



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

FOURTH SECTION

CASE OF MATTILA v. FINLAND

(Application no. 77138/01)

JUDGMENT

STRASBOURG

23 May 2006

FINAL

23/08/2006

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 Mattila 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 S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 4 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 77138/01) 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 Jukka-Pekka Mattila ("the applicant"), on 19 September 2001.

2. The applicant was represented by Faegre & Benson Llp, solicitors practising in London. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 5 June 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in London.

5. The applicant founded Notareal Oy, which was a Finnish investment and industrial holding company, in 1985. He was managing director of the company from 1985 to 1991. He was also a shareholder in the company. In April 1992 he was questioned by the police and taken into custody. On 8 May 1994 he was charged with criminal offences under Finnish law allegedly committed during the period of 1988-1991. Eight other defendants

were also charged. The charges, contained in 12 indictments (ten of which involved the applicant) covered over eighty counts, including offences of aggravated tax fraud, debtor's dishonesty, accounting irregularities and aggravated fraud.

6. On 25 May 1994 the trial in the Espoo District Court (*käräjäoikeus, tingsrätten*) began. The District Court heard 220 witnesses. It convened 71 times. There were over 7,000 pages of pre-trial investigation reports. In addition, six victims presented their own criminal claims and claims for compensation.

7. On 14 February 1997 the District Court decided on all charges save indictment no.12. It found the applicant guilty of two tax offences and two accounting irregularities and sentenced him to a suspended term of imprisonment of 11 months as well as ordering him to pay compensation to the State in sums totalling FIM 1,596,850 (some 260,000 Euros). The charges on indictment no. 12 (the Yli-Takkula golf course charge) were rejected in a separate judgment by the District Court on 25 September 1998. The Government stated they were dealt with separately as they also concerned two defendants who had absconded. They explained that the District Court had ordered their detention *in absentia* on 19 September 1995. One of them was apprehended on 25 January 1997 and the other arrested in Spain in February 1997.

8. All parties in the case appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*), which re-heard eight witnesses in an oral hearing. On 6 July 2000, it affirmed the conviction of the applicant by the District Court in respect of the four charges and convicted him additionally on 17 of the earlier rejected charges. The convictions were based on the evidence given by witnesses in the District Court in respect of the four charges and in the Court of Appeal, such as the applicant's colleagues, accountants and liquidators, and on various documents regarding the financial state of the company and the applicant's actions. The applicant was sentenced to six year's imprisonment, his military rank was forfeited, and he was ordered to pay damages amounting to FIM 97,396,171 (some 16,000,000 Euros) as well as legal fees amounting to FIM 1,640,000 (some 280,000 Euros).

9. On 21 March 2001 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicant leave to appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING LENGTH OF PROCEEDINGS

10. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

11. The Government contested that argument.

12. The period to be taken into consideration began on 9 April 1992 when the applicant was arrested and questioned by the police and ended on 21 March 2001 when the Supreme Court refused leave to appeal. It thus lasted over eight years and eleven months over three levels of jurisdiction.

A. Admissibility

13. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

14. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

15. The Court notes that the proceedings concerned multiple defendants and numerous charges arising out of complex and extensive allegations of economic crime, apparently one of the largest such cases in Finnish legal history. It observes that the pre-trial investigation took some two years which may be adequately explained by the complexity of the case. The proceedings before the District Court took some two years and eight months for most of the charges. This may already be regarded as exceptionally long for a criminal trial, yet it took a further one year and seven months to determine the final indictment. While the Government explained this delay by the fact that two defendants had absconded, it appears that they were arrested in early 1997 and there is no explanation for the lapse of time

before the District Court gave its judgment on these outstanding charges on 25 September 1998. Given the length of time over which the proceedings had already been pending, the authorities should have been aware of the need for expedition.

16. As regards the Court of Appeal proceedings, these were pending from 4 July 1997 until 6 July 2000. While it is true that the appeal concerning indictment no. 12 was joined to the proceedings on 9 November 1998, this does not sufficiently account for an overall period of three years. No exception can be taken to the diligent disposal of the leave to appeal before the Supreme Court which took little more than six months.

