



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

FOURTH SECTION

CASE OF H.L. v. FINLAND

(Application no. 33600/96)

JUDGMENT
(strike out)

STRASBOURG

14 December 2000

In the case of H.L. v. Finland,

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

Mr G. RESS, *President*,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs N. VAJIĆ,

Mr J. HEDIGAN,

Mr M. PELLONPÄÄ,

Mrs S. BOTOCHAROVA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 21 November 2000,

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

PROCEDURE

1. The case originated in an application (no. 33600/96) against the Republic of Finland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, H.L. (“the applicant”), on 24 September 1996.

2. The applicant was represented by Mr E. Käyhkö, a lawyer practising in Lahti (Finland). The Finnish Government (“the Government”) were represented by their Agent, Mr Holger Rotkirch, Director-General for Legal Affairs, Ministry for Foreign Affairs.

3. The applicant complained, under Article 6 § 1 of the Convention, about the length of criminal proceedings against him.

4. Following communication of the application to the Government by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention.

5. On 20 January 2000, having obtained the parties’ observations, the Court declared the application admissible.

6. On 15 September 2000, after an exchange of correspondence, the Section Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 21 September 2000 and on 13 October 2000 the Agent of the Government and the applicant’s representative respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. The applicant is a Finnish citizen, born in 1938 and resident in Helsinki. He was arrested on 16 September 1988 in connection with several offences concerning the insolvent liquidation of three different companies (X, Y and Z) he had been involved with as, *inter alia*, managing director. He was released on 28 September 1988 after a police investigation.

8. On 13 December 1988 the applicant was charged with tax offences concerning companies Y and Z before the City Court of Lahti (*raastuvanoikeus, rådstuvurätt*; known as the District Court of Lahti (*kärjäoikeus, tingsrätt*) as from 1 December 1993). The prosecutor stated that the police investigations concerning suspected offences in relation to the insolvent liquidation had not yet been finished. A witness gave evidence at the hearing. The prosecutor and the applicant's lawyer requested an adjournment, which was granted until 14 March 1989.

9. At the hearing of 14 March 1989 the prosecutor stated that four further charges against the applicant concerning the insolvent liquidations were still under consideration. He requested an adjournment until 18 July 1989. The request was not opposed, and the case was adjourned until the requested date.

10. The police investigations concerning company Z were finished on 18 May 1989. The results obtained were delivered to the prosecutor for a prosecution to be brought.

11. At the hearing of 18 July 1989 the prosecutor brought new charges against two co-defendants. The prosecutor stated that the police investigations concerning the liquidation of companies Y and Z had been finished, but the charges were still under consideration. Furthermore, most of the complainants had not been summoned. Thus, the prosecutor requested an adjournment of two months or more. A complainant and the two co-defendants concurred in his request. The applicant's lawyer found no reason for a further adjournment and asked for the case to be decided in respect of the applicant. As requested by the prosecutor, the case was adjourned until 19 September 1989.

12. On 19 September 1989 the applicant was charged with offences in relation to the liquidation of companies X and Y. The applicant's lawyer read and filed a written pleading and stated that he would answer the charges concerning company Y in writing. Three witnesses and a complainant gave evidence at the hearing. The prosecutor requested an adjournment in order to hear witnesses and to have a complainant summoned. Furthermore, he explained that the charges in relation to company Z were still under consideration. Several others, including the applicant, concurred in the request for an adjournment, which was granted until 28 November 1989.

13. At the hearing on 28 November 1989 the applicant's lawyer filed a pleading. The applicant named a witness to give evidence and another witness was reheard. The prosecutor requested an adjournment in order to call more witnesses and as the consideration of further charges had not been concluded. The case was adjourned until 20 March 1990.

14. At the hearing of 20 March 1990 the substance of the charges was not dealt with at all. The prosecutor requested about two months' adjournment. He explained that the consideration of charges concerning company Z had not been completed, but that it was in its final stage. He had intended to prepare the subpoenas in the near future. Furthermore, he meant to hear evidence from some witnesses at the next hearing. All the four defendants concurred in the request, and the adjournment was granted until 29 May 1990.

