CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FOURTH SECTION

## DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 14132/02
by Hannu SAVOLA
against Finland

The European Court of Human Rights (Fourth Section), sitting on 6 September 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 March 2002,

Having deliberated, decides as follows:

# THE FACTS

The applicant, Mr Hannu Savola, is a Finnish national who was born in 1949 and lives in Hämeenlinna. He is represented before the Court by Mr Markku Vepsäläinen, a lawyer practising in Helsinki.

## A. The circumstances of the case

The facts of the case, as submitted by the applicant and as they appear from the documents, may be summarised as follows.

The applicant's firm had constructed chalk stabilisation machines for a construction firm P.. Concerning the first machine, they agreed that the costs up to 1,540,000 Finnish Marks (FIM; corresponding to 259,041 euros (EUR)) were to be financed by the latter. No formal agreements were entered into for the subsequent machines.

Allegedly on 7 July 1989 the applicant and H., a managing director of a company M., which is a subsidiary company of P., concluded a rental agreement for the machines to be used in M.'s construction business in Sweden. One of the machines was rented to M.. On April and May 1989 H. paid the applicant rent amounting to 1,000,000 and 1,109,014.95 Swedish kronor (SEK), respectively.

On 10 May 1990 the applicant allegedly removed one of the machines from the construction site, without returning it to P.. The following day P. filed a criminal complaint with the police of Vantaa, accusing the applicant, as the responsible partner of his firm, of having stolen it.

On 15 May 1990 the applicant's firm, P. and M. agreed that the civil dispute as to the ownership and the right of possession of the machines were to be resolved before the City Court (*raastuvanoikeus, rådstuvurätten*) of Helsinki.

On 28 August 1990 the police in Sweden interrogated H. on suspicion of embezzlement (concerning the rental agreements). However, on 28 May 1991 the Swedish prosecutor decided not to lodge charges against him since there was insufficient evidence. At the time the applicant was not a suspect.

On 31 January 1993 the police of Vantaa discontinued the pre-trial investigations concerning the applicant, finding the case to be a civil dispute.

It appears that meanwhile a civil dispute between P. and the applicant was pending before the City Court of Helsinki, which decided on 15 April 1993 that the machines (and apparently also other similar machines) belonged to P.. It ordered the applicant to return the machines to P..

In an another civil dispute, the then District Court (*kihlakunnanoikeus, häradsrätten*) of Espoo on 25 October 1993 ordered H. to reimburse to M. the rental costs of the machine amounting to SEK 2,213,762.95.

According to the applicant, on 2 September 1993 a demand for an investigation (*tutkintapyyntö, begäran om förundersökning*) to be opened against him was made to the police of Vantaa. Another demand for an investigation was made to the police of Hämeenlinna on 23 May 1996. Following this, on 5 June 1996 an offence by the applicant was reported to the police. He was suspected of aggravated embezzlement relating to the non-delivery of the constructed machine to P. ("first embezzlement"). On 16 September 1996 the pre-trial investigation was assigned to the economic crime investigation group of the province of Häme. At that time H. was a suspect as well. It is unclear when the applicant was interrogated by the police.

Apparently criminal investigations against the applicant and H. relating to an alleged embezzlement committed in Sweden concerning the rental agreement ("second embezzlement") were opened in Finland in February 1997.

The applicant was arrested and detained between 4 February 1997 and 2 April 1997. On 6 March 1997 the provisional indictment was served on him.

On 15 September 1997 the pre-trial investigation was concluded. Charges were lodged in October 1997. Following the request by the Swedish public prosecutor, he was also charged with the alleged embezzlement committed there.

On 15 October 1997 the criminal proceedings before the District Court (*käräjäoikeus, tingsrätt*) of Hämeenlinna began. On 30 December 1999 the District Court issued its judgment, acquitting the applicant and other defendants. The court further ordered P. and M. to pay the defendants' legal costs.

