



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

FOURTH SECTION

CASE OF SUURIPÄÄ v. FINLAND

(Application no. 43151/02)

JUDGMENT

STRASBOURG

12 January 2010

FINAL

12/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Suuripää 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,

David Thór Björgvinsson,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 43151/02) 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 Keijo Tapani Suuripää (“the applicant”), on 4 December 2002.

2. The applicant was represented by Mr Simo Ellilä, 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. The applicant alleged, in particular, that the Supreme Court had reversed the Court of Appeal’s judgment to his disadvantage without holding an oral hearing and that the criminal proceedings against him had been excessively long.

4. On 20 December 2005 and 3 December 2008 the President of the Fourth Section decided to communicate the complaints concerning the excessive length and the lack of an oral hearing to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Espoo.

6. In 1992 he became a member of a police rally driving club called Handcuff Team Police Finland ry. In 1997, he was elected Chairman of the club.

7. In May 1998, the applicant took part in a rally in Belgium with a car he had rented. As he was bringing the car back to Finland, the Customs Authorities took note of the fact that the registration of the car had been changed. They started a criminal inquiry into the matter. On 7 July 1998, the Office of the Prosecutor General (*Valtakunnansyyttäjänvirasto, Riksåklagarämbetet*) decided that a police investigation should be carried out into whether the applicant had been aware of the change in the registration.

8. On the same date, the Office of the Prosecutor General decided that a police investigation should also be carried out into whether the applicant had accepted bribes while collecting funds for the rally club. In exchange for the money received, the donor's sticker appeared on the car. The present application concerns these proceedings.

9. The police investigation of the bribery case commenced on 7 July 1998 and the applicant was arrested the next day. It appears that the applicant was informed about the suspicion of offences only when arrested. He was suspended from his post in the Police Department of the Ministry of the Interior (*sisäasiainministeriön poliisiosasto, inrikesministeriets polisavdelning*) from 8 July 1998 until 15 February 2001, that is, for a period of two years and seven months. The Ministry of the Interior withheld half of the applicant's salary for the periods from 9 July 1998 to 9 August 1998 and from 8 November 1998 to 14 February 2001.

10. On 4 October 1999 R., a State Prosecutor (*valtionsyyttäjä, statsåklagare*), preferred charges against the applicant for a bribery violation under Chapter 40, Section 3, of the Penal Code (*rikoslaki, strafflagen*). Alternatively, the applicant was charged with negligent violation of official duty under Section 11 of the same Chapter. On 18 October 1999 the applicant was notified of the charge. Because he held the position of a referendary to the Council of State (*Valtioneuvosto, Statsrådet*), the case was to be tried in the Helsinki Court of Appeal (*hovioikeus, hovrätten*).

11. Following a plea by the applicant challenging the impartiality of the State Prosecutor, the Court of Appeal held two oral hearings on 19 and 25 November 1999 after which it held, in a decision given on 29 November 1999, that the State Prosecutor was disqualified. The applicant had claimed that the investigation had started after receipt of a letter of denunciation from a police officer, and that the prosecutor had made this letter disappear in order not to have to show it to the defence. The Court of Appeal did not confirm any such action on the part of the prosecutor, but nevertheless held that, due to these issues, the impartiality of

the prosecutor might appear to be undermined and he was therefore disqualified.

12. Subsequently, the applicant's case was assigned to another State Prosecutor, K. On 2 February 2000 the applicant received from the new prosecutor a document entitled "Revised charge" which was dated 31 January 2000. It stated that the applicant had requested, and the club had subsequently received, contributions totalling 18,000 Finnish marks (FIM: approximately 3,000 euros (EUR)) from a company which had a business relationship with the Ministry of the Interior. The money in question had been intended expressly as financial support for the applicant (the navigator) and another policeman (the driver) in the rally. The prosecutor took the view that successful competing abroad would not have been possible without such financial support and therefore it was to be considered a benefit within the meaning of the Penal Code. There was no information as to how the financial support had affected the applicant's performance of his duties but this personal benefit had been conducive to weakening confidence in the impartiality of the authority's activities because the applicant could, due to his position, have influenced the police department's use of funds and acquisitions, at least for projects for which he had been responsible. During 1996 and 1997 the applicant had held the position of presenting official and in practice had authorised orders or checked the invoices for acquisitions amounting to FIM 52,410 (approximately EUR 10,800) made by a person reporting to the applicant from the company now in issue.

