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

SECOND SECTION

DECISION

Application no. 10646/08
Vladas KOTURENKA
against Lithuania

The European Court of Human Rights (Second Section), sitting on 29 September 2015 as a Chamber composed of:

Işıl Karakaş, *President,*
Paul Lemmens,
Helen Keller,
Ksenija Turković,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 19 February 2008,

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 Vladas Koturenka, is a Lithuanian national, who was born in 1971 and lives in Trakai. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

A. The circumstances of the case

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

3. The applicant and his wife got married in 1999 and subsequently had two sons. In 2004 the applicant's wife moved to Germany to pursue

doctoral studies and, with the applicant's consent, she took the children with her. A year later the applicant's wife initiated divorce proceedings before the Lithuanian courts.

4. On 25 May 2007 the Vilnius City First District Court granted the divorce. The court found that the marriage had broken down due to the applicant's fault – it was established that he had regularly gambled, using his wife's and her relatives' money for that purpose.

5. During the court proceedings, the applicant agreed that the custody of the two children be awarded to his ex-wife. He subsequently changed his position, first requesting custody of the older son and later of the both children. However, the court held that the interests of the children were best served by awarding custody to their mother. It found that the children were very attached to their mother and to each other, and that the applicant had not maintained regular contact with them since their move to Germany.

6. The applicant was ordered to pay maintenance to the two children. The court held that the amount of maintenance had to be calculated according to German law and found this amount to be 247 euros (EUR) per month for each child. The court then noted that the applicant did not have sufficient income to provide this amount: during the court proceedings the applicant himself stated that he was only able to afford 200 Lithuanian litai (LTL, approximately EUR 58) per month for each child. However, the court also noted that the applicant owned an apartment in Vilnius, the market value of which was estimated to be LTL 205,000 (EUR 59,400). Stressing that the interests of children took priority over the interests of their parents, the court awarded the apartment as a form of maintenance jointly to the two children.

7. On 4 October 2007 the Vilnius Regional Court upheld the decision of the lower court with certain amendments. The court held that the maintenance needs of the children had to be determined in accordance with Lithuanian (and not German) law. The court re-evaluated the amount of maintenance on the basis of the documents submitted by the applicant's ex-wife and accepted her claim that LTL 2,000 (EUR 580) per month for each child would be appropriate. The court then estimated that the applicant's apartment, sold at its market price (see paragraph 6 above), could provide each child with approximately LTL 600 (EUR 174) per month until they turned eighteen. It also concluded that the applicant's ex-wife nonetheless had to bear a significantly larger financial burden in the upbringing of their children. Therefore, the court held that awarding the applicant's apartment for the maintenance of the children was proportionate and justified.

8. The applicant lodged a cassation appeal with the Supreme Court arguing that the decision to award his apartment as a form of maintenance was unjustified. However, on 21 November 2007 the Supreme Court refused to examine the appeal on the ground that it raised no important legal

questions. The applicant then lodged a new cassation appeal, but on 8 January 2008 the Supreme Court refused to examine it (on the same grounds).

B. Relevant domestic law and practice

1. Constitutional and statutory provisions

9. Article 38 of the Constitution of the Republic of Lithuania provides that parents have the obligation to support their children until they come of age.

10. Article 3.3 of the Civil Code provides that the legal regulation of family relationships shall be based on, *inter alia*, the priority of protecting and safeguarding the rights and interests of children.

11. Article 3.192 of the Civil Code reads as follows:

> "1. Parents shall be obliged to maintain their children until their majority. The procedure and form of maintenance shall be determined by the mutual agreement of the parents.
>
> 2. The amount of maintenance must be commensurate with the needs of the children and the financial situation of their parents; it must ensure the conditions necessary for the children's development.
>
> 3. Both parents must provide maintenance to their children until their majority in accordance with their financial situation."

12. Article 3.196 § 1 of the Civil Code reads as follows:

> "1. The court may issue a maintenance order obliging the parents (one of the parents) who fail in their duty to maintain their children to provide maintenance to their children in the following ways:
>
> 1) regular monthly payments:
>
> 2) a defined lump sum;
>
> 3) award of a particular property."

13. Article 3.198 § 1 of the Civil Code provides that when making a maintenance order in respect of two or more children, the court shall determine an amount sufficient to meet at least the minimal needs of all the children.

