



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

FOURTH SECTION

CASE OF FRYCKMAN v. FINLAND

(Application no. 36288/97)

JUDGMENT

STRASBOURG

10 October 2006

FINAL

10/01/2007

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 Fryckman v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 15 November 2005 and on 19 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 36288/97) 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 Peter Fryckman (“the applicant”) and a limited liability company Fryckman-yhtiö Oy, owned by the applicant but eventually wound-up, on 21 May 1997 (see paragraph 5 below).

2. The applicant was represented by several lawyers in succession, lastly by Mr Petteri Snell, a lawyer practising in Helsinki. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged that the criminal proceedings against him had been excessively lengthy.

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 15 November 2005, the Court declared the application partly admissible. The application having been declared inadmissible insofar as Fryckman-yhtiö Oy was concerned, the title of the case was henceforth referred to as *Fryckman v. Finland*.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1951 and lives in Helsinki.

8. On 14 December 1992 the tax authority filed a criminal complaint against the applicant and two other persons, suspecting them of debtor's dishonesty or aiding and abetting the commission of such an offence in relation to 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 contract had later been declared null and void in civil proceedings.

9. The criminal proceedings related to several sets of criminal investigations. Of these, the earliest one concerned the applicant's alleged offence of debtor's dishonesty. On 22 March 1993 the applicant was interrogated as a suspect by the police.

10. On 14 May 1993 the administrator of Cenoporex Oy and Seroponex Oy, which by that stage had been wound-up, requested that charges be brought. On 16 November 1993 the public prosecutor preferred charges against the applicant.

11. On 15 December 1993 the applicant and two others were charged before the District Court (*käräjäoikeus, tingsrätten*) of Helsinki with two counts of debtor's dishonesty and a further defendant was charged with aiding and abetting. The case was heard on 26 occasions by the court.

12. The public prosecutor requested that the case be adjourned at the 3rd – 8th hearings, held between 15 February 1994 and 16 May 1995.

13. At the 9th hearing on 19 September 1995 the case was adjourned at the applicant's request.

14. At the next hearing, held on 28 November 1995, the case was again adjourned at the public prosecutor's request. Subsequently, the applicant, among others, requested adjournments at the 11th – 15th hearings, held between 2 April 1996 and 18 March 1997.

15. At the 16th hearing on 10 June 1997 the District Court adjourned the case so as to await the outcome of the taxation proceedings concerning Seroponex Oy and Cenoporex Oy, pending before the County Administrative Court (*läninoikeus, länsrätten*) of Uusimaa. The District Court held five more hearings before 11 March 1999, when the County Administrative Court issued its decision in the taxation proceedings.

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

17. At the 22nd hearing on 18 March 1999 the case was adjourned at the applicant's request for two months.

18. At the 23rd hearing on 23 June 1999 and the 24th hearing on 18 November 1999 the case was adjourned pending the outcome of the taxation proceedings, which were now pending before the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*). On 2 December 1999 the Supreme Administrative Court dismissed the companies' final appeals.

19. At the 25th hearing on 9 February 2000 the District Court took note of the above decisions and deferred judgment until 13 June 2000.

20. On 13 June 2000 the District Court of Helsinki delivered its judgment. The applicant was found guilty of debtor's dishonesty and sentenced to one and a half year's imprisonment. He was also ordered to pay damages jointly and severally with other convicted persons.

21. The applicant appealed, having been granted a two-month extension of the time-limit for appealing. He claimed, *inter alia*, that he should have been acquitted in view of the excessive length of the proceedings. He further argued that the evidence had not been assessed objectively by the District Court due to the change in the composition of the court.

22. The proceedings before the appellate court began in September 2000. On 23 November 2001, following an oral hearing at which four witnesses were examined, the Court of Appeal (*hovioikeus, hovrätten*) of Helsinki dismissed the applicant's request for an acquittal based on the length of the proceedings and upheld his conviction and sentence.

23. On 28 June 2002 the Supreme Court refused the applicant leave to appeal.

24. The applicant filed extraordinary appeals with the Supreme Court concerning, *inter alia*, the judgment sentencing the applicant. On 2 January 2006 the Supreme Court rejected the applicant's request for annulment.

II. RELEVANT DOMESTIC LAW

25. 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 that 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 date of 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 examination of the case, the court could adjourn the case until such time as the impediment has ceased to exist (section 5).

