



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

FOURTH SECTION

CASE OF LAUKKANEN AND MANNINEN v. FINLAND

(Application no. 50230/99)

JUDGMENT

STRASBOURG

3 February 2004

FINAL

03/05/2004

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 Laukkanen and Manninen v. Finland,

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 J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO, *judges*,

and Mrs F. ELEN-PAAS, *Deputy Section Registrar*,

Having deliberated in private on 28 May 2003 and on 13 January 2004,

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

PROCEDURE

1. The case originated in an application (no. 50230/99) 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 two Finnish nationals, Mr Ari Laukkanen and Mr Jukka Manninen ("the applicants"), on 15 February 1999.

2. The applicants, who had been granted legal aid, were represented by Mr Jukka Juntunen, a lawyer practising in Hämeenlinna. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director, Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that they were not able to defend themselves properly, that they were not allowed to obtain the attendance and examination of witnesses on their behalf as the identity of the police officers who had been at the place of the events at issue was not revealed to them during the District Court proceedings and they were not allowed to call them as witnesses before the Court of Appeal at a later stage of the proceedings as the Court of Appeal refused to hold an oral hearing. Neither was the case referred back to the District Court for a re-hearing. They invoked Article 6 §§ 1 and 3 (d) of the Convention.

4. The application was allocated to the Fourth 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 28 May 2002, the Court declared the application partly admissible and decided that no hearing on the merits was required (Rule 59 § 3 *in fine*).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1953 and 1955 respectively and live in Riihimäki and Lahti, respectively.

9. The applicants were charged before the District Court (*käräjäoikeus, tingsrätt*) of Lahti; the first applicant with unauthorised use of a motor vehicle and driving without a licence and the second applicant with unauthorised use of a motor vehicle, among other offences. The applicants were represented before the District Court by legal counsel.

10. At the hearing before the District Court, on 10 September 1997, the public prosecutor called an eyewitness, N., a police officer. He had recognised the applicants and had seen them enter a car that was later reported stolen. When the witness gave evidence it appeared that there might have been other police officers in the area. The witness refused to answer some questions about his whereabouts when observing the applicants and also declined to confirm whether there had been other officers in the area, since he had been assigned to another operation not related to the applicants' actions. The witness testified that he had recognised the applicants since he had met them before during pre-trial investigations. He had seen the first applicant enter the car by opening the door from the driver's side. The second applicant had arrived a little later and had entered the car, and the car had left. The witness had seen its registration plate and remembered that it had contained the same digit three times.

11. The applicants denied the charges against them, explaining they did not know anything about the incident they were accused of. They also stated to the District Court that they wished to be informed of the identity of the police officers witness N. had mentioned in order to be able to call them as witnesses.

12. The District Court convicted the applicants on 10 September 1997 of unauthorised use of a motor vehicle, among other offences, and sentenced the first applicant to sixty days' and the second applicant to six months' imprisonment. In so far as the judgment concerned the offences referred to

above, the court based itself on the testimony of the eyewitness. There was no other evidence.

13. The applicants appealed to the Court of Appeal (*hovioikeus, hovrätt*) of Kouvola, arguing that they should not have been convicted on the basis of the testimony of one eyewitness, since it would have been possible to hear the police officers who had been in the area at the same time. The applicants demanded a chance to hear those police officers as witnesses, requesting an oral hearing to be held before the Court of Appeal or that the case be referred back to the District Court for a re-hearing. They stressed that the names of those police officers had not been known until the public prosecutor gave his answer to the applicants' appeal to the Court of Appeal. After the hearing at the District Court the public prosecutor had established that the two police officers had been in the area but had not observed the incident.

14. The public prosecutor submitted his observations on the applicants' appeal to the Court of Appeal on 16 January 1998. In his observations he revealed the identity of the proposed witnesses in question. He objected to the hearing of those witnesses and to the applicants' request to refer the case back to the District Court. He stated that he had, on 15 January 1998, discussed the case with both officers who had told him that they had seen the applicants in the area but had not made any observations concerning the unauthorised use of the vehicle. The public prosecutor stated that the applicants had been able to question witness N., whereas the two other officers could not be considered as witnesses who would give evidence on the applicants' behalf within the meaning of Article 6 § 3 (d) of the Convention.

15. The applicants were provided with an opportunity to submit written comments on the prosecutor's observations. The first applicant asserted, *inter alia*, that he must be afforded a right to obtain answers from N. to the questions he had put to him, and a right to hear the above-mentioned two police officers as witnesses. The second applicant argued that the public prosecutor's statement about his conversations with the police officers in question was not comparable to their being heard as witnesses before a court. He noted that the applicants could have had other questions put to them than those put by the prosecutor.

