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

SECOND SECTION

DECISION

Application no. 23523/05
Josifas FIŠMANAS and GRIFLIT Ltd
against Lithuania

The European Court of Human Rights (Second Section), sitting on 5 November 2013 as a Committee composed of:
Dragoljub Popović, *President,*
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Seçkin Erel, *Acting Deputy Section Registrar,*
Having regard to the above application lodged on 14 June 2005,
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

1. The first applicant, Mr Josifas Fišmanas, is a Lithuanian national, who was born in 1946 and lives in Vilnius. The second applicant is Griflit Ltd, a private company registered in Lithuania. Mr Fišmanas is a shareholder and the president of Griflit Ltd.

A. The circumstances of the case

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

1. The criminal proceedings

3. On 18 December 1998 the prosecutors instituted criminal proceedings into alleged episodes of various fraudulent offences and falsification of contracts. In particular, it was alleged that by forging contractual documents the first applicant had attempted to appropriate a hundred railway wagons

which Griflit Ltd had allegedly intended to operate under a lease agreement. The wagons had already been seized since 23 September 1998 in view of the claim lodged by the Ministry of Finance against a private enterprise L. Ltd.

4. On 4 January 1999 the prosecutor seized the flat of the first applicant to guarantee a civil claim in the abovementioned criminal case. Next day the first applicant was questioned as a suspect and a search was conducted in his flat.

5. On 15 January 1999 a bail was ordered by the prosecutors. Later, on 28 June 2000 it was replaced with a written undertaking not to leave his place of residence.

6. On 1 February 1999 the prosecutors additionally seized the first applicant's movable personal property and ordered to freeze assets in his bank accounts.

7. During the following months the first applicant and numerous witnesses were questioned, searches were conducted in several places, the forensic examinations ordered and requests for submission of documents were issued to the third persons and authorities.

8. From the start of investigation until the bill of indictment was issued on 28 June 2002 the prosecutors questioned 42 witnesses (some of them lived abroad) and two suspects in the case. Besides, nine forensic examinations (financial, hand-writing and other) were conducted. Since some of the relevant documentary evidence was in the Russian Federation the prosecutors filed four requests for legal cooperation with the Russian authorities. Therefore, several times in 1999-2000 the investigation was suspended until the answers to the requests were received.

9. On 10 December 2001 the prosecutors informed the first applicant about the end of the pre-trial investigation. One of the accused and, later, the first applicant together with their attorneys were handed over the case file to familiarize with it.

10. Several hearings took place before the court of first instance. On 27 September 2002, 13 January and 18 February 2003 the hearings were postponed as the first applicant did not appear before the court due to his illness. The court inquired into his health state. A report on forensic medical examination allowing him to participate in hearings was delivered on 22 April 2003.

11. On 4 August 2003 the first applicant was convicted by the Vilnius Regional Court of falsifying and using a number of documents, *inter alia*, of forgery of the 100 wagons purchase agreement of 24 July 1996. It was also established that in 1996 the disputed property had been transferred to third persons but not to any of the applicants.

12. However, the first applicant was acquitted on the remainder of the charges, including appropriation and cheating. He was sentenced to two years' imprisonment but an immediate amnesty was ordered. The court

also decided to lift the seizure of his property and the written undertaking not to leave his place of residence once the judgment becomes valid. The court did not decide the question of lifting the seizure of the wagons, stating that the question should have been decided by way of civil proceedings.

13. On 28 May 2004 the first applicant's appeal against the conviction was dismissed by the Court of Appeal.

14. On 25 January 2005 the Supreme Court rejected the first applicant's cassation appeal.

2. The civil proceedings

15. On 23 September 1998 upon a request by the Ministry of Finance to recover debts from the private enterprise L. Ltd, a bailiff seized 97 of the abovementioned wagons which at that time were in actual possession of that enterprise.

16. On 23 October 1998 the second applicant brought civil proceedings, requesting that the seizure of the wagons be lifted and claiming its ownership over them.