13. The applicant replied in writing to both the initial and the revised charges, arguing that the contributions were not financial support, a gift or an unlawful benefit but payment for advertising. He submitted, *inter alia*, that he had sold advertisements and concluded such contracts in the name of the club, which had received the payments and entered them in the books. His superiors had been aware of this. The applicant had not made any IT equipment acquisitions and could not even have influenced acquisitions. None of the facts mentioned in the bill of indictment could have been conducive to weakening confidence in the impartiality of the authority's activities.

14. On 27 March 2000 the Court of Appeal held a preparatory hearing. The oral hearing was held from 8 to 10 May and on 15 and 25 May 2000.

15. On 22 June 2000, after hearing 19 witnesses and examining a significant amount of documentary evidence, the Court of Appeal acquitted the applicant.

16. The court found that the applicant had accepted a benefit connected to his work but that his possibilities to influence IT spending were too insignificant for his actions to lead to loss of confidence in the impartiality of the authority's activities from an outsider's viewpoint. He had not made any decision to acquire IT equipment from the company or in any other way

tried to influence the procedure with regard to acquisition from that company. The benefit had been paid to the club, which had allocated it to the applicant and it had been based on advertising and co-operation contracts concluded by the applicant on behalf of the club. In those transactions the applicant had mentioned his job title and office.

17. As to the conclusions to be drawn, the Court of Appeal noted that the central issues to be decided were whether the financial contributions had been a benefit within the meaning of Chapter 40, Section 3, of the Penal Code, whether the applicant, on the basis of his post, had had the possibility to influence the acquisitions from the company and whether this benefit led to a loss of confidence in the impartiality of the authority's activities. The court answered the first question in the affirmative. As to the second question, it noted that the applicant's influence was too insignificant. As to the third question, having regard to his limited influence, the court held that it also had to be answered in the negative. Accordingly, the bribery violation charge had to be dismissed.

18. As to whether the applicant was guilty of negligent violation of official duty, the Court of Appeal found that confidence may be weakened more easily for the purposes of negligent violation of official duty compared to bribery violation. It concluded that confidence in the applicant as an official, and in the police as an authority, had been weakened within the meaning of Section 15 of the State Civil Servant Act (*valtion virkamieslaki, statstjänstemannalagen*). However, the court found that the acts were as a whole trivial having regard to their harmful and detrimental effect and other circumstances and therefore it also dismissed the charge for negligent violation of official duty.

19. The prosecutor appealed. He renewed his claims and took the view that the credibility of the testimonies received was not at issue but that the case turned on the conclusions to be drawn from those testimonies. In his reply to the prosecutor's appeal the applicant submitted that he did not wish to have an oral hearing if the decision of the Court of Appeal was to be upheld. If, however, the decision was to be amended to his disadvantage, that could not take place without a new oral hearing.

20. On 3 November 2000 the applicant filed a complaint with the Parliamentary Ombudsman (*eduskunnan oikeusasiamies, riksdagens justitieombudsman*) which gave a decision on 31 January 2001. The Parliamentary Ombudsman also informed the applicant that he himself could request the Ministry of the Interior to terminate the suspension from office, which he did on 5 February 2001. Following the decision by the Parliamentary Ombudsman recommending that a new decision on the suspension of the applicant be adopted on the basis of the essentially changed circumstances, the Police Department granted a termination petition on 7 February 2001. According to the decision of 9 February 2001 by the Ministry of the Interior, the judgments concerning the applicant had

not become final. However, in the decision it was noted that the circumstances had essentially changed since the time of his suspension from office, and that waiting for the final judgments could take a long time. Therefore, the Ministry of the Interior held that it was unreasonable to continue the applicant's suspension from office after 15 February 2001 and terminated it on that date.

