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

SECOND SECTION

CASE OF G.J. v. LUXEMBOURG

(Application no. 21156/93)

JUDGMENT

STRASBOURG

26 October 2000

In the case of G.J. v. Luxembourg,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 5 October 2000,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case was referred to the Court by a Danish national, G.J. ("the applicant") on 28 October 1999 pursuant to former Article 48 § 1 (e) of the Convention for the Protection of Human Rights and Fundamental freedoms ("the Convention"). It originated in an application (no. 21156/93) against Luxembourg lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention, on 8 September 1992.

2. The applicant, who had been granted legal aid, was represented by Mr Tyge Trier, a lawyer practising in Copenhagen. The respondent Government ("the Government") were represented first by Maître Georges Ravarani, subsequently by Maître Albert Wildgen and then by Maître Lynn Spielmann, as Agent.

3. The case concerns the duration of the proceedings concerning the liquidation of the limited liability company in which the applicant owned 90% of the shares and whether these proceedings were terminated within a "reasonable time" as required by Article 6 § 1 of the Convention.

4. On 8 December 1999 a Panel of the Grand Chamber decided, in accordance with Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, that the case should be dealt with by a Chamber constituted within one of the sections of the Court. Subsequently, the President of the Court assigned the case to the Second Section. The Chamber constituted within the Section included *ex officio* Mr M. Fischbach, the judge elected in respect of Luxembourg (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court) and Mr A.B. Baka, Mr G. Bonello, Mrs V. Strážnická, Mr P. Lorenzen, Mrs M. Tsatsa-Nikolovska and Mr E. Levits (Rule 26 § 1 (b)).

5. On 16 December 1999 the President invited the parties to submit memorials in the case (Rule 59 § 3). The applicant was further invited to submit his claims for just satisfaction under Article 41 of the Convention. (Rule 60 § 1). The applicant filed his reply on 15 March 2000. The Government filed their memorial on 14 March 2000 and filed their reply to the applicant's claim for just satisfaction on 20 April 2000. The Danish Government were invited on 9 November 1999 to state whether they wished to intervene in accordance with Article 36 of the Convention and Rule 61 of the Rules of Court. The Danish Government did not wish to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. In 1967 the applicant moved to Luxembourg. In 1975 he founded a limited liability company for the purpose of trading in fur and leather products. The applicant held 90% of the company's shares and his wife the remaining 10%.

7. The firm went through a period of considerable expansion but soon experienced certain problems in respect of the tax assessments made by the Internal Revenue Service, in particular concerning the period from 1978 to 1980. Eventually the applicant decided in 1986, to liquidate the company and it furthermore appears that it was the intention that a new limited liability company should be established as of 15 May 1987 and managed by the applicant's two sons.

8. The applicant left Luxembourg in April 1987 and took up residence in the United Kingdom. Subsequently he moved to Denmark. The intended voluntary liquidation of his company ended on 14 May 1987. On that date the Commercial Court of first instance (*le tribunal d'arrondissement de et à Luxembourg siégeant en matière commerciale*) examined the situation of the applicant's company and found, on the basis of the available material, that it had stopped honouring its financial obligations and that its financial situation endangered the rights of its creditors. Thus, the court declared the company bankrupt, appointed a judge (*juge-commissaire*) and an official receiver to sort out the estate and settle the accounts. The applicant did not appeal against this decision but on 18 May 1987 he informed the official receiver of his new address in the United Kingdom and expressed his willingness to submit further information should this prove necessary. On 22 May 1987 the applicant sent a letter to the Danish Embassy in

Luxembourg in which he complained, *inter alia*, of the decision to declare his company bankrupt and of the official receiver's actions in connection with the establishment of the company's assets.

9. On 20 May 1987 the official receiver submitted a request to the Commercial Court for authorisation to sell the applicant's company's assets.

10. Following a public hearing on 26 May 1987 during which the court heard the *juge-commissaire* as well as the official receiver, but in the absence of the applicant, the court authorised the receiver to sell the insolvent company's assets in order to satisfy the interests of the creditors to the extent possible.

11. By 2 October 1987 44 creditors had submitted claims in the liquidation proceedings and the official receiver and the *juge-commissaire* had accepted 32 claims whereas they contested the remaining 12 claims. By 1 April 1988 5 further claims had been submitted of which 4 were accepted and 1 contested.

12. In the meantime, in August 1987, the official receiver had been informed that court proceedings were pending in Germany regarding, *inter alia*, a bank guarantee involving the applicant's company. These proceedings came to an end on 10 May 1990 following which a certain amount of money was transferred to the estate in bankruptcy.

