



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

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1959 · 50 · 2009

FOURTH SECTION

**CASE OF AIMINEN v. FINLAND**

*(Application no. 24732/06)*

JUDGMENT

STRASBOURG

15 September 2009

**FINAL**

***15/12/2009***

*This judgment may be subject to editorial revision.*



**In the case of Aiminén 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 25 August 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 24732/06) 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 Jari Kalervo Aiminén (“the applicant”), on 20 June 2006.

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

3. On 23 June 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**

4. The applicant was born in 1951 and lives in Fuengirola, Spain.

**THE CIRCUMSTANCES OF THE CASE**

5. On 10 May 1999 the applicant was detained by the police as a suspect. Two days later he was released after questioning. He was further questioned by the police on two later occasions. On 11 August 1999 the public prosecutor filed an application for a summons with the Hämeenlinna District Court (*käräjäoikeus*, *tingsrätten*). According to the indictment the

applicant had concealed property, namely a retirement pension insurance of a considerable value, firstly in enforcement proceedings against him and on a later occasion in his application for legal aid concerning another set of proceedings. The summons was served on 4 October 1999.

6. The proceedings began on 17 March 2000 with a preparatory hearing. In an oral hearing, held on 6 April 2000, the applicant was charged with aggravated fraud by a debtor and aggravated fraud. Two complainants to the case joined the first charge and presented an accessory claim for damages and legal costs. On 27 April 2000 the court dismissed the first charge, as well as the complainants' civil claims, stating that the applicant's actions in that respect did not constitute a criminal offence. As to the second charge, the court found the applicant guilty of fraud and sentenced him to three months' conditional imprisonment.

7. The applicant appealed against the conviction to the Turku Court of Appeal (*hovioikeus, hovrätten*). The complainants also appealed against the judgment as to the dismissal of the first charge and their civil claims. They supplemented the indictment alleging that the applicant had also concealed other property besides the retirement pension insurance in the enforcement proceedings. The applicant objected to the alteration of the charge, contending that it was unlawful. The court found for the applicant on this point and examined the first charge without having regard to the alterations. On 27 June 2002, after having held an oral hearing, the court upheld the lower court's judgment in all parts.

8. The Supreme Court (*korkein oikeus, högsta domstolen*) granted the complainants leave to appeal. On 4 November 2003 the court found that their fresh allegations did not constitute a prohibited alteration of the charge and referred the case back to the District Court for re-examination in that part.

9. After the Supreme Court's decision, the local media took a strong interest in the case as the applicant was well-known in the region's commercial life.

10. The other complainant requested the District Court, twice, for an extension of the time-limit set by that court for completing the charge, as civil proceedings, allegedly related to the case, were still pending in the Supreme Court. These requests were granted on 25 April 2005 and 16 June 2005 respectively, without hearing the applicant. According to the Government, the court had taken certain procedural measures in the case even before granting those extensions.

11. On 7 June 2005 the applicant filed a complaint with the Deputy Chancellor of Justice (*apulaisoikeuskansleri, biträdande justitiekanslern*) contending that the proceedings had lasted too long. He made reference to Articles 6 and 13 of the Convention.

12. A preparatory hearing was held by the District Court on 1 November 2005. The charge against the applicant was scheduled to be re-

examined on 21 December 2005. However, the complainants waived the charge and the case was dismissed on that date without an examination of the merits.

13. On 5 June 2006 the Deputy Chancellor of Justice gave his response to the applicant's complaint. He noted that the additional allegations made by the complainants at the appellate stage had led to a fresh pre-trial investigation, finalised by the end of 2004. At the same time the police had investigated different offences allegedly committed by the applicant. The latter pre-trial investigation had ended in September 2005. After that, the District Court had resumed the examination of the case remitted by the Supreme Court. The Deputy Chancellor of Justice found it somewhat problematic that the fresh hearing in the District Court only took place in December 2005, although the case had been remitted already in November 2003. However, having obtained a statement from the District Court, the Deputy Chancellor of Justice was satisfied that it had been justified for that court to wait for the outcome of the additional pre-trial investigation relating to the case and to allow it to examine the remitted case and possible new charges against the applicant in joint proceedings. In these circumstances, the Deputy Chancellor of Justice took the view that the length of the proceedings had not exceeded a "reasonable time".

