



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

FOURTH SECTION

CASE OF UOTI v. FINLAND

(Application no. 61222/00)

JUDGMENT

STRASBOURG

9 January 2007

FINAL

09/04/2007

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 Uoti 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 S. PAVLOVSKI,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 5 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 61222/00) 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 Kari Uoti ("the applicant"), on 14 September 2000.

2. The applicant was represented by Mr M. Fredman, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr A. Kosonen of the Ministry for Foreign Affairs.

3. On 14 September 2004 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1962 and lives in Helsinki.

5. On 28 November 1992 a State-owned bank requested the police to investigate whether a former bank director, P., had committed offences as the bank had advanced loans without acceptable guarantees to such an extent that its solvency was endangered. The bank also requested the police to investigate whether P. or some other person had received unlawful financial inducements or whether blackmail had been involved.

6. On 20 August 1993 the bank supplemented its request maintaining that the applicant had possibly committed offences of dishonesty as a debtor, debt fraud or aggravated debt fraud during April-May 1992, as he had allegedly participated in transferring bank shares owned by certain limited liability corporations into his own control, thereby causing one of the corporations' biggest creditors, the bank, financial losses of approximately 10,000,000 Finnish marks (FIM; equivalent to 1,681,879 euros: EUR).

7. On 8 August 1994 the applicant was arrested. On 10 August 1994 he was questioned by the police for the first time. On 12 August 1994 the Helsinki District Court (*käräjäoikeus, tingsrätten*) ordered his detention on remand since he was suspected of aggravated blackmail and three counts of dishonesty as a debtor. He was released on 27 September 1994.

8. On 14 July 1995 the police completed their pre-trial investigation. A summons was served on the applicant on 2 February 1996. It was alleged that the offences had been committed between 2 January 1991 and 1 June 1992.

9. On 18 April 1996 the applicant was charged with aggravated fraud and three counts of dishonesty as a debtor. On the same day the Salo District Court upheld the applicant's claim that he had not been legally summoned to the trial and declared the case against him inadmissible. On 24 September 1996 the Turku Court of Appeal (*hovioikeus, hovrätten*) upheld the decision. On 20 October 1997 the Supreme Court (*korkein oikeus, högsta domstolen*) quashed the previous decisions and remitted the case to the District Court. Meanwhile, on 20 August 1997 the District Court also upheld a co-defendant's claim that he had not been lawfully summoned. On 11 March 1998 the Court of Appeal quashed the decision. On 8 February 1999 the Supreme Court upheld the Court of Appeal's decision.

10. Meanwhile, at the second hearing on 12 June 1996, the applicant was charged additionally with a count of aggravated fraud and incitement to dishonesty as a debtor. The public prosecutor thereafter added to the charges on several occasions.

11. At the third hearing on 27 August 1996, the acting public prosecutor was found by the District Court to be biased and a new prosecutor was assigned to the case.

12. On 21 January 1998 the District Court upheld the applicant's claim that he had not been lawfully summoned (as regards a summons delivered on 6 March 1997 to his wife in Spain) and that the statute of limitations had already expired. On 8 October 1998 the Court of Appeal quashed the decision and remitted the case to the District Court. On 3 November 2000 the Supreme Court upheld the Court of Appeal's decision.

13. Meanwhile, on 30 March 2000 the District Court noted in its minutes that the parties were in disagreement as regards the question whether the

“reasonable time” requirement according to Article 6 of the Convention had been fulfilled, and that the court would decide at a later stage on whether the trial could continue.

14. On 18 May 2000 the District Court issued a separate decision dismissing the applicant’s request that the charges against him be declared inadmissible due to the excessive length of the proceedings. It held, *inter alia*, that the case was exceptionally difficult involving voluminous evidence and that it was of significant public interest.

15. On 19 December 2000 the District Court dismissed the applicant’s renewed request to that effect. On 12 January 2001 he lodged a procedural complaint with the Turku Court of Appeal. It was dismissed on 13 March 2001.

16. There were 28 days of hearings in the District Court up to the end of 2000, held at approximately two to five months’ intervals. There were six days of hearings which concerned the applicant in 2001, four in 2002 and five in 2003.

17. On 14 August 2001 co-defendant X was granted immunity. On 2 December 2002 the Spanish Government consented to the continued prosecution of X in Finland whereupon he challenged the lawfulness of the consent. On 20 August 2003 the District Court gave a decision.

