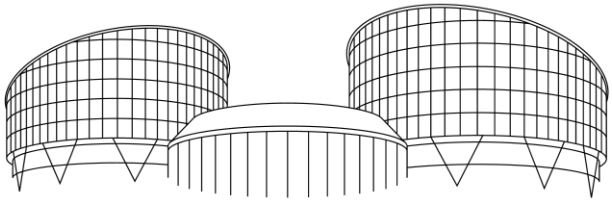

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 45073/07
by Aurelijus BERŽINIS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 13 December 2011 as a Committee composed of:

Dragoljub Popović, *President*,
Danutė Jočienė,
Paulo Pinto de Albuquerque, *judges*,

and Françoise Elens-Passos, *Deputy Registrar*,

Having regard to the above application lodged on 9 August 2003,

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

The applicant, Mr Aurelijus Beržinis, is a Lithuanian national who was born in 1952 and lives in Jonava. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

A. The circumstances of the case

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

In 1986 the applicant reported the theft of his car, prompting an investigation by the prosecution. The applicant alleged that, soon thereafter, his former wife confessed that she had taken the car. Later on he accused

J.S., an investigator at the Palanga City Police Office, of being implicated in the events.

The prosecution refused to institute criminal proceedings against the applicant's former wife, having found no evidence of a crime. The applicant was advised to lodge his claims regarding the car by way of civil proceedings, as it was his and his former wife's joint property.

In 1993 and 1994, the prosecution reiterated that the applicant's previous requests to institute criminal proceedings against J.S. and his former wife had been rejected as unsubstantiated. The applicant took further actions to contest the refusal and submitted new requests for investigation. The last refusal by the Prosecutor General to start an investigation was dated 30 September 1998.

1. The civil proceedings

On 23 July 1992 the applicant lodged a civil claim before the Kaunas City District Court against Kaunas and Palanga police offices and the Kaunas City Prosecutor's Office; subsequently, J.S. and the applicant's former wife were included as defendants. The applicant alleged that he had suffered damage because the police and the prosecution had failed to examine effectively the theft of his car.

Several court hearings took place.

In April 1993, upon a request by the applicant, the examination of his civil action was stayed until the completion of the inquiry into the disappearance of the car.

During the period of 1994-1998 the applicant took further actions in order to contest the examination of his requests to start the pre-trial investigation.

By the letters of 15 December 1993 and 8 August 1994 the Office of the Prosecutor General informed the applicant about the discontinuance of the investigation. The applicant appealed against those decisions. On 21 September 1995 and repeatedly on 6 November 1995 the Supreme Court refused to entertain his cassation appeal. Next the applicant filed again a complaint concerning the disappearance of his and his ex-wife car, which was rejected by the letter of the Office of the Prosecutor General of 30 September 1998.

On 3 July 1999, after the criminal investigation was terminated and upon the request of the applicant, the Kaunas City District Court renewed the examination of the applicant's civil case.

In September 1999 and May 2000 the applicant clarified his civil claims.

The applicant attended the hearings of 4 October, 12 November 1999, 20 March and 3 April 2000.

The applicant failed to attend the hearings of 27 January, 7 June and 18 October 2000.

On 27 November 2000 the applicant informed the district court that he wished to have his case examined without his presence.

On 12 December 2000 the Kaunas City District Court decided to leave the applicant's lawsuit unexamined on the ground that he had failed to appear before the court, and noted that the applicant was acting against speedy examination of the case.

The district court decision was quashed by the Kaunas Regional Court on 23 April 2001, noting that the applicant had requested that the examination of the case be continued in his absence.

In June 2001 the applicant was seriously injured when he fell from a four-storey building. Afterwards he was detained in relation to accusations against him in a separate criminal case and was placed in a prison hospital.

On 25 June 2001 the applicant requested the court to suspend the civil proceedings until his health improved. On 1 October 2001 the Kaunas City District Court dismissed his request, referring to medical records received from the prison hospital that the applicant had a chronic illness caused by the accident, and noting that under the domestic law a case could be suspended only when the illness was not of a chronic character.

The applicant several times unsuccessfully requested the withdrawal of the judge.

