



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

FIFTH SECTION

**CASE OF FORMINSTER ENTERPRISES LIMITED  
v. THE CZECH REPUBLIC**

*(Application no. 38238/04)*

JUDGMENT

(Just satisfaction)

STRASBOURG

10 March 2011

**FINAL**

*15/09/2011*

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



**In the case of Forminster Enterprises Limited v. the Czech Republic,**  
The European Court of Human Rights (Fifth Section), sitting as a  
Chamber composed of:

Dean Spielmann, *President*,  
Elisabet Fura,  
Karel Jungwiert,  
Boštjan M. Zupančič,  
Isabelle Berro-Lefèvre,  
Ganna Yudkivska,  
Angelika Nußberger, *judges*,  
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 February 2011,

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

## PROCEDURE

1. The case originated in an application (no. 38238/04) 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 Forminster Enterprises Limited, a company registered in Cyprus (“the applicant company”), on 22 October 2004.

2. In a judgment delivered on 9 October 2008 (“the principal judgment”), the Court held that there had been a breach of Article 1 of Protocol No. 1. In particular, the Court found a violation on account of the excessive duration of the seizure of shares held by the applicant company in the context of pending criminal proceedings (*Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, § 77, 9 October 2008).

3. Under Article 41 of the Convention the applicant company sought millions of euros in just satisfaction for damage sustained and costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 80, and point 3(b) of the operative provisions).

5. The parties did not reach an agreement on the question of just satisfaction.

6. The applicant company and the Government each filed observations.

## THE LAW

### 7. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Pecuniary Damage

8. The applicant company requested 704,752,000 Czech korunas (CZK) in respect of pecuniary damage. This claim was supported by an expert opinion in which the calculations were based on the value of the shares in 1999, minus the value of the shares at present, plus interest on the money received from a hypothetical sale transaction had the shares been sold the day the seizure began. The expert report further contained a graph according to which the price of the shares in question was more or less stable from the beginning of 2001 until May 2007 when the report was drafted.

9. The Government noted that the violation the Court found in its principal judgment was solely connected with the excessive duration of the seizure of the shares. They were of the view that there was no causal link between the damage claimed and the violation found. They noted that the ownership of the shares was the subject of pending litigation. They submitted a document based on which the receiver of an insolvent company TREND had decided to include the shares in its assets on 25 July 2008. Consequently, in the Government’s view, any compensation for alleged pecuniary damage would be nothing else than mere speculation as it was not clear who owned the shares.

10. The Government further disputed the accuracy and truthfulness of the expert opinion on which the applicant company based its pecuniary claim. They presented another expert opinion, which used a similar methodology of calculating the loss suffered by the applicant company but it distinguished between various dates when the seizure became contrary to Article 1 of Protocol No. 1. The report concluded that even taking into account the interest earned from the money received from a hypothetical sales agreement of the shares, the applicant company could not have suffered any damage if it had sold the shares between April 1999 and the date of the delivery of the principal judgment because of the steadily rising price of the shares. The Government further recognised that the seizure of the shares had probably already become a disproportionate measure owing to its duration before the date the principal judgment was adopted.

11. The Court reiterates that, in principle, a judgment in which it finds a violation of the Convention imposes on the respondent State a legal obligation to make reparation for its consequences in such a way as to

restore as far as possible the situation existing before the breach (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B). The Court must determine at its discretion the level of just satisfaction, having regard to what is equitable (see *Sunday Times v. the United Kingdom (no. 1)* (Article 50), 6 November 1980, § 15, Series A no. 38). For an award to be made in respect of pecuniary damage the applicant must demonstrate that there is a causal link between the violation and any financial loss alleged (see, for example, *Družstevní záložna Píra and Others v. the Czech Republic* (just satisfaction), no. 72034/01, § 9, 21 January 2010).

12. The Court observes that, in its principal judgment, it found that the applicant company's right to dispose of their shares had been suspended for more than eleven years, which did not strike a fair balance between the general interests of society and the interests of the applicant company. The Court thus found a violation based exclusively on the excessive duration of the seizure that was otherwise legal and pursued a legitimate aim. The Court considered the seizure to be disproportionate on the day of its principal judgment. It did not indicate whether the seizure had already become disproportionate at some point before the principal judgment.

13. The expert opinions submitted by the applicant company and the Government agree on the method of calculating the loss that corresponds to the depreciation of the value of the shares from a certain point in time. The Court is, in principle, prepared to accept this method of assessing the damage. The precise calculation thus depends on the date the seizure became contrary to the Convention owing to its excessive duration.

14. In its principal judgment the Court did not specify when exactly the duration of the seizure became excessive. Assuming that the violation occurred only on the date of the principal judgment, the applicant company could not have suffered any loss from the depreciation of the price of its shares during that one day. It seems, however, to be common ground between the applicant company and the Government that the violation occurred some time before 2008. Yet, even assuming that this is the case, the Court still does not find any loss suffered by the applicant company.

15. As both the expert reports have shown, the price of the shares has been more or less stable since 2001; in fact it appreciated slightly. Consequently, the applicant company did not suffer any pecuniary damage owing to its inability to sell the shares between 2001 and 2008, even taking into account any interest on money received from their sale, because the share value increased. The applicant company might have theoretically suffered some loss if it had sold the shares exactly on those days when, owing to market forces, their price was at its local maximum. Such a conclusion that the applicant company would have sold the shares on those precise dates is, however, speculative and cannot constitute the basis of an award for pecuniary damage.

