



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

FOURTH SECTION

CASE OF MÕTSNIK v. ESTONIA

(Application no. 50533/99)

JUDGMENT

STRASBOURG

29 April 2003

FINAL

24/09/2003

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 Mõtsnik v. Estonia,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 1 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 50533/99) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Tõnu Mõtsnik ("the applicant"), on 2 June 1999.

2. The applicant, who had been granted legal aid, was represented by Mr I. Gräzin, Dean of the Law Faculty at University Nord in Tallinn. The Estonian Government ("the Government") were represented by their Agents, Ms M. Hion, First Secretary of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs, and Mr E. Harremoës, Special Advisor to the Mission of the Republic of Estonia to the Council of Europe.

3. The applicant alleged, in particular, that the criminal proceedings against him were not conducted within a reasonable time.

4. The application was allocated to the First 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.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 5 March 2002 the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1959 and lives in Tallinn.

9. On 1 June 1994 the Tartu police initiated criminal proceedings against the applicant on the suspicion of having committed an offence of satisfying his sexual desire in an unnatural manner.

10. On 25 October 1994 the applicant was formally charged with this offence. On the same day he was subjected to a preventive measure in the form of an obligation not leave his place of residence.

On 22 November 1994 the applicant was further charged with attempted rape.

11. On 13 January 1995 the preliminary investigation of the charges was complete.

On 18 January 1995, upon approval of the indictment by the Tartu Public Prosecutor, the applicant's criminal case-file was sent to the Tartu City Court (*Tartu Linnakohus*).

12. On 7 January 1997, by a decision of the City Court judge, the applicant was committed for trial.

13. On 17 February 1997 the judge ordered the serving of the indictment on the applicant who received it on 4 March 1997.

14. On 30 June 1997 the applicant wrote a letter notifying the City Court of his change of residence. However, he did not send out the letter, but handed it to his lawyer.

15. On 13 October 1997 the City Court summoned the parties and the witnesses to a hearing which was scheduled for 16 December 1997.

16. On 7 November 1997 the City Court was informed that it had not been possible to serve the summons on the applicant at the address indicated by him in October 1994. Consequently, the hearing was postponed.

In mid-December, the applicant's lawyer delivered to the City Court the applicant's letter of 30 June 1997 about his new address.

17. On 19 December 1997 the City Court scheduled a hearing for 12 February 1998.

On 12 February 1998 the hearing was adjourned on account of the absence of the applicant's lawyer for health reasons.

18. On the same day the City Court ordered that the applicant be taken into custody. It noted that the applicant had four prior convictions and considered that he could re-offend.

The applicant filed an appeal against the order directly with the Tartu Court of Appeal (*Tartu Ringkonnakohus*) which, on 17 February 1998, forwarded it to the City Court as appeals to a higher court must be presented

through a lower court. On 5 March 1998 the Court of Appeal rejected the applicant's appeal.

19. In the meantime, on 18 February 1998, the City Court scheduled a new hearing for 11 March 1998.

On 2 March 1998 the applicant's lawyer requested that the hearing be adjourned as it was not possible for him to attend because of a meeting of the Bar Association. His request was granted.

20. On 4 May 1998 the applicant complained to the Office of the Chief Public Prosecutor (*Riigiprokuratuur*) about the delay in examining his case.

On 5 May 1998 he addressed a similar complaint to the Ministry of Justice, which asked the City Court to inform it of the reasons for lack of progress in the case.

21. On 21 May 1998 the City Court scheduled a hearing for 24-25 August 1998.

22. By letters of 25 May 1998 and 26 May 1998 the Ministry of Justice and the prosecutor's office, respectively, informed the applicant that the reason for the delay in dealing with the case from January 1995 until late 1997 was the City Court's heavy workload. They also stated the reasons for the postponement of the hearings.

23. On 20 June 1998 the applicant requested the appointment of a lawyer by the court as he was dissatisfied with the services of the lawyer chosen by him.

24. The City Court heard the applicant's case on 24-25 August 1998.

On 24 August 1998 the applicant sought the adjournment of the hearing, arguing that the preliminary investigation had been incomplete and that he did not have a copy of the indictment, which was in the hands of his previous lawyer. He also disputed the legality of the appointment of his new lawyer and requested the removal of the public prosecutor from the case. His requests were dismissed as unfounded.

25. By a judgment of 26 August 1998 the City Court convicted the applicant of attempted rape and sentenced him to 4 years' imprisonment. The City Court heard the testimonies of the victim and two witnesses and examined two medical expert reports.

26. On 1 September 1998 the applicant lodged an appeal against the City Court judgment, arguing that his trial and conviction had been unlawful. The City Court had infringed procedural time-limits concerning the start of the trial stipulated in Articles 184(1) and 204 of the Code of Criminal Procedure according to which the court must take a decision to try the accused within 10 days from the seizure of the court, and the trial must start no later than 20 days from the taking of that decision. The applicant pointed out that his criminal case-file arrived in the City Court on 18 January 1995, but the decision committing him for trial was taken only on 7 January 1997.

At the hearing before the Tartu Court of Appeal on 28 October 1998 the applicant also pointed to the delay in examining his case at the first instance court.

27. By a judgment of 28 October 1998 the Court of Appeal dismissed the applicant's appeal and upheld the City Court judgment. It admitted that the time-limit for committing the applicant for trial had been exceeded, but found no substantial infringement of procedural law which would have entailed a reversal of the lower court judgment.

