



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

FOURTH SECTION

CASE OF ELORANTA v. FINLAND

(Application no. 4799/03)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the case of Eloranta v. Finland,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 4799/03) 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, Ms Vera Eloranta (“the applicant”), on 24 January 2003.

2. The applicant was represented by Mr R. Virtanen, a lawyer practising in Turku. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 20 December 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1939 and lives in Masku.

5. On 16 February 1980 the applicant was injured in a car accident. On 15 October 1980 the Turku City Court (*raastuvanoikeus*, *rådstuvurätten*) rejected her request to increase the amount of compensation she had already received from an insurance company. She unsuccessfully appealed against the decision to the Turku Court of Appeal (*hovioikeus*, *hovrätten*) and

subsequently the Supreme Court (*korkein oikeus, högsta domstolen*), which gave their decisions on 13 May and 5 October 1981 respectively.

6. Subsequently, another insurance company, as well as the Social Insurance Institution (*kansaneläkelaitos, folkpensionsanstalten*) granted the applicant a pension on grounds of her disability.

7. On 14 September 1993 the Supreme Court partly annulled the above court decisions in the light of new medical evidence presented by the applicant. On 1 December 1993 she filed a new claim for compensation alleging that she had become permanently unfit for work due to her physical injuries and a traumatic stress reaction caused by the accident. On 8 November 1994 the Turku District Court (*käräjäoikeus, tingsrätten*) ordered the other party to the accident and the insurance company to pay the applicant approximately 1,500,000 Finnish marks (FIM), mainly for loss of income.

8. On 9 March 1995 the police started a pre-trial investigation, suspecting the applicant of, *inter alia*, multiple fraud. The applicant was questioned as a suspect for the first time on 19 April 1995.

9. On 19 January 1996 the public prosecutor brought charges against the applicant in the Turunseutu District Court, which held its first session on 4 March 1996. In addition to written evidence, the court received testimony from several witnesses in the course of the proceedings.

10. On 8 May 2000 the court concluded, *inter alia*, that the applicant had continued to work as an entrepreneur in the cleaning trade after the accident, although she was receiving a pension at that time. Furthermore, she had given false information to the tax authorities about her business activities and had falsely claimed to be disabled in order to obtain financial benefits. She was convicted of several offences including, *inter alia*, tax fraud, an accounting offence and aggravated fraud and was sentenced to one year and ten months' unconditional imprisonment. She was also ordered to pay damages.

11. The applicant appealed against the judgment to the Turku Court of Appeal claiming, *inter alia*, that the District Court had unlawfully relied on witness statements given to the police because some of the witnesses had refused to testify in court. The applicant had not been able to put questions to these witnesses. The court had also relied on the applicant's own pre-trial statement. Furthermore, she claimed that the court had made an assessment of her medical condition on the basis of insufficient evidence.

12. On 28 June 2002 the Court of Appeal, having held an oral hearing, upheld the judgment specifying, however, its own conclusions on the facts regarding the dates of the offences and modifying the amount of damages. The court received testimony from 20 witnesses as well as from the applicant herself. In its reasons it stated, *inter alia*, that the medical evidence presented to the court did not have any relevance to the assessment of the applicant's criminal liability, since other evidence had shown that she

had been working as an entrepreneur and cleaner at the relevant time. The Court of Appeal, unlike the District Court, did not rely on statements given to the police as evidence.

13. On 1 April 2003 the Supreme Court refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

14. The Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*) provides that a statement in a pre-trial investigation report may not, as a rule, be admitted as evidence in court. The court may exceptionally admit such a statement as evidence, if the witness in question cannot be questioned before the court (Chapter 17, article 11; Act no. 690/1997). A witness must give testimony orally before the court. Oral evidence given during a pre-trial investigation may be read out in court only if the witness in question retracts an earlier statement or states that he or she is unable or unwilling to testify before the court (Chapter 17, article 32; Act no. 571/1948).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

15. The applicant complained under Article 6 of the Convention that the length of the proceedings had been incompatible with the “reasonable time” requirement.

