



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

FOURTH SECTION

CASE OF LEHTONEN v. FINLAND

(Application no. 11704/03)

JUDGMENT

STRASBOURG

13 June 2006

FINAL

13/09/2006

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 Lehtonen 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 T.L. EARLY, *Section Registrar*,

Having deliberated in private on 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 11704/03) 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 Ari Lehtonen (“the applicant”), on 30 March 2003.

2. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 13 May 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 1957 and lives in Muurla.

5. The applicant was employed by a bank, working in the relevant years 1989-90 in the bank’s new campaign to grant loans and to invest in property abroad.

6. The applicant’s suspected offending in respect of credit decisions made without adequate guarantee arrangements, which led to the bank’s winding-up in the beginning of the 1990s, was reported to the police on 23 June 1992. The criminal investigation was begun by the police on 7 July 1992. A total of fourteen reports of offences had been made. The

corresponding investigations lasted from 7 July 1992 to 9 December 1994 and from 9 April 1996 ending on 9 May 1996. On 7 August 1992 the police carried out a search at the applicant's home and seized his assets, at which point he became aware that he was suspected of serious fraud in connection with his activities at the bank.

7. The hearing of the case, which involved 33 defendants, began in the Salo District Court (*käräjäoikeus, tingsrätten*) on 7 March 1995. It included several adjournments and lasted approximately five years in total. The case was heard during a total of 68 days. The judgment was rendered on 24 March 2000 and it ran to almost 900 pages. The applicant was convicted of four counts of aggravated fraud and sentenced to a suspended term of one year and ten months' imprisonment and a fine.

8. On 4 March 2002 the Turku Court of Appeal (*hovioikeus, hovrätten*) gave judgment. It added a fifth count of serious fraud and increased the applicant's sentence to four years and six months of unconditional imprisonment and a loss of military rank. The court decided to examine the case directly including the part which had been declared inadmissible by the District Court (charge 12), i.e. without returning the case to the District Court, referring to Article 6 of the Convention and the right to a trial within a reasonable time guaranteed therein. Furthermore, it stated in its reasons (p. 138) that it was taking the length of the proceedings into account as a factor lessening the sentence for all defendants in the case.

9. On 30 October 2002 the Supreme Court (*korkein oikeus, högsta domstolen*) refused leave to appeal.

10. The applicant submitted an extraordinary appeal against the decisions of the Supreme Court and the Court of Appeal, but it was rejected by the Supreme Court on 17 February 2003.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION CONCERNING LENGTH OF PROCEEDINGS

11. 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..."

12. He also claimed that he had had no effective remedy for this complaint in breach of Article 13 of the Convention which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Preliminary objection and admissibility

13. The Government submitted that the applicant could no longer claim to be a victim of any excessive length of proceedings as the Court of Appeal when sentencing the applicant took this into account. They argued that according to domestic law the maximum sentence imposable was seven years and that the Court of Appeal also took into account the systematic nature of the applicant’s criminal activities which was also a ground for increasing sentence. The normal sentence in the present case would have amounted to six years’ imprisonment. Thus, in their view, by sentencing the applicant to four and a half year’s imprisonment, the court had reduced the applicant’s sentence by one and a half years. The redress afforded had therefore been real and sufficiently clear.

14. The applicant stated that although the Court of Appeal mentioned the time aspect, it proceeded to double the sentence imposed in the District Court which showed that they did not understand the reasonable time requirement.

15. The Court recalls that an individual can no longer claim to be a victim of a violation of the Convention when the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (*Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66; for the application of this principle in the context of Article 6, see *Lüdi v. Switzerland*, judgment of 15 June 1992, Series A no. 238 at § 34 and *Schlader v. Austria* (dec.), no. 31093/96, 7 March 2000, unreported). In this regard the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Eckle v. Germany*, cited above, § 66, *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001 and *Cocchiarella v. Italy* [GC], no. 64886/01, § 77, ECHR 2006-...).

