



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

FOURTH SECTION

CASE OF NOUSIAINEN v. FINLAND

(Application no. 45952/08)

JUDGMENT

STRASBOURG

23 February 2010

FINAL

23/05/2010

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

In the case of Nousiainen 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 2 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 45952/08) 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 two Finnish nationals, Mr Toivo Pekka Nousiainen (“the first applicant”) and Mr Veli-Pekka Nousiainen (“the second applicant”), on 22 September 2008.

2. The applicants were represented by Mr Harri Nevala, a lawyer practising in Oulu. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 14 May 2009 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1931 and 1958 and live in Oulu and Espoo respectively.

5. The applicants are father and son. On 17 June 2000 they were involved in an incident in which the first applicant was attacked by a group

of men. The second applicant went to his rescue. They both sustained injuries and the second applicant's camera and mobile phone were broken.

6. The applicants filed a criminal complaint with the police on that same date. On the following day, one of the alleged attackers filed a criminal complaint against the second applicant alleging that he had kicked and hit him during the incident.

7. On 19 June 2000 the police questioned the second applicant as an injured party. He then informed the police that he would make a claim for damages in the court proceedings. At the end of the interview the police took a brief statement from the second applicant in respect of the criminal complaint filed against him. He did not contest the alleged conduct but maintained that it had been justified.

8. On 6 July 2000 the police questioned the first applicant as an injured party. He also informed the police about his intention to make a claim for damages in the court proceedings.

9. On 19 March 2003 the second applicant was again questioned by the police. He was first heard as a suspect and then as a victim.

10. On 8 July 2003 the public prosecutor filed an application for a summons with the Iisalmi District Court (*käräjäoikeus, tingsrätten*). Charges were brought against two persons, L. and R., for robbery. R. was also charged with having physically assaulted the second applicant. The second applicant, for his part, was charged with having physically assaulted L. The applicants later joined the charges as far as they were the alleged victims.

11. On 23 September 2003 the first applicant submitted to the court a specified claim for damages. Apparently the second applicant also filed such a claim prior to the trial.

12. On 4 May 2005 the District Court held an oral hearing during which it received witness testimonies and written evidence.

13. On 1 June 2005 the court issued its judgment. It found that L. and R. had used physical violence against the first applicant. They were convicted of assault and sentenced to a fine respectively. They were also ordered to pay the first applicant some EUR 400 in damages and the second applicant EUR 300 for the camera. The court further found that the second applicant had physically assaulted L. for the purpose of defending his father. As he had used more violence than had been necessary in the circumstances, he was convicted of assault and sentenced to a 30 days' conditional prison term. He was also ordered to pay damages to L. The court dismissed the charge concerning the alleged assault against the second applicant for lack of evidence.

14. Both applicants appealed against the judgment to the Itä-Suomi Court of Appeal (*hovioikeus, hovrätten*) renewing their initial claims regarding punishment and damages, in so far as they had been rejected by the District Court. The second applicant also requested that he be acquitted

or, in the alternative, exempted from punishment and liability in damages. On 18 September 2007, having held an oral hearing, the court came to the same conclusion as the District Court. It upheld the lower court's judgment giving some further reasons of its own.

15. On 11 April 2008 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. Chapter 3, section 1 of the Criminal Procedure Act (*laki oikeudenkäynnistä rikosasioissa, lag om rättegång i brottmål*, Act no. 689/1997) provides that a civil claim arising out of the offence for which a charge has been brought may be heard in connection with the charge. If such a claim is made separately, the provisions on civil procedure apply. Chapter 3, section 9 (1) stipulates that if charges are brought by a public prosecutor, that authority shall also pursue a related claim for damages, if the injured party so requests. The prosecutor may refuse the request only for reasons specified in the Act. Chapter 3, section 10 (1) further provides that if the injured party has during the pre-trial investigation or otherwise notified the prosecutor that he or she wishes to pursue a civil claim arising out of the offence, or if the prosecutor has refused to present that claim, the injured party is to be afforded an opportunity to submit his or her claim in writing to the court.

17. It is common practice that the injured party pursues a claim for damages in the criminal proceedings instead of instituting separate civil proceedings.

THE LAW

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

18. The applicants 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 his civil rights and obligations or any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

19. The Government contested that argument. They submitted that the proceedings began, in respect of both applicants, on 17 June 2000 when they filed a criminal complaint with the police and that the proceedings thus

lasted nearly seven years and ten months. However, there were considerable delays in the proceedings, which were not attributable to the State.

