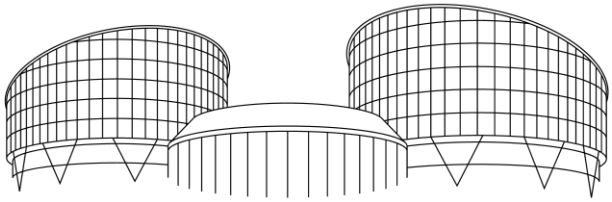

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 20510/08
by Aurelijus BERŽINIS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 13 December 2011 as a Committee composed of:

Dragoljub Popović, *President*,
Danutė Jočienė,
Paulo Pinto de Albuquerque, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having regard to the above application lodged on 19 November 2005,

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

The applicant, Mr Aurelijus Beržinis, is a Lithuanian national who was born in 1952 and lives in Jonava. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

A. The circumstances of the case

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

1. The first set of civil proceedings

On 21 April 1988 the applicant launched a claim in the courts for the division of joint property after divorce.

On 1 December 1993 the court satisfied the request by the applicant and suspended the proceedings until a related case between the same parties would be resolved. The proceedings were reopened by the applicant's request on 17 June 1998. On 18 September 1998 the applicant and the other party failed to attend the hearing.

On 20 November 1998 the proceedings were again suspended on the applicant's request based on his health condition. By the same decision the applicant was obliged to inform the court about his ability to participate at the court hearings which he later failed to do.

On 8 June 2001 the applicant had suffered major injuries after a fall from a building. On 10 August 2001 the Kaunas City District Court suspended the proceedings due to the applicant's ill health until further notice from the applicant.

On 7 February 2002 the Kaunas City District Court asked the applicant about his health and whether he would be able to participate in the hearing. On 26 February 2002 the applicant informed the court that he was unable to participate in the proceedings, as his health was in a bad state.

The proceedings were recommenced on 12 December 2003. Since then the applicant did not attend the hearings.

On 6 October 2004 the Kaunas City District Court refused the applicant's request to remove the judge from the case as being completely without merit and unsubstantiated by evidence.

On 4 November 2004 the applicant in writing requested suspension of the proceedings. However, on the same date the Kaunas City District Court adopted a decision to leave the claim unexamined on the grounds of his non-attendance of the hearing and that the request he had sent seeking a postponement of the hearing had not enclosed any documents justifying his non-attendance. The court also observed that the applicant failed to attend a number of hearings and thus had himself caused the delay in the case.

The applicant appealed to the Kaunas Regional Court. He then filed a request with the Court of Appeal seeking the removal of all the Kaunas Regional Court judges from his case and the transfer of the case to another court. His request was dismissed as unfounded.

On 14 February 2005 the Kaunas Regional Court dismissed the appeal by the applicant against the district court decision of 4 November 2004. The court stated that the applicant had been duly informed about the hearing in advance. The court observed that the case had been before the courts since 1988 and the parties to the proceedings were under an obligation to use their procedural rights in good faith and to help expedite the proceedings, informing the court in advance if one party could not be present at the

hearing and to provide justification for such absences. The court also noted that the applicant had not sent a representative to the hearing.

On 20 May 2005 the Supreme Court refused to examine the appeal on points of law as presenting no grounds for cassation.

2. The second set of civil proceedings

On 16 September 1994 the applicant's former wife, V.V., a lawyer by profession, sold the apartment which was purportedly jointly-owned. On 3 March 1995 the applicant launched a claim for annulment of the contract on selling of the apartment.

On 7 June 1995 the Kaunas City District Court suspended the proceedings until the resolution of the first case concerning the division of the jointly-owned property.

On 4 January 2002 the Kaunas City District Court reopened the proceedings. The applicant failed to attend the hearing of 11 February 2002. On the same date the court reviewed the case and decided to suspend it again, as the case on division of the property was still not resolved.

On 2 March 2004 the Kaunas City District Court reopened the proceedings. However, on 22 April 2004 the Kaunas City District Court granted the applicant's request to suspend the proceedings in the second set of proceedings until the resolution of the first case.

On 14 April 2005 the Kaunas City District Court decided to renew the examination of the case.

On 4 May 2005 the court decided to leave the claim unexamined. The court observed that the applicant had failed to attend the hearing after refusing to accept the summons. The applicant's refusal was duly noted on the document for the delivery of the summons. The court further noted that the applicant was under an obligation to act in good faith and to assist to expedite the proceedings. However, the applicant's behaviour was causing delays as he often failed to attend hearings without explanation or justification. As the applicant had not requested leave to have the case examined in his absence, the court had declined to examine the case in accordance with domestic law provisions.

On 30 September 2010 the Kaunas Regional Court dismissed the applicant's request for re-opening of the proceedings observing, *inter alia*, that the decision of 4 May 2005 had never precluded the applicant from submitting the same claim again.

3. Other proceedings initiated by the applicant

On an unspecified date the applicant contacted the police claiming that V.V. had committed a crime by selling the apartment. The police refused to institute criminal proceedings against V.V. on 2 August 2004, having found no evidence that she had committed a crime. On 28 October 2004 the public prosecutor's office upheld that decision.