15. On 29 May 1990 the prosecutor raised charges against a fifth defendant. The charges against the applicant were not dealt with. At the request of the prosecutor the case was adjourned until 18 September 1990.

16. At the hearing of 18 September 1990 charges against three of the applicant's co-defendants were dealt with. The prosecutor stated that charges concerning two police investigation reports were still under consideration. He requested an adjournment, which was granted until 18 December 1990.

17. By the hearing of 18 December 1990 the prosecutor had not concluded the consideration of charges in relation to company Z. The substance of any of the charges was not dealt with. At the request of the prosecutor the case was adjourned until 19 March 1991.

18. On 19 March 1991 the prosecutor dropped some of the charges, one of which was against the applicant. He explained that the charges in relation to company Z and some further charges in relation to company X were still under consideration, and he requested an adjournment. The applicant's lawyer objected to the adjournment. He stated that the prosecutor had already had three and a half years to complete the charges. The applicant's lawyer also asked the prosecutor a question concerning the charges already made, but the prosecutor refused to answer at this point. Finally, the applicant's lawyer stated that if the adjournment was granted, the case should this time be adjourned for a sufficiently long period of time. The case was adjourned until 27 August 1991.

19. Apparently no hearing was held on 27 August 1991.

20. The next hearing took place on 1 October 1991. A witness gave evidence. The prosecutor did not present any new charges, and at his request the case was adjourned until 26 November 1991.

21. On 26 November 1991 further charges concerning company X were brought against the applicant. The prosecution had called five witnesses who gave evidence at the hearing. The prosecutor and two co-defendants

requested an adjournment. There was no objection. The case was adjourned until 4 February 1992.

22. At the hearing on 4 February 1992 the applicant's lawyer filed certain evidence. He also explained that he intended to ask for a criminal investigation to be conducted on the ground of contradictions between the witnesses' statements given at the previous hearing. Therefore, he requested the case be adjourned. The prosecutor did not submit any further material. He stated that the charges concerning company Z were still under consideration and, thus, requested an adjournment. The case was adjourned until 26 May 1992.

23. At the hearing of 26 May 1992 the substance of the charges against the applicant was not dealt with. The prosecutor stated that the consideration of charges against the applicant had not been completed and requested an adjournment. The applicant's lawyer concurred in the request. The case was adjourned until 1 September 1992.

24. On 27 August 1992 the applicant's lawyer requested a further police investigation of charges concerning company X.

25. At the hearing of 1 September 1992 the substance of the case was not dealt with. At the prosecutor's request, in which the applicant's lawyer and a co-defendant concurred, the case was adjourned until 17 November 1992.

26. The further police investigation requested by the applicant was terminated on 6 November 1992.

27. The investigation report was submitted to the City Court at the hearing of 17 November 1992. The applicant requested an adjournment in order to provide written observations concerning the investigation and the prosecutor concurred in the request. The case was adjourned until 9 February 1993.

28. At the hearing of 9 February 1993 the prosecutor explained that he had completed the consideration of charges concerning the applicant in relation to company Z, but that the indictment was not ready yet. Therefore, he requested an adjournment. The applicant's lawyer filed a written pleading. He concurred in the prosecutor's request for an adjournment. Furthermore, he stated that if the prosecutor intended to bring new charges against the applicant in relation to company Z, he should definitely do so at the next hearing. The case was adjourned until 11 May 1993.

29. On 11 May 1993 the substance of the charges was not dealt with. The prosecutor assumed he would complete the new charges by the next hearing and he requested a further adjournment. The applicant's lawyer concurred in the request and repeated what he had expressed at the last hearing insofar as new charges were concerned. The case was adjourned until 5 October 1993.

30. On 5 October 1993 the hearing was adjourned on the request of the public prosecutor as the new charges were still under consideration. The next hearing was ordered to be on 30 November 1993.

