



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

THIRD SECTION

CASE OF MEILUS v. LITHUANIA

(Application no. 53161/99)

JUDGMENT

STRASBOURG

6 November 2003

FINAL

06/02/2004

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 Meilus v. Lithuania,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 53161/99) 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, Raimundas Meilus (“the applicant”), on 2 November 1999.

2. The applicant was represented by Mr A. Josefsen, a lawyer practising in Odense, Denmark. The Lithuanian Government (“the Government”) were represented by their Agent, Mrs D. Jočienė.

3. The applicant alleged in particular that criminal proceedings against him had breached the “reasonable time” requirement in 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.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

6. By a decision of 30 May 2002 the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicant is a Lithuanian national, born in 1972 and living in Vilnius.

9. In November 1994 the applicant became a suspect in a criminal case of fraud. On 29 November 1994 a search was conducted in his flat in the context of the proceedings.

10. On 14 August 1996 the applicant was charged on five counts, including cheating and embezzlement. On 22 August 1996 he was remanded on bail. There were four other co-accused persons in the case.

11. On 10 September 1996 the pre-trial investigation was concluded. From 10 September 1996 until 14 November 1996 the applicant and the co-accused had access to the case-file. On 18 November 1996 the Deputy Prosecutor General confirmed the bill of indictment. On 20 November 1996 the case was transmitted to the Kaunas City District Court.

12. On 3 January 1997 the Kaunas City District Court committed the applicant for trial. On 23 May 1997 the court ordered further investigations in the case and returned the case-file to the investigators.

13. The prosecution appealed against the above decision, complaining that there was no need for further investigation, and that the trial could proceed. On 26 August 1997 the Kaunas Regional Court rejected the prosecution's appeal, holding that further investigation measures were required.

14. On 26 September 1997 the Prosecutor General lodged a cassation appeal against the decisions of 23 May 1997 and 26 August 1997, stating that there was no need for further investigation, and that the trial should resume. On 29 January 1998 the Court of Appeal examined the prosecuting authorities' cassation appeal. The cassation court quashed the decisions of 23 May 1997 and 26 August 1997, deciding that the trial could be resumed. It transmitted the case to the Kaunas City District Court for a new examination.

15. On 13 October 1998 the applicant was taken to hospital with a stomach illness.

16. On 15 October 1998 the Kaunas City District Court found the applicant guilty on four counts, the applicant's defence counsel being present. He was sentenced to five years' imprisonment.

17. On 16 October 1998 the applicant was transferred from the hospital to the prison on the basis of the judgment of 15 October 1998.

18. Upon the applicant's appeal, on 22 March 1999 the Kaunas Regional Court amended the applicant's conviction insofar as it concerned damages

which had been awarded against him. The applicant's sentence was not changed.

19. Upon the applicant's cassation appeal, on 30 September 1999 the Supreme Court quashed the conviction and the appellate decision because of numerous breaches of domestic criminal procedure. The Supreme Court found in regard to the applicant that the findings by the lower courts of his guilt on two counts had not been properly motivated, and that the question of damages against him had not been adequately resolved. The case was returned to the Kaunas City District Court for a new examination to be carried out. The Supreme Court ordered the applicant's release on bail. The applicant was not present during the cassation hearing. He was released on the next day when the decision of the Supreme Court was sent to the prison.

20. On 25 October 1999 the Kaunas City District Court returned the case to the prosecution for further investigations to be carried out. On an unspecified date the investigation was concluded. The applicant's trial is currently pending before the first instance court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant complained that the criminal proceedings against him had breached his right to “trial within a reasonable time” under Article 6 § 1 of the Convention.

22. The Government submitted that 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.

23. The Court notes that while the applicant became a suspect in the criminal case in November 1994, the period to be taken into consideration began only on 20 June 1995, when the Convention entered into force in regard to Lithuania. The Court further notes that the proceedings are pending to this date. They have so far lasted for more than eight years and three months.

24. 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 (see, among many other authorities, *Šleževičius v. Lithuania*, no. 55479/00, 13.11.2001, § 29).

25. Turning to the facts of the present case, the Court considers that the proceedings may be deemed complex, owing *inter alia* to the number of the

accused (five) and the nature of the alleged offences, i.e. the financial impropriety allegedly committed by the applicant. In view of the fact that the trial is pending at first instance to this date, the Court considers that it is up to the Government to justify such a long lapse of time since the start of the proceedings. However, the Government have failed to explain the delay in dealing with the case. The Court considers that this situation is unacceptable from the point of view of Article 6 § 1 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant sought 58,000 United States dollars (USD) as compensation for loss of earnings and opportunities caused by the length of the proceedings against him.

29. The Government considered this claim to be unjustified.

30. The Court is of the view that there is no causal link between the violation found and the alleged pecuniary damage (see the *Šleževičius* case cited above, § 35). Consequently, it finds no reason to award the applicant any sum under this head.

B. Non-pecuniary damage

31. The applicant further requested the Court to make a total award of 185,000 USD for non-pecuniary damage as a result of the excessive length of the criminal proceedings.

32. The Government considered the claim exorbitant.

33. The Court finds that the applicant has certainly suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation (*loc. cit.*, § 38). Making its assessment on an equitable basis, the Court awards the applicant 5,000 euros (EUR) under this head.

C. Costs and expenses

34. The applicant claimed 13,650 USD by way of legal costs in the domestic proceedings, and 16,050 USD by way of legal cost and expenses incurred during the Convention proceedings.

35. The Government considered the claims excessive.

36. 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 *Šleževičius* case, § 41).

37. The Court notes that part of the fees claimed 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*, *loc. cit.*, § 42). Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 for costs and expenses.

D. Default interest

38. 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 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, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 5,000 (five thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into Lithuanian litai at the rate applicable on 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 amounts 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's claim for just satisfaction.

Done in English, and notified in writing on 6 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President