



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

FOURTH SECTION

CASE OF RUOHO v. FINLAND

(Application no. 66899/01)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Ruoho v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr K. TRAJA,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 16 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 66899/01) 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, Mr Pertti Ruoho ("the applicant"), on 11 January 2001.

2. The applicant was represented by Mr Jukka Lunden, a lawyer practising in Helsinki. 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 excessively lengthy.

4. By a decision of 3 February 2004, the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and apparently lives in Portugal.

7. On 30 March 1993 the applicant was interrogated on suspicion of debtor's dishonesty. He had acted as a financial consultant in connection with transactions between two companies, Osakeyhtiö Six (as of 1997

Fryckman-Yhtiö Oy) and Moniplan Oy. On 30 December 1988 Osakeyhtiö Six had sold to Moniplan Oy the shares of its subsidiaries Six-Myynti Oy (later Seroponex Oy) and Aromimauste Oy (later Cenoporex Oy). The above-mentioned sales contract had later been declared null and void in civil proceedings.

8. On 15 December 1993 the applicant was charged with two counts of aiding and abetting debtor's dishonesty before the District Court (*käräjäoikeus, tingsrätten*) of Helsinki. At the same trial the owners of Osakeyhtiö Six and Moniplan Oy were charged with two counts of debtor's dishonesty. The case was heard on 26 occasions before the District Court.

9. On 10 December 1997 the Helsinki Tax Rectification Committee (*verotuksen oikaisulautakunta, prövningsnämnden i beskattningsärenden*) found Seroponex Oy and Cenoporex Oy liable to pay certain taxes. They appealed to the County Administrative Court (*läninoikeus, länsrätten*).

10. At the 16th hearing on 10 June 1997 the District Court adjourned the case in anticipation of the outcome of the taxation proceedings pending before the County Administrative Court.

11. After the 19th hearing, held on 27 May 1998, the presiding judge died and she was replaced by another judge.

12. On 11 March 1999 the County Administrative Court issued its decision, dismissing the appeals.

13. At the 23rd hearing on 23 June 1999 and 24th hearing on 18 November 1999 the District Court adjourned the case in anticipation of the outcome of the taxation proceedings which were now pending before the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*). In two decisions of 2 December 1999 the court dismissed the appeals.

14. At the 25th hearing on 9 February 2000 the District Court took note of the above decisions and deferred judgment until 13 June 2000, when it found the applicant guilty on both counts. He was sentenced to a suspended term of imprisonment of eight months and ordered to pay damages jointly and severally with two other convicted persons.

15. On 23 November 2001 the Court of Appeal (*hovioikeus, hovrätten*) of Helsinki dismissed the applicant's appeal.

16. On 28 June 2002 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

17. Under Chapter 16, section 4 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*), as in force at the relevant time (Act no. 1052/1991), a district court was to adjourn criminal proceedings on request, for example if a party wished to adduce further evidence and the court was satisfied there was a good reason for the adjournment. The court

could not adjourn criminal proceedings of its own motion save for special reasons. If a party considered that civil or criminal proceedings had been delayed unjustifiably, a procedural complaint (*kantelu, klagan*) could be lodged with the court of appeal within 30 days from the adjournment (subsection 2). If it was important for the resolution of the case that an issue under examination in other proceedings be resolved first, or if there was another long-term impediment to the case being examined, the court could adjourn the case until such time that the impediment has ceased to exist (section 5).

These provisions were repealed with effect from 1 October 1997, when new provisions generally prohibited adjournments.

THE LAW

I. SCOPE OF THE ISSUES BEFORE THE COURT

18. In his memorial to the Court of 31 March 2004 the applicant also complained, *inter alia*, that the changes in the applicable domestic legislation were not resolved adequately while his case was pending before the District Court.

19. The Court notes that the case has been delimited by the decision on admissibility which related to the alleged violation of Article 6 § 1 of the Convention on the grounds of the excessive length of the proceedings. Accordingly, it will limit its examination to the complaints under the said Article.

