



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

SECOND SECTION

CASE OF BAŠKIENĖ v. LITHUANIA

(Application no. 11529/04)

JUDGMENT

STRASBOURG

24 July 2007

FINAL

10/12/2007

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 Baškiene 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 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 11529/04) 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 Ms Aldona Baškienė.

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

4. The applicant alleged under Article 6 § 1 of the Convention that she had had no right to a court because, after a lengthy examination, no determination of her civil claims was made. She also complained that the “reasonable time” requirement had been breached.

5. On 15 June 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

6. The applicant was born in 1952 and lives in Šiauliai.

7. In accordance with an agreement on the division of their mutual property with her former husband, approved by a court decision on 27 September 1995, the applicant was entitled to a number of shares in two companies owned by the husband.

8. On 17 May 1996 the applicant brought a civil action, requesting that the value of the shares in one of the companies be awarded to her.

9. On 6 September 1996, during the hearing of the applicant's case, the Šiauliai City District Court discovered some evidence of crime, allegedly committed by the director and the chief accountant of those companies. In particular, they were suspected of embezzlement and fraud (Articles 274 § 2 and 275 § 1 of the Criminal Code as then in force). The court considered that, in these circumstances:

“it was not possible to assess the value of [the applicant's] claims; therefore, her civil action should be referred for an examination in the framework of the criminal proceedings.”

10. On 10 October 1996 the applicant was afforded the status of a victim in those proceedings.

11. On 18 November 1996 she was granted the status of a civil claimant in the criminal proceedings.

She was further granted the status of a civil claimant on 18 November 1996.

12. On 20 January 1997 several other criminal procedures against the director were joined in one set of proceedings.

13. On 25 June 1997 an expert examination was ordered. It was completed on 17 October 1997.

14. On an unspecified date the applicant requested the institution of further criminal proceedings against the director and other employees of the companies, alleging that they had falsified certificates as to the number and value of the shares which had belonged to her former husband. On 5 December 1997 the prosecutors dismissed her request.

15. On 13 January 1998 the bill of indictment against the director of the companies and three other co-accused was approved. The original charges of embezzlement and fraud were supplemented with accusations of forgery and negligent accountancy (respectively, Articles 207 § 1 and 322 of the Criminal Code as then in force).

16. On 17 February 1998 the accused were committed for trial.

17. Hearings scheduled for 7 April and 18 May 1998 were adjourned at the request of the defendants.

18. On 18 June 1998 the court ordered a further expert examination. It was completed on 29 December 1999.

19. On 27 March and 12 June 2000 the trial was adjourned due to the illness of the defendants.

20. Hearings scheduled for 6 and 7 September, 25 October, 27 November and 14 December 2000 and 23 January 2001 were partially adjourned because certain witnesses failed to appear before the court. The court questioned those witnesses present and ordered the police to bring the remaining witnesses to the next hearing.

21. On 21 February 2001 the hearing was adjourned due to the illness of the judge.

22. On 27 May 2001 the hearing was again adjourned due to the failure of certain witnesses to appear.

23. On 30 May 2001 the hearing was further adjourned since one of the defendants had failed to appear due to illness.

24. On 27 June 2001 another expert examination was ordered at the request of the prosecution.

25. In a letter to the prosecution of 4 October 2001, the Šiauliai City District Court noted that the proceedings had lasted an unduly long time due to deficiencies in the pre-trial investigation.

26. On 29 January 2002 the Šiauliai City District Court decided to exclude the applicant from the list of civil claimants. The applicant unsuccessfully challenged the decision, the courts ruling that domestic law did not provide her with a right of appeal.

27. On 18 February 2002 the Šiauliai City District Court convicted the defendants.

28. In a letter of 28 May 2002, the Supreme Court informed the applicant that she could appeal against the judgment of 18 February 2002.

29. On 1 July 2002 the applicant requested renewal of the time-limit to lodge an appeal against her exclusion from the list of civil claimants.

30. On 11 June 2002 the Šiauliai City District Court granted her request. It was noted that the courts had erred in deciding that the domestic law had precluded the applicant from appealing.

