



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

THIRD SECTION

CASE OF BECK v. NORWAY

(Application no. 26390/95)

JUDGMENT

STRASBOURG

26 June 2001

FINAL

26/09/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Beck v. Norway,

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

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Sir Nicolas BRATZA,

Mrs H.S. GREVE,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 November 1999 and 7 June 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 26390/95) against the Kingdom of Norway 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 Norwegian-Swiss national, Mr Gunnar Beck (“the applicant”), on 28 January 1995.

2. The applicant was represented by Bjørn Stordrange, a lawyer practising in Oslo (Norway). The Norwegian Government (“the Government”) were represented by their Agent, Mr Frode Elgesem, Attorney, Attorney-General’s Office (Civil Matters).

3. The applicant alleged that certain criminal proceedings against him in relation to fraud charges had exceeded a reasonable time, in violation of Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 16 November 1999 the Chamber declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), decided the case on the basis of the case-file as it stood.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. In the autumn of 1985 the applicant, together with three associates, started a business involving lactic cultures, purportedly for use in the cosmetic industry. It consisted of two limited liability companies, founded respectively in August and December 1985 and named *Cosmesin Laboratorieprodukter A/S* (“*Cosmesin*”) and *Geneve A/S* (“*Geneve*”). According to the Norwegian courts’ findings in the proceedings referred to below, the business was a fraudulent pyramid scheme by which *Cosmesin* purchased from a producer in Denmark freeze-dried concentrates of lactic acid bacteria at 100 Norwegian *kroner* (NOK) per bag (containing 0.5 grams), resold them to *Geneve* at NOK 240 per bag, which again sold them at the price of NOK 330 per bag to cultivators whom it had recruited, and after 15 weeks bought the cultivated products back at the price of NOK 625. The number of producers increased from 4 at the end of 1985 to 3,205 at the end of January 1987. Payments were made to a company in London. No goods containing the cultivated substances were ever marketed or produced. As of November 1986, the companies stopped bookkeeping.

9. On 27 January 1987 the Consumer Ombudsman (*Forbrukerombudet*) filed a complaint with the Director General of Public Prosecutions (*Riksadvokaten*) against *Geneve* and *Cosmesin* for defrauding several thousand persons who had invested in products from *Geneve*. The companies went into bankruptcy in February 1987. Between February and April 1987 the police received 335 complaints from cultivators in various parts of Norway. Further complaints were made in January 1988 and January 1989 respectively by a major bank and the tax authorities.

10. On 29 January 1987 the police interviewed the applicant as a witness, because of his role in the companies. On 30 January 1987 the police carried out searches of premises and confiscations. Such measures, including interviews of the persons involved, continued in February. On 20 February 1987 the applicant was arrested but then released on certain conditions. He then moved to Switzerland and, by a letter of 4 December 1987, his lawyer informed the police of his Swiss address and his preparedness to go to Oslo to meet police investigators if necessary.

Throughout 1987 investigations were conducted in Denmark, Sweden and England concerning the companies' business connections and investments. In April 1989 the police held meetings with Swedish and English police authorities. In October 1991 and April 1992 the police interviewed 12 cultivators.

On 29 February 1988 the Probate Court (*skifteretten*) received the final report from the administrators of the estates of *Cosmesin* and *Geneve*. On 26 January 1989, the police received the tax authorities' report on the tax and value-added tax ("VAT") offences.

11. After the initial interviews mentioned above, one of the two leading figures in the criminal activity concerned, Mr D.R., disappeared. In November 1987 a search for him with an arrest warrant was made via Interpol. On 7 November 1990 he was arrested by the Spanish police. The Norwegian authorities requested his extradition on 23 November 1990. On 8 July 1991 he was released from custody in Spain, subject to a duty to report to the police. In early February 1992 he was extradited to Norway.

12. Following the issuing of indictments in August 1989, the case was submitted to the Oslo City Court on 4 September 1991.

13. On 19 February 1992 the City Court fixed 5 October 1992 for opening the trial hearing, rather than the earlier date of 22 April 1992, to which objection had been made by defence counsel, whilst accepted by the prosecution.