16. In the present case, while it is true that the Court of Appeal stated that it was taking into account the length of proceedings in reducing the sentence of the defendants, it is not apparent from its judgment what this reduction was in the applicant’s case. As the applicant pointed out, the court significantly increased the sentence from one year and ten months’ conditional imprisonment to four year and a half years’ unconditional

punishment. Since the Court of Appeal also had regard to the systematic nature of the applicant's offending as an aggravating factor, it is not evident from the text of its judgment what reduction was in fact made for length. The Government's calculation that the likely sentence but for the length aspect would have been six years, indicating a reduction of one and a half years is speculative. It is not an automatic or necessary conclusion that can be drawn from the court's judgment. It cannot, therefore, be said that the applicant has been afforded express and quantifiable redress for the alleged breach of the reasonable time requirement (see, *mutatis mutandis*, *Beck v. Norway*, cited above, §§ 27-29; also *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

17. The Court finds that the applicant may therefore still claim to be a victim. It follows that this application 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. Article 6 of the Convention

18. The period to be taken into consideration began on 7 August 1992 when the police searched the applicant's home and seized his assets and ended on 30 October 2002 when the Supreme Court refused leave to appeal: over ten years and two months.

19. 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).

20. The Court notes that the application concerned a case of some complexity involving economic crime. The Government have pointed out that this involved investigation measures and witnesses from abroad, some 5,000 pages of investigative materials, that the charges consisted of more than 50 indictments with 160 separate counts and that there were 33 defendants.

21. The Court observes that the investigative stage lasted some three years, the proceedings before the District Court five years, after the applicant had lodged his appeal the appeal procedure before the Court of Appeal about one year and eight months with about some six months before the Supreme Court. The bulk of the time was accordingly taken up in the early stages and at first instance. The Court sees no indication that the applicant contributed to the length at this stage, either through the submissions which he made to the court or through his apparent acceptance of the timetabling proposed by the District Court. While the Government

pointed to 68 days of hearing at this instance, this does not show, over a period of five years, any level of continuous judicial activity. Therefore, while the case was undoubtedly complex, this does not, however, justify the overall period of time which elapsed.

22. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

23. There has accordingly been a breach of Article 6 § 1.

C. Article 13 of the Convention

24. The applicant submitted that he had had no effective remedy for his complaint about the excessive length of proceedings. The Government pointed out that he could raise, and had raised, this matter on appeal and the Court of Appeal had mitigated the applicant’s sentence as a result. They also pointed out that there had been recent amendments to the Criminal Code to take into account

25. The Court notes that it has found above that there was no clearly identifiable reduction of sentence by the Court of Appeal in connection with the length of proceedings. In the circumstances, this cannot be considered as disclosing effective redress for the purposes of Article 13, either. Consequently, since the Government have not shown that any other form of relief – either preventive or compensatory – was available, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention (see *Kangasluoma v. Finland*, no. 48339/99, §§48-49, 20 January 2004).

II. REMAINDER OF THE APPLICATION

26. The applicant had also complained that the proceedings in the District Court were affected by bias because the judge had a negative predisposition against the applicant, that the contents of the charges were changed, that the judgment did not accurately reflect the charge, and that the District Court worked too closely with the prosecutor. He was also of the view that his sentence was six months longer than the lawful limit at the time, that the judgments contained statements on which he did not have the possibility to comment, thus making the proceedings not fully adversarial and, with regard to his extraordinary appeal, that one of the judges had previously been involved, in his capacity as parliamentary ombudsman, and should have withdrawn in the Supreme Court.

27. Having regard to the case-file, the Court does not find any substantiation of these complaints nor any indication of procedural

impropriety or failure to comply with the applicable criminal laws contrary to Articles 6 or 7 of the Convention or that the applicant was deprived of an effective opportunity to put forward his defence as guaranteed by Article 6 of the Convention. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 635,755 euros (EUR) in respect of pecuniary damage in respect of his own time and work on his defence and in respect of translation costs during the criminal trial and appeals. He also claimed EUR 164,000 for his detention between 3 January 2003 and 3 April 2005 and, referring to the systematic destruction of his reputation, with corresponding suffering of his family, a further EUR 200,000.

30. The Government pointed out that the applicant received a cost free trial and saw no legal basis for compensating the alleged pecuniary damage. They considered that the claim of non-pecuniary damage for detention did not relate to any finding of a breach and for the rest the claim was manifestly excessive.

31. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. While it agrees with the Government that his claims for the period of detention and loss of reputation are misconceived, it considers that the applicant must have sustained non-pecuniary damage as regards the breaches found above. Ruling on an equitable basis, it awards him EUR 5,000 under that head.

B. Costs and expenses

32. The applicant made no claim in this regard. No award is made.

C. Default interest

33. 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* that there has been a violation of Article 13 of the Convention;
4. *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, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President