31. On 19 June 2002 the applicant lodged an appeal whereby she challenged the decision of 29 January 2002 and the judgment of 18 February 2002.

32. On 5 July 2002 the Šiauliai City District Court refused to admit the applicant's appeal. The court noted that the applicant was not a participant in the trial, and therefore was not entitled to appeal against the judgment 18 February 2002. Moreover, the court found that the applicant had failed to comply with the time-limit for appeal without good reason.

33. On the same date the applicant challenged that decision.

34. On 25 July 2002 the Šiauliai Regional Court granted her appeal. The court renewed the time-limit for appeal against the judgment of 18 February 2002. It was noted, *inter alia*, that the courts had unduly restricted the applicant's rights by refusing to accept her appeal.

35. On 2 August 2002 the Šiauliai Regional Court quashed the decision of 29 January 2002 whereby the applicant had been deprived of the status of civil claimant. It was noted that the impugned decision had breached the applicant's rights. The judgment of 18 February 2002 was also quashed, and the case was remitted for a fresh examination.

36. A hearing scheduled for 8 October 2002 was adjourned as one of the defendants, certain witnesses and defence counsel had failed to appear.

37. On 11 November 2002 the trial hearing was further adjourned due to the failure to summon one of the defendants.

38. Following the applicant's hierarchical complaint about the actions of the Šiauliai City District Court, an inquiry was conducted by the Šiauliai Regional Court. In a letter of 27 November 2002, the latter informed the applicant that the Šiauliai City District Court had not undertaken all the necessary measures to ensure a speedy trial.

39. On 3 January 2003 the Šiauliai City District Court convicted the defendants of forgery and negligent bookkeeping, and acquitted them of the original charges of embezzlement and fraud.

40. By the same judgment, the trial court decided to leave the applicant's civil claims "without examination". The court noted that the defendants had neither been accused of nor tried for offences which could have caused damage to the applicant's interests as a shareholder. It further reasoned that, as a shareholder, the applicant had no entitlement to any part of the property of a joint-stock company. Only if the company had been liquidated could she claim a part of its property, together with other shareholders. It noted that the applicant had a possibility to pursue her claims by way of a separate civil action. The court concluded that "the applicant should not be deemed a victim or civil claimant in this case".

41. The applicant appealed, complaining that she had incurred significant pecuniary and non-pecuniary damage, particularly as the examination of the case had taken almost seven years. She reiterated that the criminal case had been instituted on the basis of her civil action, and that she had been granted the status of victim and civil claimant.

42. On 12 March 2003 the Šiauliai Regional Court dismissed the applicant's appeal. It noted:

"The victim, Baškienė, took part in the examination of the case throughout the proceedings; she was entitled [*inter alia*] to submit a civil claim and the evidence in order to substantiate it. However ... the submission of a civil claim does not presuppose the obligation on the part of the court to satisfy it. ... The first-instance court has reasonably established that the victim's right to part of the company's property would only arise in accordance with company law, and has correctly noted that [the applicant] could defend her property rights in accordance with the civil procedure. ...

When adopting the ... judgment, the court must also decide on the civil claim. Civil claims can only be granted if [the defendants are convicted], and it is established that the civil claimant had suffered pecuniary damage due to the criminal acts in question; finally, there must be a causal link between the criminal actions and the damage incurred. ...

The defendants were not tried for any offence which could have caused damage to [the applicant]. ...

As to [the applicant's] property rights, they are not the object of this criminal case. It is the object of civil law and has only to be decided in accordance with the civil proceedings."

43. The court further noted that the examination of the case had been unjustifiably long, in breach of Article 18 of the Criminal Code, the Constitution and the European Convention of Human Rights. The court concluded however that, despite the acknowledgement of the breach, "it was not possible to remedy this flaw at the current stage of the proceedings". On the same date, the judgment of 3 January 2003 entered into force.

44. The applicant lodged a cassation appeal, complaining, *inter alia*, that the courts had failed to bring additional charges of forgery against the defendants, which would have allowed their conviction and the satisfaction of her civil claims. She also alleged that the length of the proceedings had been excessive.

