



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF PETROFF v. FINLAND

(Application no. 31021/06)

JUDGMENT

*This version was rectified on 1 March 2010
under Rule 81 of the Rules of the Court.*

STRASBOURG

3 November 2009

FINAL

03/02/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Petroff 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 13 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 31021/06) 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 Pentti-Nikolai Petroff (“the applicant”), on 2 August 2006.

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

3. On 1 December 2008 the President of the Fourth Section decided to communicate the complaint concerning the length of the proceedings 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1951 and lives in Helsinki.

5. On 6 February 1997 the applicant was questioned as a suspect regarding an aggravated tax offence.

6. The charges became pending before the District Court (*käräjäoikeus*, *tingsrätten*) on 17 November 1997.

7. In the period between 20 March 1998 and 17 May 2001 the bailiff unsuccessfully tried to reach the applicant at least three times: once in March 1998 at an address in Helsinki and twice, in January and June 1999, via the post box used by the applicant's company in Helsinki. It appears from the documents provided that the applicant called the bailiff on or after 20 March 1998 informing him of a new address outside Helsinki. However, there is no indication that the bailiff tried to reach him at that or any other address than those mentioned above.

8. As is customary in cases where a person cannot be found by the bailiff, a warrant for the applicant's arrest was issued on 24 June 1999. The warrant was subsequently renewed at regular intervals.

9. On 17 May 2001, while serving a prior prison sentence, the applicant was located by the bailiff and served with the summons.

10. The District Court held preparatory hearings on 5 December 2002 and 11 February 2003. The main hearing was organised over two days, on 24 and 26 March 2003. The applicant and four witnesses were heard. Two of those witnesses testified on the applicant's behalf.

11. On 5 May 2003 the District Court convicted the applicant of an accounting offence and aggravated tax fraud. The charges with regard to a third offence had been withdrawn due to its having become time-barred. The applicant was sentenced to seven months' imprisonment.

12. In his appeal of 1 June 2003 the applicant requested an oral hearing, at which the four previously heard witnesses would be heard on the same matters as at first instance. In the same observations, however, he stated that, due to the length of time that had passed, the witnesses had not been able to recall, before the District Court, the relevant events which had taken place from 1992 to 1994. He also argued that the charges should be dismissed owing to the length of the proceedings. In his additional observations of 6 July 2004, the applicant requested that the Court of Appeal (*hovioikeus, hovrätten*) hear two entirely new witnesses.

13. On 29 June 2005 the Court of Appeal rejected the request for an oral hearing as manifestly unnecessary since no issue had arisen as to the assessment of the credibility of the oral evidence and as the matter could be decided on the basis of the written material presented during the proceedings. The lower court's judgment was upheld but instead of an unconditional prison term of seven months the applicant was sentenced to 180 hours of community service.

14. On 29 August 2005 the applicant requested leave to appeal. The request was denied on 7 February 2006 by the Supreme Court (*korkein oikeus, högsta domstolen*).

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 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

18. The period to be taken into consideration began on 6 February 1997 when the applicant was questioned as a suspect in the pre-trial investigation. The period ended on 7 February 2006 with the Supreme Court's refusal to grant leave to appeal to the applicant. The proceedings thus lasted in total nine years and one day for three levels of jurisdiction.

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 time during which the applicant could not be found for service of the summons had to be deducted from the length of the proceedings attributable to the Government. Other than this period the proceedings had advanced quickly. Thus, according to the Government, the proceedings had lasted five years, three months and six days, which could not be considered excessive.

21. The applicant stated that it was for the Government to ensure that he was reached. He had had the same address in the population registry from 1994 until the autumn of 1999, after which it had been erroneously changed by the authorities. This, he continued, could also be attributable to the Government.

22. The Court observes that the proceedings as such were conducted within acceptable time limits. The pre-trial investigation and the consideration of charges by the prosecutor took some nine months. The proceedings before the District Court, once the summons had been served, lasted approximately two years, as did the proceedings before the Court of Appeal. The Supreme Court refused leave to appeal within seven months.

