



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KNASTER v. FINLAND

(Application no. 7790/05)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of Knaster 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 7790/05) 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, Ms Riitta Knaster (“the applicant”), on 2 March 2005.

2. The applicant was represented by Mr Heikki Salo, 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 28 April 2008 the President of the Fourth Section decided to give notice of the application to the Government as concerned the length of the criminal proceedings. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

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

THE CIRCUMSTANCES OF THE CASE

5. On 28 August 1992 the applicant opened a joint bank account with her husband, S.K., in Luxembourg. At the beginning of 1994 S.K. fell ill with an incurable disease. He decided that the joint bank account should be closed and the money deposited therein, 132,655.16 U.S. dollars (USD), transferred to a new account, which was to be opened in the applicant’s name at the same bank. The transaction was carried out on 28 April 1994.

6. On 4 August 1994 S.K. died. An inventory of his estate was conducted on 1 November 1994. The applicant did not report in the inventory the money which was still in her account in Luxembourg. On 20 January 1995 she confirmed the inventory of the estate on oath before a court. She did not mention the money in her Luxembourg account. On 31 March 1995 she transferred the money to another bank account in her name in Switzerland.

Criminal proceedings

7. On 3 July 1995 S.K.'s children from his previous marriage filed a criminal complaint with the police alleging that the applicant had embezzled from S.K.'s foreign bank accounts money belonging to his estate. On 16 August 1995 the applicant was questioned by the police for the first time.

8. In August 1995 requests for international legal assistance were sent to the Luxembourg and Swiss authorities. The former replied in either August or September 1997 and the latter did not reply at all.

9. On 24 September 1997 the Helsinki District Court (*käräjäoikeus, tingsrätten*) confiscated the applicant's property in the amount of USD 477,609 (equivalent to 2,551,731 Finnish marks (FIM)) as security for the total sum allegedly embezzled by her. Apparently, the applicant's appeal against that decision was dismissed by the Helsinki Court of Appeal (*hovioikeus, hovrätten*) on 4 December 1997.

10. The pre-trial investigation was completed on 5 December 1997. Subsequently, the public prosecutor sought several extensions to the time-limit for pressing charges. On 24 May 1999 the prosecutor filed an application for a summons with the Helsinki District Court. According to the indictment the applicant had appropriated assets in the amount of USD 132,655.16 in her possession but belonging to S.K.'s estate by failing to report the money in the estate inventory.

11. On an unspecified date the prosecutor filed a request to reduce the amount of the above-mentioned security. It appears that the District Court granted this request on 4 June 1999. On 11 October 1999 the Court of Appeal dismissed the applicant's appeal in this connection, upholding the security measure as amended by the District Court.

12. In the criminal proceedings before the District Court the applicant denied the charge of aggravated embezzlement claiming that she had not been engaged in any transactions regarding the money allegedly appropriated by her. She also contended that S.K. had told her that the money had belonged to a Russian businessman and she had not therefore been obliged to report it at the time of drawing up the estate inventory.

13. On 13 September 1999, having obtained the testimony of the applicant and four other persons as well as written evidence, the court found the applicant guilty as charged and sentenced her to a suspended term of one

year and four months' imprisonment. She was also ordered to compensate S.K.'s estate in the amount of USD 132,655.16. The court ordered the security measure to remain in force until the compensation had been paid or levied or until it had been decided otherwise. In its reasons the court stated, *inter alia*, that there was no evidence to support the applicant's allegation that the money had belonged to a Russian businessman. The court did not find the applicant's own testimony reliable as she had given different accounts about the money on different occasions. The court concluded that she had been obliged to report the existence of the money at the time of drawing up the inventory of S.K.'s estate and that she had intentionally failed to fulfil this obligation.

14. The applicant appealed against the judgment to the Court of Appeal maintaining that S.K. had voluntarily transferred the money to her account and that she had not been under an obligation to mention it in the estate inventory given that the money did not belong to it. In the applicant's view, her conduct did not constitute the offence of which she was convicted.

15. On 15 August 2000 the prosecutor requested the court to postpone its oral hearing, scheduled for 7 September 2000, in order to conduct a supplementary investigation into the applicant's allegation that the money had belonged to a Russian businessman. She filed a request with the police to that end on the same date. The investigation was conducted in connection with a request for international legal assistance previously received from Russia and related to S.K.'s accounts abroad. Fresh requests for international legal assistance were sent to the Luxembourg and Swiss authorities. Several attempts to speed up the proceedings were then made by the Finnish police. On 19 February 2003 it was decided that the information obtained thus far would be compiled in an investigation report and used as evidence in the applicant's case, without waiting for the completion of the investigation.

