



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

---

1959 · 50 · 2009

FOURTH SECTION

**CASE OF TAAVITSAINEN v. FINLAND**

*(Application no. 25597/07)*

JUDGMENT

STRASBOURG

8 December 2009

**FINAL**

*08/03/2010*

*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 Taavitsainen 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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 25597/07) 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, Ms Sirpa Marita Taavitsainen (“the applicant”), on 13 June 2007.

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

3. On 10 November 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 1971 and lives in Tampere.

**I. THE CIRCUMSTANCES OF THE CASE**

5. On 16 June 2001 the police searched the applicant's apartment on account of a suspicion that it had been used for procuring. On 26 June 2001 she was questioned as a suspect. On 11 August 2001 the pre-trial investigation was completed.

6. On 23 August 2001 the public prosecutor preferred charges against the applicant for procuring, allegedly committed during the period from 4 to 11 June 2001.

7. On an unspecified date the applicant was summoned to appear before the Tampere District Court (*käräjäoikeus, tingsrätten*) at a hearing which was to take place on 6 March 2002.

8. However, the hearing was cancelled owing to the fact that Ms H., a witness, had failed to appear before the court although lawfully summoned to do so. Another witness, Ms M., had not been summoned. Both witnesses were Estonian citizens. The hearing of the case was postponed until 12 August 2002 and Ms H. was summoned to appear before the court on pain of a fine of 650 euros (EUR).

9. On 12 August 2002 the District Court noted that the above-mentioned witnesses had failed to appear before it although lawfully summoned. The court adjourned the case until 11 December 2002 and decided to summon the witnesses on pain of a fine of EUR 800 each.

10. On 11 December 2002 the District Court noted that the witnesses had not been summoned, postponed the hearing of the case until 1 December 2003 and decided that the witnesses should be summoned to appear before it on pain of a fine of EUR 800 each. The court also issued warrants for their arrest.

11. On 1 December 2003 the District Court again noted that the witnesses had not been summoned, adjourned the case until 26 May 2004 and decided that the witnesses should be summoned to appear on pain of a fine of EUR 800 each. The court also issued warrants for their arrest.

12. On 26 May 2004 the District court noted that Ms M. had not been summoned and that Ms H. had been summoned but failed to appear. It postponed the hearing of the case until 8 December 2004, issued warrants for their arrest and decided that they should be brought to court.

13. On 8 December 2004 the District Court noted that the witnesses had not been found. The case was adjourned until further notice.

14. According to the Government, seven more attempts were made by the District Court to hold an oral hearing between 2005 and 2008. These attempts proved unsuccessful, as the witnesses could not be brought before the court in Finland.

15. In January 2008 the District Court contacted the Finnish liaison prosecutor in Estonia to explore the possibility of arranging the hearing of the witnesses through a video link.

16. In the autumn of 2008 the District Court received video-conferencing equipment. On 9 January 2009 the District Court issued a request for international legal assistance to Estonia to have the hearing by video link arranged.

17. On 23 February 2009 the District Court held its oral hearing. The applicant argued that the proceedings had exceeded a reasonable time and

were thus in breach of the Convention. In consequence, the charges against her should be dismissed. The court rejected the applicant's argument. It acknowledged that the proceedings had been delayed but noted that the delay had resulted from the unsuccessful attempts to bring the crucial witnesses before the court. It was only after the Tampere District Court was provided with video-conferencing equipment that the hearing could be held and the court was able to receive testimony from the witnesses in their own country.

18. On 3 March 2009 the District Court gave its judgment. It found that, between 4 and 11 June 2001, the applicant had provided an apartment for the practice of prostitution for two women and gained from that arrangement. It convicted the applicant of procuring and sentenced her to 30 unit fines. It also ordered her to pay the State 1,681.87 euros (EUR) representing the proceeds of the offence.

19. In assessing the gravity of the offence the court noted that the two women who had occupied the applicant's apartment had not been controlled by her, but had provided sexual services of their own free will. The court again acknowledged the excessive length of the proceedings, noting that it was not attributable to the applicant. Relying on Chapter 6, Article 7 of the Penal Code (*rikoslaki, strafflagen*) it stated that she was entitled to redress for the delay, which could be awarded either by choosing a more lenient type of punishment or by reducing the sentence. The court went on to state that the applicant had been found guilty of fairly small-scale unorganised procuring. It also took into account the short period of time over which the offence had been committed and the small amount of proceeds obtained. For those reasons, and due to the length of the proceedings, the court concluded that the applicant should be sentenced to a fine. The court also took into account the delay in the proceedings in the amount of the unit fines, without specifying the reduction in the sentence.

