



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

THIRD SECTION

CASE OF ŠLEŽEVIČIUS v. LITHUANIA

(Application no. 55479/00)

JUDGMENT

STRASBOURG

13 November 2001

FINAL

13/02/2002

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 Šleževičius v. Lithuania,

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

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr P. KŪRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mr K. TRAJA, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 28 November 2000 and 23 October 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 55479/00) 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, Adolfas Šleževičius (“the applicant”), on 9 March 2000.

2. The applicant was represented by Mr L. Gasiūnas, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Mr G. Švedas, Deputy Minister of Justice.

3. The applicant alleged that criminal proceedings against him were too long, in breach of Article 6 § 1 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. By a decision of 28 November 2000, the Chamber declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a Lithuanian national, born in 1948 and living in Vilnius. From 1993 to 1996 he was the Prime Minister of Lithuania.

8. In January 1996 two members of the Seimas (Parliament) wrote letters to the Prosecutor General, requesting him to institute criminal proceedings against the applicant in connection with allegations of financial impropriety amounting to abuse of office. On 24 January 1996 proceedings were instituted.

9. On an unspecified date in January 1996, the applicant's bank accounts were seized in the context of the proceedings. On 8 February 1996 he resigned as Prime Minister in order to pursue business activities.

10. On 10 October 1996 a prosecutor of the Office of the Prosecutor General charged the applicant with two counts of abuse of office. On 17 October 1996 the preliminary investigation was concluded, and the applicant was given access to the case-file until 28 November 1996. On 16 December 1996 the prosecutor re-formulated the charges against the applicant. From 18 to 19 December 1996 the applicant again had access to the case-file. On 21 December 1996 the bill of indictment was confirmed, and the case was transmitted to the Vilnius Regional Court.

11. On 13 March 1997 the Vilnius Regional Court, after a directions hearing on 24 January 1997, found that the pre-trial investigation had been conducted improperly as the charges against the applicant had been vague and speculative, and his defence rights had been breached. The Regional Court returned the case to the prosecution for further investigation.

12. On 26 March 1997 the prosecutor appealed. The appeal was dismissed on 14 May 1997. On 29 October 1997 the prosecutor again charged the applicant, this time with four counts of abuse of office, forgery and cheating. On 1 December 1997 the prosecutor re-formulated the charges. From 3 December 1997 to 23 February 1998 the applicant had access to the case-file. On 23 February 1998 the applicant requested the prosecution to discontinue the case in the absence of any offence. This was rejected on 6 March 1998. On 23 March 1998 a new bill of indictment was confirmed and the case transmitted to the Vilnius Regional Court.

13. On 19 June, 10 July and 9 to 30 September 1998, the Vilnius Regional Court heard the case. On 30 September 1998 the court found that the charges against the applicant had been vague and speculative, and that the collection of further material evidence was required. The court adjourned the case and applied to the Constitutional Court, requesting it to rule on the compatibility with the Constitution of a number of provisions of the Code of Criminal Procedure pertaining to the investigative nature of

judicial functions. On 5 February 1999 the Constitutional Court adopted a decision on the request, returning the case-file to the Regional Court on 8 March 1999.

14. On 10 May 1999 a prosecutor of the Office of the Prosecutor General charged the applicant for the fifth time, this time with five counts of abuse of office, forgery and cheating. One co-defendant was charged together with the applicant.

15. On 10 and 19 May 1999 the Vilnius Regional Court adjourned the case because of the absence of the co-defendant. The court heard the case on 28 June and 13 July 1999. On that latter date the Vilnius Regional Court found that the investigation had been conducted improperly as the charges against the applicant had been unclear. The court returned the case to the prosecution for further investigations to be carried out.

16. On 21 July 1999 the prosecutor appealed. The hearing scheduled for 16 September 1999 did not take place given the absence of the co-defendant. On 8 October 1999 the Court of Appeal dismissed the appeal.

17. On 24 November 1999 the Deputy Prosecutor General lodged a cassation appeal against the above decisions, complaining *inter alia* that the courts had returned the case for further investigation several times by reference to allegedly unclear charges, instead of evaluating the merits of those charges, leading to the applicant's conviction or acquittal. The prosecutor pleaded that the courts thereby unjustifiably protracted the proceedings and delayed the adoption of a final decision in the case.

18. On 11 January 2000 the Supreme Court dismissed the appeal. It held that the main reason for returning the case for further investigation was the ambiguity of the charges against the applicant, which interfered with his defence rights and "prevented the adoption of a lawful judgment" on the merits.

19. On 18 February 2000 the Prosecutor General transmitted the case to a Vilnius regional prosecutor for further investigation. On 18 April 2000 the regional prosecutor informed the applicant that the proceedings against him had been discontinued and the pre-trial investigation had been adjourned because of the absence of an offence with regard to two of the charges against him (Article 5 § 2 of the Code of Criminal Procedure), and a lack of evidence of the applicant's guilt in respect of the remaining three charges (Article 233 § 2 of the Code of Criminal Procedure). The seizure of his property was lifted on the same date.

20. The applicant's appeal against this decision was rejected by another Vilnius regional prosecutor on 26 May 2000. The applicant appealed to the Office of the Prosecutor General, claiming that the proceedings had not been definitively discontinued. On 31 August 2000 a prosecutor of the Office of the Prosecutor General dismissed the appeal, holding that the case had been discontinued in accordance with the relevant domestic

requirements. The applicant was also informed that he could apply to a court to challenge the decision of 18 April 2000.