16. On 10 and 11 November 2003 an oral hearing was held in the Court of Appeal.

17. On 19 December 2003 that court dismissed the applicant's appeal and upheld the District Court's judgment. The court found that the evidence produced before it did not support the allegation that the money had belonged to a Russian businessman. It did show, however, that the applicant had intended to distribute the money unofficially among the parties to the estate, namely without the knowledge of the tax authorities.

18. On 2 September 2004 the Supreme Court refused the applicant leave to appeal.

Taxation proceedings

19. On 2 December 1997 the local tax authorities imposed a gift tax on the applicant amounting to FIM 327,940, based on an alleged gift from S.K.

in the amount of FIM 2,551,731. A tax surcharge of FIM 65,588 was also imposed on her in this connection. The applicant's claim for rectification was rejected by the Tax Rectification Board (*verotuksen oikaisulautakunta, skatterättelsenämnd*) on 20 April 1998.

20. The applicant appealed to the County Administrative Court of Uusimaa (*lääninoikeus, länsrätt*) requesting that the gift tax and the related tax surcharge be quashed. She maintained that only a sum of USD 132,407 (approximately FIM 730,000) had been transferred to her bank account. She also claimed that the said money was not a gift and did not belong to her. She further pointed out that she was suspected of having embezzled the money in question and it could not be considered by the State both as a gift and as the proceeds of the alleged offence. She also contended that the tax decision was based on information obtained from the authorities in Luxembourg which, given its nature, could not be used for the purpose of taxation.

21. On 28 May 1999 the court found for the applicant and ordered the local tax authorities to refund her the tax and tax surcharge already paid. In its reasons the court stated that, as regarded the money transferred to the applicant's bank account in Luxembourg, the tax authorities should not have used the information obtained from the foreign authorities in connection with international legal assistance in criminal matters. As to the rest, the court noted that there was no proof of whether the applicant had in fact received the money in the first place.

22. On 21 November 2000 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) dismissed the tax authority's appeal upholding the lower court's decision.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING LENGTH OF PROCEEDINGS

23. The applicant complained that the length of the criminal 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 ..."

24. The Government contested that argument.

A. Admissibility

25. 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

26. The period to be taken into consideration began on 16 August 1995, when the applicant was first questioned by the police, and ended on 2 September 2004, when the Supreme Court refused her leave to appeal. The proceedings thus lasted nine years and twenty days for three levels of jurisdiction.

27. 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).

28. The Government argued that the time elapsed during the pre-trial investigation and the consideration of charges, some three years and nine months, was not unusual in the case of a comprehensive economic offence. The investigation had included requests for international legal assistance. The applicant had also changed and supplemented her statement several times during the pre-trial investigation, which added to its length. The proceedings before the District Court had been completed speedily. The proceedings before the Court of Appeal, lasting over four years, had been delayed due to the supplementary investigation requested by the prosecutor. The purpose of that investigation had been to look into the applicant's contention about the money belonging to a Russian businessman. It was therefore conducted in her interest. The request was dated 15 August 2000 and the investigation reports were dated 13 and 25 March and 2 September 2003. The investigation measures had comprised requests for international legal assistance and the police had been active in the conduct of the investigation. The leave to appeal proceedings in the Supreme Court had lasted less than seven months. In the Government's view, the case had been complex.

29. The applicant contested those arguments. Contrary to the Government's view, she considered the time taken for the consideration of charges, some one and a half years, particularly lengthy in a case where the suspect's assets had been confiscated. The supplementary investigation at the appellate stage had been conducted solely at the request of the prosecutor and in connection with some other previously instituted

investigation. In the applicant's view, the case against her had not been particularly complex. The long duration of the criminal proceedings and the confiscation of her assets had caused her considerable damage.

30. The Court notes that the case concerned proceedings of some complexity including requests for international legal assistance at two instances. The total length of the criminal proceedings was in large part due to those requests. However, they were made in the interest of establishing the facts underlying the charge against the applicant. The Court finds that the delay thus caused, some four and a half years, was not solely the Finnish authorities' responsibility. At least during the supplementary investigation at the appellate stage, the domestic authorities made efforts to speed up the proceedings at the international level. Apart from those periods during which the proceedings were stayed pending replies from the foreign authorities, the only stage entailing unnecessary delay seems to have been the consideration of charges, which lasted almost one and a half years. However, even taking into account the delay caused by the requests for international legal assistance, the Court finds the total length of the criminal proceedings, some nine years, problematic.

31. 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).

32. Having examined all the material submitted to it, the Court considers that the Government have not put forward sufficient facts or arguments 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 violation of Article 6 § 1 of the Convention concerning the length of the proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant complained under Article 6 § 1 of the Convention that the security measure imposed on her was unfounded and excessive and remained in force too long. In fact, it had still not been lifted on the date of lodging her application.

