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

FOURTH SECTION

DECISION

Application no. 4964/11
Audrius LAZAUSKAS and Darius LAZAUSKAS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 6 September 2016 as a Chamber composed of:

András Sajó, *President,*
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 5 January 2011,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Audrius Lazauskas and Mr Darius Lazauskas, are Lithuanian nationals who were born in 1970 and 1966 respectively and live in Panevėžys, Lithuania and Vicar, Spain. They are represented before the Court by Mr S. Zabita, a lawyer practising in Vilnius.

A. The circumstances of the case

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

3. The applicants are brothers. After their mother's death in 2006, they requested a notary to issue them with a document confirming their right to inherit their late mother's property. They were issued with the document on

17 July 2006. The document stated that they had the right to inherit the money that their mother had deposited in several banks. On 17 November 2006 a bailiff drew up a factual circumstances statement record (*faktinių aplinkybių konstatavimo protokolas*) which indicated that 1,043,970 Lithuanian litai (LTL, approximately 302,354 euros (EUR)) had been found in a safe in a bank. On the basis of this document, on 22 November 2006 the applicants were issued with another document that stated that they had inherited LTL 1,043,970 in cash that had been found in a safe in a bank.

4. In 2006 a pre-trial investigation was instituted in order to determine the origin of the money found in that safe. On 21 November 2006 the prosecutor decided to restrict the applicants' property rights to the money found in the safe and to the money in the deposit accounts.

5. On 22 November 2006 the Panevėžys District Court authorised a search to be conducted in the apartment of the applicants' mother; the search was performed on 27 November 2006. The first applicant was present during the search and did not have any objections to it; he signed the search report.

6. The national tax authority was informed about the pre-trial investigation and started its own inspection. On 15 June 2007 it determined that no documents confirming the origin of the money in the safe existed. The national tax authority calculated the personal income tax on the money found in the safe; together with late-payment interest, it amounted to LTL 320,533 (approximately EUR 92,833).

7. On 19 July 2007 the Panevėžys Regional Court decided to apply interim measures and seized the immovable property of the applicants' mother, as well as LTL 320,533 of the money deposited in the bank. These measures were never complained against.

8. On 18 July 2007 the prosecutor and the national tax authority instituted court proceedings seeking to extend the time-limit for their lodging a complaint with the Panevėžys Regional Court about the applicants' failure to pay the tax due and to oblige the applicants to pay LTL 320,533 in tax surcharges. The domestic law provided that creditors of a deceased person could declare their claims to that person's heirs or to the court within three months of the date on which the inheritance of the heirs was declared. The prosecutor and the national tax authority stated that they had only found out about the unpaid tax when the national tax authority had inspected tax declarations dated 15 June 2007 submitted by the applicants' mother. On 31 January 2008 the Panevėžys Regional Court extended the time-limit for lodging the above-mentioned complaint. The court also held that the claims against the deceased should automatically pass to the heirs and that they should become personally liable for the deceased's debts. The court ruled that each applicant had to pay an equal part of the income tax

(plus late-payment interest) in respect of the money belonging to their mother found in the safe of the bank.

9. On 16 December 2008 the Court of Appeal upheld the decision of the court of first instance.

10. On 6 May 2009 the Supreme Court held that the lower courts had not respected the principle of equality of arms because one applicant had lived in Spain and his request for the hearing of 16 December 2008 before the Court of Appeal to be postponed had been refused one day before the start of that hearing. Consequently, the case was remitted for re-examination by the Court of Appeal.

11. On 30 March 2010 the Court of Appeal held that income declarations submitted by the applicants' mother had been examined and that no proof of the origin of the money in the safe had been found; therefore, her heirs were liable to pay income tax on their inheritance. The applicants asked the court to summon the manager of the bank where the money was found in the safe, but this request was refused. The court considered that the manager had no knowledge about the contents of the safe and that to hear him would have been excessive and unnecessary. The applicants also, without providing any details, complained that the lower-instance court had been biased as it had been discussed in the media that one of the applicants had allegedly been a member of an organised criminal group. However, the Court of Appeal stated that there was no evidence that discussion of that information in the media had influenced the decisions of the domestic courts; moreover, the applicant had not provided any details regarding that alleged bias. The applicants lodged a cassation appeal with the Supreme Court, which dismissed it on 7 July 2010 as not raising important legal issues.