18. On 25 February and 20 August 2003 the District Court dismissed the applicant’s further requests that the charges be ruled inadmissible owing to the length of the proceedings. On 9 February 2004 the District Court also dismissed the request of the applicant’s co-defendants to that effect. The Court of Appeal upheld the last-mentioned decision on 30 June 2004. On 31 August 2004 the District Court dismissed the applicant’s renewed request that the charges be ruled inadmissible owing to the length of the proceedings.

19. During the trial the police conducted at least 12 additional investigations, the last of which, according to the Government, was completed on 28 November 2003.

20. There had been a total of some 50 days of hearings prior to 30 March 2004 when the District Court started to receive evidence. After that there were 38 days of hearings up until the end of October 2004. On 30 December 2004 the Parliamentary Ombudsman, noting at the outset that he lacked competence to interfere with the ongoing proceedings, drew the Government’s attention to the need for the allocation of adequate financial resources to the District Court and to the authorities involved in the case.

21. On 21 March 2006 the District Court gave its judgment. It convicted the applicant of aggravated fraud. It dismissed as time-barred the charges concerning five counts of dishonesty as a debtor. The court found that the “reasonable time” requirement laid down in the Constitution and the Convention had not been respected and that the applicant was therefore entitled to redress. The court noted that it had dismissed as time-barred

some of the charges. As the court was not allowed to pass any judgment on the time-barred charges, the redress for the length of the proceedings had to be given in some other way. Accordingly, the applicant's sentence had to be mitigated. The court considered that the redress had to be significant and, having regard to the exceptionally lengthy nature of the proceedings, it should also be substantial. The court stated that it was taking one third off the applicant's sentence owing to the breach of the "reasonable time" requirement. Taking an earlier sentence into account, it sentenced the applicant to six months and twenty days' imprisonment.

22. The case is still pending before the Court of Appeal.

THE LAW

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

23. 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..."

24. The Government contested that argument.

A. Preliminary objections and admissibility

25. The Government argued that the applicant could not claim to be a victim of the alleged violation, since the District Court had reduced his sentence owing to the length of the proceedings. In addition, the statute of limitations had provided an effective remedy in that the District Court had dismissed some charges as time-barred. In any event, the applicant had not exhausted domestic remedies since the proceedings were still pending before the domestic courts, which may mitigate a sentence or waive punishment, *inter alia*, on the ground that a considerably long time has passed since the commission of the offence (Chapter 6, Articles 7(3) and 12(4) of the Penal Code (*rikoslaki, strafflagen*; as amended by Act no. 515/2003)). They also made reference to the Supreme Court judgment of 11 June 2004 (KKO 2004:58) in which it was held that although there were no legal provisions justifying the dismissal of a criminal charge due to an unreasonable delay in proceedings, such a dismissal or the declaring of a case inadmissible might in some exceptional circumstances be the only effective remedy satisfying the requirements of Article 13 of the Convention.

26. While agreeing that the District Court had reduced his sentence by three months owing to the length of the proceedings, the applicant considered that the reduction had been annulled by the Helsinki District Court's subsequent judgment of 16 June 2006 in separate proceedings. That judgment had imposed on him a term of five months and ten days' unconditional imprisonment, which was an unlawfully long sentence having regard to his previous sentences for offences committed during the same period.

27. The Court sees no reason to depart from its findings that no specific remedy against unreasonable length of proceedings is available under Finnish law (see *Kangasluoma v. Finland*, no. 48339/99, §§ 47-48, judgment of 20 January 2004, and *Hagert v. Finland*, no. 14724/02, § 20, 17 January 2006). Further, the Government's plea that the application is premature cannot be sustained because the applicant has made an arguable claim that there has already been an unreasonable delay (see *Mlynek v. Austria*, no. 15016/89, Commission's report of 9 December 1991, Decisions and Reports (DR) 242-C).

28. However, the question remains whether the applicant may continue to claim to be a victim of a violation of Article 6 § 1 of the Convention on the grounds of the length of the criminal proceedings against him in view of the fact that the District Court mitigated his sentence. In this connection, the Court also takes note of the Government's argument to the effect that the applicant may be afforded further redress by the higher courts.

29. 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 (see *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). 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-...).

