



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

FOURTH SECTION

CASE OF MANNINEN v. FINLAND

(Application no. 28631/05)

JUDGMENT

STRASBOURG

14 April 2009

FINAL

14/07/2009

This judgment may be subject to editorial revision.

In the case of Manninen v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 28631/05) 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 Rainer Kaarlo Tapio Manninen (“the applicant”), on 8 August 2005.

2. The applicant was represented by Mr V. Lehtevä, 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 4 June 2008 the President of the Fourth Section decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Helsinki.

6. The applicant purchased a company in September 1995. The company was wound-up on its own initiative in March 1996. A criminal investigation was started in regard to the financial activities of the company in

February 1997 and the applicant was questioned by the police for the first time on 21 April 1997. He was, together with two other persons, suspected of aggravated debtor's dishonesty and false accounting in 1995 and 1996.

7. The pre-trial investigation was finalised on 26 November 1997. On 27 March 1998 the prosecutor waived prosecution due to insufficient evidence.

8. On 22 April 1998 the bankruptcy estate requested the State prosecutor to examine the previous decision not to prosecute. On 23 December 1998 the deputy State prosecutor requested the police to conduct an additional investigation without delay due to the time that had already passed since the beginning of the investigation. On 23 December 1999, the local prosecutor was ordered to bring charges against all the suspects. An additional investigation was requested. The last investigation was concluded on 13 January 2000.

9. The charges were brought against the applicant and the other defendants on 16 February 2000. The District Court (*käräjäoikeus, tingsrätten*) dismissed all the charges on 1 March 2002.

10. Following the prosecutor's appeal and after a two-day oral hearing, the Court of Appeal (*hovioikeus, hovrätten*) convicted the applicant on 18 June 2004. He was sentenced to five months' imprisonment. The sentence was amended for reasons of equity in view of two previous prison sentences dating from 2002 and 2004.

11. In his appeal to the Supreme Court the applicant raised the issue of the excessive length of the proceedings. The Supreme Court (*korkein oikeus, högsta domstolen*) refused leave to appeal on 8 February 2005.

II. RELEVANT DOMESTIC LAW

12. Chapter 6, Article 7, point 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.”

THE LAW

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

13. 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...”

14. The Government contested that argument.

A. Admissibility

15. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The period to be taken into consideration began on 21 April 1997 when the applicant was heard by the police for the first time in the course of the investigation and ended on 8 February 2005 when the Supreme Court refused leave to appeal. It thus lasted some seven years and ten months for three levels of jurisdiction.

17. 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

18. The Government pointed out that the case was complex since it concerned economic crime. It involved three defendants, three consecutive pre-trial investigations, several witnesses and a considerable number of documents produced in evidence. However, the Government conceded that the proceedings before the Court of Appeal had taken more than the average time, maintaining at the same time that the overall length was still reasonable in the applicant’s case.

19. The Court observes that the investigation stage and the preparation of the charges lasted some two years and ten months and the proceedings before the District Court two years and one month. The Court of Appeal gave its judgment about two years and four months after the District Court’s

judgment and the proceedings came to an end less than eight months later, when the Supreme Court refused leave to appeal.

20. The Court further observes that there is no indication that the applicant contributed to the length of the proceedings at any stage.

21. 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 *Frydlender*, cited above).

22. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicant further complained that he did not have an effective remedy against the excessive length of the proceedings. He relied on Article 13 of the Convention.

25. Article 13 of the Convention reads as follows:

“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.”

26. The Government contested that argument.

A. Admissibility

27. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The Government argued that the applicant did not raise the length issue until his appeal to the Supreme Court. The possibility to mitigate a sentence due to the lapse of a considerably lengthy period since the commission of the offence was available to him under Chapter 6, section 7 of the Penal Code already at the stage of the proceedings before the Court Appeal. According to the Government, this remedy fulfilled the requirements of Article 13 of the Convention and by actually invoking the issue before the Supreme Court the applicant had accepted the availability of an effective remedy.

29. The applicant contested that argument and noted that only at the last stage of the proceedings – in his appeal to the Supreme Court – could he look back and assess the length of the proceedings in total. Furthermore, the applicant did not consider the aforesaid remedy effective.

30. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief. The scope of the Contracting States’ obligations under Article 13 varies depending on the nature of the applicant’s complaint; however, the remedy required by Article 13 must be “effective” in practice as well as in law (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI, *Kangasluoma v. Finland*, no. 48339/99, § 46, 20 January 2004, *Cocchiarella v. Italy* [GC], no. 64886/01, § 74-79, ECHR 2006-...).

31. The Court notes that the provisions on sentencing in Chapter 6 of the Penal Code have been amended with effect from 1 January 2004, so that the lapse of a considerably lengthy period since the commission of the offence may be taken into consideration as a mitigating factor which may result in the reduction of the sentence imposed.

32. The Court notes that the applicant complained about the length of the proceedings in his appeal to the Supreme Court. However, no leave to appeal was granted. The Court can accept that had the Supreme Court upheld the applicant’s complaint and reduced his sentence in a manner which provided express and quantifiable redress for the breach of the reasonable time requirement, an issue might arise as to the applicant’s victim status (see, for example *Beck v. Norway*, no. 26390/95, §§ 27-29, 26 June 2001 and *Uoti v. Finland* (just satisfaction), no. 61222/00, § 14, 13 January 2009). However, the Court is not persuaded that the domestic law provisions relied on by the Government constitute an effective remedy within the meaning of Article 13 of the Convention. It notes that the provisions do not address the situation of an applicant who is ultimately acquitted of an offence. Moreover, an applicant is left in a state of uncertainty as to the time of application of the provisions given that he must await the stage of sentencing before any consideration can be given to reducing the length of the sentence in the light of the length of the criminal proceedings.

33. Furthermore, under Finnish law, an applicant at no stage of the proceedings is 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-...).

34. Consequently, since the Government have not shown that any form of relief – either preventive or compensatory – was available to the applicant, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention (see *Kangasluoma v. Finland*, no. 48339/99, §§48-49, 20 January 2004).

III. REMAINDER OF THE APPLICATION

35. The applicant claimed under Article 8 of the Convention that his prison sentence had interrupted his family life and prevented him from taking care of his sick wife. He further claimed that his unconditional prison sentence in the current case meant that he also had had to serve two-thirds of his other two sentences and this had resulted in increased time in prison.

36. Having regard to the case-file, the Court finds that the matters complained of do not disclose any appearance of a violation of the applicant's rights under the Convention. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 50,000 euros (EUR) with interest from the beginning of the proceedings in respect of non-pecuniary damage for mental and physical suffering.

39. The Government considered the applicant's claims excessive as to *quantum*. However, should the Court find a violation of Article 6 § 1 and/or 13 of the Convention, the Government conceded that the applicant should be awarded compensation which should not exceed EUR 3,500.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head.

B. Costs and expenses

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

C. Default interest

42. 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 length of the criminal proceedings and lack of an effective remedy in this connection 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* that there has been a violation of Article 13 of the Convention;
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 4,000 (four thousand 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 14 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President