



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

FOURTH SECTION

CASE OF KAJAS v. FINLAND

(Application no. 64436/01)

JUDGMENT

STRASBOURG

7 March 2006

FINAL

07/06/2006

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 Kajas v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 14 September 2004 and on 14 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 64436/01) 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 Jari Kajas ("the applicant"), on 21 December 2000.

2. The applicant was represented by Mr Ari Halonen, 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 14 September 2004 the Court declared the application admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Helsinki.

7. On 16 February 1995 the applicant wrote an article which criticised the business transactions and financial affairs of the Student Association of the University of Helsinki (to be called “HYY” hereinafter). The article was published in a magazine called “*Uusi Ylioppilaslehti*” which is a publication mainly distributed to the students and professors of the University of Helsinki and others interested in questions concerning the Student Association and the University. On 7 August 1995 HYY and some others mentioned in the article requested the police to investigate whether the applicant had defamed them.

8. On 13 September 1995 the applicant was interrogated by the police for the first time for approximately one hour. On 13 February 1996 the police received another request for investigation which was related to a further alleged defamation in November-December 1995. In the context of this investigation, the applicant was heard on 2 May 1996 and the investigation was completed on the same day.

9. On 20 June 1996 a local prosecutor decided not to prosecute the applicant for either of the alleged offences. However, as a result of an extraordinary appeal (*kantelu, klagan*) of 22 July 1996 by the complainants the County Prosecutor of Uusimaa ordered, on 17 January 1997, that the applicant be charged with an offence. On 27 January 1997 another local prosecutor brought defamation charges against the applicant before the District Court (*käräjäoikeus, tingsrätt*) of Espoo. Charges were brought and a summons was served on the applicant on 31 January 1997.

10. There were eight hearings before the District Court on 17 April 1997, 15 and 17 September 1997, 25 November 1997, 3 December 1997, 21 January 1998 and 26 February 1998, respectively. Both parties requested an adjournment on four occasions. On 7 April 1998 the District Court issued its judgment, finding the applicant guilty of defamation. Fines or other penalties were not imposed but the applicant was ordered to pay compensation for some non-pecuniary damage and part of the complainants’ legal expenses.

11. The applicant appealed to the Court of Appeal (*hovioikeus, hovrätt*) of Helsinki in May 1998. On 22 December 1998 he submitted to the appellate court two missing pages of one appendix and on 30 March 1999 his lawyer’s invoice on legal aid.

12. On 27 June 2000 the Court of Appeal overturned the District Court’s judgment and acquitted the applicant of all charges by two votes to one. It found that the applicant had a right to discuss the financial affairs of HYY

publicly and to raise the issue among the students and other interested parties. Having a right to use his freedom of speech in this respect, the applicant had not committed an offence.

13. No appeals were made to the Supreme Court (*korkein oikeus, högsta domstolen*) and the judgment gained legal force on 28 August 2000.

THE LAW

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

14. 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

15. It is undisputed that the proceedings started on 13 September 1995, when the applicant was first questioned by the police as a suspect. In the Government's view there were two sets of proceedings as the public prosecutor decided on 20 June 1996 not to lodge charges against the applicant and the case was later reopened following an extraordinary appeal by the complainants. The Government were of the opinion that the second set of the proceedings began on 31 January 1997 when the summons were served on the applicant before the District Court. They argued that the Government had no control over whether or when an extraordinary appeal was filed by a party to the proceedings. The Government further submitted that the proceedings came to an end on 27 June 2000 when the Court of Appeal issued its judgement. The applicant contested this view. He maintained that there were not two separate set of proceedings but even if this was the case, the second set of proceedings began on 22 July 1996 when the complainants filed an extraordinary appeal to the county prosecutor and ended on 28 August 2000 when the Court of Appeal's decision gained legal force.

16. The Court reiterates that in criminal matters, the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”. “Charge”, for the purposes of Article 6 § 1, may be defined as “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 of whether “the situation of the [suspect] has been

substantially affected” (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 33, § 73). Such proceedings will end with an official notification to the accused that he or she is no longer to be pursued on those charges so as to allow a conclusion that the situation of that person can no longer be considered to be substantially affected (*X v. the United Kingdom*, no. 8233/78, Commission decision of 3 October 1979, §§ 64 and 65, unreported). This end is generally brought about by an acquittal or a conviction.

17. Turning to the present case, the Court finds that the proceedings for the determination of the criminal charge against the applicant began on 13 September 1995 when the applicant was interrogated by the police for the first time. The proceedings ended on 20 June 1996 when the public prosecutor decided not to lodge charges against the applicant, having lasted at that stage for nine months and seven days. However, the proceedings resumed on 22 July 1996 when the complainants lodged an extraordinary appeal with the county prosecutor, who, on 17 January 1997, ordered that the applicant be charged with an offence. As to the continuation of the proceedings, the applicant became substantially affected by the charges on 31 January 1997 when the summons was served on him before the District Court. The proceedings ended on 27 June 2000 when the Court of Appeal issued its judgment on the merits, acquitting the applicant of all charges. This set of the proceedings lasted for three years, four months and twenty-six days.

18. Consequently, the Court finds that the whole proceedings lasted for four years, two months and three days.

B. Reasonableness of the length of the proceedings

19. 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).

