



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

THIRD SECTION

CASE OF GIRDAUSKAS v. LITHUANIA

(Application no. 70661/01)

JUDGMENT

STRASBOURG

11 December 2003

FINAL

11/03/2004

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 Girdauskas 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 R. TÜRMEŅ,

Mrs M. TSATSA-NIKOLOVSKA,

Mrs H.S. GREVE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 20 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 70661/01) 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, Mr Vytas Girdauskas (“the applicant”), on 23 April 2001.

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

3. On 23 January 2003 the Court decided to communicate to the respondent Government the complaint concerning the length of criminal proceedings against the applicant. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1947 and lives in Kaunas.

5. The applicant was suspected of committing various financial irregularities. Criminal proceedings were instituted in this respect on 15 May 1995. On the same date the applicant was arrested.

6. On 18 May 1995 the applicant was released on bail.

7. On 13 May 1996 the applicant was charged with appropriating property of another and embezzlement. On the same date he was again arrested.

8. On 9 July 1996 the Kaunas City District Court committed the applicant for trial.

9. On 11 October 1996 the court remitted the case to the prosecution for further investigative measures to be carried out.

10. Upon the prosecutors' appeal, on 17 December 1996 the Kaunas Regional Court quashed the above decision, ordering that trial should recommence.

11. On 7 February 1997 the Kaunas City District Court adjourned the examination of the case in order to conduct an audit of an enterprise owned by the applicant. On the same date the applicant was released on bail.

12. During the period from 7 February 1997 until 13 December 2001 the investigative authorities conducted the audit of the applicant's company.

13. On 21 February 2001 the trial recommenced.

14. On 2 April 2002 the Kaunas City District Court convicted the applicant on two counts, obtaining property of another and improper operations with currency, sentencing him to two years' imprisonment. Civil damages in the amount of 811,560 Lithuanian litai (LTL) were also ordered against him.

15. Upon the applicant's appeal, on 10 October 2002 the Kaunas Regional Court quashed the conviction, referring the case back to the first instance court for a fresh trial.

16. On 25 February 2003 the Supreme Court quashed the appeal judgment, returning the case for a fresh examination at appellate instance.

17. On 17 April 2003 the Kaunas Regional Court acting as a court of appeal pronounced a new judgment, acquitting the applicant on one of the charges against him (obtaining property of another). However, his conviction for improper currency operations stayed. The sentence was reduced to one year' imprisonment. No civil damages were ordered against the applicant.

18. The applicant submitted a cassation appeal which is currently pending before the Supreme Court.

THE LAW

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

19. The applicant complained that the proceedings were unfair and excessively long, in breach of Article 6 of the Convention, which reads, insofar as relevant, as follows:

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

20. The Government stated that the applicant's complaint about the allegedly excessive length of proceedings was unsubstantiated in view of the complexity of the case and the absence of a delay which may have been attributed to the authorities.

21. The applicant contested the Government's arguments.

A. Admissibility

1. *The right to a fair trial*

22. To the extent that the applicant complained under Article 6 of the Convention that he had not had a fair trial, the Court recalls that the fairness of criminal proceedings must be examined on the basis of the proceedings as a whole. The Court notes that the proceedings in the present case are still pending. Accordingly, it would be premature for the Court to deal with this complaint until the domestic courts have finally determined the criminal offences alleged against him. In these circumstances, the Court concludes that the applicant cannot at this stage claim to be a victim of a violation of the above provision in regard to this aspect of the case.

23. It follows that this part of the application must be declared inadmissible in accordance with Articles 34 and 35 §§ 3 and 4 of the Convention.

2. *The right to a trial "within a reasonable time"*

24. The Court considers that the applicant's complaint about the length of proceedings 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

25. The Court notes that while criminal proceedings against the applicant were opened on 15 May 1995, 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 currently pending before the Supreme Court. They have so far lasted for more than 8 years and 5 months.

26. 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).

27. Turning to the facts of the present case, the Court considers that the proceedings may be deemed as complex, owing *inter alia* to the nature of the alleged offences, i.e. the financial impropriety imputable on the applicant. However, in view of the fact that the proceedings are already pending for more than 8 years and 5 months, the Court considers that it is up for the Government to justify such a long lapse of time since the start of

the proceedings. However, the Government have failed to show why such a long time has been required for the authorities to deal with the case. The Court notes in particular that during more than four years from 1997 to 2001 the proceedings had been adjourned for audit of the applicant's company to be carried out. It follows that the domestic authorities have shown neither diligence nor rigour in the handling of the proceedings. This situation is unacceptable from the point of view of Article 6 § 1 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant sought LTL 2,828,142 as compensation for loss of earnings and opportunities caused by a violation of the Convention.

31. The Government considered this claim to be unjustified.

32. 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

33. The applicant further requested the Court to make an award of LTL 759,000 for non-pecuniary damage.

34. The Government considered the claim exorbitant.

35. The Court finds that the applicant has certainly suffered non-pecuniary damage as a result of the excessive length of proceedings, 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 4,000 euros (EUR) under this head.

C. Costs and expenses

36. The applicant claimed LTL 20,000 by way of legal cost and expenses incurred during the Convention proceedings, and LTL 2,325 for additional expenses for post and translations in connection with the Convention proceedings.

37. The Government considered the claims excessive.

38. 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).

39. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 for costs and expenses.

D. Default interest

40. 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 applicant's complaint about the length of proceedings under Article 6 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 4,000 (four thousand euros) for 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President