21. On 13 June 2002, the Supreme Court (*korkein oikeus, högsta domstolen*), without holding an oral hearing, overturned the lower court's decision and convicted the applicant of a bribery violation, sentencing him to a fine of EUR 532 and ordering the proceeds of the crime, EUR 3,027.38, forfeit to the State. It noted that on the applicant's request the company had, via the club, on the basis of advertising and co-operation contracts paid FIM 18,000 to him, who had held a post as senior crime inspector in the Police Department of the Ministry of the Interior. The money had been used to cover costs incurred by the applicant and his rally partner in their police rally activities, carried out chiefly during their spare time. According to the contracts, the company's sticker was displayed on the car. The Police Department of the Ministry of the Interior had, between 1996 and 1998, acquired at least FIM 200,000 (approximately EUR 40,500) worth of IT equipment from the company. Equipment had also been acquired for persons reporting to the applicant and five invoices for a total of FIM 52,410 from 1996 and 1997, mentioned in the Court of Appeal's judgment, had either been checked by the applicant or his name had been the reference on the invoice.

22. The court went on:

"In its judgment the Court of Appeal has given an account of what has become apparent as to the applicant's position and the related possibilities to influence acquisitions of IT equipment, [the company's] relevant equipment deliveries, the applicant's police rally activity and the financial support paid by [the company] and its nature.

In the Supreme Court the questions to be examined concern the legal assessment of the application of criminal law to the applicant's actions and the possible consequences.

The public prosecutor has taken the view that the applicant is guilty of a bribery violation within the meaning of Chapter 40, Section 3, of the Penal Code or at least of negligent violation of official duty within the meaning of Section 11 of the same Chapter. According to the first-mentioned provision, an official must be convicted, if the act is not punishable as the acceptance or aggravated acceptance of a bribe, of a bribery violation if he demands, receives or accepts a gift or other benefit meant for himself or for another person or demands or accepts a promise or offer to that effect which is conducive to weakening confidence in the impartiality of the authority's activities. The applicability of the provision on negligent violation of official duty requires that a public official, when acting in his or her office, has through carelessness violated his or her official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole and taking

into consideration its detrimental and harmful effect and the other circumstances connected with the act, is not of a trivial nature. The prosecutor considers that the applicant has breached Section 15 of the State Civil Servant Act. It provides that “[a] public official may not demand, accept or receive financial or other benefit which may weaken confidence in the official or the authority.”

The sum of FIM 18,000 paid by [the company] for the promotional spot on the car of the applicant and his rally partner has been allocated, as noted in the Court of Appeal’s judgment, to the use of the acquirer of the contract, the applicant. From the applicant’s point of view, the essential content of the advertising contracts has been to obtain financial support to cover costs resulting from his leisure activity. This comes down to a benefit within the meaning of Section 15 of the State Civil Servant Act and Chapter 40, Section 3, of the Penal Code. The question of how much of his own assets the applicant has used for his hobby lacks significance in this assessment.

For the act to be a bribery violation, there has to be some sort of a link between the benefit and the official’s service. As the Court of Appeal has also noted, the bribery provisions may also cover benefits received by an official in his or her spare time or benefits meant to be used for such a purpose. It has been clear to the parties to the advertising and co-operation contracts that they have amounted to contributions to the rally activities of policemen, in which the applicant has been engaged. The financial support acquired by the applicant for his hobby from [the company], which has been doing business with his office, is linked in such a way to the applicant’s position as to be sufficient for the purposes of the penal provision concerning a bribery violation. Whether or not the applicant has sent to [the company] written co-operation offers explicitly disclosing his official title or office is not decisive.