45. On 7 October 2003 the Supreme Court dismissed the applicant's cassation appeal. The Supreme Court established that the prosecution had rightly refused to bring additional charges against the defendants, as they had found no evidence of the crimes alleged by the applicant.

46. With respect to the applicant's civil claims, the Supreme Court noted that her entitlement to a certain number of shares had not been questioned. It also found that, in the share certificates issued by the defendants, the number and value of shares belonging to the applicant had been wrongly calculated and did not correspond to the data appearing in the company's statute. The Supreme Court concluded, however, that this error did not restrict the applicant's rights as a shareholder; nor did it cause her any pecuniary or non-pecuniary damage. The Supreme Court further concluded that, in such circumstances, there had been no basis to grant the applicant the status of a civil claimant.

47. Finally, the Supreme Court endorsed the findings of the appellate court as to the length of the proceedings. It emphasised, however, that it was not reasonable to consider that the excessive length was an "essential violation" of the Code of Criminal Procedure since, in such a case, the decisions of the lower courts would have to be quashed, and this would have only further prolonged the examination of the case.

48. The applicant did not bring a new civil action.

II. RELEVANT DOMESTIC LAW AND PRACTICE

49. Article 30 of the Constitution stipulates:

"The person whose constitutional rights or freedoms are violated shall have the right to apply to court."

50. Article 60 of the Code of Criminal Procedure (in force until 1 May 2003) provided that a person who, as a result of a crime, sustained physical,

pecuniary or non-pecuniary damage, should be recognised as a victim. Article 61 of the Code stipulated that a person who had incurred pecuniary damage caused by the criminal act and requested compensation should be considered a civil claimant. Under Article 66 of the Code, the person who had filed a civil action in a criminal case should be entitled to lodge a claim under the civil procedure.

51. Article 18 of the Code of Criminal Procedure (in force until 1 May 2003) provided that the investigation and trial should be conducted within a reasonable time.

52. Article 6.272 § 1 of the 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 on 7 June 2005), 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.

53. 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

54. The applicant complained about the court’s refusal to determine her civil claims after almost seven years and five months of examination. She invoked Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. *As to the applicability of Article 6 § 1 of the Convention*

55. The Government submitted that the issues examined by the criminal courts were neither directly nor indirectly related to the applicant's civil rights or obligations.

56. The applicant argued that she had sought to defend her rights as a shareholder, first by bringing civil proceedings and, subsequently, by acting as a civil claimant in the criminal proceedings.

57. The Court has consistently held that the civil party to criminal proceedings can claim to be a victim of a violation of Article 6 § 1 of the Convention (see, e.g., *Berger v. France*, no. 48221/99, 3 December 2002). It is also well-established in the Court's case-law that proceedings relating to the reimbursement of the value of shares fall within the civil limb of Article 6 § 1 (see, e.g., *Bakiyevets v. Russia*, no. 22892/03, 15 June 2006). The Court will therefore consider whether the particular criminal proceedings, in which the present applicant was a civil claimant, related to the determination of her civil rights and obligations.

58. The Court notes that the applicant first brought her claim to recover the value of shares by way of civil proceedings (see paragraph 8 above). It was the initiative of the domestic courts, not that of the applicant, to refer her civil action for an examination in the context of the criminal case, instituted on 6 September 1996 (see paragraphs 8 and 9 above). Subsequently, the applicant was recognised by the domestic courts as a civil claimant in the criminal case and retained that status – albeit not without a challenge – throughout the proceedings, i.e., until the final decision of the Supreme Court, taken on 7 October 2003 (see, in particular, paragraphs 40-43 and 46 above). In these circumstances, and recalling that it is primarily for the national courts to interpret and apply domestic law, the Court concludes that the proceedings at issue were sufficiently closely related to the applicant's civil rights to fall within the ambit of Article 6 § 1 of the Convention.