16. The Court adds that it is likewise speculative and not supported by its principal judgment (see *Benet Czech, spol. s r.o. v. the Czech Republic*, no. 31555/05, 21 October 2010) to conclude that the duration of the seizure was already in breach of the Convention prior to 2001.

17. It notes, however, that the seizure of the shares continues. Under the Court's case-law, the applicant company is entitled to a measure of compensation in respect of losses directly related to the violation found until the present time, that is, the date of the judgment on just satisfaction (see *Loizidou v. Turkey* (Article 50), 29 July 1998, § 31, *Reports of Judgments and Decisions* 1998-IV). At the same time it must take account of new circumstances that have arisen since the principal judgment (see *Shtukaturov v. Russia* (just satisfaction), no. 44009/05, § 16, 4 March 2010).

18. The Court notes the decision of the Prague High Court of 30 June 2010, by which the seizure as part of criminal proceedings was terminated with reference, *inter alia*, to the principal judgment. The Court further notes that, as submitted by the Government, the seizure of the shares continues because of a dispute over its ownership, which has been claimed by the company TREND since 25 July 2008. The dispute over ownership is a new issue and a new justification for the seizure that has not been part of the current application. Consequently, the Court did not and could not have considered it in its principal judgment. Thus, even assuming that the applicant company has suffered loss from the continuing seizure since the principal judgment, the Court concludes that there is no causal link between this loss and the violation found in the principal judgment. Consequently, no award can be made for this period either.

19. The Court adds that the applicant company did not make a pecuniary claim on any other ground.

20. In these circumstances, it concludes that the applicant company failed to prove any financial loss that could have had a causal link with the violation found and consequently its claim in respect of pecuniary damage must be dismissed.

## **B. Non-pecuniary damage**

21. The applicant company did not originally specify its claim, leaving the determination of the amount up to the Court. Subsequently, it requested a minimum of 150,000 euros (EUR) in compensation for the serious loss of its reputation in international trade.

22. The Government argued that the applicant company had never provided any evidence that the seizure of the shares had caused damage to its good reputation or any difficulties in running and planning its business activities. They suggested that a maximum award of between EUR 3,000 and EUR 10,000 would be appropriate.

23. The Court reiterates its case-law to the effect that it cannot exclude the possibility that a commercial company may be awarded pecuniary compensation for non-pecuniary damage. In this context account should be taken of the company's reputation, uncertainty in decision making, disruption to the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV; *Sovtransavto Holding v. Ukraine* (just satisfaction), no. 48553/99, § 79, 2 October 2003; and *Dacia SRL v. Moldova* (just satisfaction), no. 3052/04, § 60, 24 February 2009).

24. The Court observes that the applicant company based its claim on its loss of reputation. It firstly doubts whether there is any causal link between the seizure of shares in criminal proceedings against persons with whom the applicant company has no connection and its reputation. However, even assuming that the seizure itself could have had a negative effect on the reputation of the applicant company, the Court notes that in its judgment it found that the seizure was legal and pursued a legitimate aim. The violation was found only in respect of its excessive duration. The Court does not see any causal link between an alleged loss of the applicant company's reputation and the excessive duration of the seizure, which is a fact wholly independent from the activities of the applicant company.

25. The Court further observes that the applicant company provided no argument that it had suffered any other prejudice relevant from the point of view of awarding compensation in respect of non-pecuniary damage to corporations, which is governed by specific criteria (see *Comingersoll S.A. v. Portugal* [GC], cited above, § 35). In view of the lack of information on the impact of the seizure on the business activities of the applicant company, the Court is unable to conclude on its own that the applicant company suffered any non-pecuniary damage.

26. No award is therefore made under this head and the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage that the applicant company might have suffered.

### **C. Costs and expenses**

27. The applicant company claimed CZK 215,429 (EUR 8,669) for legal fees and other expenses such as translation costs before the Court. It submitted invoices for a total amount of CZK 155,480.34 (EUR 6,324) from 2006 and 2007.

28. The Government maintained that the applicant company had credibly demonstrated only CZK 151,731.50 (EUR 6,172) but of that, only

CZK 88,263.50 (EUR 3,590) could be regarded as necessarily incurred. They thus agreed to an award of CZK 88,263.50 (EUR 3,590).

29. According to the Court's settled case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and are also reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 283, ECHR 2006-V).

30. The Court firstly notes that the costs submitted by the applicant company also include four trips to Strasbourg that cost CZK 48,463.18 (EUR 1,971) in travel expenses. It does not consider these expenses to have been necessarily incurred as there was no hearing held in this case and the procedure was solely written. All of the Government's submissions were forwarded to the applicant company.

31. The Court, having regard to the complexity and volume of documents in the present case, considers that the billable hours and the other costs put forward by the applicant company reflect properly its needs for proper legal representation, with the exception of CZK 8,687 (EUR 353) for assessing a decision on admissibility where there was no such decision. Considering that the applicant company incurred further costs in the present application after 2007, the Court considers it reasonable to award the sum of EUR 4,000 to cover costs for the proceedings before the Court.

#### **D. Default interest**

32. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

### **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant company;
2. *Holds*
  - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant company; the amount to be converted into Czech korunas at the rate applicable at the date of settlement;



(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 10 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Dean Spielmann  
President