20. No appeals were filed with the Court of Appeal (*hovioikeus, hovrätten*) and the judgment gained legal force on 11 March 2009.

## II. RELEVANT DOMESTIC LAW

21. Chapter 6, Article 7 of the Penal Code, as amended by Act No. 515/2003, which took effect on 1 January 2004, reads in relevant parts:

“In addition to what is provided above in Article 6, grounds for mitigating the sentence that are also to be taken into consideration are

...

(3) a considerably long period that has passed since the commission of the offence;

if the punishment that accords with established practice would for these reasons lead to an unreasonable or exceptionally detrimental result.”

22. The sanction for procuring provided by the Penal Code runs from one unit fine to three years' imprisonment (Chapter 2a, Article 1(1) and Chapter 20, Article 9 (1)).

23. Chapter 17, Article 34a of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*), as amended by Act no. 360/2003, which came into force on 1 October 2003, provides the following:

“A witness...may be heard in the oral hearing without his or her appearance in person with the use of a video conference or other appropriate technical means of communication, where the persons participating in the hearing have an audio and video link with one another, if the court deems that this is suitable and:

1) the person to be heard cannot, due to illness or another reason, appear in person in the oral hearing, or his or her personal appearance in proportion to the significance of the testimony would cause unreasonable costs or unreasonable inconvenience;

2) the credibility of the statement of the person to be heard can be reliably assessed without his or her personal appearance at the oral hearing;

3) the procedure is necessary in order to protect the person to be heard or a person related to him or her in the manner referred to in Chapter 15, Article 10 (2) of the Penal Code, from a threat directed at life or health; or

4) the person to be heard has not reached the age of 15 years or he or she is mentally incapacitated.

A party shall be given an opportunity to put questions to the person being heard.

In the cases referred to above in points 1 and 2 of paragraph 1, however, a telephone may also be used at the hearing.”

## THE LAW

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

24. 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...”

25. The Government contested that argument.

26. The period to be taken into consideration began on 16 June 2001 when the police searched the applicant's apartment and ended on

3 March 2009 when the District Court gave its judgment. It thus lasted seven years, eight months and 18 days for one level of jurisdiction.

### A. Admissibility

27. The Government argued, firstly, that the applicant had received sufficient redress in that the District Court essentially mitigated the sentence due to the length factor, as provided by Chapter 6, Article 7 of the Penal Code. The court acknowledged the delay in the proceedings and stated that it was not attributable to the applicant. It followed that the applicant could no longer claim to be victim of the alleged breach of the “reasonable time” requirement. Secondly, the Government argued that the applicant failed to make use of the domestic remedies in that she did not appeal against the District Court's judgment. The Government concluded that, in any case, the application was manifestly ill-founded as the delay in the proceedings was not attributable to the State.

28. The applicant pointed out that the punishment for procuring ranged from one unit fine to three years' imprisonment. The District Court had relied on several factors, favourable to the applicant, when fixing her sentence. The length factor did not stand out as the decisive factor in that respect. The sentence imposed on the applicant, 30 unit fines, might well have been an appropriate punishment for the offence in question, even excluding the mitigation. As the reduction in the sentence had not been made in a clear and measurable manner, the applicant had not lost her victim status. The applicant further contested the Government's other arguments.

29. The Court points out that the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his or her status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51, § 66, *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001 and *Cocchiarella v. Italy* [GC], no. 64886/01, § 77, ECHR 2006-...).

30. In the present case, while it is true that the District Court stated that it was taking into account the length of proceedings in reducing the applicant's sentence, it is not apparent from its judgment what this reduction was. As the applicant pointed out, the District Court relied on several factors when fixing her sentence. It is clear from that court's reasoning that the applicant's offence was not considered grave. In the absence of any information from the Government on comparable sentencing practices (compare and contrast *Beck v. Norway*, cited above, §§ 17 and 28), the

Court cannot but subscribe to the applicant's view that the appropriate punishment in her case might well have been at the lower end of the sentencing scale, even excluding the length factor.

