



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

FIFTH SECTION

CASE OF BEGUŠ v. SLOVENIA

(Application no. 25634/05)

JUDGMENT

STRASBOURG

15 December 2011

FINAL

04/06/2012

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

In the case of Beguš v. Slovenia,

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

Dean Spielmann, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Angelika Nußberger,

André Potocki, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 25634/05) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Mr Igor Beguš (“the applicant”), on 6 July 2005.

2. The Slovenian Government (“the Government”) were represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

3. The applicant alleged, in particular, that his right to a trial within a reasonable time had been breached in the civil proceedings to which the company Energohit d.o.o. had been a party.

4. On 30 November 2010 the President of the Third Section decided to give notice of the application to the Government. The Court subsequently changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the present case has been assigned to the newly composed Fifth Section (Rule 52 § 1). It was decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Ljubljana.

6. The applicant is the director and sole owner of the limited liability company Energohit d.o.o., which provides consultancy, engineering and representation services.

A. The proceedings concerning the request for enforcement on the basis of a valid purchase order and ensuing contentious proceedings

7. On 25 October 1996 the applicant, representing his company Energohit, instituted enforcement proceedings against another company, L., for the payment of a bill for 887,250 Slovenian tolar (SIT)*. On 5 November 1996 the Ljubljana Local Court, relying on a valid purchase order submitted by the applicant's company, upheld his request. The operative part of the court's decision stated that company L. should pay the debt to the applicant's company and that, if not paid, this claim should be enforced.

8. Company L. lodged an objection. It argued that the purchase order to which the applicant's company referred had not been signed by it but by another company. Following the objection, the Ljubljana Local Court, on 9 December 1996, set aside its enforcement decision and the case was transferred to the Ljubljana District Court to decide on the dispute.

9. Further to the Ljubljana Local Court's decision of 9 December 1996, the proceedings, which were governed by legislation concerning commercial disputes, were conducted before the Ljubljana District Court. The latter held three hearings, the first one on 16 February 2000. On 20 April 2000 the court upheld the applicant's company's claim for SIT 523,250 and rejected the remainder finding that it had already been paid. The judgment was served on the applicant's company on 29 August 2000.

10. Following an appeal by company L., the judgment was quashed on 19 September 2002. Subsequently, the Ljubljana District Court re-examined the case, and, after holding two hearings, rejected the applicant's company's claim on 28 March 2003. The judgment was served on the applicant's company on 8 July 2003.

11. Further to the applicant's company's appeal, the second judgment was also quashed (on 20 May 2004) and the case was re-examined at a new hearing held by the Ljubljana District Court on 22 October 2004. On that date the court upheld the claim for the sum of SIT 523,250 in a judgment, which was served on the applicant's company on 28 January 2005. Company L.'s appeal was rejected by the Ljubljana Higher Court on 16 June 2005. On that date the judgment of 22 October 2004 became final

* approximately 3,700 euros

and enforceable. The Ljubljana Higher Court's judgment was served on the applicant's company on 9 July 2005.

B. The enforcement of the judgment of 22 October 2004

12. On 5 October 2005 the applicant's company lodged a request for execution of the above judgment against company L.'s monetary assets, movable and immovable property. The applicant was twice asked to supplement the request with the necessary documents. On 20 December 2005 the Ljubljana Local Court gave a decision allowing the enforcement.

13. On 23 February 2006 the court appointed an enforcement officer.

14. On 12 May 2006 the applicant's company asked the court to order company L. to supply a list of its assets. On 22 May 2006 the court issued an order in line with the applicant's company's request. On 21 June 2006 company L. supplied the list.

15. On 5 January 2007 the court decided that the seizure of company L.'s immovable property should be considered in separate proceedings, which were discontinued, presumably without success, on 11 June 2008. Subsequently, the applicant's company was requested to specify which further assets could be subject to the enforcement.

16. Further to receiving a letter from company L.'s bank noting that there were no monetary assets and no transactions on its bank account, the court, on 25 March 2009, discontinued this aspect of the enforcement. The applicant's company lodged an appeal, which was rejected on 17 June 2009 by the Ljubljana Higher Court.

17. On 25 September 2009 the enforcement officer informed the court that company L. had moved from its address, which was brought to the applicant's company's attention. On 15 February 2010 the applicant's company informed the court of the new address.

18. In the course of the proceedings the applicant's company twice requested a review of alleged irregularities in the process of execution; however, no decision appears to have been issued in reply to these requests.

19. On 13 July 2010 company L. was removed from the register of companies following a request by the tax authorities to that effect. As a result, the enforcement proceedings were discontinued on 21 December 2010. The applicant's company did not request that the enforcement be continued against potential active shareholders in accordance with the relevant provisions of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.