II. RELEVANT DOMESTIC LAW

21. Article 5 § 2 of the Code of Criminal Procedure provides that criminal proceedings must be discontinued in the absence of any offence. Article 233 § 2 of the Code states that criminal proceedings can also be discontinued if there is a lack of evidence against the suspected person.

22. Pursuant to Article 235 of the Code, a discontinued case may be renewed by a prosecutor if there are lawful grounds for further investigation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

23. The applicant alleged a breach of Article 6 § 1 of the Convention which provides, insofar as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

In the applicant’s view, the criminal proceedings against him began on 24 January 1996 and are still pending because the case has only been discontinued in the absence of any offence and, in part, for a lack of evidence. According to the applicant, the length of the proceedings was in breach of the “reasonable time” requirement laid down in Article 6 § 1 of the Convention.

24. The Government submitted that the period to be taken into account in this case started when the applicant was first charged on 10 October 1996, and ended when the case was finally discontinued on 18 April 2000. In the Government’s view, the “reasonable time” requirement was complied with in view of the complexity of the case and the absence of a delay which could be attributed to the authorities.

A. Period to be taken into consideration

25. The Court recalls that in criminal matters, the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”; this may occur on a date prior to the case coming before the trial court. A “charge” may be defined as the official notification given to an individual

by the competent authority of an allegation that he has committed a criminal offence, a definition that also corresponds to the test whether the situation of the suspect has been substantially affected (*Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, § 73).

26. The Court notes that on 24 January 1996 a prosecutor instituted a criminal case into the allegations of financial impropriety by the applicant. The applicant's bank accounts were seized in the immediate aftermath of that decision. The Court considers therefore that from 24 January 1996 the applicant's situation was affected to the degree amounting to a "charge" within the meaning of Article 6 § 1 of the Convention, and that the period to be taken into consideration started on that date.

27. The Court further notes that the proceedings were discontinued by a prosecutor on 18 April 2000, that the Prosecutor General confirmed the legality of the discontinuation, and that the applicant did not appeal to a court against the decision of the Prosecutor General. It has not been alleged that a formal decision was taken after the above date to renew the investigation of the case. The Court considers therefore that the relevant period ended on 18 April 2000.

28. The proceedings thus lasted for four years, two months, and 25 days at one level of substantive jurisdiction.

B. Reasonableness of the length of the proceedings

29. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (*Grauslys v. Lithuania*, no. 36743/97, 10.10.2000, § 60).

30. Turning to the facts of the present case, the Court considers that the proceedings may be deemed to have been complex, owing *inter alia* to their nature, i.e. the alleged financial impropriety of a top Government official. However, the Court notes that the domestic authorities have shown neither diligence nor rigour in the handling of the proceedings: the courts refused to examine the merits of the case on three occasions in 1997, 1998 and 1999, finding that the charges against the applicant had been vague and speculative. Furthermore, a substantial part of the time was spent on the procedural disputes involving the courts of ordinary and constitutional jurisdiction, regarding the prosecutors' appeals against judicial findings of inadequate investigations and the inability to proceed to trial. Nonetheless, clear charges were never formulated and a trial did not take place. Against the above background, and in the absence of any indication of the applicant's responsibility for the delays, the Court finds that the length of

the proceedings was excessive and did not satisfy the “reasonable time” requirement.

31. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant sought 30,589 LTL as compensation for loss of earnings and opportunities caused by the length of the proceedings against him.

34. The Government considered these claims to be unjustified.

35. The Court is of the view that there is no causal link between the violations found and the alleged pecuniary damage (see, *mutatis mutandis*, the above mentioned Grauslys case, § 66). Consequently, it finds no reason to award the applicant any sum under this head.

B. Non-pecuniary damage

36. The applicant further requested the Court to make an award of 1,000,000 LTL for non-pecuniary damage as a result of the excessive length of the criminal proceedings.

37. The Government considered the applicant’s claim exorbitant.

38. The Court finds that the applicant has certainly suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation (see, *mutatis mutandis*, the above mentioned Grauslys case, § 69). Making its assessment on an equitable basis, the Court awards the applicant 30,000 LTL under this head.

C. Costs and expenses

39. The applicant claimed 260,000 LTL by way of legal costs in the domestic proceedings and before the Convention organs.

40. The Government considered the claims excessive.

41. The Court recalls that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were

actually and necessarily incurred, and reasonable as to quantum (see the above mentioned Grauslys case, § 72).

42. The Court notes that a part of the lawyer's fees concerned the applicant's defence to the criminal charges against him before the domestic authorities. These fees do not constitute necessary expenses incurred in seeking redress for the violation of the Convention which the Court has found under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *ibid.*, § 74). Making its assessment on an equitable basis, the Court awards the applicant 70,000 LTL for his legal costs, plus any value-added tax that may be chargeable.

D. Default interest

43. According to the information available to the Court, the statutory rate of interest applicable in Lithuania at the date of adoption of the present judgment is 6.89 % per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*:
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) 30,000 (thirty thousand) Lithuanian litai in respect of non-pecuniary damage;
 - (ii) 70,000 (seventy thousand) Lithuanian litai in respect of costs and expenses, plus any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 6.89 % shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 November 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President