



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

SECOND SECTION

CASE OF IMPAR LTD. v. LITHUANIA

(Application no. 13102/04)

JUDGMENT

STRASBOURG

5 January 2010

FINAL

05/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of *Impar Ltd. v. Lithuania*,
The European Court of Human Rights (Second Section), sitting as a
Chamber composed of:

Françoise Tulkens, *President*,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria,
Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 13102/04) 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 *Impar Ltd.*, a company registered in Lithuania (“the applicant company”), on 30 March 2004.

2. The applicant company was represented by Mr J. Gumbis, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms Elvyra Baltutytė.

3. On 20 January 2009 the Court decided to communicate the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. In 1997 the Vilnius City tax authorities investigated the applicant company’s book-keeping. On 21 April 1997 they drew up a report in which the results of the investigation were recorded.

5. From 21 April 1997 to May 1997 the tax authorities conducted a further investigation into the applicant company’s accounting practices. On 27 May 1997 the Vilnius City tax authority drafted a supplement to the report of 21 April 1997. The report stated that the company’s book-keeping was fraudulent. The tax authorities fined the applicant company in the

amount of 4,044,643 Lithuanian litai (LTL, about 1,171,409 euros (EUR)), which corresponded to 25% of the company's annual income. In addition, the law enforcement authorities instituted criminal proceedings against the company's director and chief financial officer.

6. Refusing to pay the fine, on 18 September 1997 the applicant company instituted court proceedings.

7. On 23 December 1997 the Vilnius City First District Court granted the applicant company's action. The Vilnius City tax authority appealed, and on 10 April 1998 the Vilnius Regional Court quashed the lower court's decision, returning the case for a fresh examination. The court noted that additional evidence had to be established.

8. On 13 January 1999 the law enforcement institutions, who had been investigating the criminal case against the company's director and chief financial officer, commissioned the Department of Revisions to carry out an expert examination of the company's documents.

9. On 16 May 2000 the Vilnius City First District Court granted the applicant company's action. On 26 June 2000 the Vilnius Regional Court upheld the lower court's decision. On 20 December 2000 the Supreme Court quashed the lower courts' decisions on the ground that not all the relevant circumstances had been established. In particular, the lower courts had failed to obtain the results of the above mentioned expert examination, those results being necessary to rule on the lawfulness of the tax authorities' decision to fine the applicant company. The Supreme Court returned the case for fresh examination.

10. As transpires from the minutes of the hearing of the Vilnius City First District Court of 31 May 2001, the applicant company's representative requested that court to stay the proceedings pending the result of the expert examination of the company's documents. The Vilnius City tax authority's representative did not object to that demand. Noting the Supreme Court's instruction to the same effect, the Vilnius City First District Court granted an adjournment.

11. Having finished the expert examination, on 6 September 2002 the Department of Revisions drew up the report and on 14 February 2003 submitted it to the Vilnius City First District Court. On 17 February 2003 the investigators informed the court that they had discontinued criminal proceedings against the company's director and chief financial officer.

12. On 6 March 2003 the court proceedings resumed.

13. On 17 March 2003 the tax authority reduced the fine to the amount of LTL 808,929 (approximately EUR 231,122 or 5% of the company's annual income) in the light of amendments to the tax legislation.

14. On 14 April 2003 the Vilnius City First District Court dismissed the applicant company's action. It established that a significant part of the applicant company's books were damaged or missing, and that the records of financial transactions had been deleted from its databases. The court

concluded that the tax authorities had been right to impose a fine on it. The court further observed that the expert report of 6 September 2002 which the Department of Revisions had drawn up was in essence related to other violations, namely double book-keeping, which had not been the subject matter of the tax dispute at issue. Moreover, the expert examination was not conclusive, since the experts had not received all necessary documents. Therefore the court did not base its reasoning on that expert report.

15. On 7 August 2003 the Vilnius Regional Court upheld the decision. By a ruling of 28 October 2003, the Supreme Court refused to hear the applicant company's cassation appeal, holding that it raised no important legal issues.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The Law on Tax Administration, as applicable on 17 March 2003, provided that a company which committed a persistent tax law violation by fraudulent book-keeping could be subject to a penalty of 5 percent of its income for the last twelve months (Articles 49 § 1 and 50 § 3 (1) of the Law).

17. Article 180 of the Code of Civil Procedure, as in force until 1 January 2003, provided that the parties could submit requests to the trial court and the latter was to grant or deny them by adopting a ruling.

THE LAW

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

18. The applicant company complained that the length of the tax litigation proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

19. The Government argued that Article 6 § 1 was not applicable to the present case, because the proceedings at issue concerned tax litigation. Alternatively, they submitted that the applicant company had, at least in theory, domestic remedies as regards the complaint about the length of the tax dispute, but had failed to exhaust them. Lastly, pointing out that the proceedings started on 18 September 1997 and ended on 28 October 2003, the Government contended that their length was reasonable, all the

more so because some delay was attributable to the applicant company. In particular, on 31 May 2001 the Vilnius City First District Court stayed the proceedings at the applicant company's request and for that reason the litigation was protracted by more than a year.

20. The applicant company contested these submissions.

A. Admissibility

21. The present case concerns tax litigation in which the applicant company was found, following fraudulent book-keeping, liable to pay a fine in the amount of LTL 808,929 (approximately EUR 231,122). The Court has consistently held that, generally, tax disputes fall outside the scope of "civil rights and obligations" under Article 6 of the Convention, despite the pecuniary effects which they necessarily produce for the taxpayer (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII). The facts of the instant case do not give reason to review that conclusion.

