



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

FIFTH SECTION

**CASE OF BENET CZECH, SPOL. S R.O. v. THE CZECH
REPUBLIC**

(Application no. 31555/05)

JUDGMENT

STRASBOURG

21 October 2010

FINAL

21/01/2011

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of Benet Czech, spol. s r.o. v. the Czech Republic,
The European Court of Human Rights (Fifth Section), sitting as a
Chamber composed of:

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 28 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 31555/05) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech company, Benet Czech, spol. s r.o. (“the applicant company”), on 26 August 2005.

2. The applicant company was represented by Mr P. Klimeš, a lawyer practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

3. The applicant company alleged a violation of its right to property under Article 1 of Protocol No. 1 to the Convention.

4. On 10 September 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Benet Czech, spol. s r.o., is a limited liability company incorporated under Czech law with its registered seat in Prague.

6. In April 2001 criminal proceedings were instituted against Mr B., who was manager of the applicant company until July 2001 and its sole shareholder until October 2008, on suspicion of having committed tax

evasion (*zkrácení daně, poplatku a jiné povinné platby*). According to the Government the damage caused to the State exceeded CZK 200,000,000 (EUR 8,000,000). Mr. B was replaced as manager and shareholder by Mrs. B.

7. On 13 September 2001 the prosecuting authorities seized CZK 8,861,401.13 (EUR 319,942) and USD 41,677.80 (EUR 29,769) deposited in the applicant company's bank accounts on the suspicion that these assets represented the profits of Mr B.'s criminal activities.

8. Mr B. was prosecuted for acts which are not related to the business pursued by the applicant company. On 4 June 2009 Mr B. was acquitted by the Prague Municipal Court (*městský soud*), and on 30 April 2010 the Prague High Court (*vrchní soud*) upheld the judgment. During the investigation the prosecuting authorities, *inter alia*, collected over 100,000 pages of documentary evidence, interviewed several hundred witnesses, including homeless persons with unknown whereabouts whose names the accused had allegedly used in sham transactions to evade customs and other duties, and requested legal assistance from the competent authorities of 16 countries.

9. On 15 November 2002 the applicant company requested that the seizure be lifted. Its request was dismissed by the Prague High Prosecutor (*vrchní státní zástupce*) on 17 March 2003. In his view, the investigation so far confirmed that there was a reasonable suspicion that the assets represented the profits of Mr B.'s alleged criminal activities.

10. The applicant company appealed to the Prague High Court which dismissed its complaint on 2 July 2003.

11. On 19 September 2003 the applicant company lodged a constitutional appeal (*ústavní stížnost*) in which it alleged that the reasoning of the High Court's decision was insufficient. It further complained of an excessive length of the seizure of its assets.

12. On 23 February 2005 the Constitutional Court (*Ústavní soud*) declared the applicant company's constitutional appeal inadmissible for being manifestly ill-founded. It held that unjustified prolonged seizure of assets could in principle constitute a disproportionate interference with property rights. Nevertheless it did not find that the seizure which had lasted over three years to that date was, in the circumstances of the case, disproportionate. It found the challenged decisions to be neither arbitrary nor in any other way unconstitutional. The decision was served on the applicant company's lawyer on 28 February 2005.

Subsequent developments

13. On 9 October 2006 the Prague High Prosecutor dismissed a further request of the applicant company to lift the seizure, at least in part. The Prague High Court (*vrchní soud*) upheld the decision on 21 November 2006. On 30 January 2008 the Constitutional Court, however, quashed that

decision finding a violation of the applicant company's right to property. The court held that the length of the seizure, over six years, was already unreasonable, which thus disrupted the fair balance between the general interest of fighting serious crime and the protection of the rights of the applicant company. Consequently on 11 March 2008 the Prague High Prosecutor lifted fully the seizure of the applicant company's bank accounts.

II. RELEVANT DOMESTIC LAW

Code of Criminal Procedure (Act no. 141/1961) as in force at the material time

14. Pursuant to Article 9, prosecuting authorities shall assess on their own preliminary issues arising in course of proceedings; should a final and binding decision on such an issue be already adopted by a court or another State authority, prosecuting authorities shall be bound by it unless it concerns an issue of guilt of accused.

15. Article 42 provides for rights of a concerned person. According to it anyone whose property was seized, or ought to be seized pursuant to a motion, must be provided with an opportunity to comment on the given case, may attend a hearing, raise own motions, consult the case file within the meaning of Article 65, and file appeals provided for by this law.

16. Article 79a provides for a seizure of financial instruments deposited on a bank account. Under paragraph 1, if the facts indicate that the financial instruments on a bank account are destined for the commission of a crime, or have already been used for such purposes, or represent the profit from criminal activities, a president of a chamber and a prosecutor, or the police authority at the pre-trial stage of criminal proceedings, are empowered to seize them.

17. Pursuant to Article 79a(3), the State authority listed in paragraph (1) lifts or reduces the seizure if such a measure is no more necessary, or it is not necessary to maintain it at the given amount.