B. Relevant domestic law and practice

12. Article 92 of the Law on Tax Administration provides that tax surcharges that have not been paid by a deceased person shall be paid by his heirs, in accordance with the procedure laid down in the Civil Code.

13. Article 5.50 § 1 of the Civil Code provides that acceptance of an inheritance may not be partial or subject to conditions or exceptions. Article 5.50 § 3 and Article 5.60 § 1 provide that heirs must either accept their inheritance or renounce it within three months of the day on which the inheritance procedure commences. Article 5.63 § 1 provides that the creditors of a deceased person shall have the right, within three months of the day of the opening of succession, to make claims against the heirs who have accepted the succession or the executor of the will or administrator of the inheritance, or to bring an action in respect of the inheritable property. Article 5.63 § 4 provides that the court may extend the time-limit specified in § 1 of this Article, where the time-limit was missed for important reasons

and the time lapse from the opening of the inheritance does not exceed three years.

14. Article 5.52 of the Civil Code at the material time provided that if an estate was accepted by several heirs, all those heirs were to be liable for the debts of the deceased to the extent of their entire respective property.

15. The relevant parts of Article 145 of the Code of Criminal Procedure provide that in cases where there are grounds for assuming that there are, on particular premises or in any other place or in the possession of some person, instruments used in a crime, tangible objects and valuables obtained through criminal activity, or items or documents that might be relevant for the investigation of a crime, a pre-trial investigator or a prosecutor may conduct a search in order to locate and seize them. Such a search is carried out on the basis of a reasoned approval issued by a pre-trial investigation judge. This approval must specify what objects are to be searched for. In cases of utmost urgency, a search may be carried out with the authorisation of a pre-trial investigation officer or a prosecutor; however, in such a case approval of the legitimacy of the search in question must be obtained from a pre-trial investigation judge within three days of the time at which the search was conducted. The search must be carried out in the presence of the owner, tenant, or manager of the flat, house or any other premises in which the search is being conducted, or an adult member of their family or a close relative. Article 149 of the Code of Criminal procedure provides that an officer has to announce the authorisation to conduct the search and to give one copy of that authorisation to the person whose premises are being searched. Only objects relevant to the investigation can be taken, and all of the objects and documents found have to be shown to those participating in the search and be entered in the record of the search.

16. Article 6 § 1 of the Law on Income Tax at the material time provided that the income tax could amount to 15 or 33 per cent.

17. Summary of the Supreme Administrative Court of 21 September 2011, compiling case-law related with tax legislation (*Lietuvos vyriausiojo administracinio teismo praktikos, taikant mokesčių administravimą reglamentuojančias teisės normas, apibendrinimas*), provides that in respect of some violations of tax laws criminal or administrative responsibility may arise. However, the duty to pay taxes and related matters are regulated by tax laws; therefore, the laws on criminal or administrative responsibility are not applicable.

18. Summary of the Supreme Administrative Court of 7 March 2012, compiling case-law related with tax legislation, provides that late-payment interest is intended firstly to compensate the State for financial losses that arise when taxpayers do not pay their taxes in on time.

19. The Supreme Court has noted that the courts, when deciding whether to extend the time-limit specified in Article 5.63 § 1 of the Civil Code, have to assess why the time-limit has been missed, and to adopt a procedural

decision on the extension of the time-limit (for example, decision of 14 April 2014 (no. 3K-7-18/2014)). The Supreme Court has also noted that the courts, when deciding on whether to extend the time-limit, have to assess not only the objective circumstances, but also other circumstances of legal importance (for example, decision of 15 June 2007 (no. 3K-3-258/2007)). The assessment of the important reasons is done by the court examining the case on a case-by-case basis (for example, decision of the Supreme Court of 30 October 2006 (no. 3K-3-546/2006)).

COMPLAINTS

20. The applicants raised several complaints under Article 6. Firstly, they complained that, irrespective of any personal guilt or innocence on their part, they had to pay tax surcharges and late-payment interest in respect of their inheritance. They also complained that their right to a fair hearing had been breached when the domestic courts had extended the time-limit for the prosecutor and the national tax authority to lodge their complaint (see paragraph 8 above). Moreover, they complained that the domestic courts had acted arbitrarily in refusing to call as a witness the manager of the bank where the money was found and that as a result they had had to pay tax surcharges following alleged tax evasion by their late mother.