13. The official receiver subsequently continued the liquidation of the estate. By letters of 5 September 1991 he informed those creditors whose claims were contested that the assets of the estate in bankruptcy would not even be sufficient to cover the preferential claims and thus requested them to renounce their claims in order to be able to close the proceedings. These creditors were further requested to reply by 15 September 1991 and informed that disputes as to their claims would be brought before the Commercial Court for determination. No disputes were, however, brought before the Commercial Court for determination but it appears that certain correspondence between the official receiver and some creditors continued through November 1991.

14. In November 1991 one of the applicant's sons, who was still living in Luxembourg, fell ill. As the applicant wanted to see him he contacted the Commercial Court and enquired whether the proceedings concerning the liquidation of his company had come to an end and whether anything would impede his free entry into and departure from Luxembourg.

15. The applicant's son died on 12 November 1991.

16. On 21 November 1991 the *juge-commissaire* of the Commercial Court informed the applicant that the proceedings were still pending. Upon request the Danish Embassy in Luxembourg informed the applicant, on 11 December 1991, that the official receiver and the court were of the opinion that the proceedings would be concluded before the end of the year or by January 1992 at the latest.

17. However, on 6 March 1992 the Embassy informed the applicant that the proceedings were still pending, *inter alia*, due to the fact that the competent court was, according to the official receiver, overburdened with work. The official receiver expected, however, the proceedings to come to an end before Easter 1992. Finally, on 18 May 1992 the Embassy confirmed that the case was still pending.

18. On 18 January 1993 the applicant was informed by the official receiver that the company's accounts would be finalised during a court meeting to be held on 22 January 1993. It appears that the accounts showed a deficit of approximately 30 million Luxembourg francs (LUF). The applicant did not appear at the court meeting.

19. On 22 March 1993 the official receiver informed the Commercial Court that the liquidation of the company had come to an end and he requested the court to close the case. On 14 May 1993 the Commercial Court declared the liquidation of the applicant's limited liability company closed.

II. PROCEEDINGS BEFORE THE COMMISSION

20. The applicant applied to the Commission on 8 September 1992, complaining, *inter alia*, about the length of the proceedings concerning the liquidation of his company.

21. The Commission declared the above complaint admissible on 22 October 1996. Certain other complaints were declared inadmissible. In its report of 8 September 1999 (former Article 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

22. As they had done before the Commission, the Government maintained before the Court that there was no dispute over the applicant's civil rights within the meaning of Article 6 of the Convention in that the insolvency proceedings did not, in their opinion, affect him but only the limited liability company.

23. The Court agrees that the liquidation proceedings concerned, as such, the limited liability company which was declared bankrupt by the Commercial Court on 14 May 1987. Furthermore, the Court recalls that disregarding a company's legal personality as regards the question of being

the "person" directly affected by the act or omission which is in issue 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 - through its liquidators (cf. the Agrotexim and Others v. Greece judgment of 24 October 1995, Series A no. 330, p. 25, § 66).

24. However, in the present case the company was under liquidation and the complaint brought before the Court relates to the activities of the liquidators, i.e. the official receiver and the Commercial Court. In these circumstances the Court considers that it was not possible for the company, as a legal personality, at the time, to bring the case before the former Commission. Moreover, the Court recalls that the applicant held a substantial shareholding of 90% in the company. He was in effect carrying out his business through the company and has, therefore, a direct personal interest in the subject-matter of the complaint. Therefore, the Court finds that the applicant may claim to be a victim of the alleged violation of the Convention affecting the rights of the limited liability company.

25. Consequently, as it finds that the liquidation proceedings involved a determination of a "civil right" within the meaning of Article 6 § 1 of the Convention, the Court, like the Commission, dismisses the Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

26. The applicant complained of the length of the proceedings concerning the liquidation of the limited liability company in which he held 90% of the shares. He alleged a violation of Article 6 § 1 of the Convention which, as far as relevant, reads as follows:

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

27. The Government contested that submission on the ground that the case was complex, that the applicant had contributed to the length of the proceedings and since, in the circumstances the authorities involved had acted with due diligence.

A. Period to be taken into consideration

28. The relevant period, which is not in dispute, began on 14 May 1987 when the applicant's company was declared bankrupt by the Commercial Court. It ended on 14 May 1993 when the same court closed the case. Thus, the proceedings lasted 6 years.

B. Reasonableness of the length of proceedings

29. The reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities (see e.g. Eur. Court HR, Süßmann v. Germany judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1172-1173, § 48).

1. Complexity of the case

30. The Government contended that the case was complex having regard to the number of claims to be settled, the amount of money involved and due to the fact that certain legal questions were examined by German courts. The applicant disputed this.

