



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

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FOURTH SECTION

**CASE OF R.H. v. FINLAND**

*(Application no. 34165/05)*

JUDGMENT

STRASBOURG

2 June 2009

**FINAL**

**02/09/2009**

*This judgment may be subject to editorial revision.*



**In the case of R.H. 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 12 May 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 34165/05) 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 R.H. (“the applicant”), on 22 September 2005. The President of the Chamber decided of his own motion that the applicant’s identity should not be disclosed (Rule 47 § 3 of the Rules of Court).

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

3. The applicant alleged, in particular, that his right to a fair trial had been violated as the Appeal Court had not made a full examination of his case and had not organised an oral hearing but had used instead the so-called filtering procedure.

4. On 5 May 2008 the President of the Fourth Section decided to communicate the complaint concerning the lack of an oral hearing and of full examination of the case to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953.

6. In January 2002 the applicant went to a bar for a few drinks. He met his female acquaintance who was in the company of two 17-year-old girls whom he had not met before. Afterwards, they all decided to leave the bar in a taxi. They dropped off the applicant's acquaintance at her home and continued to the applicant's apartment. The applicant, and apparently also the girls, continued drinking and talking. According to the statement given by the applicant in the District Court (*käräjäoikeus, tingsrätten*), after a while he called a taxi for the girls and gave them money for the fare. He claims that the next time he heard of the girls was about four months later when the police contacted him and suspected him of a sexual offence.

7. The girls' version of the early evening's events was roughly the same as the applicant's but differed considerably as concerned the events at his apartment. The girls claimed that while they were in the applicant's apartment, he had sexual intercourse with one of the girls after she had fallen asleep, and that he attempted to rape the other one. Immediately after this had happened, the girls decided to leave. One of the girls called a taxi and the applicant gave them money for the fare. When they got home, the mother of one of the girls called the police. A police patrol came and the police interviewed the girls. The girl who alleged that she had been raped refused to see a doctor.

8. The applicant was questioned for the first time on 21 May 2002. The public prosecutor brought charges against him on 20 November 2003. The District Court held an oral hearing on 31 March 2004 at which only the applicant and the girls were heard.

9. On 5 May 2004 the District Court gave its judgment. It acknowledged that the parties' accounts of the facts diverged greatly. The majority of the District Court judges found that the girls' account was more reliable than the applicant's. Their stories were coherent and consistent. It was not credible that the girls could have invented the allegations. The fact that the girl who had been raped did not see a doctor immediately after the incident was of no relevance. The applicant was convicted of sexual abuse and attempted coercion into sexual intercourse (*sukupuoliyhteyteen pakottamisen yrityk, försök till tvingande till samlag*), sentenced to a conditional prison sentence of 8 months and 15 days and fined. One judge found the applicant's account of the facts to be more reliable and gave a dissenting opinion.

10. By a letter dated 4 June 2004 the applicant appealed to the Appeal Court (*hovioikeus, hovrätten*), requesting that an oral hearing be held as he

had been convicted on the basis of conflicting evidence. The girls' testimonies before the District Court had differed from their accounts given during the pre-trial investigation and were inconsistent. The girl who claimed to have been raped had not seen a doctor after the alleged offence. Moreover, the police had started to investigate the crime as rape. However, since rape was such a serious offence the police should have arrested the applicant immediately and conducted a crime-scene investigation in his apartment. Instead, the applicant had been questioned for the first time only about four months later.

11. On 6 September 2004 the Appeal Court decided to apply the filtering procedure (*seulontamenettely, sällningsförfarandet*) and rejected the request for an oral hearing. It upheld the District Court's judgment without examining the case any further.

12. By a letter dated 11 November 2004 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), complaining about the use of the filtering procedure and reiterating the grounds of appeal relied on before the Appeal Court. He referred, *inter alia*, to Article 6 of the Convention.

13. On 23 March 2005 the Supreme Court refused leave to appeal.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The filtering procedure used by the Appeal Courts is based on Chapter 26, sections 2 and 2a, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*), which has been in force since 1 October 2003.

15. The Appeal Courts may filter a case, that is, uphold the District Court's judgment without a full examination, when three judges agree, at any stage of the proceedings, that 1) an oral hearing is not necessary according to section 15; 2) the finding of the District Court or the procedure applied therein is not defective; and 3) the legal protection of the parties concerned or other circumstances of the case do not require the continuation of the proceedings.

