



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

FOURTH SECTION

CASE OF MUTTILAINEN v. FINLAND

(Application no. 18358/02)

JUDGMENT

STRASBOURG

22 May 2007

FINAL

22/08/2007

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 Mutttilainen v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 14 March 2006 and on 3 May 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 18358/02) 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 Marko Mutttilainen (“the applicant”), on 22 April 2002.

2. The applicant, who had been granted legal aid, was represented by Mr Simo Ellilä, 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 he had not had a fair trial under Article 6 §§ 1 and 3 (d) of the Convention in criminal proceedings taken against him in that the Court of Appeal had refused to hold an oral hearing and that he could not therefore examine a new witness.

4. By a decision of 14 March 2006, the Court declared the application admissible.

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1). The Court decided that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and lives in Kylänpää.

7. On 14 June 1998 the applicant and T.A. were arrested by police officers M.H. and S.H. in the act of committing a theft. The applicant had a hammer in his hand at the time of arrest. Later he was charged with attempted theft and violent resistance to a public official (*virkamiehen väkivaltainen vastustaminen, våldsamt motstånd mot tjänsteman*).

8. At the trial hearing before the Helsinki District Court (*käräjäoikeus, tingsrätten*) the applicant admitted the attempted theft but denied the charge of violent resistance to a public official. Both the applicant and police officer M.H. were heard. M.H. testified, *inter alia*, that the applicant had threatened him and his colleague S.H. with a hammer by waving it above his head when the police officers had interrupted the attempted theft. The applicant, for his part, said that he had seen the police arrive and that he had raised the hammer above his head while leaving the building, before the police officers had ordered him to drop it. He denied any intention to threaten the police officers. T.A. testified that the applicant had tried to escape. S.H. was not heard as a witness.

9. On 11 September 2000 the District Court convicted the applicant of attempted theft and violent resistance to a public official, finding M.H.'s statement reliable. The applicant was sentenced to an aggregate punishment of six months' imprisonment.

10. On 11 October 2000 the applicant appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*) requesting an oral hearing in which he, T.A., M.H. and S.H. should be heard in order to clarify his behaviour outside the building where he was arrested and the alleged threatening of the police officers. He did not specify why S.H. in particular should be called as a witness.

11. On 28 June 2001 the Court of Appeal upheld the conviction, reducing the sentence to three months' imprisonment. It found an oral hearing manifestly unnecessary, holding that the applicant's account before the District Court - which he had not contested - and his writ of appeal indisputably proved that he had seen the police officers outside the building. He had then left the building with a hammer raised in the air and had taken some steps towards the police officers. His intention had been to escape. Having seen one of the police officers draw a handgun, he obeyed their orders to drop the hammer when approximately five to six metres away from them. The Court of Appeal held that the question whether the applicant had violently resisted a public official could be reliably resolved on the basis of these undisputed facts without hearing witnesses.

As to the merits, it ruled that “the applicant must have understood that he had threatened the police officer with violence by, as he had stated himself, stepping towards him with a hammer in the air. The intention to escape mentioned by the applicant proves that he also intended to threaten the police officer with violence in order to escape from the scene of the crime.”

12. On 27 August 2001 the applicant sought leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*). He claimed that according to the domestic legislation (Chapter 26, sections 14 and 15 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*), see paragraphs 14 and 15 below) the Court of Appeal should have held an oral hearing and heard the witnesses. He stressed that the matter turned on the credibility of the oral evidence.

13. On 22 March 2002 the Supreme Court, by a majority, refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

14. Chapter 26, section 14 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*; Act no. 165/1998) provides that the Court of Appeal shall hold an oral hearing if the defendant in a criminal case so requests. An oral hearing may however be dispensed with if the appeal is manifestly ill-founded or if a hearing would be manifestly unnecessary for another reason.

15. Under Chapter 26, section 15 of the Code, the Court of Appeal shall hold an oral hearing regardless of whether one has been requested, if the decision on the matter turns on the credibility of the testimony admitted in the District Court or on new testimony to be admitted in the Court of Appeal. In that event, the evidence admitted in the District Court shall be readmitted at the hearing before the Court of Appeal unless there is an impediment to doing so.

16. Under Chapter 17, section 7 of the said Code (Act no. 571/1948) if a piece of evidence that a party wishes to adduce pertains to a fact that is not material to the case or has already been proved, or if the fact can be proved in another manner with considerably less inconvenience or cost, the court may decide not to admit this piece of evidence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant alleged that the Court of Appeal's decision to examine his appeal without an oral hearing and the refusal to examine a witness, S.H., had violated Article 6 §§ 1 and 3(d) of the Convention.

18. The said Article, insofar as relevant, reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

3. Everyone charged with a criminal offence has the following minimum rights: ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. ”

1. The parties' submissions

19. In the applicant's view the Court of Appeal should have held an oral hearing as the parties had given conflicting evidence before the first-instance court as to whether or not the applicant had threatened the police officers. He also maintained that the testimony of the police officer S.H., who was present at the time of the arrest, would have been important for the appellate court's assessment of the case.

20. The Government disagreed, arguing that the proceedings in their entirety had been fair. They referred to *Fejde v. Sweden* (judgment of 29 October 1991, Series A no. 212-C), submitting that, as in that case, the Court of Appeal had considered that the appeal did not raise any question of fact or law which could not be adequately resolved on the basis of the case file. The actions of the applicant outside the building were undisputed: all that was disputed was the applicant's intention in raising the hammer, and the Court of Appeal had been able to determine the facts on the basis of the case file. The Government also pointed out that other considerations, including the right to a trial within a reasonable time and the related need for the expeditious handling of the courts' case-load, had to be taken into account in determining the need for an oral hearing at second instance. Finally they argued that it followed from the domestic legislation that persons, who had no information material to the case, need not be called as witnesses. Considering S.H.'s evidence at the pre-trial stage, it was highly improbable that hearing S.H. would have changed the appellate court's assessment of the case or that it would have been beneficial to the outcome of the applicant's appeal.

