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

FIRST SECTION

DECISION

Application no. 5337/12
Antonio Manuel DUARTE GOMES
against Portugal

The European Court of Human Rights (First Section), sitting on 26 August 2014 as a Committee composed of:
Mirjana Lazarova Trajkovska, *President,*
Paulo Pinto de Albuquerque,
Ksenija Turković, *judges,*
and Søren Prebensen, *Acting Deputy Section Registrar,*
Having regard to the above application lodged on 16 January 2012,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr António Manuel Duarte Gomes, is a Portuguese national, who was born in 1949 and lives in Pero Pinheiro (Portugal). He was represented before the Court by Mr J. P. Leitão, a lawyer practising in Lisbon.

2. The Portuguese Government ("the Government") were represented by their Agent, Mrs M. F. da Graça Carvalho, Deputy-Attorney General.

A. The circumstances of the case

3. On 26 September 2003 the Public Prosecutor at the Lisbon's Court instituted criminal proceedings against X. on charges of aggravated fraud (*burla qualificada*) and forgery of documents (proceedings no. 5822/98.8 JDLSB).

4. On 27 October 2003 the applicant lodged a civil claim (*pedido de indemnização civil*) against X. before the Criminal Court of Lisbon alleging that he had bought a car to X. which was later confiscated, therefore he had suffered pecuniary damages.

5. On 12 February 2004 the court issued a European arrest warrant against X. The warrant was not enforced as the defendant could not be located.

6. On 14 March 2006 X. was declared wanted for prosecution. Consequently, the Criminal Court of Lisbon declared the suspension of the criminal proceedings.

7. In November 2006, April 2007, May 2007, May 2009, October 2010 and May 2012 the Criminal Court of Lisbon issued several European arrest warrants against X. and requested information to different authorities in order to try to locate him.

B. Relevant domestic law

8. The Code of Criminal Procedure provides:

Article 71

"A civil claim linked to a crime, should be raised within the criminal proceedings and it may be separately raised, before the civil courts, only in the cases established by law."

Article 72

"1. The civil claim may be autonomously lodged, before the civil court, when:

a) Prosecution submissions (*acusação*) have not been submitted within eight months after the crime report (*notícia do crime*) or criminal proceedings have been stalled for the same period of time;

b) the criminal proceedings were discontinued or temporarily suspended (...)"

Article 335

(...)

"3. The issue of an order of contumacy (...) leads to the suspension of the proceedings until the accused presents himself or is detained (...)."

COMPLAINT

9. The applicant complained under Article 6 § 1 of the Convention about the undue length of proceedings.

THE LAW

10. The applicant complained that the length of the criminal proceedings had been incompatible with the "reasonable time" requirement. He also complained that he had not been able to be compensated for his pecuniary

damages because of the inertia of the State. He relied on Article 6 § 1 of the Convention, which reads as follows in the relevant part:

Article 6 § 1

"in the determination of his civil rights and obligations..., everyone is entitled to a... hearing within a reasonable time by a... tribunal..."

11. The relevant period began on 27 October 2003, when the applicant lodged his civil claim before the Criminal Court of Lisbon, and has not yet ended. So far, it has thus lasted ten years and six months at one level of jurisdiction.

12. The Government submitted that the length of the proceedings had resulted from difficulties related to the location of the defendant, which resulted in the suspension of the proceedings on 14 March 2006, pursuant to Article 335 § 3 of the Code of Criminal Procedure. Therefore, the Government could not be held responsible for the delay.

13. As to the applicant's complaint that the inertia of the State has limited his civil claim, the Government argued that he had not exhausted all effective remedies available to him with regard to it. They emphasised that the applicant had failed to lodge a separate civil claim under the relevant provisions of the Code of Criminal Procedure, in particular Article 72 § 1 (b).

14. The reasonableness of the length of proceedings coming within the scope of Article 6 § 1 must be assessed in each case according to the particular circumstances (*Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

15. The Court reiterates that only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (see *Papageorgiou v. Greece*, 22 October 1997, § 46, *Reports of Judgments and Decisions* 1997-VI).

16. In the present case, the Court observes that the criminal proceedings have been pending since October 2003 and that the defendant has, so far, been wanted for prosecution since 12 February 2004. The Court also notes that the Criminal Court of Lisbon, faced with the situation of the defendant, has not remained passive: it made several attempts to locate him in November 2006, April 2007, May 2007 and May 2009 by issuing new European arrest warrants and by requesting information to different authorities. In the Court's view such conduct of the proceedings, in view of the particular circumstances, showed that the domestic courts dispensed due diligence in dealing with the applicant's case.

17. As to the lack of a decision concerning compensation for the applicant's pecuniary damages, the Court notes that, within the period to be taken into consideration, the applicant could have lodged a separate civil claim under Article 72 § 1 (b) of the Code of Criminal Procedure

(*see Lógica – Móveis de Organização, Lda v. Portugal* (dec.), no. 54483/00, 9 July 2002). Yet the applicant has failed to use this remedy.

18. Thus, even though the Criminal Court of Lisbon has held no hearing in the proceedings and adopted no decision concerning the applicant's civil claim since October 2003, taking into account the particular circumstances of the case, the Portuguese authorities cannot be held responsible for the period of time which has elapsed.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Prebensen	Mirjana Lazarova Trajkovska
Acting Deputy Registrar	President