



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

FOURTH SECTION

CASE OF LIATUKAS v. LITHUANIA

(Application no. 27376/11)

JUDGMENT

STRASBOURG

24 January 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Liatukas v. Lithuania,

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

András Sajó, *President*,
Vincent A. De Gaetano,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 5 January 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 27376/11) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Vygandas Liatukas (“the applicant”), on 7 April 2011.

2. The applicant, who had been granted legal aid, was represented by Mr R. Šimkus, a lawyer practising in Kaunas. The Lithuanian Government (“the Government”) were represented by their Agent, Ms K. Bubnytė.

3. The applicant complained under Article 6 § 1 of the Convention that domestic courts in civil proceedings had admitted the other party’s appeal, even though that appeal had not been lodged in accordance with procedural rules, and had upheld that appeal to the applicant’s detriment.

4. On 24 February 2016 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1956 and lives in Kaunas.

A. Civil proceedings concerning the applicant's inheritance

6. In March 2008 the applicant's mother passed away. At the time of her death, her estate consisted of an apartment, a car, and cash savings of 6,360 Lithuanian litai (LTL, approximately 1,842 euros (EUR)). In her will she left half of the apartment to the applicant's niece and the remaining property to the applicant and his sister in equal parts. On 27 May 2008 the applicant renounced his part of the inheritance (see paragraph 20 below).

7. In September 2008 V.L. brought a claim against the applicant before the Kaunas District Court. V.L. submitted that the applicant owed her LTL 14,488 (approximately EUR 4,196) in maintenance payments for their son which he had not paid because he had been insolvent. V.L. argued that by renouncing his part of the inheritance the applicant had violated her rights as a creditor because the inherited property could have been used to cover the applicant's debt. V.L. therefore invoked Article 6.66 of the Civil Code (see paragraph 23 below) and asked the court to annul the renouncement as being contrary to the interests of the applicant's creditors. She also asked the court to recognise that the applicant had *de facto* accepted the inheritance because he had been using his mother's estate since her death (see paragraph 21 below).

8. In October 2008 a similar claim under Article 6.66 of the Civil Code was brought by D.L. She submitted that the applicant had been under an obligation to pay her maintenance and that he owed her LTL 8,734 (approximately EUR 2,530). D.L. asked the court to annul the applicant's renouncement of the inheritance and to recognise that he had *de facto* accepted it. In March 2009 the Kaunas District Court decided to examine V.L.'s and D.L.'s claims together.

9. The Kaunas District Court held an oral hearing on 11 November 2009 in which the applicant and both claimants were present. The applicant argued that he had renounced his part of the inheritance for the benefit of his sister who had paid all the expenses of their mother's funeral. The applicant also submitted that his sister and niece had accepted the entire inheritance and that he had not used any of the property belonging to his late mother's estate.

10. On 25 November 2009 the Kaunas District Court partly upheld V.L.'s and D.L.'s claims. It held that the applicant had acted in bad faith by renouncing the inheritance while being insolvent and owing money to the claimants. Accordingly, the court annulled the renouncement on the grounds that it violated the interests of the applicant's creditors (see paragraph 23 below). However, the court held that there was insufficient evidence to find that the applicant had *de facto* accepted the inheritance and dismissed that part of the claim.

11. The applicant appealed against that judgment. D.L. also appealed but the Kaunas District Court refused to accept her appeal for examination

because of formal deficiencies – D.L. had asked to be completely exempted from paying court fees on the grounds that she was disabled and had a low income, but domestic law allowed only for partial exemptions (see paragraph 24 below). D.L. was given ten days to correct the deficiencies in her appeal. On 28 January 2010 the Kaunas District Court held that D.L. had not submitted a corrected appeal within that time-limit so it considered that she had not appealed (see paragraph 25 below). However, on 1 February 2010 the Kaunas District Court referred both the applicant's and D.L.'s appeals to the Kaunas Regional Court.

12. On 3 February 2010 the applicant received notice from the Kaunas District Court that the civil case and both his and D.L.'s appeals had been referred to the Kaunas Regional Court, and he was asked to submit a reply to D.L.'s appeal within twenty days. However, a copy of D.L.'s appeal was not enclosed. The applicant sent a letter to the Kaunas Regional Court requesting a copy of the appeal. He received it on 10 April 2010 and submitted a reply on 16 April 2010.

13. Subsequently the applicant asked the Kaunas Regional Court to proceed with the examination of the case in his absence – the applicant stated that he had presented all his arguments in his appeal and in his reply to D.L.'s appeal and had nothing else to add. On 15 September 2010 the Kaunas Regional Court held an oral hearing from which the applicant and D.L. were absent but where D.L.'s lawyer was present.