The application of the penal provision concerning a bribery violation requires that the benefit received has been conducive to weakening confidence in the impartiality of the authority’s activities. Thus it does not require, as does acceptance of a bribe within the meaning of Chapter 40, Section 1, of the Penal Code, that the official has demanded or received the benefit for an action taken in office, nor that through the benefit [someone] has influenced or tried to influence that action or that the benefit would have been conducive to influencing that action. What is relevant for the purposes of a bribery violation is whether the demanding, receipt or acceptance of the benefit typically has been such that it normally, from an outsider’s viewpoint, weakens confidence in the impartiality of the authority’s activities. By “an authority’s activities” in this context is meant the activities carried out in general in the position in question. What the provision aims to ensure is that an official does not act in a manner conducive to arousing suspicion of the existence of inappropriate motives in the authority’s activities. In the assessment of an activity, regard must be had to the fact that confidence in an authority’s activities may be particularly vulnerable to weakening.

Due to the nature of police activity, the neutrality and impartiality of the police and an individual policeman are required to meet especially high standards. The applicant has held a significant post as a senior crime inspector in the police activity unit of the Police Department of the Ministry of the Interior and as the person responsible for projects, to which position, from an outsider’s viewpoint, is attached an extensive possibility to influence. The fact that the applicant has repeatedly accepted financial support from a company with which his department has had a continuous business relationship, is likely to raise suspicion in outsiders as to the impartiality of the handling of purchases connected with police activity. In the assessment of the case the

extent to which the applicant has *de facto* influenced the coming about or the continuation of the business relationship is not decisive. Having regard to the aforementioned position of the applicant within the Police Department, and the relationship between it and the provider of the benefit, the applicant's actions have been conducive to weakening confidence in the impartiality of the authority's activities for the purposes of the penal provision on bribery violation.

The above-mentioned actions by the applicant fulfil the constituent elements of a bribery violation only if it can be judged that he has acted with intent. As the case concerns the receipt of personal financial benefits which are connected with the authority's activity, the non-existence of regulations on fund-raising for the police associations or the knowledge of the applicant's superiors of his police rally hobby have no relevance in the assessment of intent. Nor can actions of an official be assessed on the same basis as regards fund-raising of motorsports or clubs. Having regard to the applicant's position, training and duties, the Supreme Court considers that he must have understood that his acts were conducive to weakening confidence in the impartiality of the authority's activities.

...

Taking into account the considerations on which the Supreme Court's decision is based, an oral hearing is not needed."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Penal Code and State Civil Servant Act

23. Chapter 40, Section 3, of the Penal Code provides:

"If a public official, for himself or herself or for another

1) asks for a gift or other unlawful benefit or otherwise takes an initiative in order to receive such a benefit, or

2) accepts or agrees to a gift or other benefit or agrees to a promise or offer of such a gift or other benefit

where such actions are conducive to weakening confidence in the impartiality of the authority's activities, he or she shall be sentenced, if the act is not punishable as the acceptance or aggravated acceptance of a bribe, for a bribery violation to a fine or to a maximum term of six months' imprisonment."

24. Chapter 40, Section 10 of the same Code provides:

"If a public official, when acting in his or her office, through negligence or carelessness violates his or her official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole and taking into consideration its detrimental and harmful effect and the other circumstances connected with the act, is not of a trivial nature, he or she shall be sentenced for negligent violation of official duties to a warning or to a fine."

25. Section 15 of the State Civil Servant Act provides:

“A public official may not demand, accept or receive a financial or other benefit which may weaken confidence in the official or the authority.”

B. Code of Judicial Procedure and Criminal Procedure Act

26. Chapter 26, Section 15, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*) provides:

“1) An court of appeal shall hold a main hearing regardless of whether one has been requested, if a decision on the matter turns on the credibility of the testimony admitted in the district court or the findings of the district court in an inspection, or on new testimony to be admitted in the court of appeal. In this event, the evidence admitted in the district court shall be readmitted and the inspection carried out again in the main hearing, unless there is an impediment to the same.

2) If the evidence referred to in paragraph 1) cannot be readmitted in the main hearing, the decision of the district court shall not be changed for that part, unless the evidence for a special reason is to be assessed differently. However, a decision on a charge may be changed in favour of the defendant of a criminal case.”