2. *As to the exhaustion of domestic remedies*

59. The Government contended that, if the applicant considered that the proceedings had been excessively long, she could 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. In this respect, the Government referred to a judgment by the Vilnius Regional Court of 7 June 2005 whereby a former suspect had been awarded damages under this provision for the excessive length of a criminal case.

60. 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. The Government also reiterated that the Convention was a directly applicable act in the Lithuanian legal system, and could be directly relied on by the applicant.

61. Finally, referring to the decisions of domestic courts in the present case, the Government stressed that the courts have expressly acknowledged the violation of the “reasonable time” requirement. It was therefore open to the applicant to claim damages on the basis of the courts’ finding. The Government considered that, in view of the applicant’s failure to pursue one of the above legal avenues, her complaint should be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

62. The applicant did not make any submissions on this issue.

63. 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).

64. 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).

65. 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 adequately certain not only in theory but also in practice (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).

66. 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).

67. Turning to the case at hand, the Court first has to assess whether the domestic courts’ conclusions regarding the length of the proceedings could be deemed an express acknowledgement of the violation of the “reasonable time” requirement. The Court has certain doubts in this respect. It notes, in particular, that the Supreme Court had not been prepared to equate the excessively lengthy examination to a breach of one of the essential elements

of a criminal procedure. In this respect it noted that the quashing of the lower-courts' decisions would only further prolong the proceedings (see paragraphs 43 and 47 above). Even assuming that there has been an acknowledgement of the breach of Article 6 § 1 of the Convention, the Court observes that no reference to any possible redress was made by the domestic courts. This leads to the second question which the Court has to answer - whether any possibility of redress was accessible to the applicant.

68. 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.

69. The Court finds no reason to depart from its existing case-law in this regard. 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 17 May 1996. 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.*).

70. To the extent that the Government have argued that the applicant could have lodged a compensation claim for the period starting on 1 July 2001, 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.

71. 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).

72. 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.

73. In these circumstances, the Court remains unconvinced 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 – already 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).

74. 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.

B. Compliance with Article 6 § 1

75. In the Government's view, the applicant had not been precluded from bringing a separate set of civil proceedings even during the examination of the criminal case. They acknowledged, however, that it had been the initiative of the domestic authorities to start criminal proceedings on the basis of the applicant's civil claims introduced on 17 May 1996. The Government further stated that the domestic courts had been obliged to leave the applicant's claims unexamined, as it had been established in the process of the criminal proceedings that the applicant had not incurred any pecuniary or non-pecuniary damage as a result of the acts for which the defendants had been convicted.

76. The applicant reiterated that, while the courts had referred her civil action for examination in the context of the criminal case, they had ultimately failed to take a decision. Furthermore, the authorities had delayed the examination of the criminal case by adding and disjoining separate sets of proceedings to the principal one.

77. The Court notes that two interrelated issues arise out of the applicant's complaint under Article 6 § 1. The Court finds it necessary first to determine whether, given the circumstances of the present case, the applicant had the benefit of an effective right to a court. It will then proceed to examine whether the "reasonable time" requirement of Article 6 § 1 has been respected (see, *mutatis mutandis*, *Sukhorubchenko v. Russia*, no. 69315/01, §§ 41-54, 10 February 2005).

1. Right of access to a court

78. The Court reiterates that the procedural guarantees laid down in Article 6 § 1 secure to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36).

79. The institution of proceedings does not, in itself, satisfy all the requirements of Article 6 § 1. The Court recalls that the Convention is intended to guarantee not rights which are theoretical or illusory but those which are practical and effective. The right of access to a court includes not only the right to institute proceedings but also the right to obtain a “determination” of the dispute by a court. It would be illusory if a Contracting State’s domestic legal system allowed an individual to bring a civil action before a court without ensuring that the case is determined by a final decision in the judicial proceedings. It would be inconceivable for Article 6 § 1 to describe in detail procedural guarantees afforded to litigants – proceedings which are fair, public and expeditious – without ensuring that the parties’ civil disputes will be finally determined (see *Multiplex v. Croatia*, no. 58112/00, § 45, 10 July 2003; *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II; also see, *Sukhorubchenko* cited above, § 43). Moreover, the Court has found a violation of the right of access to a court in cases where the proceedings were stayed for a significant period of time by operation of law (see *Multiplex v. Croatia*, cited above, §§ 53-55; *Kutić v. Croatia*, cited above, §§ 32-33; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 70, ECHR 1999-V).