31. The Court acknowledges the attempt by the District Court to comply with the requirements of Article 6 § 1 of the Convention by affording the applicant redress for the excessive length of the proceedings. It is not, however, satisfied that the reduction of the sentence was measurable and had a decisive impact on the applicant's sentence. The Court thus finds that the applicant may still claim to be a victim.

32. As to the Government's argument concerning the alleged failure by the applicant to exhaust domestic remedies, the Court considers it appropriate to examine that issue in connection with the complaint concerning the alleged violation of Article 13 of the Convention.

33. Having regard to the above, the Court notes that the complaint concerning the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

34. 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).

35. The Government contended that the delay in the proceedings did not result from any inactivity of the District Court but rather from the failure of the witnesses to appear before that court. Several attempts were made to bring the witnesses to the hearing, but they proved unsuccessful. As the witnesses were citizens of another State, the court was not able to use coercive measures against them. The hearing could only be arranged after the court was provided with video-conferencing equipment and the witnesses were able to give testimony in their own country. The hearing of those witnesses constituted crucial evidence in the case.

36. The applicant contested the Government's view. If the video-conferencing equipment was the only effective means for the successful handling of cases with international connections, it should be asked why the State did not provide the court with such equipment sooner.

37. The Court finds the applicant's argument justified. It acknowledges the difficulty for the District Court to obtain the attendance of the two witnesses in the absence of the possibility to use coercive measures against them, both being foreign nationals. However, having regard to the District Court's reasoning, as summarised in paragraph 17 above, it seems that the

only obstacle to the hearing of those witnesses by means of video conferencing was the lack of suitable equipment. The Court observes that the provision enabling the hearing of a witness by such means came into force on 1 October 2003. Yet the State did not provide the Tampere District Court with video-conferencing equipment until autumn 2008 thus, in practice, hindering the application of the above-mentioned provision. The Government have not claimed that there was any other impediment to the hearing of the witnesses via video link, such as lack of co-operation by the Estonian authorities or suitable video-conferencing equipment in that country. On the contrary, it appears that the Estonian authorities acceded to the District Court's request for international legal assistance once it was made, without delay. The Court thus finds that the delay in the proceedings at hand is attributable to the State.

38. 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).

39. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicant also complained that there was no effective remedy at her disposal for her length complaint. She relied on Article 13 of the Convention, which reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

41. The Government contested that argument.

42. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

43. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint;

however, the remedy required by Article 13 must be “effective” in practice as well as in law (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI and *Cocchiarella v. Italy* [GC], cited above, §§ 74-79, ECHR 2006-...).

44. The Court reiterates that, under Finnish law, the applicant was at no stage of the proceedings able to request a domestic court to expedite the conduct of the proceedings or to file a claim for compensation either during their course or following their termination (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 186, ECHR 2006-). Moreover, given the uncertainty of whether the appellate court would eventually apply Chapter 6, Article 7 of the Penal Code and mitigate the sentence on the ground of the excessive length of the proceedings, to the extent of providing sufficient redress, the Court finds that the defendant cannot be expected to appeal against a lower court's judgment solely for that purpose. The remedy suggested by the Government also appears illusory in a situation where the proceedings have already exceeded a reasonable time. The Government have failed to substantiate the existence of any remedy whereby the applicant could have obtained redress for her complaint.

45. It follows that the applicant did not have an effective remedy in the present case. There has thus been a breach of Article 13 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

48. The Government contested the claim submitting that any compensation under that head should not exceed EUR 2,000.

49. The Court considers that it should award the full sum claimed.

#### B. Costs and expenses

50. The applicant also claimed EUR 2,305.80 (inclusive of value-added tax) for the costs and expenses incurred before the Court.

51. The Government contested the claim. Any award should not exceed EUR 1,400.

52. 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 documents in its possession and the above criteria, the Court considers that the sum claimed should be awarded in full.

### **C. Default interest**

53. 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* that there has been a violation of Article 13 of the Convention in that connection;
4. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 2,305.80 (two thousand three hundred and five euros and eighty cents), 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.

Done in English, and notified in writing on 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President