On 2 October 2001 the Kaunas City District Court addressed the prison hospital inquiring about the applicant's condition and whether he could attend a hearing on 15 November 2001. The court also requested the prison to facilitate the applicant's attendance if he expressed a wish to be present at that hearing. On 11 October 2001 the hospital informed the court that the applicant agreed to participate in the hearing only on condition that he be allowed to have his operation performed in the Jonava city hospital. The prison hospital also informed the court that the applicant was refusing food and medical treatment and that it was unable to transfer him by ordinary transport.

On 5 November 2001 the applicant filed another request to suspend the examination of the civil case. Later that month, in reply to the inquiry by the Kaunas City District Court, the hospital confirmed that the applicant had a chronic illness, and noted that it was not possible to estimate the length of the treatment, as the applicant was refusing any medical examinations and food.

On 11 January 2002 and on 22 February 2002 the district court again refused to suspend the proceedings. Furthermore, the court suggested that if his health condition precluded him from participating in the next hearing, the applicant could present his case through a counsel.

On 1 March 2002 the Kaunas City District Court heard the case on the merits. The court considered that there were no grounds to adjourn the hearing, because the applicant had been duly informed. The court received a letter from the prison hospital, stating that the applicant had been able to

take part in hearings, but had not asked to be taken to the court. Moreover, the court noted that the applicant had contributed to the deterioration of his health by refusing treatment and food. Finally, the applicant failed to substantiate his argument that he had not been able to conduct the proceedings through a representative. The court considered that it was unreasonable to adjourn the examination, as the applicant had not appeared before the court since 3 April 2000 and the proceedings had already lasted very long. The court concluded that the applicant had failed to fulfil his statutory procedural obligation of due care and had acted against speedy proceedings. As to the merits, the court dismissed the applicant's action as unsubstantiated, since he had failed to prove any of the circumstances upon which his claims were based.

The applicant appealed, complaining, *inter alia*, that the case had been examined in his absence. The applicant further complained that the judge of the first-instance court had been biased since, even before the examination on the merits started, she had taken several procedural decisions unfavourable to him.

The Kaunas Regional Court dismissed his appeal on 29 July 2002. The court noted that the case had been examined thoroughly and a reasoned decision had been adopted. It further noted that the first-instance court had discretion under Article 240 § 1 (3) of the Code of Civil Procedure whether to stay proceedings due to a party's illness. The applicant had considerable health problems, of such a protracted nature that the proceedings could not be stayed further. The court noted in conclusion that, in any event, the applicant had had knowledge of all the documents in the case file, had taken part in several hearings and had submitted a number of documents and requests and there was no appearance of bias.

On 10 February 2003 the Supreme Court upheld the lower courts' decisions, finding no violation of the applicant's procedural rights and noting that there was no indication of bias on the part of the judges. It also observed that the applicant himself had hindered the prompt examination of the case.

2. The administrative proceedings

In 2000 the applicant sued the Ministry of Justice for damages in respect of its failure to expedite the examination of his civil case and reprimand the judges of the Kaunas City District Court.

On 18 April 2000 the Court of Appeal adopted a final decision in those proceedings and dismissed the complaint.

B. Relevant domestic law

Article 240 § 1 (3) of the Code of Civil Procedure (in force till 31 December 2002) provided that the court may, upon a request of one of

the parties or on its own motion, stay proceedings due to a party's serious illness if the latter is not of chronic nature.

COMPLAINTS

1. Under Article 6 § 1 of the Convention the applicant complained about the length of the civil proceedings.

2. Invoking Article 6 § 1 of the Convention the applicant complained about the unfairness of those proceedings.

3. Relying on Articles 6 § 1, 12 and 14 of the Convention and Article 1 of Protocol No. 1, the applicant raised complaints related to the outcome of the civil case.

4. In an additional application, lodged with the Court on 9 November 2004, the applicant also complained under Articles 6 § 1 and 14 of the Convention that the administrative proceedings were unfair.

THE LAW

1. The applicant complained that the length of the proceedings in the civil case 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..., everyone is entitled to a fair hearing within a reasonable time by [a] ... tribunal..."