80. Turning to the facts of the present case, the Court recalls that the applicant sought a determination of her rights as a shareholder. On 17 May 1996 she brought a civil action, which was then joined to the criminal proceedings opened on the basis of the applicant’s civil action on 6 September 1996. The judgment in the criminal proceedings was adopted by the Šiauliai City District Court on 3 January 2003 and came into force on 12 March 2003, leaving the applicant’s civil claims without any judicial determination, and depriving her of her “civil-claimant” status in the context of that criminal case. However, the final decision on the matter was taken by the Supreme Court on 7 October 2003 (see paragraphs 39-42 and 46 above). From the introduction of the applicant’s civil claims until the above decision, almost seven years and five months had lapsed.

81. The Court would stress several elements concerning the facts of the present case: The applicant’s civil claims introduced on 17 May 1996 were joined to the criminal proceedings on the initiative of the domestic courts, considering that her interests as a shareholder might have been infringed by the suspected criminal actions. In these circumstances, the applicant could

not have reasonably been expected to bring another civil action independent from the criminal case to which her initial claims had been joined. The Court is particularly struck by the fact that the applicant had to wait almost seven years and five months to be told that the criminal courts no longer considered it appropriate to examine her civil action in the context of the criminal case (see paragraph 80 above). The Court considers that the cumulative effect of these elements was such as to deprive the applicant of an effective right to a court.

82. Accordingly, there has been a violation of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Sukhorubchenko* cited above, §§ 53-54).

2. Length of the proceedings

83. The Court reiterates that almost seven years and five months lapsed from the date when the applicant had introduced her civil claims until the adoption of the final decision to leave her civil claims unexamined, most of this delay having occurred during the examination of the impugned criminal proceedings. Given the domestic courts' acknowledgement that the proceedings had been unreasonably long (see paragraphs 42, 43, and 47 above), and taking into account the fact that the Government have not adduced any convincing explanation for the delay, the Court considers that the "reasonable time" requirement was not respected.

84. Consequently, there has been a further breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. The applicant complained under Article 6 § 1 of the Convention (cited above) that the courts had been biased, that they had erred in fact and law, and that they had failed to examine all the relevant evidence and give adequate reasons for their decisions. She further complained about the refusal of the prosecution to bring additional charges against the defendants.

86. The applicant also complained that no effective remedy had been available to her to challenge the excessive duration of the examination of her civil claims. She relied on Article 13 of the Convention, which is worded as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

87. The applicant finally complained that her property rights had been violated since, following protracted proceedings, the courts had refused to examine her civil claims. She invoked Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

88. In view of its finding of a violation of the applicant’s right of access to a court and the “reasonable time” requirement, the Court does not consider it necessary to examine separately the remainder of the applicant’s complaints.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. The applicant claimed 1,811,035 Lithuanian litai (“LTL”; about 524,532 euros [“EUR”]) as compensation for pecuniary damages, and LTL 800,000 (about EUR 231,704) in respect of non-pecuniary damages.

91. The Government contested these claims as unsubstantiated and excessive.

92. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant. It therefore makes no award in this respect. However, it considers that the applicant may be considered to have suffered some non-pecuniary damage as a result of the breach of her rights which cannot be compensated by the Court’s finding of a violation alone. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of 5,000 euros (“EUR”) under the latter head.

B. Costs and expenses

93. The applicant did not claim costs and expenses and, accordingly, there is no cause to make an award under this head.

C. Default interest

94. 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 complaints concerning access to court and the excessive length of the proceedings admissible, and finds that there is no need to examine separately the remainder of the application;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the absence of an effective right to a court;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in relation to the excessive length of the proceedings;
4. *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 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, which sums are to be converted into the currency of the respondent State at the rate applicable at 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President