20. The Court does not share the Government's opinion as to the date which marks the beginning of the period to be taken into consideration. The Court notes that at the time of filing the criminal complaint, the applicants did not make any claims for compensation. It was only when they were respectively questioned during the pre-trial investigation that they informed the police of their intention to pursue a civil claim against the attackers in the subsequent criminal proceedings. As regards the first applicant that date was 6 July 2000. As to the second applicant that date was 19 June 2000, when he was also first questioned as a suspect. The Court would also note that even though the first applicant did not submit a specified claim for damages to the District Court until 23 September 2003, he did not have any means of speeding up the pre-trial investigation, the consideration of charges or the court proceedings prior to the date when that court asked him to submit his civil claims, in accordance with Chapter 3, section 10 (1) of the Criminal Procedure Act. The Court also observes that it is common practice in Finland to pursue civil claims in the context of criminal proceedings instead of instituting separate civil proceedings (see paragraphs 16 and 17 above).

21. The Court notes that the proceedings ended, in respect of both applicants, on 11 April 2008, when the Supreme Court refused leave to appeal. They thus lasted seven years, nine months and seven days and seven years, nine months and 24 days, respectively, for three levels of jurisdiction.

A. Admissibility

22. The Court notes that the application 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

23. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

24. The Government argued that the second applicant was responsible for a delay of almost three years and ten months in the proceedings. Firstly, during the pre-trial investigation the police had had difficulties in reaching

the second applicant after his first questioning on 19 June 2000. They had visited his home in Lapinlahti several times using different means, but the second applicant could not be found. His whereabouts had been unknown even to his parents. He had not been reached until 19 March 2003 for further questioning. Secondly, the second applicant had delayed the District Court proceedings by causing the cancellation of the court's oral hearing on four occasions between 15 January 2004 and 1 February 2005. On the first three occasions the applicant had failed to appear in the hearing claiming that he was ill. On the last mentioned date the hearing had been cancelled because the court had been unable to serve the summons on the second applicant. A certificate of impediment dated by the bailiff on 31 January 2005 showed that the applicant had also been evading that authority at the time. The Government further submitted that the Court of Appeal had held an oral hearing on request of the applicants. In the appellate proceedings one of the applicants had presented a fresh piece of evidence. Also, the counsel of one of the applicants had been changed during those proceedings.

25. The applicants contested the Government's arguments. The second applicant submitted that his permanent residence had been in Espoo, as stated in the pre-trial investigation reports, even though he had worked for some four months in Lapinlahti after the first police questioning. He also denied having been responsible for any of the delay in the court proceedings.

26. The Court observes that the alleged attempts by the police to reach the applicant for further questioning and the grounds for the cancellation of the District Court's oral hearing cannot be verified from the documents submitted by the applicant. The Government have failed to submit any further documentary evidence in support of their arguments. Thus, the Court is unable to assess whether the police, in fact, resorted to all available measures, to a sufficient degree, in their attempts to find the second applicant. The Government have not claimed that the police had tried to reach the second applicant at his permanent address in Espoo. The Government's contention that the second applicant's parents had been in the dark as to his whereabouts is also unsubstantiated. Further, in view of the lack of any documentary evidence, the Court is unable to verify whether the District Court, in cancelling the first three hearings mentioned in paragraph 24 above, had considered that the second applicant had a legitimate reason for not appearing before the court. Even assuming that the applicant had deliberately evaded the oral hearing set for 1 February 2005, that had not delayed the proceedings to a significant degree. The Government have not alleged that the first applicant was responsible for any of the delay in the proceedings at this stage. Therefore, the Court cannot but conclude that no major delay prior to the appellate proceedings was attributable to the applicants.

27. As to the Government's explanation for the length of the proceedings before the Court of Appeal, the Court does not find it convincing either. The case was very simple and the submission of one fresh piece of evidence and the change of counsel could hardly explain the total length of more than two years before that court. The Court further notes that it does not transpire from the documents whether the oral hearing at the appellate stage was requested by other parties as well, and not solely by the applicants.

28. 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* and *Frydlender*, both cited above).

29. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The first applicant claimed 3,500 euros (EUR) and the second applicant EUR 4,500 in respect of non-pecuniary damage.

32. The Government contested these claims considering them excessive as to *quantum*. Any award should not exceed EUR 1,500.

33. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each applicant EUR 3,000 under that head.

B. Costs and expenses

34. The applicants also claimed, jointly, EUR 1,976.40 for the costs and expenses incurred before the Court.

35. The Government contested the claim. Any award under this head should not exceed EUR 1,600.

36. 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 (inclusive of value-added tax) should be awarded in full.

C. Default interest

37. 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 in respect of both applicants;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3,000 (three thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,976.40 (one thousand nine hundred and seventy-six euros and forty cents), plus any tax that may be chargeable to the applicants, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President