The Government submitted that the applicant had failed to exhaust domestic remedies by claiming redress for the length of the civil proceedings. In the alternative, they argued that the complaint was manifestly ill-founded as the applicant had substantially contributed to the delay in the civil proceedings. He had failed to attend numerous hearings, had insisted on suspending the proceedings several times and thus had consciously striven to prolong them, while the domestic courts made efforts to examine the case speedily.

The applicant contested the Government's submissions.

Having had regard to the materials submitted to it, the Court finds that the Government have not presented any convincing reasons which would require the Court to depart from its established case-law to the effect that the applicant did not have an effective domestic remedy at his disposal which he had failed to exhaust before lodging his application with the Court in August 2003 (see *Maneikis v. Lithuania*, no. 21987/07, § 21, 18 January 2011). It follows that the Government's objection as to non-exhaustion of the domestic remedies must be dismissed.

The Court observes that, even though the civil proceedings were initiated before 20 June 1995, it is the latter date, when the recognition by Lithuania of the right of individual petition took effect, from which the period to be taken into consideration must be counted. Given that the proceedings ended on 10 February 2003, when the Supreme Court dismissed the applicant's cassation appeal, within the Court's jurisdiction *ratione temporis* they therefore lasted approximately seven years and eight months. The applicant's case has been adjudicated at three levels of jurisdiction.

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 of the relevant authorities (see, among many other, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

The Court has previously found complaints to be manifestly ill-founded in cases where the applicant's behaviour contributed substantially to the delay in the proceedings and no substantial delays were imputable to the State (see *Ivashchenko v. Ukraine* (dec.), no. 23728/03, 24 March 2009; *Ancel v. Turkey*, no. 28514/04, §§ 53-56, 17 February 2009).

Turning to the facts in the instant case, the Court first notes that some delay in the proceedings was occasioned by the mistakes of the domestic courts, given that the civil litigation had been prolonged by four months because the Kaunas Regional Court once quashed the district court's decision to leave the applicant's lawsuit unexamined.

Assessing further, the Court notes that the civil proceedings were suspended for a number of years upon the request of the applicant whilst the criminal inquiry into the theft of the applicant's car was concluded. Even so, the Court considers that in general the period of suspension of the civil case cannot be imputable to the State, because the criminal inquiry was opened on the applicant's request and based, as it appears to be, on his repetitive but unfounded accusations against his former wife and J.S.

Assessing further, the Court also cannot fail to note that the applicant's behaviour also caused significant delays in the proceedings. The Court draws attention to the applicant's failure to attend numerous hearings, his amendments of the claims and the respondents at various stages of the proceedings, his insistence that the proceedings be suspended and submissions of numerous requests to remove judges from the case. Furthermore, on one occasion (in October 2001) the applicant agreed to attend to the court hearing only if his demands, unrelated to the civil case, were satisfied.

The Court also observes that because of the applicant's health condition, from June 2001 to February 2003 the proceedings were often in stagnation for several months. That being so, the Court cannot overlook the domestic courts' efforts to accelerate the proceedings by suggesting to the applicant to conduct them through a representative, which the applicant refused.

In the light of the above the Court cannot but conclude that the applicant himself contributed significantly to the length of the civil litigation. The foregoing considerations are sufficient to confirm that, in so far the length of the proceedings is concerned, Article 6 § 1 requirements have been observed. Accordingly, this part of the application must be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and dismissed pursuant to Article 35 § 4.

2. Invoking the above-cited Article 6 § 1 of the Convention, the applicant further complained about the unfairness of the civil proceedings. He argued that the proceedings were not adversarial and the principle of equality of arms was not respected. The applicant referred to the fact that, despite his ill-health, the courts refused to stay the proceedings and then examined the case in his absence. He also alleged that the district court did not allow him to be present at the hearing and disguised this through a suggestion to be represented by a lawyer in the hearings. The applicant also maintained that despite the letter by the prison hospital of 11 October 2001 that transportation would have to be arranged in order to bring the applicant to a hearing, the authorities failed to take him to the hearing of 1 March 2002.