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

20. The applicant claimed to be a victim of a violation 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

21. It is undisputed that the proceedings started on 30 March 1993, when the applicant was first questioned by the police as a suspect. It ended on 28 June 2002 when the Supreme Court refused the applicant leave to appeal.

Consequently the Court finds that the proceedings against the applicant lasted for nine years, three months and one day.

B. Reasonableness of the length of the proceedings

22. 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).

23. The Court observes that the case concerned economic crimes. The Government emphasised that the case was a complex criminal one, in which there were three accused as well as three parties claiming compensation. The examination of the case was procedurally complicated and involved a great deal of evidence. The case file contained in total some 2000 pages of documentary evidence. The Government further submitted that there were other sets of proceedings (i.e. tax proceedings) relating to the case, which had also delayed the proceedings and made them more complicated. The Court considers, however, that even though the case was complex, it cannot be said that this in itself justified the entire length of the proceedings.

24. As to the conduct of the authorities, the Court notes that the applicant was questioned by the police for the first time on 30 March 1993. On 15 December 1993 the applicant and the other co-defendants were charged before the District Court. It held 26 oral hearings and rendered its judgment on 13 June 2000. The proceedings before the District Court thus took about six years and six months. The Court of Appeal gave its judgment on 23 November 2001, one year, five and half months after the District Court's judgment. The proceedings came to an end seven months later, on 28 June 2002, when the Supreme Court refused leave to appeal.

25. The Government admitted that the proceedings were adjourned *ex officio* by the District Court on 10 June 1997 (16th hearing) in order to obtain the taxation decisions made by the County Administrative Court and on 23 June 1999 (23rd hearing) and 18 November 1999 (24th hearing) in order to obtain the taxation decisions of the Supreme Administrative Court. However, the Government observed that the said decisions might have affected the consideration of the criminal case to the applicant's advantage and were based on the defendants' own requests as well. The applicant was of the opinion that the proceedings were prolonged by the fact that the District Court decided to await the outcome of the taxation proceedings.

26. The Court notes that even though the District Court adjourned the case on 10 June 1997 in anticipation of the outcome of the taxation proceedings, it continued in the meantime to hold hearings. The decision of

the County Administrative Court was issued on 11 March 1999 i.e. nine months after the “initial” adjournment. While the District Court adjourned the case in anticipation of the decision of the Supreme Court on 23 June 1999, the decision of the latter was issued on 2 December 1999, i.e. less than five months later. While the Court is satisfied that the case was adjourned in anticipation of the final decision on taxation (which might have affected the criminal liability of the applicant and the co-defendant), these adjournments do not in itself explain the total length of the proceedings – six years and six months - before the District Court.

27. As to what delay was attributable to the authorities, the Government were of the opinion that the District Court had acted as efficiently and expeditiously as possible, considering the circumstances of the case. They also submitted that at no stage of the proceedings was the applicant under arrest or detained.

28. The Court is struck by the fact that at the beginning of the proceedings before the District Court the prosecutor requested adjournments eight times. One of the plaintiffs, the County Tax Office, asked for three adjournments. The Court observes that each time the case was adjourned for a period between one month and four months, and finds that this had a significant impact on the overall length.

29. As to the conduct of the applicant, the Government submitted that the applicant had contributed significantly to the length. They contended that on 2 April 1996 (11th hearing) the prosecutor and the plaintiffs left the case for the District Court’s decision, but the applicant requested a postponement until the decision on taxation had been issued. They further argued that the applicant and the other defendants requested the court hearings to be adjourned on 25 occasions and that the requests by one co-defendant alone delayed the proceedings by 13 months. The applicant contested the Government’s allegation that he had asked the District Court to adjourn the case. It was his submission that he had asked for the case to be decided.

30. The Government further submitted that the applicant had made several objections of a procedural nature which might have been aimed at delaying the proceedings, *inter alia*, by requesting at the 23rd hearing that the proceedings be recommenced due to the changed composition of the court following the death of the presiding judge. They noted that the applicant was not present nor represented by a counsel at the last six hearings and that the applicant was granted a two-month extension of the time limit for the appeal to the Court of Appeal and that the documents which the Court of Appeal had dispatched to the applicant in Italy were returned, the applicant having refused to indicate his new address.