14. Article 668 § 1 of the Code of Civil Procedure provides that judgments cannot be enforced against property which is essential for the debtor's subsistence, occupation or studies.

2. Practice of the Supreme Court

15. On 23 June 2005 the Senate of the Supreme Court issued decision no. 54 "On the application in the case-law of laws regulating parents' duty to financially maintain their children before the age of majority", which was

aimed at harmonising the case-law of the lower courts. The relevant parts of the decision read as follows:

> "10. Parents' financial situation shall be determined taking into account all types of income: wages; other employment-related income; royalties; pensions; scholarships and social benefits; income from commercial and economic activity (rent, dividends and others); funds in banks and other credit institutions; movable (cars, valuable portable items, jewellery) and immovable (houses, flats, other buildings, land, forests, and so forth) property; securities (equities, bonds); legal entities (sole proprietorships, and so on) and their property. In determining the financial situation of parents, other statutory dependants are also to be taken into account.
>
> 11. When determining the proportionality between the needs of the child and the parents' financial situation, the court should take into consideration the fact that the amount of maintenance must be commensurate with the reasonable needs of the child and the parents' financial situation (Article 3.192 § 2 of the Civil Code) ...
>
> Maintenance must also be imposed on a father (or mother) who receives only the minimum wage, a State pension or other minimum income. The parents' severe financial situation is an important criterion for calculating the amount of maintenance but it cannot be grounds for exempting the father (or mother) from the obligation to provide maintenance for their children ...
>
> 12. The court may award maintenance in the following forms: regular monthly payments; a defined sum of money; an award of a particular property to a child (Article 3.196 § 1 of the Civil Code).
>
> The form of maintenance chosen must allow the maximum satisfaction of the needs of the child, taking into account the interests of the child and the financial situation of the parents. The court may choose on its own initiative the form of maintenance which satisfies the child's best interests (Article 376 § 3 of the Code of Civil Procedure).
>
> The selection criteria for the form of maintenance are the following: the child's needs, age and health status; the parents' financial situation; the structure of the parents' property; their income level and income periodicity; and the father's (and mother's) ability to properly manage the assets and other aspects relating to property management.
>
> In selecting the form of maintenance, the court must take into account the fact that maintenance by its nature has the purpose of satisfying the everyday needs of children before their majority: the child's food, clothing, housing, education, health and development.
>
> Maintenance in the form of periodic payments paid monthly guarantees a fixed amount for the child's maintenance every month. Such a form of maintenance should be applied where the child's father (or mother) has a permanent income (earnings, pensions, allowances, and so forth).
>
> A defined sum of money as maintenance may be determined where this is allowed by the available funds of the child's father (or mother) who is liable for maintenance. The full amount of maintenance in a specific, one-off payment of money shall be determined by multiplying the amount of maintenance per month by the number of months until the child's majority.

> Maintenance in the form of awarding ownership of the father's (or mother's) specific property to a child may be applied where the father (or mother) has a property and by using it or realising [its value], the income for the child's maintenance may be received or the child's needs may be met. A court deciding to award maintenance in this form must take into account the type of the property to be awarded, the father's (or mother's) ability to manage the property, future costs for the property's maintenance, liquidity of the property, and so forth. The value of the property shall be determined on the basis of the value determined by market prices at the time the decision is rendered (Articles 3.4, 3.119 of the Civil Code) ..."

16. In case no. 3K-3-303/2008 of 26 May 2008, the Supreme Court held as follows:

> "The purpose of maintenance is to fulfil the child's daily needs, and it is constantly necessary, every day, and not some time in the future when the parents will be able or willing to provide for those needs. It is therefore important to secure stability of maintenance ... The parent who lives with the minor child also assumes the daily care of the child which is normally not compensated for by awarding maintenance [from the other parent]. Meanwhile both parents are responsible for ensuring a safe environment and proper conditions for the child to grow and develop, for providing support in the child's education and realisation of his or her talents and interests. The Supreme Court has established in its case-law that inadequate compliance or non-compliance with parental duties can be justified only in exceptional circumstances which are outside the parents' control; therefore, parents ought to evaluate their financial situation and readiness to take care of a child in advance; in failing to evaluate their readiness to raise a child, develop his personality and provide suitable conditions for his development, parents consciously assume an increased social risk and its consequences (ruling of the Supreme Court in civil case no. 3K-3-259/2004 of 26 April 2004). Thus, when assessing the party's financial status, the court evaluates not only his or her existing possessions and income, but also the action that he or she has taken to ensure income commensurate with his or her age and professional capabilities, which could be used to provide maintenance for his or her children ..."