16. On 29 September 1998 the Court of Appeal upheld the District Court's judgment, rejecting the applicants' request for an oral hearing and the request to refer the case back to the District Court. It found, in accordance with the Code of Judicial Procedure Act (Chapter 25, section 14, subsection 3), that the applicants had failed to state what they intended to prove by the witness evidence proposed. It also recalled, according to the same Act (Chapter 17, section 7), that a court must not allow irrelevant evidence to be presented. The Court of Appeal also rejected the request to

hear N. again as, in its view, additional questions would not bring any further clarification to the case.

17. On 1 February 1999, the Supreme Court refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW

18. According to Chapter 25, Section 14(3), of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*) as in force at the relevant time, in his appeal to a Court of Appeal an appellant must identify the evidence to be relied on and the facts to be proved by that evidence. According to Chapter 17, Section 7, of that same Act, a court must not allow irrelevant evidence to be presented.

19. According to Chapter 17, Section 8, of the Code of Judicial Procedure, the parties must obtain the necessary evidence. A court may also, when considered necessary, decide to obtain evidence on its own initiative.

20. According to Section 44 of the Police Act (*poliisilaki, polislagen*), a member of the police force, when heard as a witness or otherwise, is not under an obligation to disclose “tactical or technical matters” which are covered by secrecy.

21. According to the reservation made by Finland in accordance with Article 64 of the Convention, as in force at the relevant time, Finland could not guarantee a right to an oral hearing in so far as the Finnish laws at the time of the events at issue did not provide such a right. This applied, *inter alia*, to proceedings before the Courts of Appeal in accordance with Chapter 26 Section 7 of the Code of Judicial Procedure.

THE LAW

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

22. The applicants complained under Article 6 §§ 1 and 3 (d) of the Convention about the lack of a fair hearing as they were not allowed to obtain the attendance and examination of witnesses on their behalf as the identity of the police officers who had been at the place of the events at issue was not revealed to them by N. during the District Court proceedings, and as the Court of Appeal refused to hold an oral hearing or to refer the case back to the District Court.

Article 6 reads, in so far as relevant, as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal established by law. ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

23. The applicants stressed that the public prosecutor who knew the identity of the proposed witnesses, and had had discussions with them, had submitted to the Court of Appeal his observations in which he gave his comments as to the relevance of the evidence they could have presented. The Court of Appeal’s evaluation of the relevance of the proposed evidence was, thus, based on the prosecutor’s submissions which the applicants had no possibility to verify or supplement. In addition, the District Court’s minutes of its hearing were insufficient. Therefore, the Court of Appeal did not have adequate information about the facts in question in order to be able to decide the case without a hearing. They also argued that so-called hearsay evidence can by no means be compared to the attendance of a witness before a court. The applicants stressed that they would not have had put any questions about the other police operation had they been offered an opportunity to hear the witnesses. Their only interest was whether the police officers could say anything about the applicants’ actions that night. Thus, the secrecy of the other operation would not have been put at risk had they been allowed the attendance and examination of the witnesses.

24. The Government insisted that the information concerning the police operation which was carried out at the time of the events in question at the same area had nothing to do with the applicants’ case and that it had not been possible to reveal such information without risking the ongoing investigation of a serious offence. After the completion of investigation, there were no longer any reasons for withholding the said information, which is why it was disclosed to the applicants before the Court of Appeal’s consideration of the case. Moreover, the Court of Appeal, the second and remedying instance explained clearly why such evidence was irrelevant in relation to the present case. This information was given to the District Court by N. and to the Court of Appeal by the public prosecutor who had verified the facts by discussing them with the proposed witnesses in question. The Court of Appeal’s assessment, according to which the new evidence could bring no new relevant information to the applicants’ case, was justified.

25. The Government argued that, in the assessment of the relationship between the right to a fair trial guaranteed by Article 6 of the Convention and the obligation to withhold information pertaining to ongoing police operations from the parties to court proceedings, a difference should be

made between the withholding of facts not affecting nor relating to the case and the withholding of facts affecting or relating to the case. The right of everyone “to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him” under Article 6 § 3 (d) cannot be considered to extend to the examination of witnesses in respect of facts which do not affect or relate to the case.

Under Chapter 17, section 7 of the Code of Judicial Procedure, the examination of witnesses in respect of facts not affecting or relating to the case is not allowed. It follows from this that persons who have no information material to the case may not be called as witnesses, and witnesses may not be examined in respect of facts that do not affect or relate to the case. The fact that a court must not allow irrelevant evidence was also emphasised by the Court of Appeal in the reasoning of its judgment of 29 September 1998.

26. According to the Government, a police officer should not need to specifically invoke his right to withhold information by virtue of Section 44 of the Police Act in order to avoid giving a statement on such facts. In the present case, information on the other police operation, because of which the eyewitness was in the place where the offence was committed, and on the identity of the other police officers present, who had not seen the offence, were not material to the case. The final decision as to which facts may affect or relate to the case under consideration is to be made by the court which is seized with the case.