14. In the final indictments issued on 17 March 1992, the applicant was charged with the offences of serious fraud in relation to amounts totalling approximately NOK 25,000,000 (Articles 270 and 271 of the Penal Code), unlawfully drawing up cheques – in amounts totalling almost NOK 4,500,000 – on behalf of an insolvent company (Articles 285 and 288 of the Penal Code), and having disregarded statutory obligations relating to bookkeeping and the provision of information to the authorities relevant to VAT payments, with the resultant evasion of approximately NOK 3,500,000 (Article 286 of the Penal Code and section 72 of the VAT Act 1969 – *merverdiavgiftsloven*).

After holding a hearing over 20 days in October and November 1992, the City Court, by a judgment of 19 November 1992, convicted the applicant of all but the VAT charges, and sentenced him to 2 years' imprisonment.

As regards sentencing, the City Court noted from the outset that the offences for which the applicant was convicted were punishable by up to 9 years' imprisonment. It further stated that general considerations of crime prevention suggested that economic offences of the kind at issue warranted a severe penalty. As it appears from its reasoning, the City Court found the defendants' conduct particularly reprehensible and emphasised that the

suffering which they had caused to innocent cultivators must be viewed as an aggravating factor in sentencing. The City Court then went on to consider the question of mitigation, having regard to the following three factors:

“With the exception of D.R., the accused were of a young age at the time of the commission of the proscribed conduct. ... There were thus important years for settling down which elapsed between the criminal acts and judgment in the case.

Furthermore, the Court attaches some weight, albeit not a great deal, to the fact that the offences were committed at a time when banks were somewhat uncritical about giving loans. ... In the court’s view, had greater caution been displayed, the pyramid scheme would have been revealed earlier.

Finally the court attaches weight, to a not insignificant degree, to the fact that a long time has elapsed since the acts were committed. The prosecution transmitted the case to the Oslo City Court in December 1991 and final investigations concerning one aspect of the case as important as the value of the cultivators and their possible use went on as late as the first semester of 1992. Although it is correct that D.R. stayed abroad over long periods, the court could not see how this could justify the delays in the investigations. It is understood that the delays in the investigation were caused by a change of investigators in the case.

Notwithstanding that weight must be given to the long time that has elapsed since the acts were committed, the court finds that the sentencing must be severe.”

Two other co-defendants, including Mr D.R., who were considered to have played a more prominent role in the proscribed activity, were sentenced to 3 years’ imprisonment.

15. On 28 December 1992 the applicant sought to appeal to the Supreme Court, alleging a procedural error in the first instance proceedings and requesting a new trial. On 29 April 1993 the Appeals Selection Committee of the Supreme Court (*Høyesteretts kjæremålsutvalg*) admitted the appeal in as far as it concerned the procedural matter.

In the proceedings before the Supreme Court the applicant in addition asked for a reduction in sentence. After taking evidence on 14 December 1993 and holding a hearing on 6 September 1994, the Supreme Court rejected the appeal on 13 September 1994. As regards sentencing, it recalled that the City Court had taken into consideration as a mitigating circumstance the long time which had elapsed since the incriminated conduct. The Supreme Court held that, although more time had elapsed since the City Court’s judgment, it saw no reason for reducing the sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The Code of Criminal Procedure (Act of 26 May 1981 No. 25), Chapter 18 on Criminal Investigation, contains the following provisions:

Article 226

“The purpose of the investigation is to obtain the necessary information for deciding whether an indictment should be preferred, and to serve as preparation for the trial of the case. ...

If a specific person is under suspicion, the investigation shall seek to clarify both the evidence against him and the evidence in his favour.

The investigation shall be carried out as rapidly as possible and in such a way that no one is unnecessarily exposed to suspicion or inconvenience.”

Article 249

“The question of preferring an indictment shall be decided as soon as the case is sufficiently prepared for this purpose.”