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

THE LAW

I. SCOPE OF THE ISSUES BEFORE THE COURT

26. In his letter to the Court of 4 March 2006 the applicant also complained that Fryckman-yhtiö Oy's assets had been seized for an excessive length of time. In the applicant's view, they should have been sold earlier, in which case the applicant could not have been prosecuted for debtor's dishonesty.

27. 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 criminal proceedings. The applicant's complaint of 4 March 2006 is outside the compass of that decision. Accordingly, the Court will limit its examination to the complaint declared admissible.

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

28. 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

29. The parties disagree as to the date when the proceedings started. The applicant took the view that the proceedings began around November-December 1992, when he was first questioned in relation to the alleged offence of debtor's dishonesty in connection with another matter. However, no minutes had been drawn up. The Government submitted that the criminal proceedings in the present case related to several sets of criminal investigations. Of these, the first concerned the applicant's alleged offence of debtor's dishonesty. Although the alleged offence was reported to the

police at the end of 1992, it was not until 22 March 1993 that the applicant was first interrogated as a suspect. It is undisputed that the proceedings ended on 28 June 2002 when the Supreme Court refused leave to appeal.

30. 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).

31. The Court does not find any substantiation of the applicant’s allegation that he had been substantially affected before 22 March 1993 as concerns the charges of debtor’s dishonesty. Therefore, it finds that the proceedings began on that date. They ended on 28 June 2002 when the Supreme Court refused leave to appeal. Consequently, the proceedings against the applicant lasted nine years, three months and nine days.

B. Reasonableness of the length of the proceedings

32. 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. What was at stake for the applicant also has 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).

33. The Government emphasised that the case was complex. It concerned economic crimes and involved three accused and three complainants. The file contained some 2,000 pages of evidence. The parallel proceedings regarding taxation, preventive seizure of assets and the validity of the transaction between Fryckman-yhtiö Oy and Moniplan Oy also delayed and complicated the criminal proceedings.

34. The applicant argued that the length of the proceedings was not due to the complexity of the case.

35. The Court for its part finds that the case was complex. However, it cannot be said that this in itself justified the entire length of the proceedings.

36. 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 for the applicant in the criminal proceedings.

37. The Court notes that the applicant was questioned by the police for the first time on 22 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 and 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.

38. The Court finds that the criminal proceedings were indeed long. The time taken by the Court of Appeal and the Supreme Court does not appear unreasonable as such. The period before the District Court – six years and six months – does, however, give cause for concern.

39. The Court recalls 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).

40. As to the conduct of the authorities in the instant case, the Government considered that the courts acted as expeditiously as possible in the circumstances of the case. During the District Court proceedings adjournments were requested on eight occasions by the prosecutor and on three occasions by the tax authorities (plaintiff). Hearings were adjourned five times *ex proprio motu* by the court: on 10 June 1997 the (16th) hearing was adjourned in order to obtain the taxation decisions made by the County Administrative Court. On 23 June 1999 and on 18 November 1999 the 23rd hearing and 24th hearing respectively were adjourned in order to obtain the decision of the Supreme Administrative Court in the parallel taxation proceedings. The Government underlined that the decisions of the relevant authorities and courts at the various stages of the taxation proceedings were relevant for the purpose of assessing the applicant's criminal conduct and that it was also in his interest to await their outcome, which was also confirmed by the applicant's requests for adjournments throughout the proceedings. They further emphasised that when adjourning the case for this reason, the court had acted in compliance with the requirement of the proper administration of justice, taking into account also the defendants' best interests. The fact that the outcome of the taxation proceedings was finally not favourable to the applicant should not, in their view, affect the assessment of the case.

41. Further, the Government pointed out that the District Court proceedings were also delayed to some extent by the death of the presiding judge. The need to change judges also led to procedural motions by one defendant, which further delayed the proceedings.

42. The applicant submitted that the delay in the proceedings was solely attributable to the authorities. The County Tax Office was the sole creditor of the wound-up subsidiaries of Fryckman-yhtiö Oy and the administrator had appealed against the taxation decision of 12 December 1994. Against this background, the constitutive element of debtor's dishonesty, which at the time presupposed that he had been unable to meet the total claims of

creditors, could not be proved until the taxation proceedings had come to an end. Therefore the duration of the criminal proceedings came to depend on the length of the taxation proceedings. He opined, however, that the charges were lodged prematurely on 16 November 1993. It was only on 2 December 1999 that the Supreme Administrative Court finally decided on the appeals lodged by subsidiaries in the taxation proceedings.

