



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

FOURTH SECTION

CASE OF HYVÖNEN v. FINLAND

(Application no. 52529/99)

JUDGMENT
(Friendly Settlement)

STRASBOURG

22 July 2003

This judgment may be subject to editorial revision.

In the case of Hyvönen v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs E. PALM,

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 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 52529/99) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Martti Hyvönen ("the applicant"), on 4 October 1999.

2. The applicant, who had been granted legal aid, was represented by Mr Miikka Hakanen, a lawyer practising in Turku. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

3. The applicant complained, *inter alia*, under Article 6 §§ 1 and 3 (c) and (d) of the Convention that he had been denied a fair hearing in criminal proceedings against him. His dementia and other age-related illnesses had not been accepted as a legally valid excuse for his failure to attend the Court of Appeal's hearing. Furthermore, his counsel had been unable to present pleadings and to re-examine a witness.

The applicant further complained that he had been denied the right enshrined in Article 2 of Protocol No. 7 to have his conviction reviewed by a higher tribunal.

4. On 30 April 2002, after obtaining the parties' observations, the Court declared the application admissible.

5. In February 2003, after an exchange of correspondence, the 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. In June 2003 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1928 and lives in Turku.

7. On 16 June 1998 the District Court (*käräjäoikeus, tingsrätten*) of Vantaa convicted the applicant of aggravated concealment of stolen goods and aggravated forgery, sentencing him to one year and six months' imprisonment. The applicant and his co-defendants had denied the charges. The District Court referred the complainants' claims for damages to be pursued in separate civil proceedings once the criminal proceedings had ended.

8. In his appeal to the Court of Appeal (*hovioikeus, hovrätten*) of Helsinki the applicant maintained his innocence and, in the alternative, requested that his sentence be reduced or suspended. He also proposed to re-examine witness P., who had already been heard in the District Court.

9. The Court of Appeal summoned the applicant to attend its oral hearing on 24 May 1999. He failed to do so, allegedly due to his dementia and other age-related illnesses, but was represented by his counsel, who submitted a medical certificate and alluded to the applicant's dementia. Counsel further stated that the applicant had failed to show up for their joint departure for Helsinki in spite of their prior agreement.

10. In its decision of the same day the Court of Appeal found that no legally valid excuse had been shown for the applicant's absence. His appeal was therefore struck out without counsel having been able to plead its merits and without having been able to re-examine witness P. The State was ordered to pay P. an allowance and reimburse her costs for having presented herself at the hearing venue.

11. On 15 July 1999 the Court of Appeal dismissed the applicant's request for the proceedings to be re-opened. A fresh medical certificate of 11 June 1999 had not convinced the court that he had had a valid excuse for being absent from its main hearing.

12. On 28 September 1999 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicant leave to appeal.

13. In civil proceedings brought by an insurance company the District Court, on 1 November 2000, ordered the applicant and others to compensate the company for damage caused in the commission of their crime. On 30 May 2002 the Court of Appeal refused the applicant's appeal.

THE LAW

14. On 12 June 2003 the Court received the following declaration from the Government:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Finland offer to pay *ex gratia* EUR 2,500 to Martti Hyvönen in compensation for non-pecuniary damage as well as EUR 3,385.25 + EUR 744.75 in VAT in compensation for costs and expenses, less EUR 630 in legal aid granted by the Court, that is to say a total of EUR 3,500 under this head.

These sums will be payable within three months from the date of delivery of the judgment by the Court pursuant to the Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

15. On 12 June 2003 the Court received the following declaration signed by the applicant’s representative:

“I note that the Government of Finland are prepared to pay me *ex gratia* the sum of EUR 2,500 in compensation for non-pecuniary damage as well as EUR 3,385.25 + EUR 744.75 in VAT in compensation for costs and expenses, less EUR 630 in legal aid granted by the Court, that is to say a total of EUR 3,500 under this head, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

I accept the proposal and waive any further claims against Finland in respect of the facts of this application, whether at domestic or international level. Accordingly, I also agree not to file any application for a reversal of the Court of Appeal’s decision of 15 July 1999 or of its judgment of 30 May 2002. I declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and I have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court’s judgment.”

16. 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).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 22 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President