23. However, the time during which the applicant could not be found for the delivery of the summons, over three years in total, caused a considerable delay in the proceedings. It is not entirely clear from the parties' observations why the applicant was not reached, especially as he had called the bailiff and informed him of his new address. At the same time the applicant claims that his official address since 1994, and until late 1999, was the one in Helsinki, which seems not to be the address to which the bailiff had tried to deliver the summons. The Court concludes that the Government have not shown that the necessary steps were taken by the authorities to deliver the summons to the applicant within a reasonable time in the present case.

24. 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).

25. 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.

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

II. REMAINDER OF THE APPLICATION

27. The applicant also complained under Article 6 § 3(d) that he was refused the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, that the Court of Appeal refused him an oral hearing and subsequently the right to supplement his appeal after he had been denied a hearing and that the Court of Appeal ignored his written evidence.

28. 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 in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 507,431.03 euros (EUR) in respect of pecuniary damage for losses suffered by him due to wrongful taxation, the loss of his business, his imprisonment and the costs incurred due to his own work on his case.

31. In addition the applicant claimed EUR 50,000 in compensation for non-pecuniary damage.

32. The Government contested the claim for pecuniary damage and found both of the claims excessive as to *quantum*. As the amount claimed for the non-pecuniary damage related to all of the applicant's complaints and only one of them was communicated to the Government for observations, the award should not exceed the amount of EUR 3,000 in total.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

34. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000.

B. Costs and expenses

35. The applicant also claimed EUR 11,712 for the costs and expenses incurred before the Court.

36. The Government considered that the award should not exceed EUR 3,000 (inclusive of value added tax) as only one of the applicant's four complaints was communicated to the Government for observations.

37. 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 (inclusive of value added tax)¹ covering costs and expenses for the proceedings before the Court.

¹ Rectified on 1 March 2010: “inclusive of value added tax” has been added.

C. Default interest

38. 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

1. *Declares* unanimously the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one
 - (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 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
 - (iii) plus any tax that may be chargeable on the abovementioned 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* unanimously the remainder of the applicant's claim for just satisfaction.

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

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Björgvinsson is annexed to this judgment.

N.B.
T.L.E.

DISSENTING OPINION OF JUDGE BJÖRGVINSSON

I do not agree that there has been a violation of Article 6 § 1 of the Convention. Admittedly, nine years for the overall proceedings is a long time. However, as repeatedly stated in the case-law of the Court, the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case with reference to, *inter alia*, the conduct of the applicant and the relevant authorities, (*Pélissier and Sassi v. France* [GC], no 25444/94, paragraph 67, ECHR 1999-II).

I agree with the majority, as stated in paragraph 22 of the judgment, that the “proceedings as such were conducted within acceptable time limits.” This implies, as can also be seen from paragraphs 7 and 23 of the judgment that, of the whole nine years taken by the proceedings, the only problematic period of “inactivity”, in the view of the majority, is the period between 20 March 1998 and 17 May 2001 (three years and two months). As regards this period, the majority finds that “the Government have not shown that the necessary steps were taken by the authorities to deliver the summons to the applicant within a reasonable time ...”.

I respectfully disagree with this finding. From paragraphs 7, 8 and 23 of the judgment it transpires that during this period the bailiff repeatedly, albeit unsuccessfully, tried to reach the applicant to serve the summons on him, which eventually led to an arrest warrant being issued on 24 June 1999. This arrest warrant was subsequently renewed at regular intervals. The applicant was finally located by the bailiff on 17 May 2001 when he started to serve a prison sentence. I believe that the bailiff took, within a reasonable time, genuine and relevant steps in attempting to locate the applicant.

It appears from the documents that the applicant *on or after* 20 March 1998 called the bailiff's office to inform him of a new address outside Helsinki. However, if such a telephone call took place as early as 20 March 1998, as the applicant alleges, it strongly indicates that the applicant was aware of the fact that the bailiff was trying to reach him. It would therefore seem that the applicant allowed this state of affairs to persist for more than three years. Nevertheless, he still finds it appropriate to complain to the Court that the bailiff did not do enough to ensure that he was reached and to claim compensation for non-pecuniary damage allegedly suffered as a result of that. I am unable to accept this.

For these reasons I find that there has been no violation of Article 6 § 1 in this case. It follows that I also disagree with awarding compensation and costs and expenses to the applicant.