14. It does not transpire from the case file whether fresh charges against the applicant were brought and whether their examination was joined with the case remitted to the District Court.

## THE LAW

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

15. 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..."

16. The Government contested that argument.

#### A. Admissibility

17. The Court notes that the application 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

18. The period to be taken into consideration began on 10 May 1999, when the applicant was detained, and ended on 21 December 2005, when the District Court dismissed the remainder of the case. The proceedings thus lasted six years, seven months and 14 days for three levels of jurisdiction, of which one level twice.

19. 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).

20. The Government argued that the proceedings before the remittal of the case to the District Court did not exceed a “reasonable time”. The Government also pointed out that the applicant had requested an extension of the time-limit set for his written reply to the Court of Appeal and an oral hearing before that court. In the Government’s view, the proceedings after the remittal did not include any periods of inactivity, bearing in mind the ongoing fresh pre-trial investigation against the applicant and the civil proceedings pending in the Supreme Court, both related to the remitted case. The delay caused by the extensions granted at the request of the complainants could not be attributed to the Government. Moreover, those extensions had contributed to legal certainty and therefore also benefited the applicant. Lastly, the Government submitted that although the case had not been complex, it had been exceptional due to the alteration of charges at the appellate stage.

21. The applicant contested those arguments. In his view, the proceedings before the Court of Appeal had been excessively lengthy. Nor did the District Court have any justification for the delay in the proceedings after the remittal. The ongoing pre-trial investigation had been completed by the end of 2004. The civil proceedings in the Supreme Court, concerning an enforcement dispute, had had no relevance to the criminal case against the applicant.

22. Although the proceedings before the Court of Appeal lasted some two years, the Court finds that the total length of the first round of the proceedings, some four and a half years, did not exceed a “reasonable time”. The proceedings were delayed, however, following the Supreme Court’s decision to remit the case to the District Court, where the case remained pending for almost two years and two months before it was dismissed. The Court notes that the pre-trial investigation instituted in the context of the additional claims made by the complainants during the appellate proceedings was completed by the end of 2004. Even assuming that it had been justified for the District Court to wait for the outcome of that

investigation, the necessity for the extensions granted by the District Court to the other complainant pending the outcome of parallel civil proceedings remains unclear. The Court observes that the parties have not made any comments on the other pre-trial investigation mentioned in the Deputy Chancellor of Justice's reply to the applicant. The Court thus considers that the Government have failed to give a satisfactory explanation as to why the case was not scheduled to be re-heard until 21 December 2005, after it had been remitted to the District Court.

23. 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).

24. 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.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 9,875 euros (EUR) in respect of non-pecuniary damage for suffering, frustration and stress.

27. The Government contested the claim considering it excessive as to *quantum*. The amount of any non-pecuniary damage should not exceed EUR 2,500.

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

### B. Costs and expenses

29. The applicant also claimed EUR 6,543.01 (inclusive of value-added tax) for the costs and expenses incurred at the domestic level and before the Court. The applicant did not specify the total sum under each head, but the

measures taken by the applicant's lawyer transpire from an invoice submitted to the Court.

30. The Government contested those claims. They firstly noted that the costs and expenses incurred at the domestic level only related to the applicant's claim to the State Treasury for reimbursement of the time spent in pre-trial detention, and should not be taken into account. As to the proceedings before the Court, the Government submitted that the award should not exceed EUR 3,500.

31. 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. The Court firstly notes that the application concerned a rather simple case of length of criminal proceedings. It further notes that the invoice submitted by the applicant does not include any costs and expenses pertaining to the applicant's attempt to speed up the proceedings by way of lodging a complaint with the Deputy Chancellor of Justice. The Court subscribes to the Government's view that the costs and expenses incurred before the State Treasury are not related to the applicant's complaints before this Court. Having regard to all 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 2,500 (inclusive of value-added tax) for the proceedings before the Court.

### **C. Default interest**

32. 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 application admissible;
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, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 2,500 (two

thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable on those amounts;

(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 15 September 2009 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı,  
Deputy Registrar

Nicolas Bratza  
President