



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

FOURTH SECTION

CASE OF JAANTI v. FINLAND

(Application no. 39105/05)

JUDGMENT

STRASBOURG

24 February 2009

FINAL

24/05/2009

This judgment may be subject to editorial revision.

In the case of Jaanti 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 3 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 39105/05) 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 Anssi Jaanti (“the applicant”), on 2 November 2005.

2. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 7 February 2008 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 1951 and lives in Espoo. He is an attorney.

5. The applicant was suspected of aiding and abetting aggravated embezzlement. He was first questioned by the police on 28 September 1998. He was subsequently questioned again in connection with two other similar offences.

6. On 14 December 2000 the public prosecutor brought charges against him and another defendant, R, in the Helsinki District Court (*käräjäoikeus, tingsrätten*). The court held its first session on 29 November 2001. In the

course of the proceedings, the court was presented with written evidence, including 94 documents submitted by the applicant. It also received testimony from both defendants and twelve witnesses, four of whom were called by the applicant. The evidence included a written statement and the oral testimony of the Bankruptcy Ombudsman. On 10 May 2002 the court gave its judgment. It found that on 30 September 1994 the applicant had, as a receiver of a bankrupt's estate, unlawfully transferred a substantial sum of money from the estate's bank account to the account of his own law firm. The court also found that, on the same date, he had aided and abetted his associate R in the commission of two similar offences. The court convicted the applicant of aggravated embezzlement and two counts of aiding and abetting aggravated embezzlement and sentenced him to a suspended term of one year and four months' imprisonment. R was found guilty of having made unlawful money transfers on several separate occasions between 29 April 1993 and 31 May 1996. He was convicted of two counts of aggravated embezzlement, as well as aiding and abetting the applicant's aggravated embezzlement.

7. The applicant, R, and the prosecutor all appealed against the judgment to the Helsinki Court of Appeal (*hovioikeus, hovrätten*). At the applicant's request, the court had extended by some five weeks the time-limit for lodging his appeal. In his letter of appeal, lodged on 16 July 2002, the applicant claimed that he had only transferred funds to which he believed he was entitled as a retainer and that he had, therefore, lacked criminal intent. He made similar claims in connection with the two counts of aiding and abetting R's offences. He also referred, *inter alia*, to the written statement of the Bankruptcy Ombudsman, in which the latter had considered it possible that the applicant had, in fact, lacked criminal intent in regard to the alleged embezzlement. On 15 and 17 November 2004 the Court of Appeal held an oral hearing. By its judgment of 13 January 2005 it upheld the applicant's conviction but changed his sentence to one year and ten months' unconditional imprisonment. In its reasons the court had regard, *inter alia*, to the Bankruptcy Ombudsman's testimony. The Ombudsman had noted, *inter alia*, that at the time of drawing up his written statement he had not had all the information about the applicant's actions in the matter or, at least, had not paid attention to it. He had also testified that the receiver of a bankrupt's estate did not have a right to withdraw money from the estate's account without consent.

8. On 4 May 2005 the Supreme Court (*korkein oikeus, högsta domstolen*) refused leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. Chapter 6, section 7, subsection 3 of the Penal Code (*rikoslaki, strafflagen*; as amended by Act No. 515/2003 which took effect on 1 January 2004) reads:

“In addition to what is provided above in section 6, grounds for mitigating the sentence that are also to be taken into consideration are

...

(3) a considerably long period that has passed since the commission of the offence;

if the punishment that accords with established practice would for these reasons lead to an unreasonable or exceptionally detrimental result.”

10. In its judgment of 11 June 2004 (KKO 2004:58), the Supreme Court noted that, although there were no legal provisions justifying the dismissal of a criminal charge due to unreasonably long proceedings, such a dismissal or declaring a case inadmissible might in some exceptional circumstances, for example if their duration ruled out a good defence, be the only effective remedy satisfying the requirements of Article 13 of the Convention. That was, however, not the case here. In considering whether there were grounds for applying Chapter 6, section 7, subsection 3 of the Penal Code, the Supreme Court held that it had to be decided *in casu* whether the duration of the proceedings (here over 5.5 years) had been unreasonable. It concluded that in this case there were no grounds not to impose a sentence or to mitigate the sentence owing to the duration of the proceedings.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION CONCERNING LENGTH OF PROCEEDINGS

11. The applicant alleged a violation of the right to trial within a “reasonable time” and the absence of an effective remedy in that connection.

Article 6 § 1 reads insofar as relevant:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

12. The Government contested those arguments.

A. Admissibility

13. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

14. The period to be taken into consideration began on 28 September 1998, when the applicant was first questioned by the police as a suspect, and ended on 4 May 2005, when the Supreme Court refused leave to appeal. It thus lasted six years, seven months and seven days for three levels of jurisdiction.

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 Government pointed out that the case comprised three separate pre-trial investigations with related facts and one additional investigation. During these investigations the police had conducted a search and seized a large amount of material. After the pre-trial stage, the case file comprised some 1,200 pages. That stage of the proceedings, including the consideration of charges, took two years and some two and a half months, which the Government considered normal in cases concerning comprehensive business offences. The Government contended that the case was complex and that the time taken before the trial courts, one year and some five months for the District Court and two and a half years for the Court of Appeal, could therefore not be considered excessive. The proceedings before the Supreme Court had lasted less than four months. In the Government's view there had been no unnecessary delays in the proceedings on the part of the authorities. As to the conduct of the applicant, the Government pointed out that the Court of Appeal had extended the time-limit for lodging an appeal at his request. The Government concluded that the proceedings had been conducted within a reasonable time.