14. By a judgment of 29 September 2010 the Kaunas Regional Court dismissed the applicant's appeal and upheld D.L.'s appeal. The court upheld the findings of the first-instance judgment that the applicant had acted in bad faith by renouncing the inheritance while being insolvent and owing money to his creditors (see paragraph 10 above). The Kaunas Regional Court also found that since his mother's death the applicant had been using the car previously owned by her and on that basis the court concluded that the applicant had *de facto* accepted the inheritance (see paragraph 21 below).

15. The applicant submitted an appeal on points of law but on 27 December 2010 the Supreme Court refused to examine it as raising no important legal questions.

16. In March 2011 D.L. brought a new claim against the applicant and his sister. D.L. submitted that although the court in previous proceedings had acknowledged that the applicant had *de facto* accepted the inheritance (see paragraph 14 above), the applicant had not formally completed that acceptance and his sister had remained the official heir to their mother's estate. D.L. asked the court to annul the applicant's sister's rights to one half of the inheritance and to recognise the applicant's rights to that property.

17. On 5 March 2012 the Kaunas District Court dismissed D.L.'s claim. The court found that the total value of the applicant's mother's estate (the car and the savings) had been LTL 6,860 (approximately EUR 1,987), and

that the applicant's sister had spent LTL 7,817 (approximately EUR 2,264) on their mother's funeral. In line with domestic law, an heir had the right to cover funeral expenses from a deceased person's estate before formally accepting the inheritance (see paragraph 22 below). On that basis, the Kaunas District Court held that the applicant's sister had not inherited any property which could have been used to cover the applicant's debt to D.L., and thus there were no legal grounds to satisfy D.L.'s claim. That judgment was not appealed against and became final.

B. Related proceedings brought by the applicant

18. In March 2011 the applicant submitted a complaint to the Commission on Judicial Ethics and Discipline concerning the judge of the Kaunas District Court who had examined the civil case (see paragraph 10 above). He complained that the judge had acted in abuse of office by referring D.L.'s appeal to the Kaunas Regional Court because that appeal had not been submitted in accordance with procedural rules (see paragraph 11 above). On 8 June 2011 the Commission dismissed the applicant's complaint. It held that although the judge had been "insufficiently attentive" and had referred D.L.'s appeal to the Kaunas Regional Court by mistake, that mistake had not been so grave as to constitute abuse of office.

19. In August 2011 the applicant petitioned the Prosecutor General to investigate the actions of the judges of the Kaunas District Court and the Kaunas Regional Court. On 30 September 2011 the prosecutor's office denied the applicant's request on the grounds that no crime appeared to have been committed. The prosecutor's decision was subsequently upheld by the courts.

II. RELEVANT DOMESTIC LAW

A. Inheritance

20. Article 5.50 § 1 of the Civil Code provides that in order to acquire rights to a deceased person's estate the heir has to accept the inheritance. Article 5.60 § 1 provides that the heir has the right to renounce the inheritance within three months of its arising.

21. Article 5.50 § 2 of the Civil Code provides that one of the ways for an heir to accept an inheritance is to start *de facto* managing the estate. Article 5.51 § 1 provides that an heir is considered as having accepted an inheritance if he or she has started to manage the estate and take care of it as his or her own property; when the heir has started managing part of the

estate or even a single article, he or she is considered as having accepted the entire inheritance.

22. Article 5.59 § 2 (1) of the Civil Code provides that an heir who has started managing the estate before obtaining an official certificate of inheritance has the right to use the estate for covering the deceased's funeral expenses.

B. Creditor's right to challenge a debtor's transactions

23. Article 6.66 § 1 of the Civil Code provides that a creditor has the right to challenge a transaction made by a debtor, where the debtor was not obliged to enter into such a transaction and where that transaction violates the creditor's rights and the debtor knew or ought to have known that. A creditor's rights shall be considered to have been violated if by such a transaction the debtor renders himself or herself insolvent, or by which, being insolvent, he or she grants preference to another creditor, or the creditor's rights are infringed in any other way.

C. Civil proceedings

24. Article 83 § 3 of the Code of Civil Proceedings provides that a court may, at the claimant's request and taking into account his or her financial situation, grant the claimant a partial exemption from court fees.

25. Article 316 § 1 of the Code of Civil Proceedings provides that when an appeal does not comply with the formal requirements provided in the Code, the court orders the appellant to correct the deficiencies within a certain time-limit. Article 316 § 2 provides that when the appellant does not submit a corrected appeal within that time-limit, it is considered that the appeal has not been submitted.

