



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

FOURTH SECTION

CASE OF UOTI v. FINLAND

(Application no. 61222/00)

JUDGMENT
(just satisfaction)

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment 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:

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 9 December 2008,

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

I. 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. In a judgment delivered on 9 January 2007 (“the principal judgment”), the Court held as follows. The question of whether the redress afforded by the District Court was sufficient to make good a violation, if any, based on the entire length of the proceedings, could only be decided after the termination of the proceedings. These were still pending before the national courts and the redress that had been, or could in the future be offered was therefore inchoate. The Court found that the applicant could therefore still claim to be a victim. This conclusion was without prejudice to the question, to be decided at the end of the proceedings, of whether the applicant may be regarded as having obtained sufficient redress for any violation of Article 6. The Court found that the length of the proceedings up to that moment had been excessive and had failed to meet the “reasonable time” requirement. Therefore, there was a breach of Article 6 § 1 of the Convention (*Uoti v. Finland*, no. 61222/00, 9 January 2007).

3. Under Article 41 of the Convention the applicant sought just satisfaction of, *inter alia*, 20,000 euros (EUR) for distress.

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards non-pecuniary damage, the Court reserved it and invited the Government and the applicant to submit, within six months from the date on which its judgment became 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 might reach or any final redress afforded in the domestic proceedings; (ibid., §§ 31 and 44, and point 3 of the operative provisions).

5. The applicant and the Government each filed observations. The applicant's request that his application no. 9640/07 be dealt with together with the present application was refused.

II. SUBSEQUENT DEVELOPMENTS

6. When the Court delivered its principal judgment, the case was pending before the Court of Appeal. On 16 January 2007 the Court of Appeal rejected the applicant's procedural complaint to the effect that the proceedings should be terminated in the light of the Court's finding of a violation. On 13 February 2007 the Supreme Court refused leave to appeal.

7. The Court of Appeal held two preparatory hearings in November 2006. In the main hearing the case was heard over five days in January 2007. On 22 October 2007 the court, after its own proceedings lasting 18 months, gave its judgment. It concurred with the lower court that the "reasonable time" requirement had not been respected and that the applicant was therefore entitled to redress, which had to be significant and substantial. It also had to be given in a clear and measurable manner. No reason not to impose a sentence had emerged. The court however found that the applicant had contributed to the length of the proceedings. It stated that it was reducing the applicant's sentence by half owing to the lengthy proceedings.

8. Having noted the length of the standard sentence for the two counts of aggravated fraud in question and having as a mitigating factor taken into account that the sentence could have been imposed at the time of the imposition of the applicant's previous sentences (which would have been more advantageous for the applicant) and in that connection the so-called maximum sentence rule laid down by Chapter 7, article 2, of the Penal Code (*rikoslaki, strafflagen*; as amended by Act no. 697/1991), the Court of Appeal noted that six months and 20 days' imprisonment would have been appropriate had the proceedings not been excessively lengthy. However, owing to the breach of the "reasonable time" requirement, the Court of Appeal sentenced him to an immediate term of three months and ten days' imprisonment. It applied Chapter 6, article 7, point 3, of the Penal Code (as amended by Act no. 515/2003 which took effect on 1 January 2004). Having regard to the seriousness of the applicant's offence, the damage thereby caused and the advantage pursued and achieved, the court considered that the maintaining of general obedience to the law required

that the prison term be an immediate one. The two latter factors led the court to conclude that community service was not an option.

9. The applicant requested leave to appeal. On 22 May 2008 the Supreme Court refused leave to appeal. The proceedings thus lasted some 13 years and 9 months.

THE LAW

10. 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. The parties' submissions

11. The Government submitted that, in its judgment, the District Court mitigated the applicant's sentence owing to the excessive length of the proceedings. The Court of Appeal, after its own proceedings lasting 18 months, afforded further redress in reducing the applicant's sentence further, that is, by half of the appropriate sentence. In its reasoning the Court of Appeal expressly discussed the length of the proceedings both generally and then separately for each defendant. It clearly stated what the standard sentence would be for each defendant and then stated by how much, due to the unreasonable length of the proceedings, it was reducing their sentences. The judgment of the Court of Appeal became final when the Supreme Court, in its own proceedings lasting only five months, did not grant the applicant leave to appeal. In sum, not only had the unreasonable length of the proceedings been acknowledged, but the applicant had also been afforded express and quantifiable redress sufficient to make good any violation of Article 6 of the Convention for the entire length of the proceedings.

12. The applicant argued that the Court of Appeal should have terminated the proceedings in the light of the Court's finding of a violation on account of the length of the proceedings. He criticised the Government for not having taken any measures with a view to ending the violation, alleging that they had actively opposed his requests to that effect. By refusing to negotiate with a view to settling the claim for non-pecuniary damage, the Government's actions had increased the applicant's suffering and distress as the Government had not treated him as an innocent person, as required by Article 6 § 2 of the Convention, but as somebody who would be made to suffer, by making his life impossible, by continuing the

proceedings forever. It appeared to the applicant that the fact that he had claimed his rights before the Court had been detrimental to him. In this respect, he referred to a friendly settlement reached by the Government and third parties which had been made under the condition that no appeal would subsequently be made to the Court on account of the excessively lengthy proceedings. The applicant submitted that there was a structural problem in the Finnish legal system and practice, which led to excessively lengthy proceedings.

B. The Court's assessment

13. The applicable principles concerning redress for a breach of the "reasonable time" requirement have been set out in the principal judgment (§§ 29 and 31).

14. Applying these principles in the present case, the Court observes that the Court of Appeal expressly upheld the substance of the applicant's length complaint when it stated that it was taking into account the length of the proceedings in reducing his sentence by half. It can therefore be said that the applicant was afforded express and quantifiable redress for the breach of the reasonable time requirement (see *Beck v. Norway*, no. 26390/95, §§ 27-29, 26 June 2001; also *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001 - X). The Court notes that the judgment discussed the various alternatives, finding that the applicant's sentence could not be waived. Nor was suspended imprisonment considered sufficient. Hence, the Court of Appeal took into account the various possibilities and explained how it afforded the applicant address for the excessively lengthy proceedings. The Court, exercising its supervisory function, is satisfied that the redress given was sufficient.

15. In the light of this conclusion, the Court finds that it is not necessary to award just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Dismisses the applicant's claims for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President