

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

THIRD SECTION

DECISION

Application no. 32133/10
Martin BUZINGER
against Slovakia

The European Court of Human Rights (Third Section), sitting on 16 June 2015 as a Chamber composed of:

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Branko Lubarda, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 27 May 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Martin Buzinger, is a Slovak national, who was born in 1971 and lives in Bratislava. In addition to the present case, he was the applicant in six and represented applicants in seven other cases before the Court.

2. In the present case, he was represented before the Court by Ms M. Lukačovičová, a lawyer practising in Bratislava.

3. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant is a practicing lawyer. He provided legal services in association with a partner, A., with whom he shared premises.

6. On 2 September 2002 he filed a criminal complaint stating that, the previous night, A. had unlawfully removed various items of office equipment from their law firm and that the criminal offence of theft might have been committed in that connection. He specified the value of the damage thus suffered and submitted a claim against A. for compensation.

7. Subsequently an investigation was opened into a suspicion of theft having been committed by one or more persons unknown. The investigation was terminated because there was no case to answer, but that decision was quashed following the applicant's complaint. The ensuing new investigation into a suspicion of embezzlement was terminated twice, the former termination being quashed following the applicant's appeal. The applicant's appeal against the latter termination was rejected on 11 December 2012 for being belated.

8. On 28 October 2009 the Constitutional Court rejected a complaint in which the applicant had challenged the length of the criminal proceedings, in so far as they concerned his claim for damages.

9. From the observations of the Government on the admissibly and merits of the application, it transpired that, in parallel to claiming damages in the context of the above criminal proceedings, on 3 September 2004 the applicant had filed an action for damages against A. before the civil courts.

10. On 17 June 2010 the Bratislava I District Court partly granted and partly dismissed the action. The judgment was however quashed by the Bratislava Regional Court on 31 January 2012 following appeals by both parties. The matter was thus remitted to the first-instance for re-examination and it has been pending there since.

11. In all the above proceedings, the applicant was or has been represented by a practicing lawyer or a law firm.

COMPLAINTS

12. The applicant complained under Articles 6 § 1 and 13 of the Convention about the course and especially the length of the criminal proceedings, in so far as they concerned his claim for damages, and his inability to obtain redress before the Constitutional Court in that respect.

THE LAW

13. According to the publically available database of decisions of the Constitutional Court, on 4 June 2014 it allowed a complaint by the applicant

concerning the length of the proceedings in his civil action by finding a violation of his right under Article 6 § 1 of the Convention to a hearing within a reasonable time and its constitutional equivalent and awarded him legal costs and 2,500 euros in compensation for non-pecuniary damage. The applicant was represented in those proceedings by a lawyer.

14. By way of a letter of 13 March 2015, referring to the Constitutional Court's judgment of 4 June 2014, the Registrar of the Third Section reminded the applicant of the provisions of Rule 47 § 7 of the Rules of Court and Article 35 § 3 of the Convention and invited his comments.

15. In an undated letter, which was received at the Court on 25 March 2015 by fax and on 9 April 2015 by post, the applicant responded to the letter of 13 March 2015 by submitting that the proceedings before the Constitutional Court leading to that judgment had been initiated more than three years after the introduction of the application and that the failure to inform the Court of that judgment was due to negligence, the fact that he had been keeping separate files for the criminal proceedings and the civil proceedings, a reorganisation of the law practice, and the moving of the law firm.

16. The Court notes that under Rule 47 § 7 of the Rules of Court applicants are to keep it informed of all circumstances relevant to the application and that under Article 35 § 3 (a) of the Convention it is to declare inadmissible any individual application if it considers that the application is an abuse of the right of individual application.

17. The Court has recently reiterated the relevant principles in its judgment in the case of *Gross v. Switzerland* [GC] (no. 67810/10, § 28, ECHR 2014) as follows:

- An application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts.

- The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information.

- The same applies if new, important developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 (former Rule 47 § 6) of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts.

- However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty.

18. The Court notes that the application is principally aimed at the length of the proceedings on the applicant's claim for damages, which was originally made in the context of the proceedings initiated by his criminal complaint. However, since 2004 he had been advancing essentially the same

claim before civil courts, which courts did not consider themselves prevented from dealing with it.

19. The Court observes that the applicant did not inform the Court in his application of 2010 of the civil proceedings and that their existence came to light only through the Government's observations. At the same time, the Court considers the existence of those proceedings directly relevant to the present application because they comprised essentially the same claim and its resolution in the civil proceedings would have rendered its determination in the criminal proceedings moot.

20. The Court further notes that the applicant did not inform it of the Constitutional Court's judgment of 4 June 2014 and the proceedings leading to it.

21. For similar reasons as mentioned above, the Court considers the judgment of 4 June 2014 directly relevant for the present application, in particular as regards the redress afforded to the applicant by it, in relation to the question of the applicant's status as of a victim within the meaning of Article 34 of the Convention of the alleged violation of the Convention and, as the case may be, of any just satisfaction to be awarded under its Article 41.

22. The applicant's complete silence on the constitutional judgment of 4 June 2014, in the context of the application in which he did not inform the Court about the civil proceedings he had initiated in relation to the same claim cannot be interpreted, in the Court's view, as anything but a failure to disclose information concerning the very core of the application.

23. In making this assessment, the Court has taken into account all elements of context including that the applicant himself is a practicing lawyer well aware of the Court's procedures and that, in the present application, at all stages at the domestic level as well as before the Court he was or has been represented by another practicing lawyer.

24. In that regard, the Court would emphasise that, in general, lawyers must understand that, having due regard to the Court's duty to examine allegations of human rights violations, they must show a high level of professional prudence and meaningful cooperation with the Court by sparing it from the introduction of unmeritorious complaints and, once proceedings have been instituted, then meticulously abide by all the relevant rules of the procedure and urge their clients to do the same (see *Bekauri v. Georgia* (preliminary objection), no. 14102/02, § 24, 10 April 2012).

25. In view of that standard, the Court considers the applicant's explanation of the failure to keep the Court informed of all circumstances relevant to the application as required under Rule 47 § 7 unacceptable and finds it sufficiently established that by omitting to disclose the information in question the applicant intended to mislead the Court within the meaning of its above-cited case-law.

Accordingly, it is appropriate to reject the applications as an abuse of the right of petition, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 July 2015.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President