. was elected president.

13. In 2014 the applicant lodged another complaint with the domestic courts asking that these decisions be annulled; that the lending agreement concluded with S.S. and M.A. be annulled; that EUR 2,897 be returned to the association by S.S. and M.A. within five days from the issue of the decision of the court; that the agreement on sale of fuel be annulled. The applicant stated that the Vilnius City 1st District Court had already adopted a similar decision (see paragraph 8 above). The applicant also stated that if the president of the board of the community gardens association and the treasurer had compensated the pecuniary damage, the membership fee would not have had to be increased.

14. On 19 March 2015 the Vilnius City District Court (the courts in Lithuania were reorganised, and since 1 January 2013 the Vilnius City 1st, 2nd, 3rd and the 4th District Courts were merged and became the Vilnius City District Court) allowed the applicant's claim in part. The court observed that after the default judgment of the Vilnius City 1st District Court (see paragraph 8 above) the applicant had not taken the initiative to organise another meeting of the community gardens association. Therefore, its board members and the other owners of the land had decided to hold another meeting. The first meeting had taken place in August 2012 but, as less than half of the members of the community gardens association had participated, it had been decided to hold another meeting in September 2012, which had taken place as planned.

The court further held that S.S. had been elected president of the board and M.A. and V.S. had been elected as board members of the community gardens association in the meeting of 27 June 2009, the results of which had been annulled by the court (see paragraph 8 above). The court considered that the decisions adopted in the meeting of September 2012 had to be interpreted in the light of the default judgment. In that connection, the court stated that the fact that the membership of the community gardens association was voluntary, did not mean that its members could not decide to compensate some expenses of a board member of the association or any other member. The court noted that the applicant had alleged that the statutes of the community gardens association did not allow the use of the resources of the association to satisfy the needs of the president and the treasurer (see paragraph 19 below); however, those statutes provided that

the association could hire people to carry out certain activities provided in those statutes. Although the applicant had alleged that no other community gardens association had spent so much money to satisfy the needs of its board members, he had failed to provide relevant evidence.

Moreover, the court found that the default judgment of 11 May 2011 had been based solely on the arguments of the applicant. The court that had adopted that judgment had not assessed the main principles of the functioning of the community gardens association and had not analysed whether the decision to compensate the president of its board for some expenses had been contrary to the statutes of the association or the Law on Community Gardens. The applicant had no right to require that the board members of the community gardens association carried out their activities without any remuneration.

The court further stated that because there was an existing decision of the court to annul the decision to compensate the president of its board, the decision of the community gardens association of September 2012 had also had to be annulled in this part. However, it was not prohibited from compensating its treasurer for the expenses incurred.

15. Both the applicant and the community gardens association appealed. On 7 June 2016 the Vilnius Regional Court dismissed the applicant's appeal, overturning the decision of the first-instance court which had annulled the decision to pay EUR 72 for the fuel and telephone expenses of the president of the board of the community gardens association. The court held that it could not agree with the first-instance decision in this respect and noted that the reasoning of the first-instance court had not been coherent. The first-instance court had held that the community gardens association had been a public legal entity with the purpose of implementing the general rights and obligations of gardeners related to the use, maintenance and management of its garden land and the objects situated on that land. The community had implemented its rights through its board members because without them its activities would have been impossible. The first-instance court had already held that the applicant's argument that the statutes of the community gardens association had prohibited the use of the community's funds to satisfy the needs of its president and treasurer had not been proven. The Vilnius Regional Court observed that the first-instance decision to annul the impugned decision of the community gardens association had contradicted its findings, the provisions of the Law on Community Gardens and the provisions of the statutes of the community gardens association at issue. The court also held that the default judgment of the Vilnius City 1st District Court of 11 May 2011 could not be assessed as an absolute prohibition on the community gardens association's reconsidering the issue of compensation in the future. The court thus dismissed the applicant's appeal.

16. The applicant submitted an appeal on points of law but on 13 September 2016 the Supreme Court rejected it as not raising important legal issues.

B. Relevant domestic law and practice

1. Law on Community Gardens

17. Article 3 § 1 provides that community gardens are a part of a certain administrative unit of a community, created to develop amateur gardening and to foster nature and the landscape. A community gardens association is a non-profit public legal person with limited liability with the purpose of implementing general rights and obligations of gardeners related to the use, maintenance and management of amateur garden land and the objects situated on that land.