31. The Court takes note of the Government’s assertion that between 4 June 1996 and 10 June 1997 (12th, 13th, 14th and 15th hearings) the case was adjourned upon the requests of the applicant or/and the co-defendants in order to submit further evidence, the need to await the outcome of the

taxation proceedings and the need to conduct additional investigations. Nonetheless the Court finds that even though the applicant requested adjournments for the above-mentioned reasons there is no evidence to demonstrate that at any subsequent stage of the proceedings the applicant was guilty of dilatory conduct or otherwise upset the proper conduct of the trial. The fact that he asked for adjournments to prepare his defence cannot be held against him.

32. Further, the Court notes that the District Court adjourned the case *ex officio* on 10 June 1997 (16th hearing) for the first time in order to take into account the outcome of the taxation proceedings and finds that the procedural objections of the applicant were made after that date and thus did not contribute to the length of the proceedings. Neither did the other impugned conduct of the applicant have significant impact on the length.

33. The Court considers that the time taken by the District Court in examining the case appears to be exceptionally lengthy, even though there were no long periods of inactivity before it. The time which elapsed before the Court of Appeal and Supreme Court does not raise serious concerns as such.

34. Accordingly, while the above-mentioned adjournments before the District Court or the proceedings before the higher courts may not appear excessive when taken separately, the Court concludes, having regard to its case-law on the subject that in the instant case the overall length of the proceedings of over nine years failed to meet the “reasonable time” requirement. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

36. Under the head of pecuniary damage, the applicant claimed a sum of 1,000,000 euros (EUR) based on his income before he was charged with the offences.

37. Under the head of non-pecuniary damage the applicant asked the Court to award him EUR 100,000 for suffering and distress resulting from the length of the proceedings.

38. As to pecuniary damage, the Government argued that there was no causal link between the facts of the alleged violation and any pecuniary damage. In this respect they pointed out that the present case before the Court concerned the length of the proceedings under Article 6 § 1 of the Convention and not the substance of the dispute before the domestic courts. They also noted that there was no justification for making any award under this heading.

39. As to non-pecuniary damage, the Government accepted that the applicant should be awarded reasonable compensation should the Court find a violation of Article 6 § 1 of the Convention. However, the Government found the sum claimed by the applicant excessive. In their view, the amount to be awarded should not exceed EUR 1,500.

40. The Court finds that there is no causal link between the violation found and the alleged pecuniary damage. Consequently, there is no justification for making any award to the applicant under that head.

41. On the other hand, the Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the excessive length of the proceedings – which is not sufficiently compensated by the findings of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

B. Costs and expenses

42. The applicant, who had been represented by counsel, sought reimbursement for costs and expenses in the total amount of EUR 35,508 (without value-added tax) in respect of the national proceedings and EUR 9,800 (without value-added tax) for proceedings before the Court. He has not supported his claims with invoices or bills.

43. In their memorial the Government argued that the claim for reimbursement of EUR 35,508 in respect of the national proceedings had not been incurred in order to prevent the alleged violation of Article 6 § 1 of the Convention.

As to costs and expenses before the Strasbourg organs, they regarded the applicant's claim as excessive as to *quantum* and for the most part as having no direct connection to the present case. While the applicant had not provided any invoices as to the work performed by his counsel, the Government took the view that the amount to be awarded under this head should not exceed EUR 1,500 (without value-added tax).

44. The Court does not consider that the costs in the domestic proceedings were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). The claim made in respect of this must therefore be rejected.

As to the claims regarding counsel's fees and expenses incurred in the Strasbourg proceedings the Court finds that the applicant has not submitted any documentation as to any of these costs as required by Rule 60 of the Rules of Court. Accordingly, the Court makes no awards in those respects.

C. Default interest

45. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Held* that there has been a violation of Article 6 § 1 of the Convention;
2. *Held*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismissed* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President