17. Later on, another private enterprise, M. Ltd, lodged a lawsuit claiming its ownership over the disputed wagons and also requested to lift the seizure of 23 September 1998.

18. In 2002 the civil case was transferred to the Kaunas Regional Court and both civil cases were joined.

19. On several occasions the case was suspended due to ongoing criminal proceedings against the first applicant, as possible findings in those proceedings might have been determinative for the civil case over the seizure of the wagons.

20. On 12 August 2004 the examination of the civil case was renewed as the judgment in the criminal case became valid after the Court of Appeal had adopted its decision to uphold the conviction.

21. The second applicant and enterprise M. Ltd submitted an amended their common civil claim in which they argued that the enterprise M. Ltd was the real owner of the wagons while the second applicant was their possessor (*valdytojas*).

22. After the case was once remitted for re-examination by the appellate court, on 10 May 2006 the Kaunas Regional Court dismissed the claim. It found that neither the second applicant, nor the private enterprise M. Ltd could prove their ownership rights over the disputed property. Moreover, the court noted that the contracts, by which enterprise L. Ltd had acquired the disputed railway wagons in September – October 1996, had not been declared null and void, and thus were still valid.

23. On 13 July 2006 the Court of Appeal upheld the decision of the lower court. According to the provisions of the Code of Civil Procedure, no cassation appeal was available to the parties.

3. The administrative proceedings against the State for damages

24. On an unspecified date the second applicant also brought proceedings before the administrative courts, claiming that the authorities had unlawfully used the wagons pending the criminal proceedings. It claimed compensation for a loss of income in this respect.

25. On 17 September 2004 the Vilnius Regional Administrative Court rejected the claim as unsubstantiated. On 21 December 2004 the second applicant's appeal against the above decision was rejected by the Supreme Administrative Court.

B. Relevant domestic law

26. Article 2 § 2 of the Law on Companies provides that the company is a legal person with limited liability.

27. The Civil Code provides that a legal person is an enterprise or an organisation which has its business name, which may in its name gain and enjoy rights and assume obligations as well as act as a defendant and as a plaintiff in courts (Article 2.33 § 1).

28. A legal person is liable for his obligations by his property, which it owns on the basis of the ownership right or right of trust (Article 2.50 § 1).

29. A person has a right to a compensation for damage caused by unlawful acts of institutions of public authority (Article 6.271).

30. Lastly, Article 6.272 allows a civil claim for pecuniary and non-pecuniary damage, in view of the unlawful actions of the investigating authorities or court, in the context of a criminal case. The provision envisages compensation for an unlawful conviction, an unlawful arrest or detention, the application of unlawful procedural measures of enforcement.

COMPLAINTS

31. The first applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings against him. He also alleged arbitrariness during the proceedings.

32. Under Article 1 of Protocol No. 1 the first applicant complained about the seizure of his private property items, such as his real property, in the context of the impugned proceedings.

33. He further complained under the above provision about the seizure of the wagons, and the applicants' subsequent inability to lift that seizure by way of civil proceedings. The first applicant also argued that the wagons were unlawfully given away to third persons, and that the applicants' property rights were thus violated.

THE LAW

A. As to the length and arbitrariness of the criminal proceedings

34. The first applicant complained that the length of the criminal 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

35. The Court observes that the time to be taken in consideration in the present case started on 4 January 1999, the date when the first applicant's flat was seized, and ended on 25 January 2005, when the Supreme Court adopted its decision. The proceedings therefore lasted a bit more than six years for three levels of jurisdiction.

36. The Government argued that the first applicant had not exhausted domestic remedies, as he had failed to lodge a civil claim for redress with regard to the length of the criminal proceedings pursuant to Articles 6.246 and 6.272 of the Civil Code.