II. RELEVANT DOMESTIC LAW

20. The Protection of the Right to Trial without Undue Delay Act (Official Gazette nos. 49/2006 and 58/2009 – “the 2006 Act”) entered into force on 17 May 2006. On 1 January 2007 it became operational and has been implemented since that date. It applies to parties to court proceedings, participants in proceedings conducted under the statute regulating non-contentious procedure, and injured parties in criminal proceedings.

21. According to the 2006 Act, a claimant may use a supervisory appeal and a motion for deadline in order to expedite the proceedings. In addition to these acceleratory remedies, the 2006 Act also provides for the opportunity to obtain redress by means of a compensatory remedy, namely by bringing a claim for compensation. With regard to a compensatory remedy, the 2006 Act provides that two cumulative conditions must be satisfied in order for a party to be able to lodge a claim for compensation. Firstly, during the proceedings the applicant must have successfully availed himself of the supervisory appeal or have lodged a motion for a deadline, regardless of the outcome. Secondly, the proceedings must have been terminated.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS LENGTH OF PROCEEDINGS

22. The applicant complained that the domestic contentious and enforcement proceedings had been unreasonably lengthy. He invoked Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. Admissibility

1. *Victim status*

23. The Government objected, stating that the applicant could not be considered as a victim of the alleged violation since he had not been a party to the impugned proceedings. They admitted that the applicant was the sole owner, director and representative of company Energohit d.o.o. However,

his role in the proceedings was only to represent his company and not to act on his own behalf. The Government disagreed with the Court's position in *Ankarcrona v. Sweden* ((dec.), no. 35178/97, ECHR 2000-VI) and maintained that a limited liability company had its own legal personality and provided limited liability to its owners who could be liable for its obligations only in extreme circumstances leading to the piercing of the corporate veil. The same applied to limited companies which were owned by one shareholder only. As a general remark, the Government also stated that any compensation awarded to the owner would have an effect only in his personal sphere and would not mean anything for the company, which could theoretically also cause detriment to the company's creditors. One could not therefore say that there was no potential conflict of interest between a limited liability company and its only shareholder. While the Court's position in *Ankarcrona v. Sweden* could perhaps be acceptable in respect of unlimited companies, it could not be accepted in respect of companies with limited liability for the owners.

24. The applicant argued that the owners of limited liability companies were commonly liable with their personal assets for the company's debts, which was even demonstrated by his case in which the defendant company ceased to exist and the enforcement could be continued directly against its shareholders. The applicant further maintained that he was the director, a representative with unlimited authority, and the sole owner of the company in question. The company's interests were identical to his own.

25. The Court reiterates that the concept of "victim" under Article 34 of the Convention must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act. There must, however, be a sufficiently direct link between the applicant and the harm which he considers he has sustained on account of the alleged violation (*Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). The Court further reiterates that where the acts or omissions complained of affect a company, the application should in principle be brought by that company. Disregarding a company's legal personality as regards the question of being a "victim" will be justified only in exceptional circumstances (see, among others, *Agrotexim and Others v. Greece*, 24 October 1995, § 66, Series A no. 330-A). However, the sole owner of a company can claim to be a "victim" within the meaning of Article 34 of the Convention in so far as the impugned measures taken in respect of his company are concerned, because in the case of a sole owner there is no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the reality of infringement of Convention rights or to the most appropriate way of reacting to such an infringement (see *Ankarcrona*, cited above; *Nosov v. Russia* (dec) no. 30877/02, 20 October 2005; and *Khamidov v. Russia*, no. 72118/01, §§ 119-126, ECHR 2007-XII (extracts)).

26. Turning to the present case, the Court observes that Energohit - limited liability company was the party to the impugned proceedings. Yet, the applicant lodged the application in his own name alleging that it was him who was a victim of the alleged unreasonable length of proceedings. The Court notes that while the applicant did not claim that there were any obstacles for the company to apply to the Court, it is also not in dispute between the parties that the applicant was the sole owner and the director of the company. Having regard to the case-law on the issue, which also concerns companies with limited liability (see paragraph 25 above), and since the Government failed to establish that in the present case there existed competing interests between the applicant on the one hand and any other person or entity on the other (see, by contrast, *Veselá and Loyka v. Slovakia* (dec.), no. 54811/00, 13 December 2005), the Court concludes that the applicant could reasonably claim to be a victim within the meaning of Article 34 of the Convention. It therefore rejects this objection of the Government.

