



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF LANDGREN v. FINLAND

(Application no. 17889/07)

JUDGMENT

STRASBOURG

10 November 2009

FINAL

10/02/2010

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 Landgren v. Finland,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 17889/07) 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 Timo Elias Landgren (“the applicant”), on 25 April 2007.

2. The applicant was represented by Mr Joonia Streng, 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 27 August 2008 the President of the Fourth Section decided to give notice of the application to the Government, insofar as it concerned the length of the proceedings. 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 1968 and lives in Malaga, Spain.

5. The applicant's company was building houses on a plot bordering on parkland in the city of Espoo. On 19 October 2000 the city filed a criminal complaint requesting the police to investigate whether the applicant, or other persons, had committed an offence by cutting down trees on city grounds and removing them without authorisation.

6. On 31 October 2000 the applicant was questioned by the police for the first time in that connection. On 5 July 2001, having questioned the applicant on three further occasions, as well as other suspects and witnesses, and having obtained written evidence, the police referred the investigation report to the public prosecutor.

7. The applicant subsequently requested an additional pre-trial investigation. The prosecutor acceded to the request and referred the case back to the police on 14 November 2001. The report on that investigation was sent to the prosecutor on 13 March 2002.

8. In August 2001 two more criminal complaints were filed and the applicant was questioned on suspicion of having made unauthorised alterations to a listed building situated on the construction site and having used the city grounds as a storage area for soil and building materials. The reports on these investigations were referred to the prosecutor on 19 and 20 June 2002, respectively.

9. The applicant was provided with an opportunity to submit final statements to the investigation reports, which he did. The police referred the last two statements to the prosecutor on 22 August 2002.

10. On 24 September 2002 the prosecutor brought charges against the applicant and three other defendants in the Espoo District Court (*käräjäoikeus, tingsrätt*). He accused the applicant of damage to the environment, aggravated criminal damage, a building offence and criminal trespass. The city joined most of the charges. After having held preliminary hearings on 8 January 2003, the court held an oral hearing comprising ten sessions between 7 and 22 May 2003. In addition to written evidence the court received testimony from all defendants and nearly 30 witnesses. On 7 May 2003 the court also made an on-site inspection.

11. On 18 June 2003 the court dismissed all the charges. Regarding the applicant, it stated, *inter alia*, that in cutting down the trees he had acted in good faith, relying on an agreement between the city and the owner of the building plot. According to the said agreement, the constructor was required to trim and tidy up the bordering parkland. The court further found that, in the particular circumstances of the case, the applicant had justifiably believed that no authorisation was needed to renovate the listed building and that he had not used the city grounds in an unlawful manner. In assessing the amount of costs and expenses awarded to defence counsel, the District Court noted that the case material had been extensive and the court's oral hearing had comprised ten long sessions.

12. On 30 June 2003 the prosecutor requested an extension of the time-limit set for an appeal. Having regard to the extent of the case material and the prosecutor's annual leave, the District Court extended the time-limit to 15 September 2003.

13. On that date, the prosecutor lodged his appeal with the Helsinki Court of Appeal (*hovioikeus, hovrätten*). On 14 November 2003 the letter of

appeal was sent to the applicant for comments. On 3 December 2003 the applicant requested an extension of the time-limit set for his reply. The court acceded to the request and extended the time-limit to 30 January 2004. The applicant filed his reply on 22 January 2004.

14. On 12 September 2005 the court held a preliminary hearing. On 14 November 2005 it made an on-site inspection. An oral hearing comprising four sessions was held between 17 and 24 January 2006. In addition to written evidence the court received testimony from all four defendants and 19 witnesses. On 18 May 2006 the court issued its judgment, where it deviated from the lower court's conclusion about the legality of the applicant's actions. It convicted him of damaging the environment and of a building offence. It sentenced him to 80 unit fines and ordered him to pay damages and legal expenses to the city and to reimburse witness fees to the State.

15. On 23 November 2006 the Supreme Court (*korkein oikeus*, *högsta domstolen*) refused the applicant leave to appeal.

THE LAW

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

16. 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...”

17. The Government contested that argument.

18. The period to be taken into consideration began on 31 October 2000, when the applicant was first questioned by the police, and ended on 23 November 2006 when the Supreme Court refused him leave to appeal. It thus lasted six years and 24 days for three levels of jurisdiction.

A. Admissibility

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 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).