22. However, having considered the circumstances of the present case, the Court finds that the general character of the legal provisions imposing fines for persistent tax law violations, the purpose of the penalty, which was both deterrent and punitive, as well as its severity, suffice to show that, for the purposes of Article 6 of the Convention, the applicant company was charged with a criminal offence (see *Västberga Taxi Aktiebolag and Vulic v. Sweden*, no. 36985/97, §§ 76-82, 23 July 2002, and *Jussila v. Finland* [GC], no. 73053/01, §§ 30-38, ECHR 2006-XIII). It follows, that the Government's plea that the complaint is incompatible *ratione materiae* must be dismissed.

23. As to the Government's submission that the applicant company did not exhaust the available domestic remedies to obtain redress for the length of proceedings, the Court recalls its case law to the effect that in 2004, when the present application was lodged with the Court, no such effective domestic remedies were available in Lithuania (see, most recently, *Norkūnas v. Lithuania*, no. 302/05, §§ 28-30, 20 January 2009; *Vorona and Voronov v. Lithuania*, no. 22906/04, §§ 23-25, 7 July 2009; *Naugžemys v. Lithuania*, no. 17997/04, §§ 27-29, 16 July 2009). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present circumstances. Consequently, the Government's objection must be dismissed.

24. Lastly, the Court considers that this complaint 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. As regards the period to be taken into consideration, the Court observes that the tax litigation proceedings were instituted on 18 September 1997 and ended on 28 October 2003, when the Supreme Court adopted its ruling. They therefore lasted six years and one month at three levels of jurisdiction.

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

27. The Court notes the Government's objection that it was the applicant company which requested the Vilnius City First District Court to stay the proceedings pending the result of the expert examination of the company's documents. However, the Court noted that this resulted in a two year delay for an expert report which ultimately proved to be unnecessary. The Court considers that the domestic authorities were in part accountable for this delay, given their responsibility for the examination of the case in a timely fashion.

28. The Court finds, having regard to all the circumstances of the case and particularly having taken into account the overall duration of the proceedings, that in the instant case the length of those proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. Relying on Article 6 § 1 of the Convention the applicant company also complained that the domestic courts were partial in that they did not take into account all the relevant circumstances of the case and erroneously applied domestic law.

30. In this connection it must be recalled that it is not the Court's function to substitute its own assessment of the facts and domestic law for that of the domestic courts. As a general rule, it is for these courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings in their entirety were fair (see, among many authorities, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I). On the basis of the materials submitted by the applicant company, the Court notes that, within the framework of the tax litigation, the applicant company was able to introduce all necessary arguments in defence of its interests, and that the judicial authorities considered them at three levels of jurisdiction. The decisions of the domestic courts do not appear unreasonable or arbitrary. It

follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

31. Under Article 6 § 1 of the Convention the applicant company further complained that, due to the length of the tax proceedings, on 1 January 2003 the new Code of Civil Procedure came into force, limiting the grounds on which a cassation appeal could be accepted for examination by the Supreme Court. In the applicant company's view, had the proceedings in its case not been protracted, it would have had a wider range of available domestic remedies.

32. On this point the Court repeats that it is for the national courts to resolve questions of domestic law. Given that the assessment of the grounds for cassation is a matter over which the Lithuanian Supreme Court has sole jurisdiction, it is not for the Court to speculate whether the applicant company's cassation appeal would have been accepted for examination by the Supreme Court, had the former lodged it while the old Code of Civil Procedure was still in effect. Again, the Court's task is only to determine whether the proceedings as a whole were fair (see, for example, *Kukkonen v. Finland* (no. 2), no. 47628/06, § 25, 13 January 2009). In view of the Court's considerations in paragraph 30 above, this complaint must also be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

33. Lastly, under Article 1 of Protocol No. 1 to the Convention the applicant company argued that the fine of LTL 808,929 (approximately EUR 231,122) which the tax authorities imposed upon it amounted to a breach of its property rights.

34. The Court recalls that Article 1 of Protocol No. 1, which concerns the protection of property, reserves the right of States to enact such laws as they deem necessary for the purpose of securing the payment of taxes (see *Ferrazzini*, cited above, § 29). The Court has likewise held that the Contracting States must be free to empower tax authorities to impose fines even in large amounts (see, *mutatis mutandis*, *Bendenoun v. France*, 24 February 1994, § 46, Series A no. 284). Although the fine imposed on the applicant company could be considered heavy, no convincing reasons have been put forward to the Court to explain why it cannot be regarded as compatible with the above-mentioned legitimate State interests. Consequently, this complaint must be dismissed as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant company claimed LTL 892,992, as a compensation for pecuniary damage and LTL 100,000 in respect of non-pecuniary damage.

37. The Government contested these claims as unreasoned and excessive.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant company EUR 900 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant company claimed LTL 1,000 for costs and expenses incurred before the domestic courts and LTL 5,000 for those incurred before the Court. It noted, however, that it was not able to provide the Court with a full assessment of the expenses incurred in the Convention proceedings, since they were still ongoing.

40. The Government contested these claims as unsubstantiated by any documents.

41. In the absence of supporting documentation, the Court rejects the applicant company's claim.

C. Default interest

42. 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 company's 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 company, 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), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the responded 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 amount 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 company's claims for just satisfaction.

Done in English, and notified in writing on 5 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President