COMPLAINTS

17. The applicant complained under Article 1 of Protocol No. 1 to the Convention about the decision of the domestic courts to award his apartment as a form of maintenance for his two children. He claimed that the apartment was his "only personal property" and argued that his children's interests would be better protected by ordering him to provide regular payments.

18. The applicant also complained under Article 6 § 1 of the Convention that the appellate court had not overturned the decision of the first-instance court after finding that the latter court had incorrectly relied on German law. He also argued that the courts had not examined the financial situation of his ex-wife and that their children's maintenance needs had not been

proved, so the courts had failed to distribute the financial burden proportionately between the two parents.

THE LAW

A. The Government's submissions regarding non-exhaustion of domestic remedies

19. The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. The Government contended that in his two cassation appeals the applicant had raised no important legal questions, only factual matters which could not be reviewed in cassation. The Government relied on the case of *Lenkauskienė v. Lithuania* ((dec.), no. 6788/02, 20 May 2008) in which the Court held that the applicant's failure to raise legal questions in her appeal meant that she had failed to exhaust domestic remedies.

20. The Court notes that it is for the Supreme Court to decide questions of domestic law, particularly whether the case was important for the consistent interpretation of Lithuanian law. What matters for the Court is whether in those appeals the applicant "at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law" raised the complaints which he subsequently made to the Court (see, in particular, *Lietuvos Nacionalinis Radijas ir Televizija and Tapinas and Co Ltd. v. Lithuania* (dec.), no. 27930/05, 6 July 2010).

21. Having examined the applicant's cassation appeals, the Court observes that the applicant explicitly relied on relevant provisions of the Civil Code and Lithuanian case-law, arguing that the decision to award his apartment as a form of maintenance was unjustified. In view of this, the Court finds that the legal arguments made by the applicant to the Supreme Court included in substance a complaint connected with Article 1 of Protocol No. 1 to the Convention (see *Lietuvos Nacionalinis Radijas ir Televizija and Tapinas and Co Ltd.*, cited above; contrast *Lenkauskienė*, also cited above). It follows that the Government's objection concerning the applicant's alleged failure to exhaust domestic remedies must be dismissed.

B. The applicant's complaints under Article 1 of Protocol No. 1 to the Convention

22. The applicant complained about the decision of the domestic courts to award his apartment as a form of maintenance for his children. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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."

23. The applicant claimed that the apartment was his only personal property. He argued that he was able to provide regular payments for the maintenance of his two children, so awarding them the apartment was not necessary either in the interests of the children, or in the public interest. As a result, the applicant complained that there had been an unjustified interference with his right to peaceful enjoyment of his possessions.

24. The Government acknowledged the interference with the applicant's right to peaceful enjoyment of his possessions but argued that this interference had been in conformity with Article 1 of Protocol No. 1. The Government submitted that the applicant had not in fact lived in or intended to live in the apartment at issue: during the domestic proceedings the applicant had provided a different address in Trakai as his place of residence, while his apartment in Vilnius had been let (*išnuomotas*). Thus, the domestic courts' decisions did not deprive the applicant of his place of residence. The Government also submitted that the amount of regular payments suggested by the applicant (LTL 200 per month for each child) was manifestly inadequate for the children's maintenance in Germany. As the domestic courts were required by law to give priority to the interests of the children, the award of the applicant's apartment as maintenance was necessary and justified.

25. The Court first observes that it is not in dispute between the parties that the award of the applicant's apartment as a form of child maintenance amounted to a deprivation of his property, and that Article 1 of Protocol No. 1 is therefore applicable.

26. The Court reiterates that in order to be compatible with Article 1 of Protocol No. 1 a deprivation of property must fulfil three conditions: it must be carried out "subject to the conditions provided for by law", which excludes any arbitrary action on the part of the national authorities; it must be "in the public interest"; and it must strike a fair balance between the owner's rights and the interests of the community (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012).