Should a police officer wish to withhold such facts as might affect or relate to the case, it is necessary for him to invoke section 44 of the Police Act. The right to withhold information covers tactical and technical methods applied by the police, as well as the identity of a person providing information or participating in undercover operations. In the present case, however, the police officer merely refused to disclose such facts as did not affect or relate to the case.

27. In so far as the prosecutor’s submissions to the Court of Appeal were concerned, the applicants did have a possibility to verify or supplement the prosecutor’s submissions. Moreover, the Court of Appeal provided the applicants with an opportunity to submit written comments, which opportunity the applicants used.

28. The Government further observed that the applicants had stated that they wished to call two police officers as witnesses but failed to indicate, as required by law, the facts to be proved with the witness statements. Therefore, the applicants’ request did not comply with the requirements of law as to the submission of evidence.

Considering that the taking of evidence in respect of a fact that is not material to the case, or if the fact can be proven in another manner with considerably less inconvenience or cost, was prohibited under law, it was not

possible for the Court of Appeal to allow the applicants to submit such evidence or to hold an oral hearing for taking the evidence. The Government noted that the first applicant did not even request an oral hearing to be held by the Court of Appeal.

29. The Government argued that the police officers, whom the applicants wished to hear, were not heard in the pre-trial investigation, or in the District Court hearing, and at no stage of the proceedings were their statements admitted as evidence. Thus, the fact that the prosecutor gave the names of the police officers, as requested by the applicants, and the fact that the said police officers, who had been standing at a distance from witness N., had not seen the commission of the offence, had no value as evidence for the outcome of the case. The applicants were sentenced on the basis of the statement of witness N. but, contrary to what was alleged by the applicants, they were able to defend themselves by means of cross-examination.

30. The Government finally recalled the reservation made by Finland on 5 May 1990 to Article 6 concerning oral hearing. The reservation was applicable to the proceedings before the Court of Appeal at issue in the present case. They argued that, as there could be no doubt about the validity of the reservation (see, *Helle v. Finland*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44), it had to be concluded that Finland was under no obligation to ensure that an oral hearing took place before the Court of Appeal.

31. Having regard to the terms of the reservation the Court notes that the scope of the Finnish reservation was, at the relevant time, limited to relieving the Court of Appeal and certain other defined courts from the obligation to hold an oral hearing. The Court finds therefore that the reservation was valid and applicable also to the Court of Appeal in the present case.

32. As the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial set forth in paragraph 1, the Court will consider the complaint under the two provisions taken together (see, among other authorities, *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, § 25). Even though police officers named by N. have not testified at a hearing they should, for the purposes of Article 6 § 3 (d), be regarded as witnesses – a term to be given an autonomous interpretation – because their statements, as referred to by the prosecutor in his submissions to the Court of Appeal, were in fact before the court, which took account of them when assessing their relevancy.

33. The Court recalls that the admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, was fair.

34. It is a fundamental aspect of the right to a fair trial that criminal proceedings should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and evidence adduced by the other party (see *Rowe and Davis v. the United Kingdom [GC]*, no. 28901/95, § 60, ECHR 2000-II).

35. All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. As a rule, a conviction should not be based on the testimony of a witness whom the accused has not had an opportunity to challenge and question. However, Article 6 § 3 (d) does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a particular witness.

36. Applying these principles to the present case, the Court first notes that the witnesses proposed were not heard before the Court of Appeal, whereas the prosecutor had contacted them and had had an opportunity to put questions to them unofficially. Furthermore, their identities were not revealed to the applicants until a later stage of the proceedings.

The disadvantages thereby caused to the applicants were, however, alleviated by the fact that the applicants were invited by the Court of Appeal to comment on the prosecutor's submission in which the identities of the two policemen were revealed and the contents of the discussion between them and the prosecutor were explained. The applicants' request to hear the two witnesses was rejected, the applicants having failed to explain what they intended to prove by the witness evidence proposed and how this evidence could be relevant to the outcome of the case.

37. In these circumstances the Court cannot conclude that the adversarial nature of the proceedings was not respected or that the national courts exceeded the margin of appreciation they have in the admission and assessment of evidence. The Court also notes that the conviction was based on testimony by a witness (N.) heard before the District Court in the presence of the applicants who could put questions to him.

38. As a consequence of the Finnish reservation the applicants could not derive from the Convention any general right to have an oral hearing before the Court of Appeal in order to hear witnesses or for other purposes. Although the reservation did not exempt the Finnish courts from seeing to it that witnesses be heard at some stage of the proceedings if overall fairness of the proceedings so required, the Court concludes that, for the reasons explained above, the proceedings as a whole cannot be regarded as unfair within the meaning of Article 6.

It follows that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

Done in English, and notified in writing on 3 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President