21. The Government argued that the applicant had contributed to the length of the proceedings, firstly by requesting an additional investigation and secondly by requesting an extension of the time-limit set for his written reply to the Court of Appeal. This had caused delays of some four months and one month, respectively. In the Government's view all stages of the proceedings, excluding the proceedings before the Court of Appeal, had been completed swiftly. The Government pointed out that the case had not been considered urgent by the Court of Appeal, which had partly contributed to the time taken by that court. The Government further submitted that the case had been complex. In conclusion, the Government argued that the overall length of the proceedings had not exceeded reasonable time.

22. The applicant contested the Government's arguments. In his view, the case had not been complex. He had admitted to the conduct described in the prosecutor's indictment and the trial courts had mainly been called upon to make a judicial assessment of his criminal liability in that connection. Some of the oral evidence produced by the prosecution had been unnecessary. Moreover, the proceedings would have been conducted more speedily had the different charges against the applicant been dealt with in separate proceedings.

23. The Court finds no reason to question the District Court's view on the extent of the case material (see paragraph 11 above). It also takes note of the number of defendants and alleged offences as well as the number of witnesses heard before the domestic courts. However, there is nothing to suggest that the case presented any particular difficulty. Thus, the length of the proceedings cannot, in the Court's view, be explained by the complexity of the case alone.

24. The Court observes that, as far as the applicant was concerned, the pre-trial investigation and the consideration of charges lasted one year, 11 months and 13 days, which can be considered reasonable under the circumstances of the case. The Court is not convinced by the Government's argument that the applicant was partly responsible for the length of the pre-trial stage by requesting an additional investigation. It notes that at the time of the request, the police were still investigating other offences allegedly committed by the applicant, and those investigations were closed later than the one conducted at the applicant's request. In any case, the Court finds that

making full use of the various procedures available to pursue his defence cannot be held against the applicant. There is nothing to suggest that the applicant attempted to impede the proceedings in any way.

25. The Court further observes that the case was pending before the District Court for eight months and 23 days, which can also be considered reasonable. Nor do the leave to appeal proceedings before the Supreme Court, some six months, appear excessively long.

26. However, the Court finds no justification for the length of the proceedings before the Court of Appeal. After the delivery of the District Court's judgment, it took two years and eleven months until the Court of Appeal issued its judgment. This delay cannot be explained by the oral hearing, nor the on-site inspection, having regard, in particular, to the fact that the same procedural measures were taken by the lower court in a much shorter time. In the Court's view, the applicant's request for an extension of the time-limit set for his written reply did not significantly contribute to the total time taken before the Court of Appeal. By contrast, the Court notes that the Government have failed to offer a satisfactory explanation for the period of inactivity of almost one year and eight months which elapsed between the receipt of the applicant's written reply and that court's preliminary hearing.

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.

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

II. REMAINDER OF THE APPLICATION

29. The applicant also complained under Article 6 § 2 of the Convention that the presumption of innocence had been breached at the pre-trial investigation stage in that the police had taken into account mainly material submitted by the city, including a document containing false information. The presumption had also been breached by the Court of Appeal when convicting the applicant without grounds.

30. The Court notes that the applicant has not even alleged that he or his counsel were in any way prevented from adducing evidence in support of the defence, either during the pre-trial investigation or before the trial courts. He was also fully able to contest any evidence submitted by other parties. Furthermore, the Court finds no indication that the Court of Appeal,

contrary to Article 6 § 2 of the Convention, started from the presumption that the applicant had committed the offences with which he had been charged.

31. It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to 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 100,000 euros (EUR) in respect of pecuniary damage for loss of business opportunities during the proceedings. He further claimed EUR 5,000 in respect of non-pecuniary damage.

34. The Government contested these claims. In their view, there was no causal link between the alleged violation of Article 6 § 1 of the Convention and the pecuniary damage claimed. As to the claim for non-pecuniary damage, the Government found it excessive as to *quantum*. Any award under that head should not exceed EUR 3,000.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. 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 1,000 under that head.

B. Costs and expenses

36. The applicant also claimed EUR 3,385.88 for the costs and expenses incurred before the Court.

37. The Government contested the claim. They pointed out that the Court had invited observations only in respect of the alleged breach of Article 6 § 1 of the Convention. The total award for costs and expenses should not exceed EUR 2,500.

38. 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) for the proceedings before the Court. In this connection the Court notes that only one of the applicant's complaints was communicated to the Government for observations.

C. Default interest

39. 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 1,000 (one 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 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 10 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President