2. Exhaustion of domestic remedies

27. The Government further argued that the applicant's company failed to exhaust domestic remedies in respect of the above complaint. They argued that a distinction should be drawn between the proceedings that ended on 9 July 2005, in respect of which the applicant's company could have used remedies which had been available to it prior to the 2006 Act, and the subsequent enforcement proceedings which were still ongoing and in respect of which the applicant's company had at its disposal remedies provided by the 2006 Act. The Government further submitted that the second set of proceedings had been suspended pending the applicant's request for continuation.

28. The applicant argued that one could not distinguish between the two sets of the proceedings as they concerned the same issue.

29. The Court reiterates that it may only deal with a matter after all domestic remedies have been exhausted. It further notes that while the proceedings concerning the enforcement of the judgment of 22 October 2004 may be regarded as a continuation of the previous contentious proceedings, they nevertheless represent a distinct set of proceedings for the purpose of remedies available in respect of complaints of undue delay. The Court notes in this connection that it has previously assessed a requirement of exhaustion of domestic remedies in cases against Slovenia by distinguishing between different stages or sets of proceedings (see *Robert Lesjak v. Slovenia*, no. 33946/03, §§ 40-53, 21 July 2009; *Blekić v. Slovenia* (dec.), no. 14610/02, §§ 72-85, 7 July 2009; and *Sirc v. Slovenia*, no. 44580/98, §§ 166-178, 8 April 2008). It moreover observes that applicants must comply with the applicable rules and procedures of

domestic law when making use of domestic remedies (see *Ben Salah, Araqui and Dhaima v. Spain* (dec.), no. 45023/98, ECHR 2000-IV).

30. The Court takes note of the Government's argument that the 2006 Act applied only to the enforcement proceedings which were instituted on 5 October 2005 and have not yet been terminated (see paragraphs 12-19 above). They acknowledged that the 2006 Act had not applied to the earlier contentious proceedings which ended on 9 July 2005 with the service of the Ljubljana Higher Court's judgment of 16 June 2005 (see paragraphs 7-11 above), that is, prior to the entry into force of the 2006 Act. As regards these proceedings, the Court notes that the only remedies available to the applicant's company were therefore those that were found to be ineffective in its judgment in *Lukenda v. Slovenia* (no. 23032/02, §§47-71, ECHR 2005-X). Since the Government have not submitted any arguments which would require it to distinguish the situation as regards the proceedings ending on 9 July 2005 from the one concerned in *Lukenda* judgment, the Court concludes that this part of the application cannot be rejected for non-exhaustion of domestic remedies.

31. The Court notes, on the other hand, that as regards the enforcement proceedings which began on 5 October 2005 and has continued after the 2006 Act's entry into force (see paragraphs 12-19 above), the applicant's company failed to exhaust the remedies available to it under that Act. Referring to its findings in *Korenjak v. Slovenia* ((dec.) no. 463/03, §§ 62-71, 15 May 2007) and *Žunič v. Slovenia* ((dec.) no. 24342/04, §§ 43-55, 18 October 2007), the Court notes that the applicant's company should have availed itself of the acceleratory remedies. In addition, provided that it uses the acceleratory remedies, it can also claim compensation for non-pecuniary damage after the termination of the proceedings, which are currently awaiting the applicant's action. In the absence of any plausible arguments as to why these remedies would be ineffective with respect to the enforcement proceedings, the Court finds that this part of the application must be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

3. Conclusion

32. The Court notes that the complaint concerning the contentious proceedings 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

33. The applicant argued that the contentious proceedings had lasted an unreasonably long time. The fact that the decision to allow enforcement was issued extremely quickly showed that the proceedings did not concern a

complex issue. The applicant also stressed that the court had needed three years to schedule the first hearing in the case and that proceedings concerning enforcement requests should by their nature have been dealt with swiftly.

34. The Government did not dispute the applicant's argument that there had been an unreasonable delay in the proceedings in question. However, they argued that, apart from the initial delay, the court was active in the case.

35. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

36. The Court notes that the relevant period started to run on 25 October 1996, when the applicant's company instituted enforcement proceedings with the Ljubljana Local Court (see paragraph 7 above). The case was soon transferred to the Ljubljana District Court and the proceedings, which were of contentious nature, ended on 9 July 2005 when the Ljubljana Higher Court's judgment of 16 June 2005 was served on the applicant's company (see paragraph 11 above). The Court observes that within the aforementioned period the contentious proceedings took eight years and seven months at two levels of jurisdiction. It further observes that there was an initial delay of more than three years before the first hearing was held (see paragraph 9 above) in the proceedings. Further delays occurred owing to three remittals of the case on appeal, for which the applicant's company cannot be blamed (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Deželak v. Slovenia*, no. 1438/02, § 25, 6 April 2006).