28. On 24 November 1998 the applicant filed an appeal with the Supreme Court (*Riigikohus*) in which he argued that the two-year delay in dealing with his case at the trial court was unlawful.

29. On 9 December 1998 the Supreme Court refused the applicant leave to appeal.

30. On 1 March 1999 the competent prosecutor refused the applicant's request to initiate criminal proceedings against the judge of the first instance court as the failure to comply with the procedural time-limits did not constitute a criminal offence.

31. By a letter of 5 March 1999 the Ministry of Justice informed the applicant that there were no grounds to initiate disciplinary proceedings against the judge since there was no evidence of an intentional infringement of procedural rules by him. However, the judge's attention had been drawn to deficiencies in his work.

THE LAW

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

32. The applicant complained that the criminal charges against him were not determined within a reasonable time, as required by Article 6 § 1 of the Convention, the relevant part of 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”

A. Period to be taken into consideration

33. It was undisputed that the proceedings started on 1 June 1994, when the applicant became a suspect of a sexual crime, and that they ended on 9 December 1998, when the Supreme Court refused the applicant leave to appeal. The overall length of the proceedings was thus four years, six months and eight days. However, as the Convention entered into force in respect of Estonia on 16 April 1996, the period before that date lies outside

the Court's jurisdiction *ratione temporis*. Consequently, the Court can only consider the period of two years, seven months and twenty-three days, which elapsed after 16 April 1996, although it will take into account the stage reached in the proceedings on that date (see, among other authorities, *mutatis mutandis*, *Yağci and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, p. 16, § 40).

B. Reasonableness of the length of the proceedings

34. The Court recalls that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Kudla v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

1. The parties' submissions

35. The applicant submitted that the proceedings, particularly at first instance, lasted unreasonably long. The case was stalled before the City Court for over three years.

36. The Government maintained that the case was not particularly complex.

It was argued that the delays occurring after the scheduling, in October 1997, of the the first hearing were attributable to the applicant and his lawyer. The hearings had to be postponed three times because of the absence of one or the other. In addition, the applicant caused a certain delay when he sent his appeal against the order concerning his taking into custody directly to the Court of Appeal instead of the court of first instance.

The Government admitted that the proceedings before the first instance court could have been shorter. The delay in handling the case up until the scheduling of the first hearing was due to the heavy workload of the City Court and the presiding judge.

However, from the moment when the applicant was taken into custody on 12 February 1998 the case was dealt with speedily and diligently. In particular, the proceedings before the Court of Appeal and the Supreme Court were conducted with exceptional speed.

In sum, the Government considered that the overall length of the proceedings at three court instances did not exceed a "reasonable time" and that consequently Article 6 § 1 of the Convention had not been breached.

2. The Court's assessment

37. The Court notes the Government's submission, which is not contested by the applicant, that the case was not particularly complex. It

observes that the proceedings in issue, in which the applicant was the only defendant, concerned sexual offences with an inconsiderable amount of evidence (see paragraph 25 above). It therefore considers that the case did not disclose any particular complexity.

38. As regards the conduct of the applicant, the Court notes that the hearing which had been set for 16 December 1997 had to be postponed on account of the failure of the applicant, who was not in custody, or his lawyer to inform the trial court of a change of address. Further hearings scheduled for 12 February 1998 and 11 March 1998 had also to be adjourned as the applicant's lawyer was unable to attend. The delay in the proceedings from December 1997 to March 1998 was thus attributable to the applicant. However, there is no indication that the applicant was responsible for delays during any other period. The Court therefore considers the applicant did not contribute substantially to the length of the proceedings.

39. As regards the conduct of the authorities, the Court notes that the preliminary investigation of the criminal case, which had been initiated on 1 June 1994, was complete on 13 January 1995. On 18 January 1995 the case was sent to the City Court where it was stalled for nearly two years - it was only on 7 January 1997 that the applicant was committed for trial. However, as stated above, by reason of its competence *ratione temporis* the Court can consider only the period after 16 April 1996, while the preceding stage can be taken into account as a background. Following a lack of judicial activity for nearly nine months, counting from the material date, the City Court took procedural steps on 7 January 1997 (committal for trial), 17 February 1997 (serving of the indictment) and 13 October 1997 (scheduling of a hearing). There was thus a further delay of nearly eight months from February 1997 to October 1997.

40. The Court further notes that the applicant was at liberty until 12 February 1998 when he was arrested. In this connection, it recalls that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities. Consequently, in cases where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see, for example, *Abdoella v. the Netherlands*, judgment of 25 November 1992, Series A no. 248-A, p. 17, § 24).

41. As the hearings scheduled for 12 February 1998 and 11 March 1998 were cancelled, the City Court set, on 21 May 1998, a new hearing date for 24-25 August 1998. It adopted a judgment on 26 August 1998. The Court of Appeal judgment followed on 28 August 1998 and on 9 December 1998 the Supreme Court refused the applicant leave to appeal. Thus, it cannot be said that the authorities failed in their duty to administer justice expeditiously while the applicant was kept in detention.

42. In sum, although there were rather significant delays in the proceedings, in particular before the first instance court, which were not attributable to the applicant or the complexity of the case, the Court considers that the length of the proceedings at three levels of jurisdiction during the period under consideration was not such as to amount to a breach of the “reasonable time” requirement in Article 6 § 1 of the Convention, having regard to the handling of the case by the authorities after the applicant had been taken into custody.

43. There has accordingly been no violation of Article 6 § 1 of the Convention.

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 29 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President