37. Having had regard to this Government's argument, the Court recalls its conclusion in the case of *Norkūnas v. Lithuania* (no. 302/05, § 30, 20 January 2009), to the effect that in 2005, when the applicant lodged his application with the Court, there were no effective remedies in Lithuania that the applicant could use to complain about the length of domestic court proceedings. It follows, that the Government's objection as to non-exhaustion of the domestic remedies must be dismissed.

38. The Government further maintained that the total duration of the criminal proceedings of six years and twenty-two days did not give rise to any appearance of a violation of the reasonable time requirement under Article 6 § 1. The length of the proceedings, in particular at the pre-trial stage, was preconditioned by the complexity of the case, its international nature, the number of witnesses and procedural actions to be taken, the applicant's conduct and other objective reasons that could not be attributed to the domestic authorities.

39. The first applicant disagreed with those arguments. He submitted that the case was not particularly complex as only one episode of expropriation had to be investigated; some of the charges against him were excessive as they did not lead to his conviction by the courts. Although not contesting the Government's submissions that numerous procedural actions were performed by the prosecutors, he alleged that some of the actions were not necessary. The first applicant noted that he had cooperated with the authorities during the proceedings.

40. The Court will therefore examine whether the length of proceedings was compatible with the requirements of Article 6 § 1. The Court recalls

that the "reasonable" length of proceedings must be assessed in accordance with the circumstances of the case and the following criteria: the complexity of the case, the behaviour of the applicant and that of the competent authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that only delays attributable to the State may justify a finding of non-compliance with the "reasonable time" requirement (see *Humen v. Poland* [GC], no. 26614/95, § 66, 15 October 1999).

41. In the Court's view the criminal proceedings may be deemed complex. It shares the arguments presented by the Government that the complexity of the case was in first place preconditioned by the fact that several episodes of the criminal acts of financial nature had to be investigated (see, *Šleževičius v. Lithuania*, no. 55479/00, § 30, 13 November 2001, *Meilus v. Lithuania*, no. 53161/99, § 25, 6 November 2003). Moreover, the circumstances concerning not only contractual obligations of the applicants *vis-à-vis* their business partners, but also contractual relations of third private persons had to be investigated (see paragraph 11 above).

42. The Court recalls that the scale and complexity of a criminal case concerning fraud, which often is compounded further by the involvement of several suspects, may justify an extensive length of the proceedings (see, for example, *C.P. and others v. France*, no. 36009/97, § 30, 1 August 2000).

43. Large number of participants in the proceedings, international elements of the case and volume of the case file were also the factors that had influenced the duration of the proceedings, in particular, at the pre-trial stage which lasted three years and some six months (see paragraph 8 above).

44. The Court also considers that the pre-trial investigation was suspended on numerous occasions for objective reasons: waiting for replies to the requests for legal aid from another State and for delivery of the reports of multiple forensic examinations. Once the case had been transferred to court, the first-instance court hearing was held three months after the criminal case was received.

45. With regard to the conduct of the first applicant, on three occasions he failed to appear before the court due to his illness (see paragraph 10 above), thus the court had to postpone the hearings and order a medical examination to inquire if Mr Fišmanas could participate in the hearings. As a result, the proceedings were stayed for almost five months. Those delays caused by the applicant's requests for adjournment are not attributable to the national authorities.

46. It should also be noted that according to the Court's case-law, in certain circumstances length of proceedings exceeding five or six years can still be considered as not excessive (see *Ivashchenko v. Ukraine* (dec.),

no. 23728/03, 24 March 2009; *Wejrup v. Denmark* (dec.), no. 49126/99, ECHR 2002-IV).

47. In these circumstances, the Court is satisfied that, in the absence of any particular periods of inactivity attributable to the authorities, the overall length of the proceedings did not exceed a "reasonable time", within the meaning of Article 6 § 1.

48. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

49. The first applicant also complained under Article 6 § 1 about arbitrariness of the criminal proceedings against him.

50. The Court notes that no legal arguments or evidence was submitted in support of the abovementioned complaint. In the absence of any substantiation for the alleged facts, the Court does not consider it necessary to proceed with examination of this complaint. It follows that it must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. As to the seizure of the first applicant's property in the criminal proceedings

51. The first applicant further complained about the seizure of his property in the context of the criminal proceedings. He also argued the deprivation of that property was in breach of Article 1 to Protocol No. 1 of the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

52. The Court reiterates that the first applicant's property had indeed been seized on several occasions in January-February 1999 (see paragraphs 4 and 6 above) with a purpose to secure satisfaction of a possible civil claim in the criminal case.

53. However, having regard to the material in its possession, the Court observes that the first applicant has not applied to the national courts claiming redress for the violations complained of, nor has he contested the seizure orders before the domestic courts. It should be noted that the claim for redress in administrative proceedings, which the applicant company had instituted (see paragraph 24 above), concerned the company's alleged loss of income from the wagon rent, and not the damage sustained due to the

seizure of the first applicant's personal property in relation to the criminal case.

54. It follows that the first applicant has failed to exhaust the domestic remedies and thus this part of the application is inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. As to the property rights of the applicants in respect of the wagons in the civil proceedings

55. The first applicant complained under Article 1 of the Protocol No. 1 that the wagons which the second applicant had allegedly possessed were unlawfully seized by the bailiff and given away to third persons. In addition, it was claimed that the second applicant was not given access to court in order to contest the ownership of the wagons.

56. The Government submitted that there was no claim amounting to a "possession" in relation to railway wagons. Moreover, they submitted that the second applicant could not be regarded as an applicant in the case before the Court as it had failed to submit an application.

57. The two applicants objected to those arguments alleging that a valid application on behalf of each of the applicants had been submitted.

1. Whether the applicants had locus standi

(a) As concerns the first applicant

58. It was already mentioned that the party to the civil proceedings was only the second applicant (see paragraph 16 above). Thus, those proceedings were decisive for the rights and obligations of the second applicant.

59. The Court concludes that since Mr Fišmanas was not a party to the civil proceedings over the seizure of the wagons, he thus cannot be considered as a victim of a violation of the Convention within the meaning of Article 34 (see, *Četvertakas and Others v. Lithuania*, no. 16013/02, § 28, 20 January 2009).

60. Therefore the complaint under Article 1 of the Protocol No. 1 in respect of the first applicant is to be rejected as being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

(b) As concerns the second applicant

61. With regard to the *locus standi* of the second applicant, only Mr Fišmanas, a natural person, was indicated as the applicant in the application before the Court. He signed the application in his own name, whereas Griflit Ltd was neither indicated as the second applicant, nor the application has been signed on its behalf.

62. The Court has held on several occasions that disregarding a company's legal personality as regards the question of being the "person" directly affected will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Court through the organs set up under its articles of incorporation or – in the event of liquidation or bankruptcy – through its liquidators or trustees in bankruptcy (see *Camberrow MM5 AD v. Bulgaria* (dec.), no. 50357/99, 1 April 2004; *Agrotexim and Others v. Greece*, 24 October 1995, § 66, Series A no. 330-A). There is nothing in the case file to suggest that any exceptional circumstances existed which would allow the Court to disregard the legal personality of the applicant company.

63. It follows that the second applicant cannot be considered as having expressed its will to have an application lodged before the Court and to be bound by the proceedings before it. That being so, the complaint about the alleged violation of the property rights of the second applicant in respect of the civil case over the seizure and ownership of the wagons, must be dismissed for lack of standing. Similarly, must be dismissed the complaints about the alleged restriction of the right of access to court to challenge the title of the wagons and the length of civil proceedings (see paragraph 33 above).

64. In the view of the above, the Court considers that this warrants the conclusion that the second applicant has not validly lodged any application with the Court (see *Ketko and Mroz v. Ukraine* (dec.), no. 31223/03, 3 April 2006).

65. Consequently, the complaints in relation to the alleged violations of the second applicant's rights must be rejected for being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Seçkin Erel	Dragoljub Popović
Acting Deputy Registrar	President