20. The Court observes that the case concerned alleged defamation. The Government emphasised that the case involved an exceptionally large amount of argumentation and evidence. The fact that the reasoning in the judgment of the District Court amounted to 60 pages indicated that the complicated aspects of the case required profound examination. The applicant was of the opinion that the case was not complex. Given the nature of the offence and the underlying facts, the Court concludes that the case was not a complex one.

21. As to the conduct of the authorities, the Court notes that the applicant was questioned by the police for the first time on 13 September 1995 and the decision on non-prosecution was issued nine months later, on 20 June 1996. The proceedings were recommenced on 31 January 1997 when the applicant was charged before the District Court. It held eight hearings and rendered its judgment on 7 April 1998. The proceedings before the District Court thus took about one year and two months. The Court of Appeal gave its judgment on 27 June 2000, almost two years and three months after the District Court's judgment.

22. Referring to the proceedings before the District Court, the Government argued that there were no delays as the hearings were continuously scheduled. Nor were there unjustified periods of inactivity in the appellate court. They did not consider that the functioning of the prosecutor exceeded the reasonable time requirement. The Government further emphasised that at no stage of the proceedings was the applicant under arrest or imprisoned, nor were there any coercive measures imposed on him.

The applicant disagreed with the Government. He was of the opinion that the proceedings before the Court of Appeal were particularly excessive, lasting for over two years without any apparent explanation.

23. The Court considers that the time taken by the pre-trial authorities and the District Court in examining the case does not appear exceptionable. However, noting especially that the Court of Appeal did not have an oral hearing, it finds no explanation for the time which elapsed while the case was under consideration in the Court of Appeal.

24. As to the conduct of the applicant, the applicant rejected the Government's allegation that he had delayed the proceedings with his requests for adjournment or by lodging additional documentation to the appellate court. He stressed that he was forced to ask for adjournments in order to answer to the new claims and evidence presented before the District Court and that his submissions to the appellate court were only additional briefs.

25. The Court finds that even though the applicant requested adjournments and lodged two additional submissions to the Court of Appeal after the expiry of the time-limit to appeal, 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. Given the nature of his submissions to the Court of Appeal, neither did his conduct in this respect contribute substantially to the length of the proceedings.

26. The Court concludes that in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the length of the proceedings complained of, in particular the time taken in the Court

of Appeal, was excessive and failed to satisfy the reasonable time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. Under the head of pecuniary damage, the applicant claimed a sum of 20,000 euros (EUR) based on his loss of income as his studies were interrupted for five years due to the criminal proceedings against him. Had he graduated earlier he could have been gainfully employed during that period.

29. Under the head of non-pecuniary damage the applicant asked the Court to award him EUR 20,000 for suffering, frustration and distress resulting from the length of the proceedings.

30. 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 submitted that there was no justification for making any award under this heading.

31. As to non-pecuniary damage, the Government considered that finding a violation should constitute in itself sufficient just satisfaction. At any rate, they were of the view that the amount to be awarded should not exceed EUR 500.

32. 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.

33. 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 2,500 under this head.

B. Costs and expenses

34. The applicant claimed reimbursement of the legal fees and expenses of his counsel in the amount of EUR 4,011.67 (without value-added tax VAT) for proceedings before the Court. He further claimed reimbursement for his own personal costs and expenses in the amount of EUR 500.

35. The Government contested the applicant's entitlement to compensation for his own work as it was not supported by national legislation. They further regarded the applicant's claim for reimbursement his counsel's fees and expenses as being excessive as to *quantum*. While the counsel's invoice did not include the number of hours for which the applicant claimed reimbursement, the Government took the view that the amount to be awarded under this head should not exceed EUR 1,000 (with value-added tax).

36. The Court reiterates that an award under this head may be made only in so far as the costs and expenses 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 Court finds that the claims for the legal fees and expenses of his counsel covering the Strasbourg proceedings can be considered to have been actually and necessarily incurred. Taking into account all the circumstances, the Court awards EUR 4,000, plus any VAT that may be payable, for the costs of counsel under this head.

The Court reiterates that under Article 41 of the Convention no awards are made in respect of the time or work put into an application by the applicant as this cannot be regarded as monetary costs actually incurred by him or her. Having regard to the nature of the case and the fact that the applicant has not substantiated that he personally incurred any costs, the Court makes no award in this respect.

C. Default interest

37. 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

1. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* by six votes to one

(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, the following amounts:

(i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinion of Mr Borrego Borrego is annexed to this judgment.

N.B.
M.O'B.

DISSENTING OPINION OF JUDGE BORREGO BORREGO

I regret that I am unable to agree with the majority of the Chamber.

In the case of *Debono v. Malta* (no. 34539/02, judgment of 7 February 2006) the majority of the Chamber decided that a period of two years, nine months and thirteen days in appeal proceedings had been excessive.

In that case I wrote a dissenting opinion which includes a number of observations on the question of reasonable time and the Court.

In the present case the majority of the Chamber decided that a total of less than five years for domestic proceedings was excessive. The Court, it must be said, has taken more than five years to examine the case. It has particularly identified as excessive a period of two years and a few weeks for appeal proceedings (see paragraphs 21 and 26).

In my opinion the periods of time considered reasonable by the Court are becoming shorter and shorter.

To my great regret, I feel obliged to repeat and emphasise the content of my dissenting opinion in the above-mentioned *Debono* case. I would only like to add this one comment: The day will come when someone will say “Look, the emperor is not wearing any clothes!”