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

SECOND SECTION

DECISION

Application no. 68611/14
Jolita GUBAVIČIENĖ
against Lithuania

The European Court of Human Rights (Second Section), sitting on 15 September 2015 as a Committee composed of:

Paul Lemmens, *President*,
Helen Keller,
Egidijus Kūris, *judges*,
and Abel Campos, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 October 2014,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Jolita Gubavičienė, is a Lithuanian national, who was born in 1952 and lives in Domeikava.

A. The circumstances of the case

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

The applicant and her husband V.G. were co-owners of a private company *Gratus*. In 2007 this company took a loan of 12,9 million Lithuanian litai (LTL, approximately 3,7 million euros (EUR)) from the commercial bank *Šiaulių bankas*. Soon afterwards the applicant signed an authorisation for V.G. to mortgage her personal property – an apartment in the town of Neringa – to *Šiaulių bankas* in order to secure the loan taken by *Gratus*.

On 1 December 2008 the applicant signed a new authorisation for V.G. to mortgage two plots of land in the city of Kaunas, owned jointly by him and the applicant. The applicant claims that she was planning to take a loan

for her own purposes and intended the land to be mortgaged as a security for this future loan.

In 2010 the company *Gratus* went bankrupt. *Šiaulių bankas* transferred its creditor rights to another private company *Minera*.

According to the applicant, in 2011 she discovered that the loan taken by *Gratus* in 2007 had been secured not only by the mortgage of her apartment in Neringa but that V.G. had also mortgaged other property: the aforementioned land, as well as his own personal property – an apartment and non-residential premises in Kaunas. When mortgaging the land V.G. had indicated that he was acting on the basis of the authorisation signed by the applicant on 1 December 2008.

The applicant instituted court proceedings against co-defendants V.G. and the companies *Minera* and *Gratus*. *Šiaulių bankas* participated as a third party. The applicant requested the court to annul the mortgage on the land, as well as V.G.'s apartment and non-residential premises. She claimed that her husband could not mortgage their joint property without her consent and that she had not given such consent: the authorisation of 1 December 2008 authorised V.G. to mortgage the land only to secure the applicant's personal loan but not the loan taken by the company *Gratus*. The applicant also argued that even though the apartment and non-residential premises in Kaunas had originally been V.G.'s personal property, she had substantially improved them from her personal funds, so they had become the joint property of both spouses and thus V.G. could not mortgage them without her consent either.

In 2012 the Kaunas Regional Court upheld the applicant's claim concerning the land but dismissed the claim concerning the other property.

In 2013 the Court of Appeal annulled the first instance decision and dismissed the applicant's claim in its entirety. The court found that the authorisation of 1 December 2008 explicitly granted V.G. a broad discretion to mortgage the land and did not refer to any specific loan. In addition, the court held that when mortgaging the land to secure the company's loan V.G. acted in the interests of the applicant, who was one of the co-owners of *Gratus*. On these grounds the court refused to annul the mortgage. Finally, the Court of Appeal held that there was insufficient evidence to find that V.G.'s personal property in Kaunas had been improved by the applicant sufficiently to become their joint property, and as a result, V.G. had not needed the applicant's consent to mortgage this property.

On 23 April 2014, the Supreme Court, sitting in a panel of three judges, upheld the decision and the reasoning of the Court of Appeal. The panel included G.S. who, before being appointed as a judge, in 2007-2013 worked as an attorney in the law firm which represented *Šiaulių bankas* (a third party) in the aforementioned civil proceedings.

B. Relevant domestic law

Article 65 § 1 of the Code of Civil Procedure (hereinafter "CCP") provides that a judge must recuse himself from the case or his recusal can be requested, *inter alia*, when the outcome of the case may affect his rights or obligations due to his relationship with one of the parties, or when he is or was representing one of the parties in the case, or when he has a direct or indirect interest in the outcome of the case. Article 66 of the CCP provides that a judge must also recuse himself from the case or his recusal can be requested in any other circumstances which may raise doubts as to his impartiality.

Article 356 § 1 of the CCP provides that a cassation appeal is examined by the Supreme Court in a written procedure. Article 133 § 3 of the CCP provides that when a case is examined in a written procedure, the information about the date, time and place of the examination and the composition of the panel is announced in a specially designated website at least seven days before the examination. This information can also be obtained directly from the relevant court.

Article 355 § 1 of the CCP provides that the parties to the cassation proceedings have the right to request the removal of judges. When the case is examined in a written procedure, the parties need to submit their requests in writing before the start of the examination.

COMPLAINTS

The applicant complained under Article 1 of Protocol No. 1 to the Convention and Articles 6 § 1 and 13 of the Convention that there had been an unlawful interference with her property rights because the domestic courts erred when dismissing her claims.

The applicant also complained under Article 6 § 1 of the Convention that one of the three Supreme Court judges was not independent and impartial because before becoming a judge he used to work in a law firm which represented a third party in the proceedings.

THE LAW

The applicant complained that the domestic courts erred in assessing the evidence in the civil proceedings and incorrectly refused to annul the mortgage of her and her husband's property. She invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the relevant parts of which read as follows:

Article 6. Right to a fair trial

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

Article 13. Right to an effective remedy

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 1. Protection of property

"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."

The Court reiterates that it is not a court of appeal for the decisions of domestic courts and that, as a general rule, it is for those courts to interpret domestic law and assess the evidence before them (see *Paplauskienė v. Lithuania*, no. 31102/06, § 61, 14 October 2014, and the cases cited therein). As a result, the Court observes that the complaint at hand is essentially of a "fourth instance" nature and must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

The applicant also complained under Article 6 § 1 of the Convention that one of the three Supreme Court judges was not independent and impartial because before becoming a judge he used to work in a law firm which represented *Šiaulių bankas* (a third party) in the proceedings.

The Court reiterates that in accordance with Article 35 § 1 of the Convention, it may only deal with the matter after all effective domestic remedies have been exhausted. The purpose of Article 35 § 1 is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and the cases cited therein).

In this context the Court observes that Lithuanian law allows the parties to the cassation proceedings to request the removal of a judge from examining the case if they have doubts as to his or her impartiality. The composition of the panel of the Supreme Court is made public at least seven days before the case is examined and the right to request removal may be exercised until the day of the examination. Furthermore, the list of grounds for removal provided in the Code of Civil Procedure covers situations where a judge has had a professional relationship with a party to the case or where

a judge may have a direct or indirect interest in the outcome of the case (see "Relevant domestic law" above).

The Court notes that the applicant did not claim that the information about the composition of the panel had not been made public in time or that she had been unable to access such information. The applicant also did not claim that she had only become aware of G.S.'s prior employment at the law firm after the adoption of the Supreme Court's decision. Nor did she provide any other reasons as to why the aforementioned domestic remedy may not have been effective in the circumstances of the present case. As a result, the Court finds that an effective domestic remedy was available for the applicant to request the removal of the judge whose impartiality she questioned.

Accordingly, the complaint must be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention due to non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 8 October 2015.

Abel Campos
Deputy Registrar

Paul Lemmens
President