16. Section 15 of the Code of Judicial Procedure (Act no. 165/1998) provides:

“(1) The Appeal Court shall hold a main hearing regardless of whether one has been requested, if a decision on the matter turns on the credibility of the testimony admitted in the District Court or the findings of the District Court in an inspection, or on new testimony to be admitted in the Appeal Court. In this event, the evidence admitted in the District Court shall be readmitted and the inspection carried out again in the main hearing, unless there is an impediment to this.

(2) If the evidence referred to in paragraph (1) cannot be readmitted at the main hearing, the decision of the District Court shall not be changed for that part, unless the

evidence for any special reason is to be assessed differently. However, a decision on a charge may be altered in favour of the defendant in a criminal case.”

17. In the filtering procedure the material to be taken into account comprises the appeal documents, the finding of the District Court as well as any possible reply.

18. The Constitutional Law Committee (*perustuslakivaliokunta, grundlagsutskottet*) stated in its opinion 35/2002 concerning the filtering procedure (see government bill HE 91/2002) the following:

“A fair trial requires in some situations the holding of an oral hearing at the appellate level. The consideration of a matter cannot, according to subsection 2 of the proposed section, be discontinued in the filtering procedure if a full-scale procedure is necessary for the purposes of the legal security of the parties. The appeal courts are therefore required to apply the provisions on the filtering procedure in a way that meets the requirements of basic and human rights, for example so that the decisions made when using the filtering procedure do not, in an individual case, violate the right to an oral hearing.”

19. Since the introduction of the filtering procedure the Supreme Court has given numerous judgments on the applicability of the procedure. According to its case-law, a full examination and an oral hearing are necessary when the Appeal Court’s finding depended on the credibility of oral evidence. The credibility of oral statements and the evaluation of testimonies both require an oral hearing to be held.

## THE LAW

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

20. The applicant complained under Article 6 § 1 of the Convention that his right to a fair trial had been violated as the Appeal Court had not made a full examination of his case and had not organised an oral hearing but had used instead the so-called filtering procedure. According to the case-law of the Finnish Supreme Court, the filtering procedure could not be used if the adjudication of the case depended on the credibility of oral evidence. He claimed that this had been the situation in his case as the District Court had not been unanimous as far as the evaluation of the evidence was concerned.

21. Article 6 § 1 of the Convention reads in its relevant parts as follows:

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

22. The Government contested these arguments.

## **A. Admissibility**

23. The Court notes that this complaint 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.

## **B. Merits**

### *1. The parties' submissions*

24. The applicant maintained that he had challenged in particular the District Court's evaluation of the testimonies and had requested that the Appeal Court reassess them. It was clear that the outcome of the case could only be based on the credibility of oral evidence. The applicant claimed that the girls' testimonies had not been credible. Also the fact that one of the judges had found the applicant's account of the facts to be more reliable and had given a dissenting opinion showed that the court had not been unanimous in evaluating the evidence. An oral hearing in the Appeal Court could have revealed more facts of the case. Also the pre-trial investigation had been conducted in a very light manner as the applicant had not been questioned immediately after the events and the taxi driver had not been questioned at all.

25. The Government pointed out that all district court judgments could be appealed against to the appeal courts but the latter could decide, under Chapter 26, section 2, of the Code of Judicial Procedure, that the consideration of an appeal was not to be continued on the grounds expressly laid down in the said provision. The appeal courts were required to apply the provisions concerning the filtering procedure in a way that met the requirements of basic and human rights (see the Constitutional Law Committee's opinion 35/2002 concerning the government bill HE 91/2002). The Supreme Court had also, in some difficult cases, decided not to apply the filtering procedure as it had not been clear that the district court judgment had been free from errors. The domestic legislation thus guaranteed the right to an oral hearing as well as the legal protection of an individual, by taking into account at the same time the right to a trial within a reasonable time.

26. As to the present case, the Government pointed out that the evidence admitted in the District Court consisted of the hearing of the applicant and the two girls. According to the District Court, the statements made by the girls on the one hand and by the applicant on the other hand differed considerably. Both the girls and the applicant had, however, described the events similarly during the pre-trial investigation and in the court. The District Court had found that the girls' statements had been more reliable

than the applicant's. The Government emphasised that the evidence that the applicant had requested to be heard by the Appeal Court had been the same evidence that had already been heard in the District Court. The applicant could have appointed witnesses to be heard. The applicant had not had an absolute right to an oral hearing by virtue of the mere request thereof. In the circumstances of the present case, it had not been necessary to hold an oral hearing in the applicant's case.