27. Chapter 30, Section 20, subsection 1, of the same Code provides:

“Where necessary, the Supreme Court shall hold an oral hearing where the parties, witnesses and experts may be heard and other information admitted. The oral hearing may be restricted to a part of the case on appeal.”

28. According to Chapter 5, Section 13, subsection 1, of the Criminal Procedure Act (*laki oikeudenkäynnistä rikosasioissa, lagen om rättegång i brottmål*; Act no. 689/1997), if the respondent has been detained, a travel ban has been imposed on him or her or if he or she has been suspended from office, the main hearing must be organised within two weeks from the lodging of the criminal charges. If the decision on the above measures has been taken after the lodging of the charges, the period is calculated from the date of that decision.

C. Forum

29. According to section 39 of the Standing Orders of the Council of State (*valtioneuvoston ohjesääntö, reglementet för statsrådet*; Act no. 1522/1995, as in force at the relevant time), charges against a civil servant, who held a position of a referendary to the Council of State, were to be examined by the Helsinki Court of Appeal as the first instance. This provision was first transferred by Act no. 145/2000, which entered into force on 1 March 2000, to the Act on Council of State (*laki valtioneuvostosta, lagen om statsrådet*; Act no. 78/1922). The provision was

then repealed by the Act no. 962/2000, which entered into force on 1 December 2000.

D. Supreme Court's practice

30. According to the Supreme Court's precedent cases *KKO 1992:140* and *KKO 1995:115*, a court of appeal could not reverse the outcome of the district court without holding an oral hearing and hearing the witnesses directly.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LACK OF AN ORAL HEARING

31. The applicant complained under Article 6 § 1 of the Convention about the lack of an oral hearing during the Supreme Court proceedings. The Supreme Court had reversed the Court of Appeal's judgment to the applicant's disadvantage without holding an oral hearing.

32. Article 6 § 1 of the Convention reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... public hearing within a reasonable time by [a] ... tribunal ..."

33. The Government contested that argument.

A. Admissibility

34. 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

35. The applicant maintained that the Court of Appeal had assessed his case on the basis of the witness statements. According to him, the conclusions made by the Court of Appeal could not be assessed by the Supreme Court in any other way, certainly not to his disadvantage, without holding an oral hearing.

36. The Government pointed out that the assessment made by the Supreme Court of the applicant's possibilities to influence IT purchases did

not differ from that made by the Court of Appeal. Instead, the Supreme Court had made a different legal assessment of the case, which had not been dependent on the extent to which the applicant had *de facto* influenced the business relationship in question. The Supreme Court's assessment was thus a pure legal assessment. Moreover, it appeared that the applicant had only wanted to have an oral hearing if the assessment of evidence by the Supreme Court were to differ from that made by the Court of Appeal. However, according to Finnish law, such a conditional request for an oral hearing was not possible. There had been no dispute over facts as the Supreme Court had not reassessed the evidence presented in the Court of Appeal. The different outcomes had been due to a different legal interpretation by the Supreme Court of the essential elements of the offence and their application to the facts already established by the Court of Appeal.

37. The Court reiterates at the outset that the entitlement to a "public hearing" in Article 6 § 1 necessarily implies a right to an "oral hearing". However, the obligation under Article 6 § 1 to hold a public hearing is not an absolute one. Thus, a hearing may be dispensed with if a party unequivocally waives his or her right thereto and there are no questions of public interest making a hearing necessary. A waiver can be explicit or tacit, in the latter case for example by refraining from submitting or maintaining a request for a hearing (see, among other authorities, *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 66, Series A no. 171-A; and *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263).

38. In the present case, the applicant did not request an oral hearing to be held before the Supreme Court unless the court were to assess the evidence differently to the Court of Appeal. It was in the applicant's interest to have an oral hearing only if his acquittal were to be changed. The Court considers that this kind of request, although conditional, suffices to show that the applicant did not intend to waive his right to an oral hearing. It remains to be examined whether the circumstances of the applicant's case were such as to justify the absence of an oral hearing.

