



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

FOURTH SECTION

CASE OF LAMMI v. FINLAND

(Application no. 53835/00)

JUDGMENT

STRASBOURG

15 November 2005

FINAL

15/02/2006

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 Lammi v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 29 June 2004 and on 25 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 53835/00) 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, Mr Markus Lammi (“the applicant”), on 18 September 1998.

2. The applicant was represented by Mr Pertti Meronen, a lawyer practising in Vantaa. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

3. The applicant alleged that the criminal proceedings against him had been excessive in length.

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. By a decision of 29 June 2004 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1936 and lives in Vantaa. He was the sole shareholder in a company, which was in the process of being wound up from 1987.

Background

8. In 1987 the official receiver of the company requested the applicant to hand over to him all the assets of the company. The applicant who was in possession of shares in a housing company refused to deliver those shares.

9. The applicant instituted civil proceedings before the District Court (*käräjäoikeus, tingsrätten*) of Vantaa against the company and requested the court to confirm that the shares were owned by him and that he was under no obligation to hand them over. On 17 December 1987 the District Court held, however, that the shares belonged to the company and ordered him to hand them over to the official receiver. On 30 November 1988 the judgment was upheld by the Helsinki Court of Appeal (*hovioikeus, hovrätten*). On 5 June 1989 the Supreme Court (*korkein oikeus, högsta domstolen*) refused leave to appeal.

In January 1990 the applicant lodged an extraordinary appeal. In October 1992 and September 1993 he lodged further annulment applications relating to the ownership of the shares and other issues arising out of the winding up of his company. Those applications were all dismissed as ill-founded by the Supreme Court on 21 June 1993 and 23 August 1994 respectively. Furthermore, his extraordinary appeal of 30 May 1995 was dismissed by the Supreme Court on 29 June 1995.

10. Meanwhile, the official receiver requested the bailiff to seize the shares from the applicant. On 13 October 1989 an attempt to this effect failed the applicant having argued that he held the shares by way of guarantee and refused to inform the bailiff about the shares' whereabouts.

Criminal investigation and subsequent events

11. On 6 November 1989 the company requested that the police investigate whether the applicant had committed an offence by refusing *inter alia* to provide information about the whereabouts of the shares. On 7 December 1989 and on 9 February 1990 the police unsuccessfully carried out searches of his apartment. On 27 February 1990 he was questioned. He told the police that he had lodged, in December 1989 and January 1990 respectively, applications for an annulment of the winding up order and the final decision in the ownership proceedings. He had also lodged a complaint

with the Chancellor of Justice (*valtioneuvoston oikeuskansleri, justitiekanslern vid statsrådet*). Further, he stated that he was not going to provide any information until the resolution of those complaints. It appears that the pre-trial investigation was completed on 30 May 1990.

12. The official receiver requested that the County Administrative Board (*lääninhallitus, länsstyrelsen*) of Uusimaa order the applicant to move out of the apartment in the housing company as the shares in question belonged to the company. On 7 November 1990 it issued an order to that effect. On 5 February 1991 the Helsinki Court of Appeal rejected the applicant's appeal.

13. On 3 September 1992 a local public prosecutor decided not to bring charges for a debtor's fraud allegedly committed on 9 February 1987. He found that it had not been sufficiently evidenced that the applicant had knowledge of the shares' whereabouts. The company lodged a complaint with the Chancellor of Justice, who on 12 November 1992 gave instructions that a new pre-trial investigation be carried out. The official receiver and the applicant were questioned by the police on 3 December 1992 and 9 February 1993 respectively and it appears that the pre-trial investigation was completed on the latter day.

14. On 13 January 1995 the official receiver requested that the District Court of Vantaa declare the shares null and void as their lawful owner, the company, had not received them from the applicant despite numerous attempts. On 24 April 1995 the District Court refused the company's request since the applicant had appeared at the District Court on 13 April 1995 and produced the shares without handing them over and since, according to Finnish law, only shares which had gone missing could be declared null and void.

District Court

15. Meanwhile, on 2 February 1995 the then County Prosecutor (*lääninsyyttäjä, länsåklagaren*) charged the applicant with aggravated embezzlement committed on 21 June 1989 when he had become aware of the Supreme Court's judgment of 5 June 1989. The County Prosecutor assigned the case to another local public prosecutor. On 4 October 1995 the summons was served upon the applicant.