18. Article 14 § 1 provides that the bodies of the community gardens are: (1) general meeting; (2) a president of the community gardens or a collegial body – a board of the community gardens.

19. Article 20 § 2 (1) provides that it is not permitted to allocate a community's income to activities other than those established in the organisation's statutes.

2. Code of Civil Procedure

20. Article 142 § 1 provides that, together with the claim, the court must send a notice to the defendant and third parties and ask them to submit their reply to the claim. The court sets the time-limit to submit the reply which cannot be shorter than fourteen days and cannot exceed thirty days. Article 142 § 4 provides that if the defendant has not provided an answer to the claim without any justifiable reason within the established time-limit, a court has the right, upon the request of the claimant, to adopt a default judgment.

21. Article 279 § 4 provides that once a judgment, decision or ruling becomes effective, the parties or other participants in the proceedings cannot raise the same claims on the same grounds and cannot contest the facts and legal relations that have been established by a court in another case. However, it does not preclude the interested parties from applying to the court if a dispute has not been determined by a final decision of the court. A decision regarding acknowledgement of a certain right or existence or non-existence of legal relations, which became final, has a *res judicata* even in respect of the persons who did not participate in the proceedings.

22. Article 285 § 1 provided that a default judgment could be adopted if one of the parties to the proceedings, which had been duly informed of the place and the time of the hearing, failed to appear at a preliminary hearing or a hearing, if there was no request to examine the case in its absence, and

the other party asked that such a decision be adopted. A default judgment could also be adopted if a party to the proceedings failed to submit an answer to a claim or a preparatory document, and the other party asked that such a decision be adopted.

3. Domestic practice

23. The Supreme Court has held that *res judicata* effect of judgments and decisions meant that the argument between the parties had been resolved and that the judgment or decision had to be considered as legally binding between the parties. *Res judicata* effect could only be applicable to the parties and other parties to the proceedings. *Res judicata* effect had two consequences: the judgment or a decision that had such an effect could not be appealed against and such a judgment or decision could be grounds for a claim in another civil case (see decision of the Supreme Court of 10 October 2014 no. 3K-3-419/2014).

24. The Supreme Court has held that a failure to apply for a review of a default judgment within the time-limit established by law, if that default judgment had not been appealed against by a claimant, was grounds for a default judgment to become final. A final judgment had *res judicata* effect, that is to say it became an enforceable procedural document of the court (see decision of the Supreme Court of 7 June 2017 no. 3K-3-210-219/2017).

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that his right to a fair hearing had been violated in the civil proceedings when the domestic courts had examined the civil case differently by overturning a binding court decision and the facts established thereby.

THE LAW

25. The applicant complained that his right to a fair hearing had been violated in the civil proceedings when the domestic courts had examined the civil case differently by overturning a binding court decision and the facts established thereby. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. The parties' submissions

26. The applicant submitted that the default judgment had had all the characteristics of *res judicata* and should not have been overturned in another set of civil proceedings. The applicant considered that the two sets of proceedings had been similar because they had concerned similar decisions of the community gardens association to compensate the president of its board and its treasurer for their fuel and telephone expenses. The applicant thought that the fact that those decisions had been adopted on different dates had not been relevant for assessment of the legal relations. It would be unacceptable if the applicant had had to lodge new complaints every time the community gardens association had adopted decisions to recompense the fuel and telephone expenses of its president.

27. The applicant also claimed that his main request in the second set of civil proceedings had been not to have the decisions of the meeting of the community gardens association of September 2012 annulled but to have the default judgment enforced. The applicant considered that after the adoption of the default judgment, the community gardens association had been prohibited from paying for the fuel and the telephone expenses of the president of its board in the future.

28. The applicant considered that the fact that the first set of civil proceedings had ended by a default judgment could not change its legal force. The Vilnius City 1st District Court examined the evidence as submitted by the applicant and the applicable law. The fact that a default judgment had been adopted had merely meant the implementation of the principle of concentration of the proceedings. Moreover, the Vilnius Regional Court in its decision of 7 June 2016 had not considered that the default judgment had had shortcomings and that they had had to be remedied.