39. The Court points out that in proceedings before a court of first and only instance there is normally a right to a hearing (see *Håkansson and Sturesson v. Sweden*, cited above, § 64). However, the absence of a hearing before a second or third instance may be justified by the special features of the proceedings at issue, provided a hearing has been held at first instance (see *Helmers v. Sweden*, 29 October 1991, § 36, Series A no. 212-A). Accordingly, unless there are exceptional circumstances which justify dispensing with a hearing, the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least before one instance. A hearing may not be necessary, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see, *inter alia*, *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Lundevall v. Sweden*, no. 38629/97, § 34,

12 November 2002; *Salomonsson v. Sweden*, no. 38978/97, § 34, 12 November 2002; and *mutatis mutandis*, *Fredin v. Sweden* (no. 2), 23 February 1994, §§ 21-22, Series A no. 283-A; *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312; and *Elo v. Finland*, no. 30742/02, § 35, 26 September 2006).

40. The Court reiterates that a person charged with a criminal offence should, as a general principle based on the notion of a fair trial, be entitled to be present at the first-instance hearing. However, the personal attendance of the defendant does not necessarily take on the same significance for an appeal hearing. Indeed, even where an appellate court has full jurisdiction to review the case on questions both of fact and law, Article 6 does not always entail the right to a public hearing and to be present in person. Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the applicant (*Belziuk v. Poland*, 25 March 1998, § 37, *Reports of Judgments and Decisions* 1998-II; and *Kremzow v. Austria*, 21 September 1993, §§ 58-59, Series A no. 268-B).

41. In the present case, the Court notes at the outset that a public hearing was held at first instance, at which the applicant and several witnesses were heard.

42. It remains to be examined whether a departure from the principle that there should be such a hearing could, in the circumstances of the case, be justified at the appeal stage by the special features of the domestic proceedings viewed as a whole. In order to decide on this question, regard must be had to the nature of the Finnish appeal system, to the scope of the Supreme Court's powers and to the manner in which the applicant's interests were actually presented and protected before the Supreme Court particularly in the light of the nature of the issues to be decided by it (see, *mutatis mutandis*, *Ekbatani v. Sweden*, 26 May 1988, § 28, Series A no. 34).

43. The Court observes that the Finnish appellate courts' jurisdiction is not limited to matters of law but also extends to factual issues. Under Chapter 26, section 15, of the Code of Judicial Procedure, a court of appeal shall hold an oral hearing if the credibility of the testimony admitted in the district court is at issue. If such evidence cannot be readmitted in the oral hearing, the decision of the district court shall not be changed for that part, unless there are special reasons to assess the evidence differently. This provision, however, only applies when the appellate court is a court of appeal. In the instant case it was the Supreme Court that was called upon to examine the appeal as to both the facts and the law.

44. The Court notes that, according to its own words, the Supreme Court did not reassess the testimony received nor the facts established by the Court of Appeal but only gave a different legal meaning to these facts. This

different legal assessment led to a different outcome to that of the Court of Appeal. It is true that, in the circumstances of the instant case, the issue in question was not the credibility of the witness statements as such but rather how they were legally interpreted. The Supreme Court's examination thus focused mainly on legal questions without modifying the facts established by the Court of Appeal. The Court considers, however, that in cases like the present one, the facts and the legal interpretation can be intertwined to an extent that it is difficult to separate the two from each other. Although the Supreme Court examined the case mainly from the legal point of view and despite the fact that the facts established by the Court of Appeal were not disputed, the Supreme Court had to some extent to make its own assessment for the purposes of determining whether the facts provided a sufficient basis for convicting the applicant. This is especially true with regard to the question of intent which was expressly examined only by the Supreme Court. Moreover, when deciding on sentence, the Supreme Court did not even have the benefit of having a prior assessment of the question by the lower court which had heard the applicant directly (see *Botten v. Norway*, 19 February 1996, §§ 49-50, *Reports* 1996-I).

