



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

SECOND SECTION

CASE OF GEČAS v. LITHUANIA

(Application no. 418/04)

JUDGMENT

STRASBOURG

17 July 2007

FINAL

17/10/2007

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 Gečas v. Lithuania,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mrs D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 418/04) 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 Mr Algimantas Gečas.

2. He was represented before the Court by Mr A. Žlioba, a lawyer practising in Klaipėda.

3. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

4. On 9 May 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in the region of Klaipėda.

6. The applicant worked as a police officer. On 8 July 1997 he was arrested and charged with bribery. On 10 July 1997 the applicant was released on bail.

7. The preliminary investigation was completed on 15 September 1997, and the bill of indictment was served upon the applicant on 24 September 1997.

8. On 29 January 1998 the Klaipėda Regional Court convicted the applicant of abuse of office (Article 287 of the Criminal Code as then in force).

9. The conviction was upheld by the Court of Appeal on 18 March 1998.

10. On 23 June 1998 the Supreme Court quashed the decisions of the lower courts and remitted the case for additional pre-trial investigations. The Supreme Court noted that the charges against the applicant had been vague. In particular, the charges of bribery indicated in the bill of indictment had been reclassified during the proceedings to an abuse of office. As a result, the applicant's defence rights had been unduly restricted. Moreover, the Supreme Court considered that the investigation had been incomplete and it pointed to the need to examine the applicant's allegation that he had acted in accordance with an order of the Minister of Interior, no. 004, classified as "secret".

11. On 25 September 1998 the preliminary investigation was completed.

12. On 12 October 1998 the prosecution finalised the bill of indictment, whereby the applicant was charged with an abuse of office.

13. On 11 January 1999 the Klaipėda District Court decided to commit the applicant for trial. However, the hearing scheduled for 19 April 1999 was adjourned at the request of defence counsel due to his engagement in another case.

14. The parties were again summoned for a hearing on 25 November 1999, but defence counsel requested an adjournment due to his holidays.

15. The next hearing, called for 18 January 2000, was adjourned because of the failure of a number of witnesses to appear before the court.

16. On 23 February 2000 several witnesses again failed to report. Moreover, defence counsel requested an adjournment in order to clarify the use of classified information, *inter alia*, order no. 004, which was part of the criminal file. The hearing was therefore adjourned and, on 1 March 2000, the Klaipėda City District Court requested the Supreme Court to interpret the procedural law relating to the use of classified materials. No formal answer from the Supreme Court was received however, and on 8 May 2000 the Klaipėda City District Court summoned the parties to a hearing on 8 June 2000.

17. The hearings scheduled for 8 and 30 June 2000 were adjourned since several witnesses failed to appear before the court.

18. On 29 August 2000 the Klaipėda City District Court acquitted the applicant, finding no evidence of a crime. The court noted, *inter alia*, that it had not examined order no. 004 as no instructions in this respect had been received from the Supreme Court. The prosecution appealed.

19. From 26 February to 13 March 2001 a break was announced in the appeal proceedings to allow defence counsel time to prepare questions for an anonymous witness who the court intended to hear.

20. On 5 June 2001 the Klaipėda Regional Court dismissed the prosecution's appeal. In its decision, the court referred to order no. 004 and noted that, although it had not examined that order specifically in the context of the present case, the judges were familiar with its content.

21. On 20 November 2001 the Supreme Court again quashed the lower court decisions. It noted, *inter alia*, that the courts should not have based their findings on order no. 004, which had not been examined during the judicial proceedings. It further noted that, even if such an order existed at all, its provisions were unknown to the court. The case was remitted for an examination at the first instance.

22. From 17 January 2002 to 18 February 2002, the proceedings were adjourned at the request of defence counsel, who cited his engagement in another case.

23. On 18 February 2002 the hearing was postponed because of the failure of a number of witnesses to appear; the proceedings were resumed on 22 March 2002.

24. On 6 May 2002 the applicant's lawyer requested an adjournment in order to obtain access to the classified information used as evidence in the case. The adjournment was granted until 8 July 2002.

25. From 8 to 30 July 2002, the court adjourned the proceedings upon the request of defence counsel for time to prepare the applicant's defence in view of the more serious charges proposed by the prosecution.