18. Under Article 79a(4) the owner of a bank account, whose assets are seized, has the right to request at any time that the seizure be lifted or reduced. A decision on such a request must be given without delay. If the request is dismissed, the owner of the bank account can lodge a new request that does not contain new reasons no sooner than 14 days after the dismissal became final.

19. Article 79a(5) provides that decisions adopted pursuant to paragraphs (1), (3) and (4) may be appealed by a complaint.

THE LAW

20. The applicant company complained that the seizure of its financial assets deposited in its bank accounts had infringed its property rights, in breach of Article 1 of Protocol No. 1, which states:

“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.”

21. The Government contested that argument.

A. Admissibility

22. The Government submitted that the application was premature since at the time of lodging it there was a constitutional appeal of the applicant company regarding the seizure pending before the Constitutional Court.

23. The applicant company disputed this argument.

24. The Court reiterates that the only remedies which an applicant is required to exhaust are those that relate to the breaches alleged and which are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. Moreover, an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999).

25. The Court notes that as regards the seizure and its length to 23 February 2005, the applicant company pursued the natural remedies in respect of a seizure, namely, it asked for the seizure to be lifted, and pursued the subsequent refusals through the courts, in accordance with the rules of domestic law, up to the Constitutional Court. To that extent, the applicant company has exhausted domestic remedies. As regards the continuing seizure beyond that date, the Court notes that the applicant company again requested the prosecutor to lift the seizure, and again pursued refusals through the courts. The applicant company's complaints in respect of that period have been registered under application no. 38333/06, and do not fall to be considered in the present application.

26. The Court therefore rejects the Government's contention that the applicant company has not exhausted domestic remedies.

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

B. Merits

28. The applicant company claimed in the present application that the seizure of its assets deposited in its bank accounts was unreasonably long, that there were unreasonable delays in the investigation by the authorities and that the authorities had not presented any evidence justifying the seizure.

29. The Government admitted that there had been an interference with the applicant company's property rights but maintained that it was necessary for the efficient fight against organised crime and was proportionate to that aim. The Government referred particularly to the possibility of the applicant company at any time to petition the authorities and courts, to terminate the seizure and maintained that the length of the seizure had been necessitated by the complexity and extensiveness of the investigation.

30. The Court recalls that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V).

31. The applicant company did not specify which rule should be used. The Government maintained that the seizure was justified under the third rule.

32. The Court notes that the seizure had the effect that the applicant company could not dispose of the relevant parts of its bank accounts. Consequently, the Court agrees with the Government that the seizure constituted a control of the use of property and that the paragraph 2 of Article 1 of Protocol No. 1 is applicable (see *Atanasov and Ovcharov v. Bulgaria*, no. 61596/00, § 74, 17 January 2008).

33. The Court reiterates that any control of the use of property by a public authority should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II) and pursue a legitimate aim (see *Immobiliare Saffi*, cited above, § 48).

34. The Court has no reason to doubt that the interference complained of was in accordance with Czech law since it had a clear basis in the Code of Criminal Procedure, in particular Article 79a thereof. Similarly, the Court notes that the impugned measure was taken in the context of criminal investigation with a suspicion that the assets have constituted a profit from criminal activities of the accused manager. The purpose of fighting crime undoubtedly falls within the general interest as envisaged in Article 1 of Protocol No. 1 (see *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 58, 1 April 2010).

35. Lastly, the Court recalls that an interference must strike a “fair balance” between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see e.g. *Immobiliare Saffi v. Italy*, cited above; *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, § 55, Series A no. 163 and *AGOSI v. the United Kingdom*, 24 October 1986, § 52, Series A no. 108).

36. In cases of wide margin of appreciation the Court will respect the State authorities' judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi*, cited above, § 49 and *Antonopoulou and Others v. Greece*, no. 49000/06, § 57, 16 April 2009), or unless it is devoid of reasonable foundation (see “*Bulves*” *AD v. Bulgaria*, no. 3991/03, § 63, 22 January 2009 and *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, *Reports* 1997-VII).

37. The applicant company maintained that the seizure of its bank accounts was disproportionate because of its unreasonable duration.

38. The Government maintained that the interference was necessary as there was a reasonable suspicion that the assets originated in criminal activities of the former manager of the applicant company and that it was proportionate even considering its length due to the importance of the general interest at stake and the very complex and extensive nature of the crime that had to be investigated. The Government further argued that a violation should be found only were the procedure manifestly arbitrary or the duration of the seizure manifestly unreasonable.

39. The Court notes that the interference had its origin in a measure of prosecuting authorities in the context of investigating a serious crime in the area of customs duty and tax evasions with a damage of millions of euros.

The crux of the interference concerns the continuing assessment of a reasonable suspicion that the seized funds originated in criminal activities. The national authorities are clearly in a better position than the Court to evaluate these issues because they have a direct access to the available evidence, which in the present case included thousands of pages of documentary evidence, hundreds of witnesses and transactions of several companies including foreign and off-shore companies. Faced with such a complex investigation it is up to the national authorities in the first place to decide whether, and if so what, further investigatory measures are necessary in order to effectively fight this type of serious and carefully premeditated crime.