The applicant complained to the Prosecutor General's office that there had been an abuse of power by the Kaunas City District Court when hearing the first civil case. On 16 March 2006 the prosecutor refused to start a pre-trial investigation having found no evidence of the alleged crimes or violations of the applicant's defence rights.

COMPLAINTS

1. Under Article 6 § 1 of the Convention the applicant complained about the length of civil proceedings. The applicant alleged that the courts had caused the delay deliberately in order to protect V.V. from criminal liability for the alleged illegal transfer of the property.

2. The applicant complained under Article 1 of Protocol No. 1 of the Convention that the State has failed to protect his property since 1994, when the family's apartment was sold by his former wife V.V.

3. The applicant further complained under Article 13 of the Convention that he had not been afforded an effective remedy for the protection of his property rights or the right to a fair hearing, given that V.V. and allegedly guilty State officials had not been accused of any crimes.

4. Under Article 14 of the Convention the applicant complained that his right to property and a fair hearing had not been guaranteed due to V.V.'s gender, her political views and her profession.

THE LAW

1. The applicant complained that the length of both sets of civil proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

The Court notes that even though the civil proceedings were initiated in 1988 and 1995, the period to be taken into consideration began on 20 June 1995, when the Convention entered into force with regard to Lithuania, and ended on 20 May 2005 and 4 May 2005 respectfully. They thus lasted almost ten years.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

The Court has previously found the complaints to be manifestly ill-founded in the cases where the applicant's behaviour contributed substantially to the delay in the proceedings and no substantial delays were imputable to the State (see *Ivashchenko v. Ukraine* (dec.), no. 23728/03, 24 March 2009; *Ancel v. Turkey*, no. 28514/04, §§ 53-56, 17 February 2009).

The Court draws attention to the applicant's failure to attend numerous hearings, his requests to suspend proceedings, remove judges from the case and transfer the case to another court. Therefore, the proceedings were often in stagnation for months. It must also be noted that the proceedings were substantially delayed due to the applicant's state of health. Those protractions in the proceedings cannot be imputable to the State. By contrast, the Court also observes that the domestic courts took efforts to examine the cases speedily.

In view of the above considerations and in the light of the criteria established in its case-law in similar cases, the Court considers that both sets of civil proceedings concerning property rights of the applicant do not disclose any appearance of a breach of the "reasonable time" requirement of Article 6 § 1 of the Convention. This complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. As to the applicant's complaint under Article 1 of Protocol No. 1, it should be reiterated that under Article 35 of the Convention the Court may only deal with applications after all domestic remedies have been exhausted. It notes that the Convention institutions have consistently taken the view that this condition is not satisfied if a remedy has been declared inadmissible for failure to comply with a formal requirement (see *Wojciechowski v. Poland* (dec.), no. 23362/02, decision of 13 December 2005).

The Court finds that the civil claims concerning the division of joint property and annulment of the sale contract were intended to protect the applicant's property rights. However, by the decisions of the domestic courts of 4 November 2004 and 4 May 2005 both civil claims were left unexamined as it was established that the applicant failed to attend the hearings without justification and to pursue his claims in accordance with the domestic procedural law. The Court finds no reason to depart from the domestic courts' conclusions.

Accordingly, given that in the present case the national courts did not examine the substance of the applicant's claim, the Court finds the applicant did not exhaust the available domestic remedies. This part of the application must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

3. The applicant further complained under Article 13 of the Convention that the Lithuanian courts were not an effective remedy in the framework of

the proceedings concerning his property rights and that his requests to institute criminal proceedings against those responsible for the deprivation of his property had been dismissed.

In respect of the alleged infringement of the applicant's procedural rights, the Court considers that although the applicant relied upon Article 13 of the Convention, this complaint falls to be examined only under Article 6 § 1.

The Court recalls that the "right to court", of which the right of access is one aspect, is not absolute and may be subjected to restrictions, provided that these pursue a legitimate aim and are proportionate (see, *mutatis mutandis*, *Cudak v. Lithuania* [GC], no. 15869/02, § 55, 23 March 2010). Numerous times the applicant failed to attend the court hearings without any justification, nor did he send a representative to conduct the case on behalf of the applicant. The national courts had provided clear reasons for not examining the claims by the applicant. Insofar as the applicant himself contributed to the protraction of the proceedings, the Court considers that the applicant failed to comply with the domestic procedural requirements governing the examination of civil cases before the courts. The Court finds this part of the application to be manifestly ill-founded. It should therefore be rejected under Article 35 §§ 3 and 4 of the Convention.

As concerns the applicant's requests to the prosecutors to institute criminal proceedings against the defendant in the civil case as well as against State officials, the Court reiterates that the Convention does not guarantee a right to have third party prosecuted or sentenced for a criminal offence. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and should be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

4. The applicant also complained under Article 14 of the Convention about the alleged discrimination in respect of his former wife's status. However, having regard to all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously,

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Dragoljub Popović
President