34. It does not transpire from the case file whether the applicant sought leave to appeal to the Supreme Court against the Court of Appeal's decisions of 4 December 1997 and 11 October 1999, concerning the security measure imposed. She has submitted two Supreme Court decisions from 1999 concerning the prosecutor's requests for extension of the time-limit for pressing charges. As far as the applicant can be considered to have exhausted all domestic remedies she has, nevertheless, failed to show that she has lodged the complaint concerning the imposition of the security

measure within the six months' time-limit. This complaint must thus be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. As to the allegedly excessive period of time during which the security measure remained in force, the complaint rather falls to be examined under Article 1 of Protocol No. 1 to the Convention. The applicant's complaints under that Article will be addressed in paragraphs 39-40 below.

35. The applicant also complained under Article 6 § 1 of the Convention that the proceedings were unfair in that she had to defend herself against contradictory allegations made by the prosecution on the one hand and the tax authorities on the other.

36. The Court considers that such contradictory allegations by the State authorities do not amount to a breach of the Article invoked, as the applicant was able to defend herself against both allegations separately. It should also be noted that, subsequently, three persons working for the tax authority were charged with breach of official duty in this connection. The documents do not disclose any unfairness in the criminal proceedings concerning the applicant. This complaint is thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

37. The applicant further complained under Article 7 of the Convention that the conduct leading to her conviction did not constitute a criminal offence under national law as S.K. had voluntarily transferred the money to her account. From that moment on the money had no longer formed a part of his, and subsequently his estate's, possessions. She had, therefore, not been obliged to report the money in the estate inventory. She further complained that the unlawful conviction even constituted a breach of Article 6 § 2 of the Convention, as the presumption of innocence had not been respected by the courts.

38. The Court notes that under the Finnish Penal Code a person may be convicted of embezzlement if he or she, *inter alia*, appropriates another person's assets which are in his or her possession. The conduct with which the applicant was charged clearly meets the description of the relevant provision of the Penal Code. The Court observes that the applicant did not claim the money as her own property. The question of whether the money belonged to a Russian businessman, as the applicant contended, was part of the assessment of evidence produced before the domestic courts. Having regard to its subsidiary role in that respect, the Court cannot make a re-assessment of that evidence. The applicant's complaints under Articles 7 and 6 § 2 are thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

39. Lastly, the applicant complained under Article 1 of Protocol No. 1 to the Convention that by ordering her to pay compensation for the damage caused to S.K.'s estate, imposing the security measure on her and executing the tax decision before the final decision in the taxation proceedings had

been taken on appeal, the State had violated her right to the peaceful enjoyment of her possessions.

40. The Court observes that compensation for damages was ordered in connection with the above criminal proceedings in which the applicant was found guilty of an offence. The security measure was imposed in order to secure the payment of the said compensation. The measure was provided by law, pursued a legitimate aim and at all times complied with the requirement of proportionality. These complaints are thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

41. As to the execution of the tax decision, which was subsequently quashed, the complaint has been lodged out of time as the final decision in the taxation proceedings was given on 21 November 2000. This complaint is therefore rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 225,956.87 euros (EUR) in respect of pecuniary damage. This sum includes firstly the damages which the applicant was ordered to pay to the estate, with interest. The applicant argued that, had the proceedings lasted a shorter time, the amount of interest would have been considerably lower. The applicant also pointed out that her assets had remained confiscated up until January 2006, when the executor of the estate gave his decision. Until that time she had been unable to pay the damages. Secondly, the pecuniary damage comprises legal costs of the complainants, for which the applicant was found liable. She further claimed EUR 8,000 in respect of non-pecuniary damage for suffering.

44. The Government contested those claims. They argued that the pecuniary damage claimed was not related to the complaint communicated to the Government. The Government further considered that the applicant's claim for non-pecuniary damage was excessive as to *quantum*. Any compensation under that head should not exceed EUR 3,500.

45. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers, however, that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, and having regard to its considerations set out in paragraph 30, the Court awards her EUR 1,500 under that head.

B. Costs and expenses

46. The applicant also claimed EUR 13,521.26 for the costs and expenses incurred before the domestic authorities and EUR 2,867 (inclusive of value-added tax) for those incurred before the Court.

47. The Government contested those claims. No costs and expenses had been incurred by the applicant at the domestic level in respect of the complaint communicated. Were the Court to have a different opinion, any compensation under that head should not exceed EUR 1,000. As to the costs and expenses incurred before the Strasbourg Court, any compensation should not exceed EUR 2,000.

48. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,000 (inclusive of value-added tax) for the proceedings before the Court. In this connection the Court notes that only one of the applicant's several complaints was communicated to the Government for observations.

C. Default interest

49. 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 length of the criminal proceedings 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 criminal proceedings;
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 1,500 (one thousand five hundred 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 to the applicant, 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 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President