26. Article 320 § 2 of the Code of Civil Proceedings provides that the appellate court must examine the case within the limits of the appeal, except in cases where the public interest demands otherwise.

27. Article 313 of the Code of Civil Proceedings provides that where only one of the parties submits an appeal, the appellate court may not adopt a judgment which is worse for the appellant than the judgment of the first-instance court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

28. The applicant complained that the domestic courts had accepted D.L.'s appeal in civil proceedings, even though it had not been lodged in accordance with the procedural rules, and had upheld that appeal to his detriment. He relied on Article 6 § 1 of the Convention, which reads:

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

A. Admissibility

29. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

30. The applicant complained that the domestic courts had breached the principle of equality of arms by accepting and examining D.L.'s appeal and by upholding that appeal to his detriment, despite the fact that it had not been lodged in accordance with domestic procedural rules. He submitted that the courts had not provided any justification for accepting D.L.'s appeal and that there had been no grounds to consider that examining that appeal, despite its formal deficiencies, had been in the public interest (see paragraph 26 above).

(b) The Government

31. The Government argued that the civil proceedings instituted by the applicant's creditors had been fair as a whole, as required by Article 6 § 1 of the Convention. They submitted that D.L.'s appeal had been referred to the Kaunas Regional Court as a result of “a clerical error”. However, the applicant had had the opportunity to reply to that appeal, and thus the principle of equality of arms had been respected. The Government further stated that the applicant had been able to submit written observations at all stages of the proceedings, had been duly notified of court hearings and had freely waived his right to participate in them, and that domestic courts had adopted fair and reasoned judgments.

32. The Government further submitted that the domestic courts had also been under an obligation to protect D.L.'s access to court, and while doing so they should not have been expected to apply procedural rules in an overly formalistic manner. The Government argued that the applicant's debt to D.L. had arisen from a maintenance obligation and that protecting D.L. against the applicant's unilateral decision to renounce his inheritance had been in the public interest, so even if her appeal had not been accepted for examination, domestic law would have permitted the Kaunas Regional Court to adopt a judgment in her favour in protection of the public interest (see paragraph 26 above).

2. *The Court's assessment*

33. Turning to the circumstances of the present case, it is not disputed that D.L.'s appeal had not been lodged in accordance with domestic procedural rules (see paragraph 11 above). The Government submitted that, on the one hand, that appeal had been referred for examination before the appellate court because of "a clerical error" (see paragraph 31 above) and, on the other hand, that its examination had been justified by the public interest (see paragraph 32 above). In this respect the Court agrees with the applicant that the Kaunas Regional Court, which examined the case on appeal, did not mention either the public interest or any other reason for examining D.L.'s appeal despite its formal deficiencies (see paragraphs 14 and 30 above). Indeed, it appears that the Kaunas Regional Court was not aware of any reasons why the appeal should not have been accepted for examination. In such circumstances, the Court is more inclined to accept the Government's first submission that D.L.'s appeal was referred to the Kaunas Regional Court by mistake.

34. In that connection, the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 190, ECHR 2006-V, and *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015). In previous cases the Court has found a violation of Article 6 § 1 where domestic courts committed "a manifest error of assessment" (see *Dulaurans v. France*, no. 34553/97, § 34, 21 March 2000), where decisions by domestic courts could be regarded as "grossly arbitrary" (see *Khamidov v. Russia*, no. 72118/01, § 174, 15 November 2007, and *Bochan*, cited above, § 64), or where such decisions amounted to a "denial of justice" (see *Anđelković v. Serbia*, no. 1401/08, § 27, 9 April 2013).

35. In the present case, the Court cannot disregard the fact that the appeal submitted by D.L. formed the foundation for the appellate proceedings which resulted in a judgment that was to the applicant's detriment (see paragraphs 11 and 14 above). At the same time, the Court

observes that D.L.'s appeal was communicated to the applicant and that he had an opportunity to reply to it (see paragraph 12 above). Contrary to the applicant's submissions, the foregoing means that there are therefore no grounds to find that the principle of equality of arms was disregarded (see paragraph 30 above, and compare and contrast *Gürkan v. Turkey*, no. 1154/04, §§ 34-35, 29 March 2011). The applicant did not allege that the civil proceedings were unfair for any other reason, and the Court, having examined the material submitted to it, sees no grounds to hold otherwise. Having regard to the proceedings taken as a whole, the Court is of the view that the error committed by the domestic courts was not so significant as to make the proceedings arbitrary or to result in a denial of justice, and that in any event it was counterbalanced by granting the applicant sufficient opportunity to become acquainted with D.L.'s appeal and to comment on it.

36. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 24 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

András Sajó
President