16. The District Court held three hearings, on 23 November 1995, on 1 February 1996 and on 16 March 1996.

In its judgment of 21 March 1996 the District Court acquitted the applicant. It noted that the ownership of the shares had been finally decided by the Supreme Court's relevant decision of 5 June 1989, that the applicant had admitted that the shares were in his possession and that he had failed to prove that he had a right to withhold them from the official receiver on the basis of a contract of guarantee, or any other document. However, the embezzlement could not be regarded as an aggravated one and, as the

charges for a “normal” embezzlement should have been brought within five years of the date on which the offence had taken place, the relevant time limit had elapsed and the charges were time barred. The applicant was, however, ordered to pay 518,682.99 Finnish marks (FIM; about 87,200 euros (EUR)) in compensation for pecuniary damage, and FIM 6,000 (some EUR 1,000) in compensation for the company’s legal costs.

Court of Appeal

17. The parties appealed. On 5 December 1996, having found that the company had failed to request a court order according to which a conditional fine would have been imposed had the applicant refused to hand over the shares to the company, the Helsinki Court of Appeal (*hovioikeus, hovrätten*) altered the District Court’s judgment and rejected the company’s claims. The judgment was not unanimous.

Supreme Court

18. Only the company requested leave to appeal. On 29 May 1997 the Supreme Court granted leave to appeal. The applicant lodged an extraordinary appeal against the decision, arguing that the Supreme Court Judges X and T had been disqualified from deciding the leave to appeal matter, but this was dismissed by the Supreme Court on 21 January 1998.

19. At the oral hearing in the Supreme Court on 6 February 1998, the applicant argued that the Supreme Court Judges T and P were biased as they had been involved in the decision-making concerning some extraordinary appeal proceedings in the applicant’s previous cases before the Supreme Court. The objection was dismissed by the Supreme Court as the cases referred to by the applicant had not concerned the same issues as the present proceedings.

20. In its judgment of 19 March 1998 the Supreme Court convicted the applicant of aggravated embezzlement and sentenced him to a suspended term of seven months’ imprisonment. He was also ordered to pay the company FIM 350,000 (approximately EUR 58,800) in compensation for the latter’s pecuniary damage. Having first found the official receiver competent to act on behalf of the company in the proceedings, and having rejected the applicant’s argument according to which the company’s compensation claim for pecuniary damage had been submitted after the relevant time limit had elapsed, the Supreme Court found him guilty as charged. It considered that he had failed to prove that he had any lawful right to refuse to hand the shares over to the official receiver. As the company had been prevented from selling the shares because of his resistance, it had suffered financial loss in the form of lost interest it would have earned from the sales price had the shares been sold in the summer of

1989 for the sales price of FIM 1,100,000 (some EUR 185,000) which was the estimated sales price at the relevant time.

On 30 April 1999 the Supreme Court refused the applicant's request to re-open the criminal proceedings. Meanwhile, on 9 October 1998, he complained about the Supreme Court criminal proceedings to the Parliamentary Ombudsman. It is not known whether the complaint is still pending before the Ombudsman.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant claimed to be a victim of a breach of the "reasonable time" requirement of Article 6 § 1 of the Convention, which reads, in so far as relevant:

"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 account

22. The applicant considered that the criminal proceedings against him had begun on the day of the alleged offence *i.e.* on 13 October 1989, and they had ended on 19 March 1998 and that this was excessive.

23. The Government contested the applicant's interpretation of when the proceedings had begun, being of the view that the moment of commencement was 9 February 1993 when he had been questioned by the police for the first time relating to the alleged embezzlement.

24. The Court reiterates that in criminal proceedings the "reasonable time" begins to run with "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 73). A person has been found to be subject to a "charge" when a preliminary investigation has been opened in his case and, although not under arrest, the applicant has officially learned of the investigation or has begun to be affected by it (see *Corigliano v. Italy*, judgment of 10 December 1982, Series A no. 57, § 34).

25. In the present case the Court finds that the applicant officially learned of the investigation at the time of the search of his apartment on 7 December 1989 with a view to finding the withheld shares. That day was therefore the moment of commencement. To hold otherwise would be

artificial in the circumstances of the case given the fact that the subsequent investigation followed as a direct sequel to the Chancellor of Justice's decision, which had been brought about by the decision not to prosecute. However, since the Convention entered into force with respect to Finland on 10 May 1990, the Court will limit its examination to whether the facts occurring after that date disclosed a breach of the Convention. In order to determine the reasonableness of the length of time in question, regard must be had, however, to the state of the case on 10 May 1990 (see *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no 299-A, § 53 and *Kerojärvi v. Finland*, judgment of 19 July 1995, Series A no. 322, § 41).

It is undisputed that the proceedings ended with the Supreme Court's judgment of 19 March 1998.

Consequently, the Court finds that the proceedings lasted more than seven years and ten months.