45. In addition, bearing in mind the character of the offence in question, the Court considers that the outcome of the proceedings necessarily adversely affected the applicant's professional career and reputation (see, *mutatis mutandis*, *Helmers v. Sweden*, cited above, § 38). Indeed, criminal conviction and sentence for a bribery violation is a serious matter for any public official.

46. The Court notes that it appears that neither the applicant nor his counsel were provided with any opportunity to put forward their views in writing when it became apparent that the Supreme Court was going to change the outcome of the Court of Appeal's judgment. Even though the applicant was given an opportunity to reply to the public prosecutor's renewed claims and he was at all times legally represented in the appeal proceedings, he or his counsel did not have at any point of the proceedings a possibility, either in writing or orally, to react to the fact that the Supreme Court was going to convict the applicant and to sentence him (see *mutatis mutandis* *Sigurþór Arnarsson v. Iceland*, no. 44671/98, § 36, 15 July 2003; and *Igual Coll v. Spain*, no. 37496/04, § 37, 10 March 2009).

47. Taking into account what was at stake for the applicant, the Court does not consider that the issues to be determined by the Supreme Court when convicting and sentencing the applicant - and in doing so overturning his acquittal by the Court of Appeal - could, as a matter of fair trial, properly have been examined without a direct assessment of the evidence given by the applicant in person.

48. Having regard to the foregoing, to the nature of the issues adjudicated on and to the fact that the Supreme Court acted in the present case as the first appellate court, the Court finds that, in the circumstances of

the present case, the Supreme Court could not adequately resolve the applicant's case without holding an oral hearing. There has accordingly been a breach of Article 6 § 1 of the Convention in respect of the lack of an oral hearing.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

49. The applicant also complained that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement as provided in Article 6 § 1 of the Convention.

50. The Government contested that argument.

A. Admissibility

51. 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

52. The period to be taken into consideration began on 8 July 1998 when the applicant was apprehended as a suspect in the pre-trial investigation and ended on 13 June 2002 when the Supreme Court rendered its judgment. The proceedings thus lasted some three years and eleven months at two levels of jurisdiction.

53. 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).

54. The Government pointed out that the pre-trial investigation had lasted nine months and the consideration of charges six months in the present case. They had thus been swift. The change of the State Prosecutor, requested by the applicant, had resulted in a delay of about two months during the Court of Appeal proceedings which had, however, been concluded in about eight months. The Court of Appeal proceedings had thus been conducted speedily, as requested by both State Prosecutors. The proceedings before the Supreme Court had lasted almost one year and ten months. The national legislation did not impose a similar urgency requirement on the Supreme Court as was applicable to the courts of appeal but nevertheless these proceedings had been compatible with the

“reasonable time” requirement. There had thus not been any unnecessary periods of inactivity attributable to the courts or other national authorities. As to the complexity, the Government pointed out that cases like the present one involving a high-ranking public official, the public interest and the need to maintain confidence in the activities of public authorities required particularly careful investigation. The case had been very extensive and demanding both judicially and in practical terms. The thorough examination of the case had also been in the applicant’s interest.

55. As to the applicant’s suspension from office, the Government maintained that this precautionary measure had been necessary as the criminal suspicions against the applicant had been considered essentially to affect his qualifications to perform his official duties which included, *inter alia*, duties related to economic offences and combating crime. The courts hearing the criminal charges had not been competent to assess the applicant’s suspension as that decision had been an administrative one. The applicant had appealed against the administrative decision in a separate set of proceedings which were of no significance in relation to the length of the criminal proceedings at stake in the present case.

56. As to the diligence requirement in Chapter 5, Section 13 of the Criminal Procedure Act, the Government pointed out that the applicant had not invoked the said provision before the domestic courts. The provision only concerned the time-limit for holding an oral hearing but it did not apply to the present case as it had been heard by a court of appeal as the first instance, and not by a district court. Instead, the Court of Appeal had applied a similar provision in the Decree of Courts of Appeal, according to which primacy must be given to cases against persons suspended from office. No significance could thus be given to the diligence requirement in Chapter 5, Section 13 of the Criminal Procedure Act in the present case.