37. The foregoing considerations are sufficient to enable the Court to conclude that in the instant case the length of the proceedings failed to meet the "reasonable-time" requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Under Article 6 § 1 the applicant also complained that the domestic proceedings had been unfair, alleging, in particular, that the courts wrongly assessed the evidence. Disagreeing with the courts' decisions, he also complained that the courts had been biased.

39. Under Article 7 of the Convention the applicant complained that the domestic courts had not followed domestic legislation.

40. Under Article 10 of the Convention, the applicant complained that his right to freedom of expression had been violated as he had not been

appointed a member of the executive board of a large Slovenian company as a result of his public criticism of the sale by the Government of this company to a certain multinational company.

41. Under Article 13 of the Convention, the applicant complained that he had been unable to become a member of the above-mentioned executive board without any formal explanation being given to him.

42. Lastly, under Article 14 of the Convention, the applicant complained that he had been discriminated against by the State and its agents because of his criticism of foreign investment in Slovenia. In this respect he also complained that a mistake had been made in his academic title when his name was put on the list of candidates during the 2004 elections.

43. As regards the above complaints, the applicant maintained that he had no intention of availing himself of any remedies as the courts in any event did not respect the law.

44. Having examined the above complaints, the Court finds, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence, that they do not disclose any appearance of a violation of the Articles relied on by the applicants. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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. Damage

46. The applicant claimed 56,000 euros (EUR) in respect of pecuniary damage and EUR 150,000 for non-pecuniary damage. As regards the latter the applicant submitted that it concerned his distress as well as damage incurred in respect of the deterioration of his quality of life in the period after October 2005.

47. The Government contested the claim.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant did not specify any claim for costs and expenses but only submitted that he would claim reimbursement of expenses for his trip to Strasbourg if there was to be a hearing in his case. The Court therefore makes no award in this connection.

C. Default interest

50. 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. *Declares* the complaint concerning the length of the contentious proceedings which ended on 9 July 2005 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the aforementioned proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, 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), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Fura is annexed to this judgment.

D.S.
C.W.

CONCURRING OPINION OF JUDGE FURA

The Chamber reached the conclusion that there had been a violation of Article 6 of the Convention in this case because of the excessive length of the proceedings, rejecting the Government's argument that the applicant had not been a victim. In so doing the chamber applied the established case-law of the Court where it has been found that the sole owner of a limited company is entitled to bring the application in his own name, even if no exceptional reasons preventing the company to bring the case are alleged to exist (see the case-law cited in paragraphs 25 and 26 of the judgment and *Gubiyev v. Russia*, no. 29398/03, paragraphs 53-54, 19 July 2011, not final). Even though I accept that the case-law exists I am not sure it is a good line of case-law. Maybe it ought to be reconsidered.

I do not think it is a proper order that an applicant can bring a case before the Court without having been a party to the proceedings on the domestic level, except for in exceptional cases. Allowing this would run counter to the principle of subsidiarity, in my opinion and in theory you could have two parallel complaints filed.

In the case at hand the company of which the applicant was the sole owner was a party to the domestic proceedings the Court found to be excessively long. I fail to see why the company could not bring the complaint before our Court since it is not alleged that it was incapable of doing so because of for example liquidation or bankruptcy. I also fail to see why an individual who creates a limited company in order, amongst other things, to avoid personal liability for debts, should not be required to respect the formalities attaching to that creation – for example that it is the company which acts in respect of legal proceedings.

I have a lot of sympathy for the argument developed by the Government referred to in paragraph 23 of the judgment stating that “any compensation awarded to the owner would have an effect only in his personal sphere and would not mean anything for the company, which would theoretically also cause detriment to the company's creditors. While the Court's position in *Ankarcrona v. Sweden* could perhaps be acceptable in respect of unlimited companies, it could not be accepted in respect of companies with limited liability for the owners.”

So the main rule ought to be that there is no piercing of the corporate veil, unless there are good reasons. This is where I find the application of the said case-law to the circumstances of this case problematic. The applicant lodged the complaint in his own name claiming to be the victim of a violation without even alleging that there was any difficulty let alone any

obstacle for the company to apply to the Court. While accepting that there can be cases in which there exists a conflict of interest between the company as such and the owner and where there would be a necessity to recognize the standing of the owner as an applicant in his own right, separate from that of the company, I fail to see the need for it in a case like the one before us. For me it is simply not enough that there are no competing interests and/or differences of opinion between the owner and the company, in addition there has to be a need to acknowledge victim status to the owner. I am not convinced that there is such a need in this case.