40. Thus, the Court considers that the above mentioned principles in its case-law are fully applicable to the present case. The State should in the present circumstances enjoy a wide margin of appreciation and the Court must respect its judgment as to what is necessary in the general interest unless that judgment is manifestly unreasonable. Consequently, it is not the Court's task to conduct anew a full analysis of whether the interference was proportionate given that the national authorities, especially the Constitutional Court, themselves carried out an analysis of the proportionality of the measure. The nature and scope of the Court's supervision, mindful of its subsidiary role, is thus to assess whether the interference with the applicant company's property rights was manifestly unreasonable.

41. The Court notes in this regard that the accused Mr B. was at the material time the sole manager and the sole shareholder of the applicant company, that he remained sole shareholder until October 2008, and that his successor in both positions was Mrs B., who appears to be related to him. There was therefore a close nexus between Mr B. and the applicant company, and it was not *prima facie* unreasonable for the prosecutor to consider that the applicant company's accounts might be used for Mr B.'s transactions. The Government argued that the investigation conducted to January 2008 had led to the conclusion that the accused had established the seized applicant company's accounts specifically for the purpose of covering up his criminal activities. In view of the submissions of the parties, the Court has no reason to hold that the prosecuting authorities' suspicion about the origin of the seized funds would be manifestly unreasonable.

42. Yet, a reasonable suspicion at the beginning of the investigation cannot justify an indefinite interference with the applicant company's rights. The Court agrees with the applicant company that the ensuing investigation must be sufficiently diligent and speedy so that the interference lasts only a limited time. Thus it is the Court's task to evaluate whether in view of the conduct of the prosecuting authorities the length of the seizure, namely three and a half years (see paragraph 25 above), was manifestly unreasonable.

43. The Court notes that the Government referred to several objective factors that complicated the investigation. According to the Government it

was first of all the nature and extent of the alleged crime covering a total of 809 transactions involving an import of goods into the Czech Republic. The Government further referred to the amount of evidence that the prosecuting authorities had to collect and evaluate, in particular over 100,000 pages of documentary evidence, including several hundred purchase agreements, and the need to examine several hundred witnesses, including persons of unknown whereabouts. Moreover, the alleged criminal activities had been conducted using over a dozen of companies some of them foreign and off-shore and the police had requested legal assistance from the competent authorities of 16 countries.

44. The applicant company nevertheless maintained that the prosecuting authorities did not show a maximum diligence in their investigation which was full of unnecessary delays and argued that some of the above evidence taking, including interviewing homeless persons, was unnecessary and irrelevant to the charges of the accused manager.

45. The Court reiterates that it is not its role to evaluate whether the Czech prosecuting authorities conducted the investigation with maximum possible diligence but only to assess whether the length of the investigation was so unreasonable as not to be compatible with Article 1 of Protocol no. 1. Similarly it is not its task to assess whether some of the evidence gathering of the national authorities was irrelevant to the case unless the irrelevance were manifest.

46. In this regard the Court is satisfied that the extent of the investigation was indeed considerable. As the above information suggests the prosecuting authorities were faced with an alleged crime that was highly sophisticated and extensive. It was suspected that the alleged perpetrators used an international network of numerous companies in several countries to conduct their financial operations and cover their crimes. The Court notes that faced with such a complexity the prosecuting authorities far from remaining passive actually collected extensive evidence, heard dozens of witnesses and contacted many countries with requests for assistance in the matter.

47. The Court is unable to reach a conclusion that interviewing the homeless persons would be manifestly irrelevant to the case. The Government argued that the accused paid them to conclude fictitious sale agreements. Such practice is not unknown and the prosecuting authorities could have reasonably assumed that these testimonies were important to prove the guilt of the accused.

48. The Court is of the same opinion regarding the applicant company's argument that it should have been sufficient for the prosecuting authorities to review the financial documents of the applicant company in order to determine whether the seized funds originated in criminal activities. The Court reiterates that it is primarily for the national authorities to choose the best way of conducting criminal investigations. As pointed out by the Government the amount of documentary evidence to be assessed was vast.

Moreover the Government maintained that the crux of the alleged criminal activities lay in falsifying accounting and customs documents and thus it was necessary first to verify the authenticity and validity of all the seized documents and the data included therein.

49. The Court further notes that at any given time the applicant company had at its availability an effective remedy, which included access to courts, by which it could challenge the continuing seizure of its bank accounts. Thus the present case is materially different from those cases as *Immobiliare Saffi*, cited above, or *Denisova and Moiseyeva*, cited above, where the Court found a violation of Article 1 of Protocol No. 1 on the ground, *inter alia*, that the applicants did not have access to an effective remedy regarding the interference with their property rights (*Immobiliare Saffi*, cited above, § 56 and *Denisova and Moiseyeva*, cited above, § 64).

50. Thus, in view of the complexity and extent of the investigation the Court does not consider that the length of the investigation into Mr B., who had close links with the applicant company, and thus the seizure of the applicant company's assets until 23 February 2005, was manifestly unreasonable. For the same reasons the judgment of the Constitutional Court of 23 February 2005 that the interference was still proportionate cannot be held to be manifestly unreasonable.

51. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President