57. The applicant maintained that his case had been neither complex nor time-consuming. Nor could he be regarded as having contributed to the length of the proceedings by filing a disqualification plea as he had only exercised his legal rights in the case. It was to be noted that the Court of Appeal had accepted his plea.

58. As to his suspension from office, the applicant noted that, according to national law, a suspension from office was comparable to imprisonment and constituted, together with the withdrawal of salary, a severe punishment for a suspected criminal act. These issues were significant in the present case as cases against suspended persons, like those against detained persons, had always to be treated urgently.

59. As to the diligence requirement in Chapter 5, Section 13 of the Criminal Procedure Act, the applicant contested not having relied on the provision in question. He had done so orally on receipt of the summons. The provision did apply to the present case but it had not been complied with by the Court of Appeal.

60. 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; and *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D). 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. It notes in particular that the Government have not explained why the case was not dealt with more expeditiously, having regard to the terms of the relevant national provisions. It observes that the applicant's situation fell within the ambit of cases that had to be treated urgently. He was suspended from office, due to the pending criminal proceedings, for a period of two years and seven months and for most of this time he received only half of his salary. However, the proceedings against him lasted almost four years.

61. 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.

62. There has accordingly been a breach of Article 6 § 1 of the Convention in respect of the length of the proceedings.

III. REMAINDER OF THE APPLICATION

63. The applicant also complained under Article 6 § 1 of the Convention that the evaluation of charges had been carried out by a disqualified prosecutor. He claimed that the new prosecutor had not evaluated the charges anew, begun a new trial or preferred a new charge. He further complained, under Articles 6 § 1 and 7 of the Convention, that the provision concerning the charge of a bribery violation in the Penal Code was so unclear that an official could not know beforehand whether his activities to collect money for an association would be assessed as criminal. Lastly, he complained that he had been discriminated against on grounds of his official rank because, if the charge had been dealt with by the District Court, an oral hearing would have been held before the appellate court, namely, the Court of Appeal. Because of his capacity as a high-ranking government official, the case had first been heard by the Court of Appeal. Consequently, the Supreme Court had been the first appellate court. In addition, the way in which the applicant had been treated during the national procedure violated the principle of equality.

64. 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 pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 26.125,73 euros (EUR) plus interest in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

67. The Government pointed out that there was no causal link between the applicant’s pecuniary damage claims and the alleged violations of Article 6 § 1 of the Convention. As to the non-pecuniary damage, the Government considered that the applicant’s claims were excessive as to *quantum* and that the compensation for non-pecuniary damage in respect of the lack of an oral hearing should not exceed EUR 1,300 and in respect of the excessive length EUR 800.

68. The Court does not discern any causal link between the violations found and the pecuniary damages alleged; it therefore rejects these claims. On the other hand, it awards the applicant EUR 6,250 in respect of non-pecuniary damage.

B. Costs and expenses

69. The applicant also claimed EUR 12,405.38 for the costs and expenses incurred before the domestic courts and EUR 5,190.81 for those incurred before the Court.

70. The Government contested these claims. The fact that not all of the applicant’s complaints had been communicated should be taken into account. As to the costs and expenses before the domestic courts, the Government noted that no documentation had been submitted as required by Rule 60 of the Rules of Court. No award should thus be made under this heading. As to the costs and expenses incurred before the Court, the Government observed that the claims included the applicant’s own costs and expenses for which he had not submitted any supporting documents and which were normally not even compensated. In any event, the Government considered that the applicants’ claims concerning his counsel and the translation costs were excessive as to *quantum* and that any award under this head should not exceed EUR 500 (inclusive of value-added tax).

71. 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 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

72. 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 complaints concerning the lack of an oral hearing and the 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 in respect of the lack of an oral hearing;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;
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 6,250 (six thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five hundred 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President