She also complained that the proceedings had been unfair as a whole. In particular, she claimed that the presumption of innocence had been violated by the police, as the pre-trial investigation report had contained assertions of her guilt. The police had also ignored facts favourable to her defence and had failed to include them in the report. She further asserted that the District Court had unlawfully, and almost solely, relied on pre-trial statements as evidence and that she had been denied the opportunity to obtain the attendance of all relevant witnesses on her behalf and to examine witnesses against her. She also complained about the District Court’s assessment of the medical evidence. She further maintained that several authorities dealing with her case, as well as her own representative, had been partial, since they had connections with insurance companies. She finally asserted that several documents containing information about her private life had been made public in the course of the proceedings.

Article 6 reads insofar as relevant:

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

...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

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

...

(b) to have adequate time and facilities for the preparation of his defence;

...

(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;

...”

A. Admissibility

16. The Court notes that the complaint about the length of the criminal proceedings 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.

17. As to the complaint concerning the presumption of innocence, the Court observes that the summary of the pre-trial investigation report appears to have contained assertions of the applicant’s guilt. However, the main reason for drawing up such a report was to enable the public prosecutor to decide whether or not to bring charges on the basis of sufficient evidence of her guilt. As a rule, the report is not available to the public until the trial has begun or the prosecutor has decided not to bring charges. The summary part of the report is not used as evidence. Taking into account the context in which the assertions were made, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

18. The Court recalls that 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, were fair.

19. It is a fundamental aspect of the right to a fair trial that criminal proceedings should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and evidence adduced by the other party (see *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II).

20. All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. As a rule, a conviction should not be based on the testimony of a witness whom the accused has not had an opportunity to challenge and question. However, Article 6 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 (see, among other authorities, *Laukkanen and Manninen v. Finland*, no. 50230/99, § 35, 3 February 2004).

21. A conviction should not be based either solely or to a decisive extent on statements which the defence has not been able to challenge (see, *mutatis mutandis*, *Doorson v. the Netherlands*, 26 March 1996, § 76, *Reports of Judgments and Decisions* 1996-II).

22. As to the allegation that the police had ignored facts favourable to the applicant at the pre-trial stage, the Court notes that, even if that had been the case, the applicant still had ample opportunity to produce evidence on her own behalf before the courts in the course of adversarial proceedings. This complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

23. As regards the complaint about the District Court having relied on earlier statements as evidence, the Court observes that the said court had relied on at least four statements included in the pre-trial investigation report, one of which was the applicant's. It would appear from the documents that the applicant had in court, at least partially, retracted her earlier statement. The case materials also suggest that the other statements were admitted as evidence because the witnesses in question had been unwilling to testify before the court. The Court does not have to decide whether those statements played a decisive role in the applicant's conviction. It notes in this connection that, unlike the District Court, the Court of Appeal, which also held an oral hearing, did not rely on the above-mentioned statements as evidence. Any possible disadvantages caused to the applicant by the District Court's decision to admit and rely on those statements as evidence were, therefore, remedied in the appellate proceedings. In these circumstances, this complaint must also be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

24. As to the complaints about the applicant not being given the opportunity to obtain the attendance of all relevant witnesses or to examine witnesses against her and the District Court's allegedly incorrect assessment of the medical evidence, the Court would make the following observations. In her letter of appeal to the Court of Appeal, the applicant requested that 24 persons be heard. The court received testimony from 17 of them. Most of the witnesses who were not heard before the court were independent medical experts who normally, under the national legislation, only give a written statement but are not heard in person. However, two medical experts, called by the applicant, were heard before the Court of Appeal. Unlike the District Court, the Court of Appeal, which gave reasons for its decision, did not regard the medical evidence as relevant in deciding the matter. In these circumstances the Court cannot conclude that the adversarial nature of the proceedings was disrespected or that the national courts exceeded their margin of appreciation in the admission and assessment of evidence. It follows that these complaints must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

25. The applicant's allegations about partiality are unsubstantiated and must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

26. As regards the complaint about the alleged public disclosure of documents containing information about the applicant's private life, the Court notes that she has failed to establish that she had raised this complaint at the domestic level. Consequently, it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits of the length of proceedings complaint

27. The period to be taken into consideration began on 19 April 1995, when the applicant was first questioned by the police, and ended on 1 April 2003 when the Supreme Court refused leave to appeal. It thus lasted almost eight years for three levels of jurisdiction.