## 2. The Court's assessment

27. The Court reiterates 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, was fair (see *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140). 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 (see *Bricmont v. Belgium*, 7 July 1989, § 89, Series A no. 158; *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).

28. The Court also points out 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*, 26 May 1988, § 27, Series A no. 134; and *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 56, Series A no. 115).

29. Moreover, even where an appeal court 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

(see *Fejde v. Sweden*, 29 October 1991, § 31, Series A no. 212-C). 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 (see *Ekbatani*, cited above, § 31).

30. Turning to the present case, the Court notes that, according to Chapter 26, sections 2 and 2a, of the Code of Judicial Procedure, the filtering procedure can only be applied if an oral hearing is not necessary in the case. The acceptability of this procedure is thus directly dependent on the necessity of an oral hearing. The Court must therefore first examine whether the Appeal Court could, in the circumstances of the case, dispense with holding an oral hearing.

31. The Court observes at the outset that a public hearing was held at first instance, in which the applicant and the girls were heard. The applicant's conviction was based on the testimony of the girls, which the applicant contested.

32. The Court notes that the applicant specifically requested an oral hearing before the Appeal Court in order to hear the girls' testimonies as well as his own. Thus, no question arises as to whether or not the applicant waived his right thereto.

33. 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 on this question, regard must be had to the nature of the Finnish appeal system, to the scope of the Appeal Court's powers and to the manner in which the applicant's interests were actually presented and protected before the Appeal Court particularly in the light of the nature of the issues to be decided by it (see, *mutatis mutandis*, *Ekbatani*, cited above, § 28).

34. 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 Appeal Court shall hold an oral hearing if the credibility of the testimony admitted in the District Court is an issue. In the instant case the Appeal 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 Appeal Court had to make a full assessment of the applicant's guilt or innocence as the applicant throughout the proceedings had denied being guilty of the acts with which he had been charged. For the Appeal Court the crucial question was the credibility of the statements of the persons involved. Nevertheless,

the Appeal Court decided, without a public hearing, to uphold the District Court's conviction without examining the case any further. The Court finds that, in the circumstances of the instant case, the question of the credibility of the statements of the persons involved 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 as well as the girls.

35. 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.

## II. REMAINDER OF THE APPLICATION

36. The applicant also complained under Article 6 that his right to a fair trial had been violated as he had been questioned for the first time about the crime only four months after it had allegedly been committed. The crime scene could thus no longer be inspected.

37. The Court reiterates that it is for the States to organise their judicial systems in such a way as to enable their courts to comply with the requirements of the Convention (see for example *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II). The authorities conducting a pre-trial investigation have a certain margin of appreciation as to how to conduct the investigation (see, *mutatis mutandis*, *Szula v. the United Kingdom* (dec.), no. 18727/06, 4 January 2007).

38. To the extent that Article 6 guarantees apply to the pre-trial investigation phase (see *Salduz v. Turkey* [GC], no. 36391/02, 27 November 2008, and case law referred to therein), the Court considers that the applicant has not substantiated how any perceived defects in the investigation had adverse repercussions on his right to a fair trial. There is therefore no indication of any violation in this respect.

39. It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 7,313.50 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

42. The Government contested the causal link between the alleged violation of Article 6 § 1 of the Convention and any pecuniary damage suffered. Consequently, no award should be made under this heading. As to the non-pecuniary damage, the Government considered that the reasonable compensation for non-pecuniary damage should not exceed EUR 2,000.

43. The Court cannot speculate as to what the outcome of the proceedings before the Appeal Court 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 has 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

44. The applicant also claimed EUR 3,050 (inclusive of value-added tax) for costs and expenses incurred before the domestic courts as well as the Court.

45. The Government maintained that no specification related to costs and expenses, as required by Rule 60 of the Rules of Court, had been submitted but left it to the Court's discretion whether any award should be made in this respect. In any event, the total amount of compensation for costs and expenses should not exceed EUR 2,000 (inclusive of value-added tax).

46. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs and expenses under all heads.

### C. Default interest

47. 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 lack of an oral hearing and of full examination of the case 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, the following amounts:
    - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of costs and expenses;
  - (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 2 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Nicolas Bratza  
President