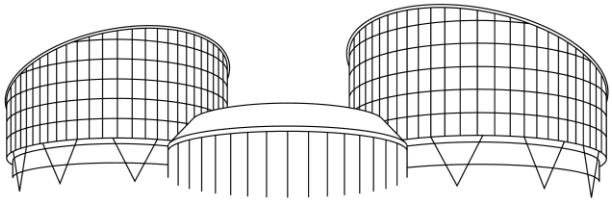

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 20513/08
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 17 November 2006,

Having regard to the comments submitted by the Lithuanian 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.

1. Civil proceedings concerning the defamation claim

In May 1994 the applicant started civil proceedings against a private person, V.V., claiming damages for alleged defamation.

During the period of 1995-2001 the Kaunas City District Court left the claim unexamined several times after the applicant or both parties failed to attend the hearings. However, the Kaunas Regional Court annulled those decisions every time and remitted the case to the district court as the evidence justifying the failure to appear was submitted subsequently.

In 2001 the applicant again failed to attend several hearings but requested the court to collect some additional evidence and to examine the case in his absence.

In June 2001 the applicant suffered a serious injury and was hospitalized.

On 25 July 2001 upon the request of the applicant, the court suspended the proceedings because of his state of health.

In 2001-2005 the courts constantly sent inquiries into his health and possibility to resume the proceedings.

On 12 May 2005 the applicant requested to hear the case in his absence.

On 10 October 2005 the Kaunas City District Court dismissed the claim, finding that the statements made by V.V. were factually true and that the applicant had failed to show that his dignity had suffered in any way.

On 15 February 2006 the Kaunas Regional Court rejected the appeal by the applicant.

On 19 May 2006 the Supreme Court refused to entertain the applicant's cassation appeal as raising no important legal issues.

2. Civil proceedings concerning the claim for damages

Subsequently the applicant addressed the courts with a civil claim for damages, allegedly incurred due to lengthy proceedings and other alleged violations of his rights.

On 27 November 2007 the Panevėžys Regional Court dismissed the claim as unfounded. The court established no fault on the part of the State and concluded that the applicant had contributed substantially to the delay.

On 30 December 2009 the Court of Appeal overturned the decision, and awarded to the applicant damages of 1,000 Lithuanian litai (about 290 euros) in relation to the length of proceedings. The court noted that the hearings were often postponed because of the failure by the applicant and the other party to attend them, and that the claim had been left unexamined twice because the applicant had failed to attend the hearings without informing the district court beforehand. Furthermore, the case was suspended for four years because of the applicant's health condition. The court went on to conclude that the applicant had contributed to the delay, and had not taken due care of the civil proceedings. Nonetheless, the court concluded that some of the delay was attributable to the domestic courts, in

so far as they failed to prevent that the parties to the proceedings would not abuse their rights.

On 12 April 2010 the Supreme Court refused to examine the cassation appeal by the applicant as raising no important legal issues.

B. Relevant domestic law

Article 6.272 of the Civil Code allows a civil claim for pecuniary and non-pecuniary damage, arising from the excessive length of the proceedings, in view of the unlawful actions of a judge or the court.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about the length of the civil proceedings for defamation.

2. The applicant also complained under Article 6 § 1 of the Convention that the courts did not take into account the evidence submitted by him and failed to give reasons as to why that evidence was rejected. He alleged that the courts were biased.

3. Invoking Article 6 §§ 1 and 2, Articles 10, 13 and 14 of the Convention, the applicant further complained about various aspects of the civil proceedings.

THE LAW

1. The applicant complained that the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government rejected the allegation.

The Court recalls that, by virtue of Article 1 of the Convention, the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). More recently, in Recommendation Rec(2004)6 of 12 May 2004, the Committee of Ministers of the Council of Europe also underlined the subsidiary character of the supervision mechanism set up by the Convention and recommended, inter alia, that the Contracting Parties pay particular attention to the existence of effective remedies in cases of an arguable complaint concerning the excessive length of judicial proceedings.

Turning to the facts of the present case the Court recalls that an applicant's status as a "victim" within the meaning of Article 34 of the

Convention depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V, and *Cataldo v. Italy* (dec.), no. 45656/99, ECHR 2004-VI).

On the facts of the case the Court observes that the Court of Appeal acknowledged that there had been a violation of the applicant's right to have his civil claim decided within reasonable time. The Court considers that such acknowledgment satisfies in substance the first condition laid down in the Court's case-law.

As to the actual sum awarded to the applicant by the domestic court, the Court notes that the compensation granted was adjudged based on the findings of the Court of Appeal that the applicant had contributed substantially to the delay of the proceedings, and that the only delay imputable to the State was caused by the inability of the courts to stop the abuse of the procedural rights by the parties. In the light of the material in the file and having regard to the particular circumstances of the case, the Court considers that the sum awarded to the applicant can be considered sufficient and therefore appropriate redress for the violation suffered (see *Giedrikas v. Lithuania* (dec.), no. 51392/07, 14 December 2010, *Cataldo*, cited above, and *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004). The Court thus considers that the domestic court's decision was consistent with the Court's case-law.

The Court therefore concludes that the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the alleged violation of his right to a hearing within a reasonable time. It follows that the complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant further complained under Article 6 § 1 of the Convention that the courts erred in assessing the evidence of the case, moreover, the courts were biased.

The Court observes that as a general rule, it is for the national courts to assess the evidence before them, in so far as overall fairness of the proceedings is observed (see, *mutatis mutandis*, *Bernard v. France*, no. 22885/93, judgment of 23 April 1998, § 37, *Reports of Judgments and Decisions* 1998-II; *Daktaras v. Lithuania* (dec.), no. 42095/98, 11 January 2000, § 5 of the law part). On the facts of the case, the Court notes that the case was examined by the courts of two instances and reasoned decisions were adopted. The applicant's submissions were given due consideration, and there is no appearance of arbitrariness. Accordingly, this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicant also alleged that the domestic courts refused to apply directly the law of the European Union and the Convention. He complained that his right to be presumed innocent was violated. Invoking Article 10 the applicant complained that his freedom of expression was violated and that he suffered discrimination in breach of Article 14. Lastly, he complained about the lack of effective remedy under Article 13.

The Court has examined the above complaints as submitted by the applicant. However, having regard to all the material 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.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Dragoljub Popović
President