21. They also complained under Article 8 of the Convention that a search had been performed in their mother's apartment without any legal grounds and that this had breached their right to respect for their home.

22. Lastly, they complained under Article 1 of Protocol No. 1 to the Convention that their right to peacefully enjoy their possessions had been breached by the prosecutor's order for their property rights to their mother's bank deposit accounts to be restricted and the subsequent decisions of the domestic courts to seize their mother's property.

THE LAW

A. The applicants' complaint under Article 6 of the Convention on account of an obligation to pay tax surcharges

23. The applicants complained that, irrespective of any personal guilt or innocence on their part, they had had to pay tax surcharges and late-payment interest in respect of their inheritance – that is to say money (found in the safe of a bank) that had belonged to their mother. They relied

on Article 6 of the Convention, which, in so far as it is relevant to the complaint, provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

1. Applicability of Article 6 in its criminal limb

24. Having regard to the fact that tax surcharges were imposed on the applicants in respect of the money they had inherited from their mother and that she was the person who had not paid income tax, the question arises whether the proceedings in the present case involved the determination of a "criminal charge". The Court reiterates that the concept of a "criminal charge" is an autonomous one (see *Blokhin v. Russia* [GC], no. 47152/06, § 179, ECHR 2016). The Court established that for the purposes of Article 6 there are three criteria to be taken into account when deciding whether a person was "charged with a criminal offence". These are the classification of the offence under national law, the nature of the offence, and the nature and degree of severity of the penalty that the person concerned risked incurring (*ibid*.).

25. As regards the domestic classification of tax surcharges, the Court notes that they are not imposed under criminal-law provisions but in accordance with various tax laws. Moreover, they are determined by the tax authorities. It further appears that the Lithuanian legislature and the courts have considered that, under the Lithuanian legal system, surcharges do not constitute criminal penalties but rather administrative duties (see paragraph 18 above). Consequently, although in some respects surcharges have been placed on an equal footing with criminal penalties, the Court finds that surcharges cannot be said to belong to criminal law under the domestic legal system.

26. It is therefore necessary to examine the surcharges in the light of the second and third criteria mentioned above. As regards the nature of the conduct imputed to the applicants, the Court notes that the national tax authority and the domestic courts found that the applicants' mother had supplied incorrect information in her tax returns. The resultant tax surcharges were imposed in accordance with tax legislation, which applied to all persons liable to pay tax in Lithuania. Moreover, the tax surcharges were imposed on the applicants on objective grounds, without the need to establish any criminal intent or negligence on their part. The income tax and the late-payment interest were intended as pecuniary compensation for any costs that may have been incurred as a result of the original taxpayer's conduct. The main purpose of the relevant domestic provisions is not punitive or deterrent but rather compensatory (see, by contrast, *Jussila v. Finland* [GC], no. 73053/01, § 38, ECHR 2006-XIV). Lithuanian tax laws had an upper limit of 33%, and although in the present case the taxes

imposed were quite substantial, amounting to LTL 320,533, they were calculated in a manner that respected the upper limit.

27. To sum up, the Court concludes that the proceedings concerning the obligation on the applicants to pay income tax (together with late-payment interest) did not involve the determination of a "criminal charge" within the meaning of Article 6 of the Convention (see, in contrast, *Jussila*, cited above, §§ 30-38, and *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, §§ 451-53, 20 September 2011). This provision is therefore not applicable to the present case.

2. Applicability of Article 6 in its civil limb

28. Taking into account the monetary obligation imposed on the applicants, it is important to determine whether the proceedings in the present case involved the applicants' "civil rights and obligations".

29. In this respect the Court reiterates for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is also protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, *Becker v. Austria*, no. 19844/08, § 30, 11 June 2015). Procedures classified under domestic law as being part of "public law" could come within the purview of Article 6 under its "civil" head, if the outcome was decisive for private rights and obligations (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 27, ECHR 2001-VII, *Stork v. Germany*, no. 38033/02, § 26, 13 July 2006). The Court considers that an obligation to pay taxes exists under domestic law and tax disputes clearly involve pecuniary interests. Nevertheless, merely showing that a dispute is "pecuniary" in nature is not in itself sufficient to attract the applicability of Article 6 § 1 under its "civil" head (see *Ferrazzini*, cited above, § 25). In particular, there may exist "pecuniary" obligations *vis-à-vis* the State or its subordinate authorities which, for the purpose of Article 6 § 1, are to be considered as belonging exclusively to the realm of public law and are accordingly not covered by the notion of "civil rights and obligations". Apart from fines imposed by way of "criminal sanction", this will be the case, in particular, where an obligation which is pecuniary in nature derives from tax legislation or is otherwise part of normal civic duties in a democratic society (*ibid.*).