30. In the present case, the District Court stated that it was taking into account the length of the proceedings in reducing the applicant's sentence by one third of the appropriate punishment. It can therefore be said that the first instance afforded the applicant express and quantifiable redress for the

breach of the reasonable time requirement (see *Beck v. Norway*, cited above, §§ 27-29; also *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

31. However, the question whether the redress thus afforded is sufficient to make good a violation, if any, based on the entire length of the proceedings, can only be decided after the termination of the proceedings. The Court recalls that the criminal proceedings are still pending before the national courts. The redress that has been, or may in the future be, offered is therefore inchoate (see, *mutatis mutandis*, *V. v. the United Kingdom* [GC], no. 24888/94, § 121, ECHR 1999-IX).

32. The Court finds that the applicant may therefore still claim to be a victim. This conclusion is without prejudice to the question, to be decided at the end of the proceedings, whether the applicant may be regarded as having obtained sufficient redress for any violation of Article 6 (see paragraph 44 below).

33. The application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is the application inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. The period to be taken into consideration began on 8 August 1994 when the applicant was arrested. On 21 March 2006 the District Court gave a judgment. The proceedings had by that date lasted over eleven years and seven months for one level of jurisdiction insofar as the substantive case was concerned. The proceedings are still pending.

35. 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).

36. The Government have pointed out that the case is very complex and the case file exceptionally extensive, running to some 20,000 pages. The economic interests involved amount to some EUR 20 million and the alleged economic offences are serious. The pre-trial investigations have continued during the court proceedings at the request of both the prosecution and the defence, which has resulted in the expansion of the case file and has slowed down the proceedings. The questions of law are difficult as there are no Supreme Court precedents on the issues raised. The conduct of the applicant and the other parties has prolonged the proceedings. The defendants have requested seventeen postponements, of which the applicant alone has requested seven. The applicant had also been difficult to reach for the purposes of serving the summons on him. The change of counsel by both the applicant and a co-defendant has delayed the proceedings.

Likewise, the changes in prosecutor, first due to bias and later due to illness, have prolonged the proceedings. The examination of the merits of the case has had to await the outcome of the preliminary objections.

37. The applicant emphasised that the changing of the public prosecutor, the new prosecutor's alleged failure to investigate the matter properly, to specify the charges and answer questions put by the defendants, as well as adjournments requested by the prosecutor, have prolonged the trial. To date four different prosecutors have appeared in the case. The charges against the applicant are not particularly complex. The fact that he was summoned to the trial at a late stage has contributed to the length of the proceedings as the court now has a duty to verify that the prosecutor does not add to the charges beyond the terms of the original indictment, having regard to the statute of limitations. The applicant contested the Government's contention that the changes of counsel at the 33rd hearing on 11 December 2001 and reversion to his original counsel on 12 March 2002 delayed the proceedings. It was the prosecutor who requested postponements at those times.

38. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

39. Having regard to its case-law on the subject, the Court considers that notwithstanding the undoubted complexity of the case the length of the proceedings to date has been excessive and has failed to meet the "reasonable time" requirement.

40. There has therefore been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. Under the head of pecuniary damage the applicant claimed 36,845.66 euros (EUR) in respect of medical costs incurred plus EUR 160 which he had paid to his book-keeper in order to itemise these costs. Under the head of non-pecuniary damage the applicant claimed EUR 20,000 for distress.

43. The Government contested the first-mentioned claim, considering that it did not constitute pecuniary damage. The claim for non-pecuniary

damage was excessive as to *quantum* and the award should not exceed EUR 1,500.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

As to non-pecuniary damage, the Court considers that the question of the application of Article 41 is not ready for decision (see paragraph 31 above). Accordingly, it shall be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the parties (Rule 75 § 1 of the Rules of Court) or any final redress afforded in the proceedings which are still pending.

B. Costs and expenses

45. The applicant claimed EUR 5,220.24 for the costs of counsel and expenses incurred before the Court. He also claimed EUR 8,750 for his own time spent on the application.

46. The Government contested the claim, considering that it was excessive as to *quantum*. The award should not exceed EUR 4,000 (including value-added tax).

47. 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). Furthermore, 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 (see *Lehtinen v. Finland (no. 2)*, no. 41585/98, § 57, 8 June 2006).

48. Taking into account all the circumstances of the case, the Court awards EUR 5,220.24 (inclusive of value-added tax) for his costs and expenses in connection with the proceedings before the Court. The claim made in respect of the applicant's own work on the application must be rejected.

C. Default interest

49. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the question of the application of Article 41 is not ready for decision in so far as the applicant has claimed non-pecuniary damage and accordingly,
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicant to submit, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.
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 5,220.24 (five thousand two hundred and twenty euros and twenty-four cents), inclusive of value-added tax, in respect of costs and expenses, plus any other 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 9 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President