



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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 50533/99
by Tõnu MÕTSNIK
against Estonia

The European Court of Human Rights (First Section), sitting on 10 October 2000 as a Chamber composed of

Mrs E. Palm, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr B. Zupančič,
Mr T. Panfīru,
Mr R. Maruste, *judges*,

and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application introduced on 2 June 1999 and registered on 24 August 1999,

Having deliberated, decides as follows:

Commented [Note1]: Judges names are to be followed by a **COMMA** and a **MANUAL LINE BREAK** (Shift+Enter). When inserting names via *AltS* please remove the substitute judge's name, if necessary, and the extra paragraph return(s). (There is to be no extra space between the judges' names and that of the Section Registrar.)

THE FACTS

The applicant is an Estonian citizen, born in 1959 and currently serving a prison sentence.

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 1 June 1994 criminal proceedings were initiated against the applicant on suspicion of his having committed a sexual crime.

On 25 October 1994 the applicant was charged with satisfying his sexual desire in an unnatural manner.

On 22 November 1994 the applicant was additionally charged with attempted rape.

Upon completion of the preliminary investigation, the case-file was sent on 18 January 1995 to the Tartu City Court (*Tartu Linnakohus*).

On 7 January 1997, by decision of the City Court judge, the applicant was committed for trial.

A hearing scheduled for 12 February 1998 was postponed due to the absence of the applicant's lawyer.

On the same day the City Court ordered that the applicant be taken into custody. It noted that the applicant had 4 prior convictions and considered that he may re-offend. The applicant's appeal against the order was rejected by the Tartu Court of Appeal (*Tartu Ringkonnakohus*) on 5 March 1998. The decision was not subject to further appeal. Both the City Court and the Court of Appeal took their decisions without the applicant or his lawyer being present.

On 4 May 1998 the applicant complained to the Office of the Chief Public Prosecutor (*Riigiprokuratuur*) about the delay in examining his case and the infringement of the provision of the Code of Criminal Procedure requiring the court to decide on the question whether or not to commit the accused for trial within 10 days from the seizure of the court.

In its response to the applicant on 26 May 1998 the prosecutor's office stated that from 1995 - 1997 the City Court could not examine his case on account of its heavy workload. Thereafter the case was postponed three times for reasons that, due to his change of residence, it was not possible to serve the indictment on him, that his lawyer had failed to appear at a hearing and that, on 11 March 1998, he could not be delivered to the hearing from his place of detention. It further stated that a hearing had been set for 24 - 25 August 1998.

In a hearing on 24 August 1998 the applicant complained about the failure to respect the deadline for deciding on the question of trial. It appears that his lawyer did not raise this issue.

The applicant submits that he was allowed to question the witness he had called only after the prosecution had done so, while under the Code of Criminal Procedure the party who calls a witness has the right to question that witness first.

By judgment of 26 August 1998 the Tartu City Court, having considered the testimony of the applicant, the victim and two witnesses as well as the results of forensic and psychiatric examinations, found the applicant guilty of attempted rape and sentenced him to 4 years' imprisonment. The judgment was confirmed by the Tartu Court of Appeal on 28 October 1998.

On 9 December 1998 the Supreme Court (*Riigikohus*) refused the applicant leave to appeal.

Subsequently, the applicant sought, unsuccessfully, the re-opening of the proceedings as well as the institution of criminal proceedings against the City Court judge for the latter's failure to decide on the question of his trial within the prescribed 10-day period.

COMPLAINTS

1. The applicant complains under Article 5 § 1(c) of the Convention that his taking into custody was unlawful and that the court decided on the question without him or his lawyer being present.
2. The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings against him lasted too long.
3. The applicant complains under Article 6 of the Convention that he did not have a fair trial. In particular, he complains that the courts lacked the authority to try him as the deadline for committing him for trial had expired, that his defence lawyer failed in his duty to protest against the violation by the City Court judge of the procedural provision, and that in breach of domestic law he was not allowed to question his witness first.

THE LAW

1. The applicant complains under Article 5 § 1(c) of the Convention that his taking into custody was unlawful and that the court decided on the question without him or his lawyer being present.

Article 5 § 1(c) of the Convention provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

....

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.”

The Court recalls that under the terms of Article 35 § 1 of the Convention it can only deal with the matter after all domestic remedies have been exhausted and within a period of six months from the date on which the final decision was taken.

It finds that the final decision regarding the applicant's complaint was given by the Tartu Court of Appeal on 5 March 1998 which is more than six months before 2 June 1999 - the date on which the application was introduced.

It follows that this part of the application must be rejected, in accordance with Article 35 § 4 of the Convention.

2. The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings against him lasted too long.

Article 6 § 1 of the Convention provides, insofar as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time ...”

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

3. The applicant complains under Article 6 of the Convention that he did not have a fair trial. In particular, he complains that the courts lacked the authority to try him as the deadline for committing him for trial had expired, that his defence lawyer failed in his duty to protest against the violation by the City Court judge of the procedural provision, and that in breach of domestic law he was not allowed to question his witness first.

The Court recalls that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many other authorities, the *Perez de Rada Cavanilles v. Spain* judgment of 25 September 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3255, § 43).

Article 6 § 1 places the “tribunal” under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision (see the *Van de Hurk v. the Netherlands* judgment of 19 April 1994, Series A no. 228, p. 19, § 59).

The Court notes that the applicant had the benefit of adversarial proceedings with the assistance of a legal representative. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. The factual and legal reasons for the first-instance and the appeal court decisions were set out at length.

It finds that there is no appearance of a lack of fairness in the impugned criminal proceedings.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 1 of the Convention, and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint about the length of proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Michael O'Boyle
Registrar

Elisabeth Palm
President