17. In the proceedings before the Court, the Government drew attention to certain case-law of the Norwegian Supreme Court, according to which a 64-year-old man had been sentenced to 8 years’ imprisonment for gross fraud and gross embezzlement totalling NOK 5,000,000 (*Norsk Retstidende* – “*Rt*”1964, p. 773); a man without a previous criminal record had been sentenced to 6 years’ imprisonment for economic crimes, including gross fraud, amounting to NOK 100,000,000 (*Rt* 1990, p. 641); a person had been sentenced to 4 years and 6 months’ imprisonment for gross fraud amounting to NOK 9,500,000 (*Rt* 1992, p. 106), and a person had been sentenced to 3 years’ imprisonment for gross fraud amounting to NOK 1,200,000 with respect to over 20 victims (*Rt* 1992, p. 1016).

The applicant drew the Court’s attention, *inter alia*, to Supreme Court rulings in which a lawyer’s secretary had been sentenced to 1 year and 4 months’ imprisonment for gross fraud and embezzlement with respect to NOK 1,100,000 (*Rt* 1995, p. 1962) and another decision where two men, aged 43 and 28, with previous criminal records, had been sentenced to 8 months’ imprisonment for gross tax fraud amounting to NOK 1,500,000 (*Rt* 1995, p. 250).

THE LAW

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

18. The applicant complains that the criminal proceedings against him – which lasted from the end of January 1987 to 13 September 1994, thus over 7 years and 7 months – were not concluded within a reasonable time as required by Article 6 § 1 of the Convention, the relevant parts of which read as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by a ... tribunal....”

A. Arguments before the Court

1. *The applicant*

19. The applicant maintained that the case was not very complex, no more so than any other case of this nature, and that the delay in the proceedings was not attributable to his own conduct. Any delay caused by Mr D.R.’s escape to Spain should not be counted against the applicant. In his opinion, it should have been possible for the police to interview Mr D.R. between 7 November 1990 and 8 July 1991, while he was detained in Spain. At all times during the investigations the applicant was available for inquiries by the police. Rather, as pointed out by the City Court, the delay was caused by the changes of police investigators in the case. However, this factor was only one of three mitigating circumstances taken into account. The sentence imposed was only a little lower than the average sentence for the kind of offences in question, which could be explained by the factors referred to by the City Court other than the length. Thus, as his sentence had not been sufficiently reduced, it could not be said that he had obtained adequate redress for the violation of Article 6 § 1 of the Convention occasioned by the excessive duration of the proceedings in his case.

2. *The Government*

20. The Government point out that the maximum sentence with respect to the offences for which the applicant was convicted was 9 years’ imprisonment and that, having regard to the seriousness of the proscribed conduct and the suffering inflicted on the aggrieved individuals, the trial court considered that the sentence had to be severe. Considering, *inter alia*, the length of the proceedings as a mitigating circumstance, the court fixed the sentence at no more than 2 years’ imprisonment. It was clear from the court’s reasoning that the length of the proceedings was a decisive factor in

the leniency of the sentence. Thus the mitigation on grounds of length was measurable and could not be viewed as an unverifiable declaration of good intent. Given the level of sentences imposed in comparable cases, one could reasonably assume that in the applicant's case the mitigating circumstances represented a reduction in sentence of at least 2 years' imprisonment. At least one year's reduction was attributable to the length of the proceedings alone, the City Court having attached less importance to the other two mitigating factors. Thus, bearing in mind the aggravating circumstances in the case, the reduction in sentence must be deemed substantial. The applicant was thus afforded adequate redress by the competent national authorities and could not claim to be a "victim", within the meaning of Article 34 of the Convention, of a violation of his rights under Article 6 § 1.

21. In any event, the Government submit that no delay occurred in the proceedings which could justify a finding of a breach of Article 6 § 1 of the Convention. In particular, there were two factors beyond the control of the authorities which had contributed to the length of the proceedings:

Firstly, one of the two leading figures in the criminal activity concerned and a key witness against the applicant, Mr D.R., had disappeared after the interviews in 1987 and was only arrested in Spain in November 1990 and extradited to Norway in February 1992. Since the charges against the defendants were based on the same facts, it was in the interests of the proper administration of justice to hear the case against all the accused at the same time. In view of the links between the charges against Mr D.R. and the applicant, the delays in the case against the latter were inevitable and fully acceptable.

Secondly, the proceedings were delayed another 5½ months because counsel for the defendants were unable to start the main hearing on 22 April 1992 as suggested by the City Court and accepted by the prosecution.