43. The applicant admitted that he and the other defendants had requested adjournments 25 times in all. As there were three defendants and only one prosecutor, it was natural that the combined number of requests made by the defendants exceeded those of the prosecutor. He stressed that the prosecutor requested adjournments at each of the hearings from the 3rd until the 10th hearing.

44. The applicant finally pointed out that he had requested an extension of the time-limit for appealing because the District Court had been unable to provide transcripts of the proceedings within the normal time-limit. He could not therefore be blamed for requesting an extension.

45. The Court notes that at the beginning of the proceedings before the District Court the prosecutor requested adjournments on eight occasions. One of the plaintiffs, the County Tax Office, asked for three adjournments. The Court observes that the case was adjourned in response to these various requests for periods between one month and four months, and finds that this had an impact on the overall length.

46. The Court further notes that even though the District Court adjourned the case on 10 June 1997 pending the outcome of the taxation proceedings, it continued to hold hearings. The decision of the County Administrative Court was issued on 11 March 1999 *i.e.* one year and nine months after the “initial” adjournment. While the District Court adjourned the case on 23 June 1999 to await the decision of the Supreme Administrative Court, the decision of the latter court was issued only 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 taxation decision, which might have affected the criminal liability of the applicant and the co-defendants, these adjournments do not of themselves explain the total length of the proceedings before the District Court.

47. As to the conduct of the applicant, the Government submitted that the applicant had contributed significantly to the length by requesting adjournments on eleven occasions, which was more than the prosecutor had requested (see, *mutatis mutandis*, *Ruoho v. Finland* (no. 66899/01, 13 December 2005), where the applicant requested only four adjournments). Moreover, the applicant never objected to any of the adjournments requested by the other parties. The Government also pointed out that at each hearing held by the District Court after 10 June 1997, until the decision of the County Administrative Court, the applicant had also requested further adjournments.

48. Further, in the Government's view the conduct of the co-defendants contributed to the length. At the hearing of 25 November 1998 one of the co-defendants contended that Article 6 § 1 had been violated. However, he did not appear at the following hearing in which the decision on this claim was to be pronounced. Therefore, the decision could not be given until the hearing of 23 June 1999. In its decision the court found no violation of Article 6, although it noted that the proceedings had been adjourned on several occasions. According to the prosecutor, his requests for adjournments were merely in response to requests for further investigations made by the defendants.

49. The Court takes note of the Government's assertion that 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. It also notes that the applicant requested adjournments more often than his co-defendants (see *Ruoho v. Finland*, cited above). Nonetheless, it finds that although the applicant requested adjournments for the above-mentioned reasons there is no evidence to demonstrate that at any subsequent stage of the proceedings he 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. Therefore, it cannot be concluded that the applicant through his conduct was responsible for substantially prolonging the proceedings.

50. The Court considers that the time taken by the District Court to examine the case was exceptionally lengthy, even though there were no long periods of inactivity in the handling of the case.

51. 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 in this area 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

52. 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

53. The applicant did not make any claims under the head of pecuniary damage. Accordingly, the Court makes no award under this head.

54. Under the head of non-pecuniary damage the applicant asked the Court to award him 10,000 euros (EUR) for suffering and distress resulting from the length of the criminal proceedings against him.

55. 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 3,500.

56. The Court accepts that the applicant has 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

57. The applicant, who had been represented by several different lawyers, sought reimbursement of costs and expenses in a total amount of EUR 27,748.57 (inclusive of value-added tax, “VAT”) in respect of the proceedings before the Court.

58. In their memorial, the Government regarded the applicant’s claim as excessive as to *quantum* and for the most part as having no direct connection with the present case. They further recalled that only one of the applicant’s five complaints had been declared admissible by the Court. The Government took the view that the amount to be awarded under this head should not exceed EUR 3,500 (inclusive of VAT).

59. 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 and are reasonable as to quantum (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63).

60. The Court finds that the applicant has certainly incurred legal costs and expenses in the Strasbourg proceedings. However, the bills presented lack specification. Further, it has declared most of the applicant's complaints inadmissible. Based on the materials before it, the Court awards EUR 3,500 (inclusive of VAT) for his costs and expenses in connection with the proceedings before the Court.

C. Default interest

61. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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 3,500 (three thousand five hundred 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President