29. The Government argued that the default judgment and the decision of the Vilnius Regional Court of 7 June 2016 had been adopted in two different sets of civil proceedings. In the Government's opinion, the default judgment had not had *res judicata* effect in respect of the decisions adopted by the community gardens association in 2012. The Government considered that no circumstances crucial to the determination of the dispute had been established by the default judgment because the Vilnius City 1st District Court had examined the claim as submitted by the applicant only and had not addressed the core of the dispute.

30. The Government submitted that the default judgment had to be interpreted as a prohibition on compensating the expenses of the president of the board of the community gardens association until the adoption of a new decision by it. In that context, the Government observed that there had been earlier decisions of the same nature adopted by the community gardens association in 2006 and 2009 (see paragraphs 6 and 7 above). The fact that

they had been adopted at different points in time meant that they had been different in substance.

31. Even if the decision of the Vilnius Regional Court of 7 June 2016 had to be considered as overturning the default judgment, the Government maintained that it had to be done in order to rectify a miscarriage of justice. When the default judgment had been adopted, the community gardens association had had no opportunity to contest the evidence submitted by the applicant and to effectively exercise its defence rights. This situation had been remedied by the decision of the Vilnius Regional Court of 7 June 2016 when it had agreed with the first-instance court that it had examined the domestic law provisions in detail and the first-instance court's finding that the default judgment had not contained the main principles of the functioning of the community gardens association and other particularities of its functioning.

32. Also, the Government submitted that the applicant did not explicitly ask to execute the default judgment in his claim to the Vilnius City 1st District Court in the second set of civil proceedings.

B. The Court's assessment

33. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

34. Legal certainty presupposes respect for the principle of *res judicata*, that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not grounds for re-examination (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

35. The Court observes that in all legal systems the *res judicata* effects of judgments have limitations *ad personam* and as to material scope (see *Esertas v. Lithuania*, no. 50208/06, § 22, 31 May 2012).

36. Turning to the present case, the Court notes that although both sets of proceedings concerned the same parties – the community gardens association and the applicant, the impugned decisions of the community

gardens association were adopted in different points in time (see paragraphs 9 and 12 above). Also, while the first set of civil proceedings concerned solely the compensation for the fuel and telephone expenses of the president of the board, the second set of civil proceedings concerned the compensation for both the president of the board and the treasurer of the community gardens association as well as other issues raised by the applicant, namely the agreements concluded by S.S. and M.A. and the applicant's request that S.S. and M.A. returned to the community gardens association certain amounts of money (see paragraph 13 above). The reasoning provided in the first set of civil proceedings was very succinct, while the reasoning provided in the second set of civil proceedings was much more extensive and included an elaborate analysis of the functions of the community gardens association and the possibility of remuneration of expenses of its board members (see paragraphs 8, 14 and 15 above). While the Court accepts the importance of the principle of *res judicata*, also established in domestic law and practice (see paragraphs 21, 23 and 24 above), it cannot conclude that both civil proceedings concerned exactly the same legal circumstances and hence the same legal relations, which were crucial for deciding the dispute (compare and contrast *Esertas*, cited above, § 23). Therefore, the Court shares the Government's view that the two civil claims were not identical.

37. Moreover, in the present case, unlike in *Brumărescu* (cited above), the 2011 default judgment was not quashed. It was established in the second set of civil proceedings that the prohibition to compensate the president of the board of the community gardens association was not absolute and did not prevent it from reconsidering the issue of compensation in the future (see paragraphs 14 and 15 above). The Court observes that, as the default judgment was adopted on the basis of arguments submitted solely by the applicant, that court based its findings on the formal assessment of evidence (see paragraph 8 above). However, in the second set of civil proceedings, the domestic courts examined the principles on which the existence of community gardens association were based, the nature of the activities of the community gardens, and held that the court in the default judgment had not addressed the core of the dispute (see paragraphs 14 and 15 above).

38. In these circumstances, the Court emphasises the subsidiary nature of its role and sees no reason to depart from the conclusions of the Vilnius Regional Court, which found that there was nothing unreasonable in the community gardens association's decision to compensate for certain expenses of its president of the board and treasurer and which were based on its direct knowledge of the facts of the case and the domestic law.

39. It follows that the application is manifestly ill-founded and must, as such, 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 21 February 2019.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President