26. On 16 May 2002 the applicant wrote to the Ministry of Interior, requesting permission for access to the classified information "which had been lodged before the court at the beginning of the judicial proceedings". He alleged that, whereas the charges against him were based on this information, he had not been allowed to familiarise himself with it. His request was refused on the grounds that such permission could only be granted to law enforcement staff. The applicant lodged an appeal before the administrative court.

27. On 30 July 2002 the Klaipėda City District Court convicted the applicant of abuse of office, relying, *inter alia*, on the provisions of order no. 004. The applicant was fined and deprived of the right to work in law enforcement institutions for two years. However, he was relieved from serving his criminal sentence, since the time-limits for its imposition had elapsed. The applicant appealed, complaining about the violations of his defence rights and the principle of adversarial proceedings. He alleged that, whereas the courts had based their conclusions on the provisions of order no. 004, they had failed to analyse it at the court hearing. Moreover, he had not been given access to that order.

28. On 18 September 2002 the Vilnius Regional Administrative Court dismissed the applicant's action against the refusal of access to the classified material, since he had failed to follow an extra-judicial dispute resolution procedure, namely, to raise the issue before the Commission for

the Protection of State Secrets (the Commission). The applicant addressed his request to the Commission on 25 September 2002.

29. On 30 September 2002 the Klaipėda Regional Court decided to adjourn the proceedings until the issue of the use of and access to the classified evidence was resolved.

30. On 14 January and again on 17 February 2003 the Commission for the Protection of the State Secrets informed the applicant that he had a right of access to the entirety of his criminal file by virtue of his status as a defendant. The applicant was advised to present this conclusion to the trial court.

31. The next hearing in the criminal proceedings was scheduled for 4 March 2003. In the meantime, the applicant appealed against the Commission's decision.

32. On 4 March 2003 the hearing was adjourned at the request of defence counsel pending the decision of the administrative courts. The applicant was enjoined to inform the court promptly about the outcome of that procedure. However, the administrative courts refused to entertain the applicant's appeal on the grounds that he had failed to observe the statutory time-limit of 20 days without good reason. The final decision in this respect was taken by the Supreme Administrative Court on 17 April 2003. This decision was received at the Klaipėda Regional Court on 13 May 2003.

33. On 3 June 2003 the Klaipėda Regional Court established that, by virtue of the new Code of Criminal Procedure in force as of 1 May 2003, the criminal prosecution against the applicant had become time-barred. The conviction was therefore quashed and the proceedings discontinued.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. Article 18 of the former Code of Criminal Procedure (in force until 1 May 2003) and Articles 2, 44 and 176 of the new Code of Criminal Procedure (effective since 1 May 2003) provide that the investigation and trial shall be conducted within a reasonable time.

35. Article 6.272 § 1 of the new Civil Code (which entered into force on 1 July 2001) allows a civil claim for pecuniary and non-pecuniary damage, in view of the unlawful actions of the investigating authorities or courts, in the context of a criminal case. The provision envisages compensation for an unlawful conviction, an unlawful arrest or detention, the application of unlawful procedural measures of enforcement, or an unlawful administrative penalty. According to the domestic case-law (the earliest decision in this respect was taken by the Vilnius Regional Court of 7 June 2005, in a civil case no. 2A-451/05), this provision may also allow claims for damages arising from the excessive length of criminal proceedings. In that decision, the Vilnius Regional Court assessed the effectiveness of the

criminal investigation from the point of view of Article 5 § 3 of the Convention.

36. The ruling of the Constitutional Court of 19 August 2006 stipulates:

“...by virtue of the Constitution, a person has the right to claim compensation for damage caused by the unlawful actions of State institutions and agents, even if such compensation is not foreseen by law; the courts adjudicating such cases ... have the power to award appropriate compensation by directly applying the principles of the Constitution ... as well as the general principles of law, while being guided *inter alia* by the principle of reasonableness, etc.”

THE LAW

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

37. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which reads 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...”

38. The proceedings began on 8 July 1997 and ended on 3 June 2003 with the decision to discontinue the criminal prosecution of the applicant as time-barred. They therefore lasted nearly 5 years and 11 months.