31. The Court recalls that a total of 49 claims were submitted and that the liabilities amounted to approximately LUF 33 million of which in the end, a total of approximately LUF 2.5 million could be distributed among the creditors. All claims were submitted by April 1988 and once the German court proceedings had come to an end in May 1990 it appears to have been clear to all concerned that only a few creditors would receive anything. The Court notes in this respect that none of the creditors chose to bring their claims before the court for determination. In these circumstances the Court does not find it established that the liquidation proceedings involved issues of any particular complexity. Thus, the length of the proceedings cannot be explained in terms of the complexity of the issues involved. Accordingly, the Court will examine the proceedings in the light of the conduct of the applicant and the authorities involved.

2. Conduct of the applicant

32. The Government maintained that the length of the proceedings should be examined in the light of the fact that the applicant did not do anything in order to accelerate the proceedings during the period 1987-91. The applicant submitted that he had authorised his son to represent him and only had to involve himself following his son's death in November 1991.

33. The Court finds that the Government have not presented evidence which shows that the applicant did in any way delay the liquidation proceedings. Already in May 1987 he informed the official receiver that he would assist if necessary, but it does not appear that any attempts were made to obtain assistance from him. Following the appointment of the official receiver the case was in the hands of the authorities and in the circumstances of this case the Court finds that the applicant's conduct did not contribute to any delays, nor can his conduct otherwise explain the length of the proceedings.

3. Conduct of the authorities

34. The Government pointed out that the conclusion of the insolvency proceedings depended on the outcome of the court proceedings in Germany which did not come to an end until May 1990. They also pointed out that the official receiver subsequently had to carry out a number of tasks which follow from the nature of his job. Furthermore, the case did not call for any particular urgency. The applicant disputed that.

35. The Court recalls that all claims had been submitted by April 1988 and the German court proceedings had come to an end in May 1990. Nevertheless, the proceedings were not terminated until May 1993. The Court considers that no convincing explanation for the period of 3 years following the conclusion of the German court proceedings has been advanced by the respondent Government. In particular, the Court has found no justification for the period from May 1990 when the German court proceedings ended until September 1991, when the official receiver appears to have informed creditors of their prospects of success. The same applies as regards the period from December 1991, when the applicant was informed that the proceedings would be concluded by January 1992 at the latest, until May 1993 when this actually happened. Furthermore the Court stresses that an excessive work-load of the court, an explanation transmitted to the applicant on 6 March 1992 through the Danish Embassy, does not constitute such an explanation.

4. Overall assessment

36. Having regard to the particular circumstances of the present case and the overall length of the proceedings lasting six years, the Court concludes, as did the Commission, that the "reasonable time" requirement was not satisfied. There has accordingly been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

38. The applicant claimed pecuniary damage in the amount of LUF 20,200,000 and 303,000 Danish kroner (DKK) as a result of the forced sale of certain property in Luxembourg and in Denmark. Furthermore, he

claimed non-pecuniary damage amounting to DKK 185,000 in view of the considerable anxiety, distress and feelings of injustice allegedly caused by the length of the proceedings.

39. The Government saw no connection between the pecuniary damage alleged and the conduct of the Luxembourg authorities. In respect of the non-pecuniary damage, the Government asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

40. The Court perceives no causal link between the breach of Article 6 § 1 and the alleged pecuniary damage. There is, therefore, no ground for any award under this head. In respect of the non-pecuniary damage alleged, the Court, making an assessment on an equitable basis, awards the applicant DKK 45,000 under this head.

B. Costs and expenses

41. The applicant claimed DKK 300,000 for his own costs and expenses allegedly incurred while the case was pending in Luxembourg and before the former Commission from 1987 until 1995. He claimed another DKK 30,000 for additional costs and expenses undertaken by himself during the subsequent proceedings before the former Commission. Finally, he claimed a total of DKK 98,150 for his lawyer's costs and expenses from which should be deducted the legal aid fees paid by the Council of Europe (3,645 French francs (FF)).

42. Finally, the applicant claimed simple interest at an annual rate of 8%.

43. The Government considered that the claims made by the applicant were excessive and unsubstantiated.

44. The Court recalls that, according to its case-law, it has to examine whether the costs and expenses were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (e.g. *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 80, ECHR 1999-III). As to the costs and expenses before the domestic proceedings the Court finds that the applicant has not shown that they were actually incurred. There is, therefore, no ground for an award under this heard. The Court finds the applicant's claims for costs and expenses for the Strasbourg proceedings excessive and, making an assessment on an equitable basis awards him a total of DKK 35,000 under this head less the amount paid by the Council of Europe in legal aid.

C. Default interest

45. According to the information available to the Court, the statutory rate of interest applicable in Denmark at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, DKK 45,000 (forty-five thousand) Danish kroner for non-pecuniary damage and DKK 35,000 (thirty-five thousand) Danish kroner less the amounts paid by the Council of Europe in legal aid (3,645 FF) for costs and expenses,
   (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

András BAKA
President