



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF NIEMINEN v. FINLAND

(Application no. 16385/07)

JUDGMENT

This version was rectified on 23 February 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 Nieminen v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *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. 16385/07) 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 Ari Nieminen, (“the applicant”), on 10 April 2007.

2. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 19 January 2009 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 1957 and lives in Lahti.

5. On 12 October 2000 the applicant was questioned by the police as a suspect in a number of aggravated narcotics offences which had allegedly been committed on 10 December 1999. The offences had been reported to the police on 5 October 2000. The pre-trial investigation was completed on 21 March 2001.

6. The case was examined and decided by the District Court (*käräjäoikeus*, *tingsrätten*) with regard to some of the defendants in

May 2001. The charges against the applicant and one other person were removed from the docket for the time being at the public prosecutor's request because H., a witness, had not been located to appear in court.

7. On 15 April 2002 the public prosecutor preferred charges against the applicant and the other remaining defendant.

8. On 15 February 2004 H. was summoned to appear before the court on 12 May 2004. That hearing was cancelled as H. was in prison awaiting trial in Sweden. The hearing eventually took place on 11 August 2004. During the hearing H. refused to elaborate on the matter and his pre-trial records were read out to the court.

9. On the same date the District Court convicted the applicant as charged and sentenced him to six months' imprisonment. In its judgment the court stated, in reply to the complaint made by the applicant's co-defendant, that when assessed as a whole, the proceedings had lasted longer than usual. However, the delay had been attributable to the legal excuse of a witness, which had prevented the case from being finalised earlier.

10. On 15 May 2006 the Court of Appeal (*hovioikeus*, *hovrätten*), having held an oral hearing, upheld the lower court's judgment. As witness H. was again unavailable for the hearing, despite several previous attempts by the court to reach him, the District Court recordings of his statements were played back during the hearing.

11. In its decision the court noted that there were no reasons in the co-defendant's case to mitigate the punishment based on the long time that had passed since the offences. It further noted that both defendants had previously been sentenced many times to unconditional prison sentences. Taking that into account the court found that the length of the sentence awarded by the District Court struck a fair balance between the act committed, the motives for that act and other aspects of their guilt.

12. On 10 October 2006 the Supreme Court (*korkein oikeus*, *högsta domstolen*) refused leave to appeal.

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 Government raised an objection claiming that the applicant had failed to exhaust domestic remedies in respect of his complaint under Article 6 § 1 of the Convention about the length of the proceedings. The applicant's co-defendant had raised the length issue both before the District Court and the Court of Appeal. The applicant had not done so. Only before the Supreme Court had he mentioned the fact that many years had passed since the act was committed. The Government argued that the application should thus be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

16. The applicant contested this argument.

17. The Court notes that the applicant did not raise the issue of length in clear terms before the national courts, unlike his co-defendant. However, the Court of Appeal elaborated on the issue also with regard to the applicant, noting that the sentence awarded was justified and that the length of the proceedings was not to be considered a mitigating factor.

18. The Court notes that had the Court of Appeal reduced the applicant's 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, this was not the case. The Court further recalls that no effective remedy as such exists in Finland with regard to the length of proceedings. On that account, the Government's argument on non-exhaustion of domestic remedies must be rejected.

19. 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

20. The period to be taken into consideration began on 12 October 2000 and ended on 10 October 2006. It thus lasted six years for three levels of jurisdiction.

21. 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).

22. The Government argued that the time during which witness H. could not be located for service of the summons or could not attend hearings had

to be deducted from the length of the proceedings. Thus, the length attributable to the Government was in total four years and four months for three levels of jurisdiction, which could not be considered excessive.

23. The applicant maintained that his case had not been complicated and that witness H. had been serving a prison sentence in Finland and Sweden during the proceedings and could thus have been reached.

24. The Court observes that the pre-trial investigation and consideration of charges by the prosecutor took less than six months in total. The proceedings before the District Court lasted some three years and those before the Court of Appeal one year and nine months. The Supreme Court refused leave to appeal within five months.

25. The delay in the proceedings was clearly caused by the time during which witness H. could not be found for service of the summons or could not attend hearings. It is not entirely clear from the parties' observations why witness H. could not be reached, especially as the applicant claimed that H. was serving a prison sentence both in Finland and in Sweden. Witness H. was eventually heard before the District Court, where he refused to say anything on the matter. This, however, could not have been known beforehand to the applicant or the court. The Court presumes that this was the reason why the Court of Appeal decided, after several failed attempts to have H. testify, that it was not necessary to hear him, although the applicant and his co-defendant had both requested that H. be heard in person.

26. The Court notes that the Government have not commented on the applicant's claims that witness H. could have been easily reached as he was serving a prison sentence at the time. This being the case, the Court can only take as a starting point the applicant's submissions on the matter. The Government, for their part, have not shown that the necessary steps were taken by the authorities to have the summons served on witness H. within a reasonable time or to make sure that he appeared in court as requested in the present case.

27. 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).

28. 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.

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

II. REMAINDER OF THE APPLICATION

30. The applicant also complained under Article 6 § 2 that he had been convicted for having called an old friend. None of the witnesses gave evidence to the effect that he was involved in the alleged offence.

31. 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

32. 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

33. The applicant claimed 2,000 euros (EUR) in respect of pecuniary losses suffered by him during the time he served his sentence in prison.

34. The applicant also claimed EUR 30,000 in compensation for non-pecuniary damage.

35. The Government contested the claim for pecuniary damage. The claim for non-pecuniary damage was deemed excessive as to *quantum*. They considered that the award should not exceed the amount of EUR 2,000 in total.

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

37. 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 1,500.

B. Costs and expenses

38. The applicant also claimed EUR 4,685 for the costs and expenses incurred before the Court.

39. The Government considered that the award should not exceed EUR 2,500 (inclusive of value added tax) as only one of the applicant's two complaints was communicated to the Government for observations.

40. 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.

C. Default interest

41. 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 excessive length of the proceedings 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 1,500 (one thousand five hundred 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;

¹ Rectified on 23 February 2010: "inclusive of value added tax" has been added.

4. *Dismisses* 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