B. Court's assessment

22. The Court notes that between 4 September 1991, when the criminal proceedings against the applicant were instituted before the City Court, and 13 September 1994, when the Supreme Court rejected his appeal, his case had been heard at two levels of jurisdiction, including an oral hearing lasting 20 days at first instance and a further hearing on appeal (see paragraphs 12-15 above). The hearing at first instance had initially been scheduled for 22 April 1992 but had, at the request of certain defendants, been postponed until 5 October 1992. It does not appear that there were any periods of inactivity during these proceedings before the national courts which would warrant criticism of the competent authorities.

23. However, the same cannot be said in respect of the period of over 4 years and 6 months which elapsed from the opening of the criminal investigation at the end of January 1987 until the institution of proceedings before the City Court on 4 September 1991 (see paragraphs 10-12 above).

24. On this point the Court observes that the investigation concerned over a thousand complaints about a large scale international fraudulent business, based on a sophisticated pyramid scheme involving several thousand persons, and engaged the police authorities of no fewer than four different countries. Parallel to the criminal case, there were also bankruptcy and tax proceedings (see paragraphs 8-10 above). The criminal proceedings required the hearing of oral evidence over 20 days by the City Court (see paragraph 14 above). The Court accepts the Government's argument that the case was very complex.

25. As regards the applicant's conduct, the fact that he moved to Switzerland pending the investigations must have caused some inconvenience to the investigating authorities, even though the police were informed of his address in Switzerland and of his preparedness to go to Oslo if requested to do so (see paragraph 10 above). However, the Court does not find it established that this fact unduly prolonged the proceedings against him.

26. As regards the conduct of the authorities, the Court observes that there were no periods of inactivity in 1987. Nor does it appear unreasonable for the investigators to have awaited the reports from the bankruptcy and VAT proceedings before completing the police investigation (see paragraph 10 above). Moreover, it is noted that one of the two leading figures in the criminal business in question, Mr D.R., disappeared after the initial interview in 1987 until his arrest by the Spanish police in November 1990. To some extent this fact, which was not the responsibility of the authorities of the respondent State, must have contributed to prolonging the investigation.

However, in the Court's view, this does not sufficiently explain why it took nearly 2 years from the issue of the formal indictment in August 1989, when – according to the Government – the investigation was essentially completed, until the institution of proceedings before the City Court in September 1991 (see paragraph 12 above). In this regard the Court notes that the City Court, after having apprised itself of all the evidence before it, observed that the lateness of the investigation was not so much caused by Mr D.R.'s sojourn abroad as by a change of investigators in the case (see paragraphs 11 and 14 above).

27. The question remains whether the applicant may continue to claim to be a victim of a violation of Article 6 § 1 of the Convention on the grounds of the length of the criminal proceedings against him. In this regard the Court recalls that the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned

of his status as a victim within the meaning of Article 34 of the Convention. However this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, § 66).

28. Applying these principles in the present case, the Court notes in the first place that the City Court expressly upheld the substance of the applicant's complaint under Article 6 § 1 of the Convention that the proceedings had exceeded a reasonable time.

Secondly, the Court is satisfied that the applicant was afforded adequate redress for the alleged violation. On this point it should be recalled that, despite the gravity of the offences in question, the applicant was sentenced to 2 years' imprisonment which was at the lower end of the scale of punishment authorised by the relevant penal provisions and appreciably less than in comparable cases (see paragraph 17 above). The Court is not convinced by the applicant's argument that the length factor had been of minor or negligible importance in the sentencing. The City Court held expressly that it attached a "not insignificant" weight to this third factor and little weight to a second factor regarding the uncritical attitude of banks in giving loans. The age mitigating factor did not apply to all the defendants, yet they all received comparable sentences according to their respective responsibilities. Thus, the time/delay element stood out as being the primary mitigating factor. Although the City Court's reasoning could have been more precise, the Court is satisfied, given the particulars on comparable sentencing practices submitted by the parties, that the reduction in sentence on account of the length factor was measurable in the present case, and had a decisive impact on the applicant's sentence.

29. Against this background, the Court does not find a violation of Article 6 § 1 of the Convention in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 26 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President