28. 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).

29. The Government pointed out that the case was somewhat complex. The police had had to prepare several pre-trial investigation reports which had been transferred to the prosecutor on different dates. The proceedings before the District Court had concerned two defendants and six plaintiffs,

and at that stage the case file already consisted of 2,250 pages. The District Court's hearing had comprised 19 sessions. In the Court of Appeal several witnesses had also been heard and over 150 written items of evidence presented. The Court takes note of these observations, but considers that they do not justify the entire length of the proceedings, notwithstanding that the facts of the case were disputed.

30. The Government further submitted that on one occasion the applicant had requested an adjournment of the pre-trial investigation and that the hearing of the case had to be adjourned on another occasion, *inter alia*, for the purpose of summoning her to the court. These adjournments took up some two months. Moreover, the examination of the case had been adjourned 15 times. Three of these adjournments had been requested by the applicant. On one occasion the case was adjourned in order to hear a witness called by her. These adjournments altogether took up some eight months. Other parties had requested adjournments on five occasions. In the Government's understanding, the applicant had not objected to these requests. The remaining adjournments had been requested by the prosecutor. The delivery of the District Court's decision had been postponed three times in order to await the delivery of judgment in the civil proceedings concerning the applicant's disability pension. These postponements, which altogether took up over a year and ten months, had been made twice on the initiative of the prosecutor and another party and once on the initiative of the court. The applicant had not objected to the postponements.

31. In the Government's view, the proceedings in the District Court had been adjourned at the applicant's request or as the direct result of her actions for a total period of some two years and eight months, including the postponement of the delivery of the court's decision.

32. In conclusion, the Government asserted that there were no unnecessary delays in the proceedings caused by the authorities. The conduct of the parties, including the applicant, contributed to a significant extent to the length of the proceedings. She had not claimed in her requests for leave to appeal to the Supreme Court that the proceedings had lasted too long. In view of the requirement of ensuring the proper administration of justice, a thorough examination of the case was necessary. In the particular circumstances of the case, it had to be concluded that the proceedings were conducted within a reasonable time in accordance with Article 6 § 1 of the Convention.

33. The Court notes that the total length of the proceedings cannot be explained by the conduct of the applicant alone. The District Court proceedings alone lasted some four years and two months. While it is true that some delays resulted from the applicant's requests for adjournment, the Government have not persuaded the Court that the postponement of the delivery of the District Court's judgment pending the resolution of parallel

civil proceedings, which resulted in a delay of one year and ten months, was necessary. Furthermore, the Government have not offered any explanation for the length of the proceedings before the Court of Appeal, which took up more than two years. While the Government stressed that the applicant had not objected to the adjournments requested by other parties or to the postponement of the delivery of judgment, the Court does not find that this can be regarded as conduct either contributing to the length of the proceedings or an implied renunciation of her right to a fair trial within a reasonable time.

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

35. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 250,000 euros (EUR) in respect of pecuniary damage and EUR 135,340 in respect of non-pecuniary damage.

38. The Government contested these claims stating, firstly, that there was no causal link between the alleged violation of Article 6 of the Convention and any pecuniary damage claimed by the applicant. As to non-pecuniary damage, the Government considered the applicant’s claim exorbitant as to *quantum*. In the event that the Court were to find a violation of Article 6 of the Convention, compensation for non-pecuniary damage should not exceed EUR 3,000.

39. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As regards non-pecuniary damage, having regard to the circumstances of the

case and deciding on an equitable basis, the Court awards the applicant EUR 3,300.

B. Costs and expenses

40. The applicant did not submit a claim for costs and expenses.

C. Default interest

41. 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*
 - (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 3,300 (three thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President