27. In the present case it is not in dispute that awarding the applicant's apartment as a form of maintenance for his children was carried out on the basis of the provisions of the Civil Code consistent with their interpretation in the case-law of the Supreme Court (see "Relevant domestic law and

practice" above). The Court sees no reason to doubt that this satisfies the principle of lawfulness and that the disputed measure was carried out "subject to the conditions provided for by law" within the meaning of Article 1 of Protocol No. 1.

28. Next the Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest" and in doing so they enjoy a certain margin of appreciation (see, among many other authorities, *Vistiņš and Perepjolkins*, cited above, § 106). In the present case it was not disputed that the aim of the interference with the applicant's property rights was to provide maintenance for his two minor children. The Court notes the existence of a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance and must be afforded significant weight (see *S.L. and J.L. v. Croatia*, no. 13712/11, §§ 62-63, 7 May 2015, and the cases cited therein). Accordingly, the Court is satisfied that the disputed measure was carried out "in the public interest".

29. Lastly, the Court has to ascertain if there was a reasonable relationship of proportionality between the interference with the applicant's property rights and the legitimate aim pursued; in other words, whether an individual and excessive burden was imposed on the applicant (see *Gogitidze and Others v. Georgia*, no. 36862/05, § 97, 12 May 2015, and the cases cited therein). In this context, the Court firstly notes the conclusion of the domestic courts that the interests of children in the present case were best served by awarding their custody to the applicant's ex-wife (see paragraphs 4 and 5 above). The Court further notes that the domestic courts thoroughly examined the maintenance needs of the two children in their country of residence, as well as the financial situation of the applicant and his ex-wife. The applicant himself stated during the domestic court proceedings that his income allowed him to provide maintenance of only LTL 200 (EUR 58) per month for each child, which the domestic courts found clearly insufficient to meet the children's daily needs in Germany. Therefore, awarding the applicant's property as a form of maintenance was considered the only available option to ensure that the applicant fulfilled his obligations. The Court also notes the observation of the Government, which was not disputed by the applicant, that the applicant did not live in the apartment which was awarded to the children, so the contested domestic decisions did not deprive the applicant of his home. Lastly, the Court takes into account the finding of the domestic court that even after awarding the applicant's apartment as a form of maintenance, his ex-wife continued to bear a bigger financial burden in the upbringing of their children (see paragraph 7 above). In these circumstances, the Court is not persuaded by

the argument that an individual and excessive burden was imposed on the applicant (see also *Mancini v. Italy* (dec.), no. 41812/04, 13 October 2005). In this context the Court notes that all awards of maintenance deprive the person concerned of his or her property, however, in principle they constitute a justified interference with that person's property rights in the best interests of the children.

30. Having regard to the above considerations, the Court is satisfied that the decisions of the domestic authorities struck a fair balance between the general interest of the community and the requirements of the protection of the individual's fundamental rights. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. The applicant's complaints under Article 6 § 1 of the Convention

31. The applicant complained that the appellate court had not overturned the decision of the first-instance court after finding that the latter had incorrectly relied on German law. He invoked Article 6 § 1 of the Convention, the relevant parts of which provide:

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

32. The Court notes that the Vilnius Regional Court, after overturning the legal grounds of the decision of the first-instance court, conducted a fresh assessment of the facts: it reassessed the children's maintenance needs on the basis of the submissions of the applicant's ex-wife (see paragraph 5 above). The Court further notes that the applicant did not complain that the proceedings before the appellate court were unfair, so his complaint relates essentially to the outcome of the case. In this context 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). This complaint is essentially of such a nature that the Court is asked to assess itself the facts which have led a national court to adopt one decision rather than another and thus disregard the limits imposed on its action (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 197, ECHR 2012, and, *mutatis mutandis*, the cases cited therein). As a result, this complaint must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

33. The applicant further complained under Article 6 § 1 that the domestic courts had not examined the financial situation of his ex-wife and that the children's maintenance needs had not been proved, so the courts

failed to distribute the financial burden proportionately between the two parents. Having regard to the materials submitted by the applicant (see paragraphs 4-7 above), the Court finds these claims unsubstantiated. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to 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 22 October 2015.

Stanley Naismith
Registrar

Işıl Karakaş
President