B. Reasonableness of the length of the proceedings

26. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

27. The Court notes the Government's argument that the complexity of the case was illustrated by the local prosecutor's decision not to prosecute for a criminal offence related to bankruptcy and by the County Prosecutor's decision to prosecute for embezzlement on the one hand and by the courts' diverging conclusions on the other. It also takes note of the applicant's counter argument that all relevant information had been at hand since June 1989. The Court observes that the case had a connection with winding up proceedings, which connection has a tendency to hinder the official receiver from acting with the same degree of diligence as a complainant who has an unrestricted mandate. Nevertheless, given the nature of the offence and the underlying facts, the Court concludes that the case was not a complex one.

28. Having regard to the seriousness of the charges and the claim for compensation, the Court does not doubt the importance of what was at stake.

29. As to the conduct of the applicant, the Court takes note of the Government's argument that, on 27 February 1990, he requested that the pre-trial investigation should await certain decisions by the Supreme Court and the Chancellor of Justice and that he stated that he would provide no further information until the resolution of those complaints. He had also lodged further applications for an annulment of seven other decisions. The

applications were rejected in June 1993, August 1994 and June 1995. The Government also pointed out that on 23 November 1995 the District Court adjourned the case upon request by the applicant and the complainant and on 1 February 1996 upon the applicant's request. Moreover, in the Supreme Court he requested on 29 December 1997 that it deal with the case in February 1998 at the earliest. The Government emphasised that there were negotiations between the applicant and the company during the pre-trial investigation. Lastly, the applicant was not residing at his official address, which delayed the serving of the summons. The Court observes that the minutes from the Supreme Court's hearing in 1998 disclose that the applicant admitted that he had not been residing at his official address since 1991. The serving of the summons to the Supreme Court hearing had therefore been delayed. The Court further notes that the applicant has not contested that he lodged the above complaints or that he requested postponements.

30. The Court reiterates that by the time the Convention entered into force with respect to Finland searches had been conducted on 7 December 1989 and 9 February 1990 and the questioning of the applicant had taken place on 27 February 1990.

The pre-trial investigation was completed on 30 May 1990. It appears that the case was then referred to the public prosecutor. On 3 September 1992 the local public prosecutor decided not to prosecute. About two months later the Chancellor of Justice instructed the police to carry out a further investigation, which subsequently came to an end some three months later, in February 1993. It would appear that the case was then referred to the County Prosecutor for the consideration of the charges. In February 1995 charges were brought and the applicant was served with the summons in October 1995. The District Court delivered judgment less than six months later. The Court of Appeal rendered its judgment eight and a half months after the District Court's judgment. The Supreme Court granted leave to appeal, dismissed the extraordinary appeal, held a hearing and delivered judgment within about one year and three months from the Court of Appeal's judgment.

31. The Court finds that the criminal proceedings were indeed long. The time it took for the local prosecutor to consider the charges gives reason for concern. It may also be noted that there appeared to be little activity in the two years that elapsed from the closing of the further pre-trial investigation in February 1993 to the decision to prosecute in February 1995. However, the dormant proceedings can be explained by the fact that the police and the local prosecutor were awaiting the outcome of the two applications for an annulment and the Chancellor of Justice's decision, as requested by the applicant in February 1990. It appears that he never withdrew that request. The same applies to the second consideration of the charges carried out by the County Prosecutor. The Court observes that the applicant had two

further annulment applications pending from October 1992 and September 1993. The latest application for an annulment in the ownership proceedings was rejected in August 1994. Furthermore, at the time when the County Prosecutor was considering the charges it appears from the facts outlined above that the official receiver was preparing the lodging of a civil action aiming at obtaining the possession of the shares, which he subsequently did on 13 January 1995. As noted above, this proved to be unsuccessful as the applicant appeared in court with the shares but refused to hand them over. The Court observes that the criminal proceedings before the courts took less than two and a half years for three instances, which is not excessive.

32. The Court reiterates that only delays attributable to the State may justify a finding of a failure to comply with the “reasonable time” requirement (see *H. v. France*, judgment of 24 October 1989, Series A no. 162-A, p. 21-22, § 55).

33. In the instant case, the ownership issue had been finally settled in June 1989. Instead of acknowledging this fact and complying with the court order to hand over the shares, the applicant manoeuvred with the aim of hindering or at least impeding the criminal investigation and the bringing of charges. From 1991 to 1998 he did not reside at his official address and thus made it more difficult for the authorities and the courts to contact him. He also requested several postponements. Further, he lodged numerous applications for annulments and presented unfounded partiality complaints. It appears that he did much to prolong the criminal proceedings.

Having regard to all the circumstances of the case, it is apparent that the applicant through his conduct was responsible for prolonging the proceedings. The Court therefore considers that his complaint is unfounded.

There has therefore 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 15 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President