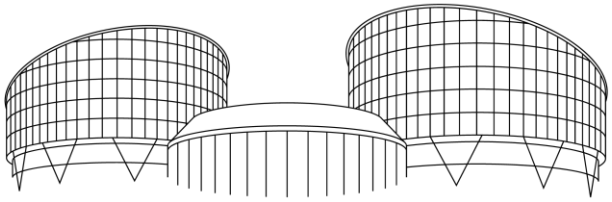

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 17064/06
by Boruch SHUB
against Lithuania

The European Court of Human Rights (Second Section), sitting on 30 June 2009 as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş, *judges,*
and Sally Dollé, *Section Registrar*,

Having regard to the above application lodged on 13 April 2006,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Boruch Shub, is a Lithuanian national who was born in 1924 and lives in Tel Aviv, Israel. He is represented before the Court by Ms F. Kukliansky, a lawyer practising in Vilnius.

A. The circumstances of the case

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

After Lithuania regained independence in 1990, the Restitution of Property Act, concerning the restitution of property rights to property nationalised by the Soviet authorities, was enacted. The applicant, an Israeli citizen at that time, requested the authorities to restore to him the property rights to a building owned by the applicant's late relatives prior to nationalisation.

By letters of 16 March 1992 and 21 September 1994, the Vilnius City Board informed the applicant that his request could not be granted because he did not meet the criteria set out in the Restitution of Property Act, namely, he did not have Lithuanian citizenship and did not reside in the country. On 8 August 1994 the Government's office also informed the applicant about the citizenship and residence requirements.

On 15 November 2002 the applicant started an exceptional Presidential procedure to obtain Lithuanian citizenship. On 11 April 2003 the applicant gained Lithuanian citizenship by a decree of the State's President. In 2005 the applicant requested the domestic courts to extend the statutory time-limit for his application for restitution, which had lapsed on 31 December 2001. The applicant submitted that he could not have applied for the restitution of his claimed property rights within the statutory time-limit because he had not had Lithuanian citizenship earlier. He also noted that he did not know the Lithuanian language and did not reside in Lithuania, which made it difficult for him to claim his rights within the time-limit. Before the courts the applicant was represented by counsel, who was present at all the hearings.

On 24 August 2005 the Vilnius Regional Administrative Court granted the request. The court held that the applicant had actively sought to have his property rights restored and noted that his requests for restitution had been admitted and examined. Furthermore, the applicant had sought Lithuanian citizenship in order to fulfil all the requirements of the Restitution of Property Act. The court observed that in 2004 the law was amended to include a possibility to extend the time-limit for applications for restitution and found no reason to deprive the applicant of that possibilty.

On 22 December 2005 the Supreme Administrative Court overturned the decision and dismissed the request by the applicant. The court stated that the applicant, not being a Lithuanian citizen before 2003, did not meet the criteria set out in the law and thus could not claim restitution of property rights. The applicant had only become a Lithuanian citizen on 11 April 2003, after the time-limit for restitution applications had already expired. The examination of the provisions regulating the matter allowed the conclusion that the time-limit for submitting a restitution

request could only be extended in respect of those persons who had acquired the right within the prescribed time-limit, but who had not been able to make use of it properly within the deadline for good reasons. The submission of the request for restitution, its time-limit and the extension of that deadline were interconnected. The applicant did not have the right to the restitution of property within the statutory time-limit until 31 December 2001 because he had not been a Lithuanian citizen. Thus, the legal provision regarding the extension of the time-limit was not applicable to his situation. Furthermore, the court observed that the applicant had only applied for citizenship under the exceptional Presidential procedure in 2002, whereas there had been nothing to stop him taking action earlier.

B. Relevant domestic law

The Restitution of Property Act 1991 (*Nuosavybės teisių ... atkūrimo įstatymas*) (amended on numerous occasions) provides that the right to property nationalised by the Soviet authorities can only be restored to persons who are citizens of Lithuania. Under Article 10 of the Act, applications for the restitution of property rights could be submitted up until 31 December 2001. The time-limit of 31 December 2003 was set for the production of any additional supporting documents which could not have been submitted earlier in respect of applications made before 31 December 2001. Article 10 of the Act, as amended on 12 October 2004, provides that the time-limit for both an application for the restitution of property rights and the submission of supporting documents could be extended if substantial reasons for missing the deadline existed. Whether those reasons are sufficiently important is to be established by the courts on a case-by-case basis.

COMPLAINTS

Relying on Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained that the courts had erred in their negative application of the Restitution of Property Act to his case. This had led to the refusal to extend the time-limit for his restitution application. The applicant also claimed in this connection that the courts were biased and unfair because in other similar cases the domestic courts had ruled differently.