17. While the Government referred to the applicant as agreeing to the courts' scheduling of hearings, the Court does not find that this can be regarded in the circumstances as conduct either contributing to the length of proceedings or as tacitly ceding his right to a fair trial within a reasonable time.

18. Having regard in particular to the time taken before the District Court and the Court of Appeal, the Court concludes that in the instant case the overall length of the proceedings of almost nine years failed to meet the "reasonable time" requirement. There has therefore been a violation of Article 6 § 1 of the Convention.

II. THE REMAINDER OF THE APPLICATION

19. The applicant also complained under Article 6 of the Convention *inter alia* that the Court of Appeal was biased, in that the Chairman of the Court of Appeal made a comment which displayed actual or apparent bias in favour of the prosecution; that it failed to conduct a full oral hearing, re-hearing only eight of the witnesses heard in the District Court, that its judgment misinterpreted the evidence, failed to address critical elements of the offences charged and contained serious misapplications of Finnish law; as well as convictions for offences inappropriate to the facts. These factors he relied upon as violations of Article 6 as well as supporting his allegations concerning lack of impartiality and lack of a full oral hearing. He invoked Article 6 § 3(a), alleging that he was convicted of offences the details of which were never supplied to him and in respect of which he had no opportunity to defend himself, Article 7 (prohibition of retrospective penalties) alleging that he was convicted of offences that were not offences at the time of the events in question and Article 4 of Protocol No. 7, alleging that he was convicted of more than one offence based on the same conduct.

20. The Court recalls that according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not the function of this Court to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and

freedoms protected by the Convention. In particular, while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and national courts (see, *e.g. Pitkänen v. Finland*, no. 30508/96, § 60, 9 March 2004). The Court's task is to ascertain whether the proceedings as a whole, including the way in which the evidence was taken, were fair.

21. In the present case, insofar as these complaints fall within the scope of the provisions invoked, the Court finds that they do not disclose any appearance of a violation. In particular, it considers that, taking the proceedings as a whole, the applicant was afforded an effective opportunity to put forward his defence and that he was not deprived of a fair hearing. There is, in the circumstances, no appearance of a violation of the provisions invoked by the applicant.

22. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed non-pecuniary damage in an unquantified amount, referring to the disastrous effect of the proceedings on his business, reputation and finances and the years which he spent in prison.

25. The Government did not consider that any more than 1,500 euros (EUR) would be appropriate for non-pecuniary damage.

26. The Court considers that the applicant must have suffered non-pecuniary damage – such as distress and frustration resulting from the excessive length of the proceedings – which is not sufficiently compensated by the finding of a 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

27. The applicant also claimed 289,357.46 pounds sterling for legal services from his solicitors in London and 272,190.23 Finnish marks, states

as the equivalent of EUR 45,779.11 for legal services from Finnish lawyers during the domestic proceedings in Finland.

28. The Government submitted that the Finnish legal expenses were not incurred in seeking to prevent the violation of the Convention and in any event were excessive as to *quantum*. As regarded costs for the Strasbourg proceedings, they noted that the claim covered a total of 562 hours work at a rate of some EUR 429 per hour and submitted that this was far too excessive.

29. The Court recalls that where there has been a violation of the Convention it may award the applicant not only actual and necessary costs of the proceedings in Strasbourg, insofar as reasonable in *quantum*, but also those incurred before the domestic courts for the prevention or redress of the violation (see, for example, *I.J.L., G.M.R. and A.K.P. v. the United Kingdom (Article 41)*, nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001). It does not find that the Finnish legal costs can be regarded as related to the latter head. As concerns the proceedings in Strasbourg, it recalls that it has only found a violation in respect of the complaint about length of proceedings, the other complaints being rejected as inadmissible. It also notes that the application was examined under the joint procedure provided for under Article 29 § 3 of the Convention. In those circumstances, the sum claimed is out of all proportion with the scope and complexity of the case before the Court. It awards for legal costs and expenses EUR 10,000, inclusive of value-added tax.

C. Default interest

30. 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. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(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 5,000 (five thousand euros) in respect of non-pecuniary damage;

(ii) EUR 10,000 (ten thousand euros) in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 23 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President