A. Admissibility

39. The Government submitted that the applicant should have filed a claim for damages before a civil court under Article 6.272 of the Civil Code which had entered into force on 1 July 2001. They argued that the efficacy of such a remedy was supported by the domestic case-law. Moreover, the Government referred to the ruling of the Constitutional Court of 19 August 2006, recognising a general right to claim compensation for damage caused by unlawful State actions, even in the absence of a specific legal entitlement. Finally, the Government reiterated that the Convention was directly applicable in the Lithuanian legal system, and could be invoked by the applicant in any domestic proceedings. The Government considered that, in view of the applicant’s failure to use any of these avenues, his complaint should be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

40. The applicant contested these submissions.

41. The Court reiterates that the machinery of complaint to the Court is subsidiary to national systems safeguarding human rights. This subsidiary character is reflected in Articles 13 and 35 § 1 of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 140, ECHR 2006).

42. The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The rule in Article 35 § 1 is based on the assumption in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see, among other authorities, *Scordino*, cited above, § 141; also see, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

43. Nevertheless, the only remedies to be exhausted under Article 35 § 1 of the Convention are those which relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Scordino*, cited above, § 142; *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11–12, § 27; *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 87–88, § 38; *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

44. The Court further notes that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one. Moreover, the assessment of whether domestic remedies had to be exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see, *Baumann v. France*, no. 33592/96, § 47, 22 May 2001; *Scordino*, cited above, § 144; *Grizincic v. Slovenia*, no. 26867/02, § 99, 3 May 2007).

45. Turning to the case at hand, the Court recalls its conclusion in *Simonavičius v. Lithuania* (no. 37415/02, §§ 32–35, 27 June 2006) and *Kuvikas v. Lithuania* (no. 21837/02, §§ 41–45, 27 June 2006), where it has assessed the measure indicated by the Government – a claim for damages under Article 6.272 of the Civil Code – and concluded that it did not satisfy the test of “effectiveness”. Moreover, the Court notes the fact that in the decision of the Vilnius Regional Court of 7 June 2005, which the Government have cited as an example of the application of Article 6.272, the expeditiousness of the criminal investigation had been assessed from the viewpoint of Article 5 § 3 of the Convention, and not Article 6 § 1. In that case, the domestic courts considered, in particular, the imposition of a restriction measure, as an element to be taken into consideration for the purpose of establishing the unlawfulness of the authorities' acts in delaying the investigation.

46. The Court finds no reason to depart from its existing case-law. In particular, the Court reiterates that the remedy suggested by the Government is based on a provision of the Civil Code which became effective on 1 July 2001, while the first example of the relevant domestic case-law in this respect dates from June 2005. There is no indication that such a remedy – even in theory – was available to the applicant during a considerable part of the proceedings in the present case which had been instituted on 8 July 1997. Nor has it been shown that Article 6.272 of the new Civil Code could have been applied retroactively to delays which had occurred prior to its entry into force (see, e.g., the *Simonavičius* judgment, cited above, *ibid*).

47. To the extent that the Government have argued that the applicant could have lodged a compensation claim for the period from 1 July 2001 to 3 June 2003, the Court notes that, at the time of the introduction of the present application and before June 2005, no domestic law or practice existed to indicate that Article 6.272 of the Civil Code could have afforded relief for the breaches of the “reasonable time” requirement. Nor have the Government presented any further (post-June 2005) examples of the application of this provision in relation to the excessive length of proceedings.

48. The Court reaffirms its position that, where the legislature has introduced a new domestic remedy, it will pay due regard to the significance of that development by, *inter alia*, allowing the State a wide margin of appreciation to organise matters in a manner consistent with its own legal system and traditions (see, e.g., *Scordino*, cited above, § 189).

49. However, this was not the situation in Lithuania when the present application was introduced. Three elements are pertinent in this respect: (a) the absence of any specific statutory redress for the excessive length of proceedings, (b) the general nature of Article 6.272 of the Civil Code, referring to the State’s liability in tort, and (c) the lack of any body of case-law showing the application of that provision in excessive-length cases.