2. *The Court's assessment*

21. The admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, was fair (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, § 46). The Court has held on many occasions that Article 6 § 3 (d) does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a particular witness (*Bricmont v. Belgium*, judgment of 7 July 1989, Series A no. 158, p. 31, § 89, *Laukkanen and Manninen v. Finland*, no. 50230/99, § 35, 3 February 2004). It is accordingly not sufficient for a defendant to complain that he has not been allowed to question certain witnesses; he must, in addition, support his request by explaining why it is important for the witnesses concerned to be heard and their evidence must be necessary for the establishment of the truth (see *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V).

22. The Court recalls also that the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing as it does for the trial hearing (see *Hermi v. Italy* [GC], no. 18114/02, § 60, ECHR 2006-...). The manner of application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see, among many other authorities, *Hermi*, cited above, § 60, *Ekbatani v. Sweden*, judgment of 26 May 1988, Series A no. 134, p. 13, § 27, and *Monnell and Morris v. the United Kingdom*, judgment of 2 March 1987, Series A no. 115, p. 22, § 56).

23. Moreover, even where a court of appeal has jurisdiction to review the case both as to facts and law, the Court cannot find that Article 6 always requires a right to a public hearing irrespective of the nature of the issues to be decided. The publicity requirement is certainly one of the means whereby confidence in the courts is maintained. However, there are other considerations, including the right to trial within a reasonable time and the related need for expeditious handling of the domestic courts' case-load, which must be taken into account in determining the necessity of a public hearing at stages in the proceedings subsequent to the trial at first instance (*Fejde*, cited above, § 31). Provided a public hearing has been held at first instance, the absence of such a hearing before a second or third instance may accordingly be justified by the special features of the proceedings at issue. Leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given an

opportunity of being heard in person by the appeal or cassation court (*Ekbatani*, cited above, § 31).

24. Applying the above-mentioned principles to the present case, the Court observes at the outset that a public hearing was held at first instance, in which the applicant, his co-defendant and police officer M.H. were heard. The conviction was based on the testimony of witness M.H., which the applicant contested.

25. The Court notes that the applicant specifically requested an oral hearing before the Court of Appeal and to hear the testimony of, *inter alia*, police officer S.H. Thus, no question arises as to whether or not the applicant waived his right thereto. It remains to be examined whether a departure from the principle that there should be such a hearing could, in the circumstances of the case, be justified at the appeal stage by the special features of the domestic proceedings viewed as a whole. In order to decide this question, regard must be had to the nature of the Finnish appeal system, to the scope of the Court of Appeal's powers and to the manner in which the applicant's interests were actually presented and protected before the Court of Appeal particularly in the light of the nature of the issues to be decided by it (see, *mutatis mutandis*, *Ekbatani*, p. 13, § 28).

26. The Court observes that the Finnish appellate courts' jurisdiction is not limited to matters of law but also extends to factual issues. Under Chapter 26, section 15 of the Code on Judicial Procedure, the Court of Appeal shall hold an oral hearing if the credibility of the testimony admitted in the District Court is an issue. In the instant case the appellate court was called upon to examine the case as to both the facts and the law. The applicant denied the facts upon which the charge against him was founded, requesting an oral hearing in order to elucidate the relevant events. The Court of Appeal had to make a full assessment of the applicant's guilt or innocence as the applicant throughout the proceedings had denied any intention of threatening the police officers. For the Court of Appeal the crucial question concerned the credibility of the statements of the persons involved. Nevertheless, the Court of Appeal decided, without a public hearing, to confirm the District Court's conviction. The Court finds that in the circumstances of the instant case the question of the applicant's intention and the credibility of the statements could not, as a matter of fair trial, have been properly determined without a direct assessment of the evidence given in person by the applicant and by the police officer M.H.

27. Accordingly, there has been a violation of Article 6 § 1 of the Convention as regards the refusal to hold an oral hearing at the appellate stage.

28. In view of the Court of Appeal's firm conclusion that an oral hearing could be dispensed with, the Court considers that it is not necessary to examine separately whether the rights of the defence were disrespected by reason of the Court of Appeal's refusal to hear S.H. as a witness.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant asked the Court to award him 8,500 euros (EUR) for damages, without specifying whether it was to compensate pecuniary or non-pecuniary damage.

31. The Government accepted that the applicant should be awarded reasonable compensation should the Court find a violation of Article 6 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 1,500.

32. The Court cannot speculate as to what the outcome of the proceedings before the Court of Appeal would have been if the latter had held an oral hearing. Accordingly, no pecuniary damage can be awarded (see *Bakker v. Austria*, no. 43454/98, § 36, 10 April 2003). However, the Court is satisfied that the applicant suffered distress and frustration resulting from the above breach 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 2,000 under this head.

B. Costs and expenses

33. The applicant also claimed EUR 2,201.35 (inclusive of value-added tax, “VAT”) for the costs and expenses incurred before the Court. The legal aid paid by the Council of Europe amounting to EUR 850 had not been deducted before arriving at that amount.

34. In their memorial the Government considered that the applicant’s lawyer’s invoice contained some costs that were not actually and necessarily incurred (in a total amount of EUR 187.50).

35. 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 (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). Taking into account the legal aid granted by the Council of Europe, the Court considers it reasonable to award the applicant EUR 1,000 for his costs and expenses in connection with the proceedings before the Court (inclusive of VAT).

C. Default interest

36. 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 on account of the refusal to hold an oral hearing in the appeal proceedings;
2. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 6 § 3(d) 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 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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 22 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President