The applicant complained under Article 1 of Protocol No. 1 to the Convention, separately and in connection with Article 14 of the Convention, that the Restitution of Property Act was discriminatory on the basis of citizenship. The applicant also claimed in this regard that objective reasons

for his not obtaining Lithuanian citizenship within the statutory time-limit for restitution had been caused by the State itself, as the laws had not permitted him to obtain citizenship earlier.

THE LAW

A. Articles 6 and 14 of the Convention

The applicant complained under Articles 6 § 1 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention that the domestic courts were wrong, biased and unfair. The Court will examine the complaint solely under Articles 6 § 1 and 14 of the Convention, being the relevant provisions, as follows:

Article 6

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

Article 14

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... national or social origin, association with a national minority ..."

The Court reiterates that it is not its task under the Convention to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by domestic courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, among other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Instead, the Court's function is to examine compliance with Article 6 in the light of the impugned proceedings as a whole (see, among many other authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, p. 32, § 33, and *Edwards v. the United Kingdom* judgment of 16 December 1992, Series A no. 247-B, § 34). The key element in this respect is that the applicant was afforded ample opportunities to state his case and to contest the interpretation of the law which he considered incorrect, before the courts at two levels of jurisdiction. The applicant's counsel was present at every hearing. Having examined the proceedings as a whole, the Court does not find it established that they were in any way unfair or tainted by arbitrariness.

Furthermore, the applicant has failed to submit any evidence showing a lack of subjective or objective impartiality on the part of the domestic courts or any elements of discrimination contrary to Article 14 of the Convention.

It follows that this part of the application is to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Article 1 of Protocol No. 1 and Article 14 of the Convention

The applicant complained under Article 1 of Protocol No. 1 to the Convention, separately and in conjunction with Article 14 of the Convention, that he was unable to recover his property because he did not have Lithuanian citizenship. He submitted that the Restitution of Property Act, which provided that only Lithuanian nationals could make restitution claims, was incompatible with the Convention.

Article 1 of Protocol No. 1 provides, in so far as relevant:

> "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 Court notes at the outset that there is no right to acquire citizenship under the Convention and that the Contracting States are free to determine the requirements of and procedures for citizenship requests.

The Court next observes that a violation of Article 1 of Protocol No. 1 can only be alleged in so far as the impugned decisions relate to a person's "possessions" within the meaning of this provision. "Possessions" can either be "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining the effective enjoyment of a property right (see, for example, *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 31, Series A no. 332, and *Ouzounis and Others v. Greece*, no. 49144/99, 18 April 2002, § 24). There is a difference between a mere hope of restitution, however understandable that hope may be, and a legitimate expectation, which must be of a more concrete nature and should be derived from a legal provision or a legal act. The hope that a long-extinguished property right may be revived cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1; nor can a conditional claim which lapses as a result of the non-fulfilment of the condition be so characterised (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 82-83, ECHR 2001-VIII, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48). Nor can it be interpreted as creating any general obligation for the Contracting States to restore property which had

been expropriated before they ratified the Convention, or as imposing any restrictions on their freedom to determine the scope and conditions of any property restitution to former owners (see *Bergauer and Others v. the Czech Republic* (dec.), no. 17120/04, 4 May 2004; *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003; *mutatis mutandis*, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

In the instant case the applicant did not have "existing possessions" or the status of an owner but was merely a claimant like the applicants in the cases of *Gratzinger and Gratzingerova* and *Jantner*, cited above.

It therefore remains to be determined whether the applicant had a "legitimate expectation" that a claim for restitution would be determined in his favour. In this respect the Court notes that the Restitution of Property Act did not entitle the applicant to claim the restitution of his relatives' property because he did not meet the citizenship requirement. For this reason, under the domestic law as applied and interpreted by the domestic authorities (see Facts: the decision of the Supreme Administrative Court of 22 December 2005), the applicant had neither a right nor a claim amounting to a legitimate expectation, in the sense of the Court's case-law, to obtain the restitution of the property in question. Therefore he held no "possession" within the meaning of Article 1 of Protocol No. 1. Consequently, the Court finds that the Restitution of Property Act did not amount to an interference with the peaceful enjoyment of the applicant's possessions and the facts of the present case do not fall within the ambit of Article 1 of Protocol No. 1.

It follows that the complaint under Article 1 of Protocol No. 1 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.

Finally, the court reiterates that Article 14 has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by the Convention and its Protocols. Since the Court has found the applicant's property complaint to be incompatible with the provisions of Protocol No. 1, so too the complaint under Article 14 must be rejected, pursuant Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Sally Dollé
Registrar

Françoise Tulkens
President