50. In these circumstances, the Court does not consider that the possibility of claiming damages for the excessive length of proceedings under Article 6.272 of the Civil Code had – at the moment of the introduction of the present application – acquired a sufficient degree of legal certainty requiring its exhaustion for the purposes of Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Jakubowska v. Luxembourg* (dec.), no. 41193/02, 28 September 2006; also see, *a contrario*, *Charzynski v. Poland*, no. 15212/03, § 41, 1 March 2005).

51. Finally, whereas the Government argued that the applicant could have brought a claim based on the general principles of law, the Constitution or the Convention, they have not adduced any evidence to demonstrate that such a remedy had any reasonable prospect of success, especially before the ruling of the Constitutional Court on 19 August 2006.

52. The Court concludes, therefore, that this part of the application cannot be rejected for non-exhaustion of domestic remedies.

53. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

54. The Government argued that the “reasonable time” requirement had not been breached, given the complexity of the case, the efforts of the authorities to handle the case with proper care and, especially, the delays imputable to the defence.

55. The applicant disagreed.

56. 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 the authorities (see, among other authorities, *Simonavičius*, cited above, § 40).

57. Turning to the case at hand, the Court considers that the proceedings were of a certain complexity. The Court notes that its examination was delayed for over 11 months because of the unavailability of the applicant’s lawyer. There were also some difficulties which were not entirely imputable to the authorities, given the failure of a number of witnesses to attend hearings.

58. However, the Court finds that the most extensive delays in the proceedings were occasioned by the acts, mistakes or inertia of the domestic authorities. In particular, the case was returned – for the first time - for additional pre-trial investigations by the Supreme Court on 23 June 1998, because of a number of deficiencies in the investigation and trial. The Supreme Court pointed out the inadequacy of the formulation of the charges against the applicant, and the failure of the courts to examine the evidence related to secret order no. 004 (see paragraph 10 above).

59. Furthermore, on 20 November 2001 the Supreme Court remitted the case – for the second time - for re-trial at first instance, on the grounds that the courts had based their conclusions on order no. 004 which had not been examined during the hearings (see paragraph 21 above).

60. It further appears that a delay of over thirteen months occurred as a result of the uncertainty relating to the handling of and access to the evidence classified as secret under order no. 004. Although this issue had already been raised by the Supreme Court in June 1998, the courts failed to clarify the matter during consultations with the Supreme Court (see paragraphs 10 and 16 above). The Court draws particular attention to the fact that the use of this secret order was again a matter of contention in the

Supreme Court's decision of 20 November 2001 and was one of the grounds for remitting the case for a *de novo* examination at first instance (see paragraphs 21 and 59 above). The proceedings had to be further adjourned in order to allow the defence time to get access to the classified evidence (see paragraphs 24, 29 and 32 above).

61. Having regard to the above circumstances, the Court considers that the authorities have failed to deal with the case with due diligence and it finds, therefore, that the length of the proceedings did not satisfy the "reasonable time" requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

62. The applicant further complained that his dismissal from office prior to the conclusion of the criminal proceedings as well as the coverage of his case in the press amounted to a breach of the principle of the presumption of innocence, guaranteed in Article 6 § 2, which provides:

"... Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. ..."

63. The Court notes, however, that the applicant has raised no issue in this respect in his appeal before the Klaipėda Regional Court. It follows that this part of the application is to be rejected for the failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government contested the claim as unsubstantiated.

67. The Court considers that the applicant must have sustained some non-pecuniary damage. It notes, however, that some delay in the proceedings at issue was imputable to the applicant's lawyer. Therefore,

ruling on an equitable basis, it awards the applicant EUR 900 under that head.

B. Costs and expenses

68. The applicant also claimed 2,006 Lithuanian litai (“LTL”; about EUR 581), for the costs and expenses incurred before the Court.

69. The Government contested this claim as unfounded.

70. The Court finds the applicant’s claim reasonable and awards it in full.

C. Default interest

71. 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 excessive length of the proceedings 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 in accordance with Article 44 § 2 of the Convention, EUR 900 (nine hundred euros) in respect of non-pecuniary damage and EUR 581 (five hundred and eighty-one euros) for costs and expenses, plus any tax that may be chargeable, which sums are to be converted into the national currency of that State 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 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President