



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

FOURTH SECTION

CASE OF NARINEN v. FINLAND (No. 2)

(Application no. 13102/03)

This version was rectified (paragraph 28) on 4 September 2007 under Rule 81 of the Rules of Court.

JUDGMENT

STRASBOURG

6 March 2007

FINAL

06/06/2007

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 Narinen v. Finland (no. 2),

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 13 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 13102/03) 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 Jukka-Pekka Narinen (“the applicant”), on 31 March 2003.

2. The applicant was represented by Mr Pentti Lehtoruusu, 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. On 13 December 2005 the Court decided to communicate the applicant's complaint about the length of the criminal proceedings, declaring the remainder of the application inadmissible. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the length complaint at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Klaukkala. He is a former partner in a limited partnership company, which was wound-up in 1993.

5. On 4 February 1994 the company's estate reported an offence against the applicant. The applicant was first interrogated by the police on 4 July 1995 on suspicion of, *inter alia*, offences of debtor's fraud,

dishonesty and bookkeeping. In June 1997 he was charged on twenty-one counts.

6. The Helsinki District Court (*käräjäoikeus, tingsrätten*) held the first hearing on 30 September 1997. In the following 14 hearings it heard 21 witnesses named by the prosecutor and 5 witnesses named by the applicant.

7. At the 16th hearing on 4 March 1999 the District Court delivered its judgment. It convicted the applicant of, *inter alia*, two aggravated debtor's frauds, two offences of debtor's dishonesty and five bookkeeping offences and sentenced him to one year and eight months' imprisonment. He was ordered to pay the company's estate some 723,400 Finnish Marks (FIM; corresponding to 122,000 euros (EUR)) in compensation and to reimburse its legal expenses.

8. He appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*), requesting an oral hearing. On 16 February 2001 he asked the court to speed up the proceedings and to dismiss the charges because of the length of the proceedings.

9. On 25 March 2002, without having held an oral hearing, the Court of Appeal upheld the District Court's judgment with some minor amendments. His conviction was reduced to eighteen months' imprisonment. It rejected the applicant's further claims with the reasoning that the proceedings had not exceeded a reasonable time.

10. On 2 October 2002 the Supreme Court refused the applicant leave to appeal.

THE LAW

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

11. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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. The Government contested that argument.

13. The period to be taken into consideration began on 4 July 1995 and ended on 2 October 2002. It thus lasted seven years and three months for three levels of jurisdiction.

A. Admissibility

14. The Court notes that the remainder of the 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. Merits

15. 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).

16. The application concerned a case of some complexity involving economic crime. The Government pointed out that the applicant's legal counsel had admitted during the domestic proceedings that the case was difficult. They further noted that the Court of Appeal's file contained some 7,000 pages. That fact, however, cannot in itself explain why the proceedings took so long.

17. The Court observes that the investigative stage lasted almost two years and the proceedings before the District Court some one year and eight months. The appeal procedure before the Court of Appeal took about three years and before the Supreme Court less than seven months.

18. The Court sees no reason to criticise the time taken to conclude the early stages of the proceedings or for the Supreme Court to dispose of the appeal. However, it finds no convincing explanation for the time taken – about three years – before the Court of Appeal. As remarked by the applicant, there was a period of inactivity of one year and ten months before the appellate court had even assigned a court official (*referendaire*) to examine his case. The Government explained that at the turn of the century the Helsinki Court of Appeal had suffered from a heavy case load. By the end of 2000 the number of pending cases had increased by approximately 12 %, which was considered alarming. The present case had to wait its turn. The Court recalls that this is not a sufficient excuse for the delay as domestic courts are under an obligation to organise themselves in such a way as to meet the requirements of Article 6 including the reasonable time requirement (*Pélissier and Sassi v. France* [GC], no. 25444/94, cited above, § 74, *Molander v. Finland*, no. 10615/03, § 28, 7 November 2006). Given the importance of what was at stake for the applicant and the fact that there was no oral hearing before the Court of Appeal, the Court considers that the time taken by that court to examine the case was exceptionally lengthy.

19. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 96,000 euros (EUR) in respect of pecuniary damage for loss of income due to the lengthy proceedings.

23. 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.

24. The Government saw no legal basis for compensating the alleged pecuniary damage. As to the non-pecuniary damage, they found the sum claimed by the applicant excessive. In their view, the amount to be awarded should not exceed EUR 2,200.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant, who was represented by a lawyer, also claimed EUR 5,002 (inclusive of value-added tax, “VAT”) for the costs and expenses incurred before the Court.

27. In their memorial, the Government recalled that only one of the applicant's four complaints had been declared admissible by the Court. They also considered his representative's invoices somewhat high. The Government took the view that the amount to be awarded under this head should not exceed EUR 4,000 (inclusive of VAT).

28. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are recoverable only in so far as they

relate to the violation found. In the present case the Court has declared most of the applicant's complaints inadmissible. Having regard to the nature of the case, the Court considers it reasonable to award the applicant EUR 2,500 (inclusive of VAT) covering costs and expenses for the proceedings before the Court.

C. Default interest

29. 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 remainder of the application admissible;
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 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President