30. The Court considers that tax matters still form part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the community remaining predominant (see *Niedzwiecki v. Germany (no. 2)*, no. 12852/08, § 31, 1 April 2010). It

follows that the complaint under the civil limb of this Article is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Remaining complaints

1. Complaint under Article 8 of the Convention

31. The applicants complained that the search was performed in their mother's apartment without any legal grounds and that this breached their right to respect for their home. They relied on Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

32. The Court notes that neither of the applicants lived in their mother's apartment; therefore, it was not their home.

33. The Court further observes that even without declaring this complaint incompatible *ratione personae*, it would still have to be dismissed, for the following reasons. Even if the apartment had been considered to be applicants' home and the search had amounted to an interference with the applicants' right to respect for their home, the search warrant was issued in accordance with the provisions of the domestic law (see paragraph 15 above) and performed in the presence of the first applicant. The Court notes that the measure in issue was taken in the interests of the economic well-being of the country and of determining whether a crime had been committed, both of which are "legitimate aims" within the meaning of Article 8 § 2 of the Convention. Where States consider it necessary to resort to measures such as searches of residential premises in order to obtain evidence of offences, the Court will assess whether the reasons adduced to justify such measures were relevant and sufficient and whether the proportionality principle has been adhered to (see *Gerashchenko v. Ukraine*, no. 20602/05, § 129, 7 November 2013). In the present case the Court observes that search was performed under a warrant issued by the Panevėžys District Court and was therefore subject to judicial scrutiny. The Court notes that, in order to grant a warrant for a search of a house or other property, the Lithuanian courts are required by law to be satisfied that there are sufficient grounds to believe that the items to be searched for might be found there (see paragraph 15 above). In that

connection, the Court notes that the decision of the competent national court took place in the course of an investigation concerning the applicants' mother and was based on various items of evidence (such as documents concerning the pre-trial investigation and the findings of the tax authority). The Court notes that the aforementioned evidence was capable of giving rise to the belief that the documents proving the origin of the money could have been kept in the apartment in question. Moreover, it was neither alleged by the applicant nor is otherwise discernible from the case-file material that the judge dealing with the issue had acted in bad faith or had failed, for any other reasons, to adequately implement the judicial scrutiny. Accordingly, the Court finds that the execution of the search warrant was attended by adequate safeguards against abuse and arbitrariness and it cannot, in the circumstances of the case, be regarded as disproportionate to the legitimate aim pursued.

34. It follows that this complaint must be dismissed as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. Complaint under Article 1 of Protocol No. 1 to the Convention

35. The applicants complained that their right to the peaceful enjoyment of their possessions had been breached by: the prosecutor's order to temporarily restrict their property rights to their mother's bank deposit accounts and to LTL 1,043,970; the decision of the Panevėžys Regional Court of 19 July 2007 to seize their mother's property and the LTL 320,533; and the decision of Panevėžys District Court of 31 January 2008 not to abolish the interim measures until the final execution of that decision. They relied on Article 1 of Protocol No. 1 to the Convention, which, in so far as it is relevant to the complaint, provides:

> "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."

36. The Court notes that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial organ to first use the remedies provided by the national legal system. Consequently, States do not have to answer before an international body for their actions before they have had an opportunity to put matters right through their own legal system. For the requirements of Article 35 of the Convention to be satisfied, normal recourse must be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-66, *Reports of Judgments and Decisions* 1996-IV; *Aksoy v. Turkey*, 18 December 1996, § 52, *Reports* 1996-VI; *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports* 1998-VIII; *Avotiņš v. Latvia* [GC], no. 17502/07, § 119, 23 May

2016, ECHR 2016). In the present case, the Court observes that the applicants did not complain about the interim measures or the seizure of their mother's property before the domestic courts (see paragraph 7 above). Moreover, the Court does not discern in the present case any particular circumstances capable of absolving the applicants from the obligation to exhaust domestic remedies.

37. It follows that this complaint must be rejected for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2016.

Marialena Tsirli
Registrar

András Sajó
President