31. At the hearing of 30 November 1993 the prosecutor brought before the District Court the main charges concerning company Z. The applicant was accused of committing aggravated fraud as a debtor. As the serving of the summons on the applicant concerning the new charges had not been effected, the prosecutor requested an adjournment, which was granted until 1 February 1994.

32. The applicant was charged with offences concerning company Z on 1 February 1994, which was the twenty-first hearing in the case. The verbal indictment was almost identical to the factual findings set out in the police report. The presiding judge requested the prosecutor to complete the written indictments and to state more precisely, *inter alia*, who was being charged and of what offences. Seven witnesses were heard. The prosecutor requested an adjournment. The applicant's counsel stated:

“Should the proceedings only concern company Z, the case would be ready for decision today as regards [the applicant]. The situation is that the charges here include charges concerning companies X and Y in addition to the charges brought today. It is probably clear to everyone that these companies have connections to each other through [the applicant], and I have gone through receipts until the year 1985. I hope to be able to finish this work during this spring, and in that connection I have the intention to hear ... office clerk T, and possibly other persons who have been in connection to companies X and Y. I do not object to the prosecutor's request for an adjournment. I hope that the adjournment will be sufficiently long so that a further hearing will not be necessary.”

31. The case was adjourned until 10 May 1994.

32. On 10 May 1994 the applicant's lawyer stated that he was still doing some checking on the accounts of companies Y and Z and, on that account, requested a further adjournment. The case was adjourned until 4 October 1994.

33. At the hearing on 4 October 1994 a witness called by the applicant gave evidence. The case was adjourned for deliberations until 13 December 1994.

34. The charges concerning companies X, Y and Z were heard jointly all through the proceedings. It appears that the companies, Y and Z in particular, had been connected. The case concerned mainly alleged economic offences related to those companies, but also to some other companies. There were six accused, who were charged with more than 20 offences all together. The applicant was charged with 17 offences. The number of the complainants was 115, as in principle all the creditors of the companies in liquidation were in the position of a complainant. Only a few of them were present in court or presented any claims.

35. At the twenty-fourth hearing on 13 December 1994 the District Court convicted the applicant of three aggravated frauds as a debtor, two tax offences and two accounting offences and sentenced him to two years and one month's imprisonment, including a previous sentence of one year's imprisonment. The applicant was acquitted of ten charges.

36. The applicant appealed to the Court of Appeal of Kouvola (*hovioikeus, hovrätt*) which upheld the conviction in respect of the two accounting offences and acquitted the applicant of the rest of the charges on 9 November 1995. The applicant was given a suspended sentence of one year and twenty days' imprisonment, including the previous sentence of one year's imprisonment. The Court of Appeal's case file contained 3,168 pages, mostly documents related to the pre-trial investigations.

37. On 26 March 1996 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicant leave to appeal.

THE LAW

38. On 21 September 2000 the Court received the following declaration from the Agent of the Government:

“... I have the honour, on behalf of the Government of Finland, to inform you that the Government accepts the Court's proposal for a friendly settlement in the present case.

The Government understands that the Court's proposal for a friendly settlement - outside the monetary issues - covers the normal clause referred to in the Government's letter of 16 March 2000. According to this clause the applicant declares, as a part of the friendly settlement, that subject to the fulfilment by the Government of what is stated in the friendly settlement, he has no further claims against the Finnish State based on the facts of the application.

On the above basis a friendly settlement on [an] *ex gratia* basis can be achieved and the case struck out of the Court's list of cases under Rule 51 §§ 2 and 4 of the Rules of Court.”

39. On 13 October 2000 the Court received from the applicant's representative the following declaration signed by the applicant's representative:

“... I have the honour, on behalf of [the applicant], to inform you that [the applicant] accepts the Court's proposal for a friendly settlement in the present case as follows:

- the Government will pay the applicant the sum of FIM 25,000 as non-pecuniary damage, and

- the Government will pay the applicant the sum of FIM 33,934 for the legal fees and expenses.

After the fulfilment by the Government of what is stated in the friendly settlement, [the applicant] has no further claims against the Finnish State based on the facts of the application.”

40. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

41. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 14 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President