17. The applicant contested those arguments. He submitted that the charges against him had only concerned three money transfers, whereas several other money transfers made by R had not been connected to his actions in any way. On the applicant's part, the case had not been complex. The material seized by the police had not concerned the offences with which he had been charged. Also the case file had comprised material mainly concerning R's alleged criminal actions. In the applicant's view, the investigations of R and himself, as well as the subsequent court proceedings, had been joined unnecessarily, which had resulted in their excessive length. The five week extension of time-limit at the appellate stage had only had a minor effect on the total length.

18. The Court notes that, while the proceedings as such may have involved complex issues of economic crime, the case against the applicant only concerned three money transfers made in the course of one day. Therefore, the total length of the proceedings cannot be justified by the alleged complexity of the case, as far as the applicant was concerned. Even taking into account the five-week extension requested by the applicant for the lodging of his appeal, the proceedings against him lasted six and a half years, which cannot be considered reasonable in these circumstances. The Court would also note that the Government have not afforded a satisfactory explanation for the length of the proceedings before the Court of Appeal, which took more than one year longer than in the District Court.

19. 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).

20. 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.

2. Article 13 of the Convention

21. As to the Article 13 complaint the Government submitted that Chapter 6, section 7, subsection 3 of the Penal Code constituted an effective remedy. There had been no reason to apply that provision in this case, however, as the length of the proceedings had been reasonable. Thus, this part of the application was also manifestly ill-founded.

22. The applicant contested that argument.

23. The Court notes that the national courts did not acknowledge in any way that the length of the proceedings was excessive and did not afford any

redress by reducing the applicant's sentence in an express and measurable manner under the provision advanced by the Government.

24. The Court further reiterates that, under Finnish law, the applicant was at no stage of the proceedings able to request a domestic court to expedite the conduct of the proceedings or to file a claim for compensation either during their course or following their termination (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 186, ECHR 2006-).

25. It follows that the applicant did not have an effective remedy in the present case. There has thus been a breach of Article 13 of the Convention.

26. The Court would further wish to draw attention to the fact that, subject to compliance with the requirements of the Convention, the Contracting States are afforded some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision. It has also stressed the importance of the subsidiarity principle so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that could otherwise, and in the Court's opinion more appropriately, have been addressed in the first place within the national legal system (see *Kudla v. Poland*, §§154-155, ECHR 2000-XI).

II. REMAINDER OF THE APPLICATION

27. The applicant also complained under Article 6 § 1 of the Convention that the proceedings had been unfair in that, in their reasoning, the courts had totally disregarded the written statement and the oral testimony of the Bankruptcy Ombudsman, which evidence had been favourable to him.

28. The Court observes that, in the light of the documents, the District Court did not refer to the said evidence in its reasons. However, the Court of Appeal's summary of the Ombudsman's testimony comprised almost a full page and contained, *inter alia*, his comments on the said statement. The Court of Appeal referred to this testimony in its conclusions, although not in full detail. According to the Court's case-law, Article 6 § 1 does not, however, require a detailed answer to every argument (see, *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). The Court also observes that the statement was only one of the dozens of documents which the parties produced before the courts and that twelve witnesses were heard altogether, four of whom were called by the applicant. The Court reiterates that the assessment of evidence is primarily the task of the national courts (see, for example, *Doorson v. the Netherlands*, 26 March 1996, § 67, *Reports of Judgments and Decisions* 1996-II). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

29. The applicant further complained under Article 6 § 1 of the Convention that the joining of the pre-trial investigation and court proceedings concerning him and R had been, for the most part, unnecessary and had given rise to a suspicion of the courts' lack of objectivity. Moreover, there was reason to believe that the joint investigation and examination of their cases had had a negative effect on the length of the proceedings as well as the outcome in his regard.

30. The Court reiterates that both defendants were suspected of, and charged with, similar offences. More importantly, they were charged with aiding and abetting at least some of their respective offences. In the Court's opinion, joining the cases did not amount to a breach of Article 6 § 1 as such. The Court finds the applicant's other grievances in paragraph 29 unsubstantiated. The Court considers that these complaints are also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. The Court would note, however, that the joint procedure may have contributed to the overall length of the proceedings, in respect of the applicant. As the Court has found a violation of Article 6 § 1 of the Convention concerning the length of the proceedings, it is not necessary to address this question as a different complaint.

31. Lastly, the applicant complained under Article 13 of the Convention about the lack of an effective remedy as regarded his complaints under this heading. The Court finds that he has no arguable claim in this respect. This part of the application is therefore also rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government contested the claim considering it excessive as to *quantum*. The amount of any non-pecuniary damages should not exceed EUR 3,500.

35. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,500 under this head.

B. Costs and expenses

36. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the Court. As he had not used any outside legal services, the amount was to compensate his own work in pursuing the application.

37. The Government contested the claim and submitted that such claims were not supported by the Court's case-law.

38. 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*, 25 August 1998, § 63, *Reports* 1998-VI). Furthermore, the Court reiterates that 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, *Brincat v. Italy*, 26 November 1992, § 29, Series A no. 249-A, *Pétur Thór Sigurðsson v. Iceland*, no. 39731/98, §§ 52 and 54, ECHR 2003-IV, *Lehtinen v. Finland* (no. 2), no. 41585/98, § 57, 8 June 2006). No award is thus made under this head.

C. Default interest

39. 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 complaints concerning the excessive length of the proceedings and the lack of an effective remedy in that connection admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention concerning the length of the proceedings;
3. *Holds* that there has been a violation of Article 13 of the Convention in that connection;

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 2,500 (two thousand five 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President