Lastly, the applicant alleged that the courts were biased and deprived him of the right to participate effectively in the proceedings, to submit additional evidence, to request the summoning of some witnesses and to argue his case.

The Government maintained that the overall fairness of the proceedings was observed. The applicant was present at numerous hearings. However, he had also chosen not to attend a number of them, even before troubles with his health had started. The Government submitted that the domestic authorities made inquiries into the applicant's health and refused to suspend the proceedings only when it was confirmed that the applicant's illness was chronic.

The Government then pointed out that the law in force at the time allowed suspension of the case on the grounds of illness of a party, but only when that illness was not chronic.

The Court reiterates that although the presence of the parties to civil litigation does not have the same significance as the presence of an accused in a criminal trial, Article 6 § 1 guarantees the right of a party to participate effectively in the proceedings, which includes, *inter alia*, the right to be present at the proceedings. Such rights are implicit in the very notion of an adversarial procedure (see *Stanford v. the United Kingdom*, 23 February 1994, § 26, Series A no. 282-A; *Mitrevski v. "the former Yugoslav Republic of Macedonia"*, no. 33046/02, § 35, 21 June 2007; *Švenčionienė v. Lithuania*, no. 37259/04, § 25, 25 November 2008).

The Court nonetheless is satisfied that under certain circumstances the full presence of the parties in the proceedings may be unattainable. On the basis of the materials submitted in the instant case, the Court observes that

the domestic authorities made every effort to guarantee the applicant's effective participation in the proceedings. The Court notes that the applicant had participated in a number of hearings before his injury in 2001, and failed to attend others on his own choice.

However, as the Court has concluded above, following his injury the applicant himself refused to cooperate with the authorities to ensure speedy and effective examination of the case. On the basis of the documents submitted by the parties the Court also notes that throughout that period the applicant effectively used his procedural rights and submitted various requests to the courts, which for the Court is an important consideration. Also, as it appears from the case-file, after the applicant's injury in 2001, no new materials, except for those concerning his health condition, were adduced in evidence. Finally, the applicant himself refused to be represented by the lawyer during the proceedings. The Court considers that, in such circumstances and in view of the applicant's complaints of the length of proceedings both domestically and to this Court, the reasons given by the Government as to the applicant's somewhat limited participation are legitimate. Accordingly, as concerns this aspect of the complaint the fairness of the proceedings was not affected.

Turning to the applicant's complaint that some witnesses were not summoned and some evidence was dismissed in the civil proceedings, the Court recalls that it is for the national courts to assess the relevance of any evidence that a party wishes to have produced. The Court has nevertheless to ascertain whether the proceedings considered as a whole were fair as required by Article 6 § 1 (see *Mantovanelli v. France*, 18 March 1997, § 34, *Reports of Judgements and Decisions* 1997-II, pp. 436-37; *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII).

The Court recalls that the case was examined at three levels of jurisdiction and the applicant's pleas were dismissed as unfounded. As was confirmed by the Kaunas Regional Court on 29 July 2002, the applicant had knowledge of all documents in the case-file. The applicant's submissions were given due consideration. The Court also notes that the applicant adduced no evidence showing any bias of the domestic courts, either from the objective or subjective standpoint.

Having regard to the foregoing, the Court considers that the civil proceedings in question were fair and satisfied the requirements of Article 6 § 1 of the Convention. It follows that this part of the application must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. In relation to the civil proceedings, the applicant also alleged that he suffered discrimination in breach of Article 14 read in conjunction with Article 6. He complained under Article 1 of Protocol No. 1 about the outcome of those proceedings. Under Article 12 of the Convention the applicant complained that the equality of spouses was not respected.

The Court has examined the above complaints as submitted by the applicant. However, having regard to all the materials in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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.

4. Lastly, under Articles 6 and 14 of the Convention the applicant complained about the unfairness of the administrative proceedings.

The Court notes that this complaint was first submitted to the Court on 9 November 2004. However, the final decision in those proceedings was given on 18 April 2000, that is, more than six months before the above complaint was lodged. By virtue of Article 35 §§ 1 and 4 of the Convention, the Court is not required to examine this part of the application as it was submitted out of time.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Dragoljub Popović
President