The prosecutor, the complainants, the applicant and co-defendants appealed to the Court of Appeal (*hovioikeus, hovrätt*) of Turku. In one of the four oral hearings before the appellate court the applicant, among others, requested the court to dismiss the charges alleging that the proceedings had been excessively lengthy. On 24 April 2001 the Court of Appeal issued its judgment, upholding by two votes to one, the judgment of the District Court concerning the alleged first embezzlement, but quashing the judgment concerning the second embezzlement. It convicted the applicant of aggravated embezzlement in this respect. The court admitted that the period from the lodging of criminal complaint until the Court of Appeal proceedings, *i.e*. 11 years, had exceeded the period at issue in cases before the Strasbourg Court, relied on by the applicant's company. The court nevertheless rejected the request to dismiss the charges ruling, *inter alia*, that:

> "These proceedings were already pending in 1997. The handling of the case at issue began on 21 April 1999. The proceedings before the District Court took one year and eight months and the proceedings before the Court of Appeal will have taken

> approximately one year and three months, i.e almost three years in all. As from the reporting of the offence until the end of the proceedings before the Court of Appeal the time elapsed has been almost 11 years. ... The interests at stake are exceptionally wide, including, inter alia, the civil proceedings. ... The Court of Appeal notes that the court proceedings have not been excessively lengthy taking into account the nature and extent of the case ... However, the pre-trial proceedings have been lengthier than on average. ... The Court of Appeal concludes that ... the proceedings have not exceeded the reasonable length–requirement as provided in the European Convention on Human Rights.
>
> **Conclusion**
>
> The request to rule inadmissible or dismiss the charges is rejected."

The appellate Court took the long time which had elapsed since the incriminated conduct into account when imposing the sentence. Instead of an unconditional term of imprisonment, the applicant was sentenced to a suspended sentence of one year and three months. He was further ordered to pay FIM 4,000 by way of supplementary fines and, jointly with H., the other defendant, M.'s legal costs. The appellate court ruled, *inter alia*, that:

> "The sentences for [the applicant] and [H.] have to be severe taking into account the amount of embezzled property and the premeditation of the offences ... [thus] the reprehensible conduct warrants that [the applicant] and [H.] be sentenced to imprisonment. For the same reason, the general obedience to the law would require that the sentences be ones of imprisonment. [The complainants] became aware of the offences committed by [the applicant] and [H.] on 10 May 1990. The effective criminal investigation began, however, on 7 February 1997 in respect of [the applicant] ... The proceedings before the District Court began on 15 October 1997. The lapse of time since the acts were committed until the initiating of the criminal proceedings was not caused by the [applicant] and [H.] covering up the acts. The fairly lengthy period which elapsed before the courts was not to any major extent caused by [the applicant] or [H.]. Taking into account the exceptionally long pre-trial period and the proceedings ... the punishment shall be a suspended sentence ..."

The applicant and the other defendants applied for leave to appeal from the Supreme Court (*korkein oikeus, högsta domstolen*), which was rejected on 19 September 2001.

## B. Relevant domestic law

Section 2, subsection 1 of the Criminal Investigations Act (*esitutkintalaki, förundersökningslag;* 449/1987) provides that the police or another investigation authority shall carry out a pre-trial investigation where, on the basis of a report made to it or otherwise, there is a reason to suspect that an offence has been committed.

Section 6 of the said Act provides that a pre-trial investigation shall be carried out without undue delay.

Section 21 of the Constitution of Finland (*perustuslaki, grundlagen* 731/1999) provides that everyone has the right to have his or her case dealt

with appropriately and without undue delay by a legally competent court of law or other authority. This section is equivalent to section 16 of the repealed Constitution Act of Finland of 1918 (*Suomen Hallitusmuoto, Regeringsform för Finland*), as in force at the relevant time.

Chapter 28, section 5 of the Criminal Code (*rikoslaki, strafflagen*) prescribes a maximum penalty of four years' imprisonment for aggravated embezzlement.

## COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention that the length of the criminal proceedings against him had exceeded a reasonable time.

The applicant also complained under Article 6 § 2 of the Convention about an alleged failure by the Court of Appeal to comply with the presumption of innocence as the burden of proof was allegedly on the defendant and it did not give him the benefit of any doubt.

## THE LAW

The applicant complained that the criminal proceedings instituted against him were not concluded within a reasonable time, as required by Article 6 § 1 of the Convention. He further complained, invoking Article 6 § 2 that the standard of proof considered adequate to establish his guilt in this matter fell short of the standard which is necessary to overcome the presumption of innocence. The said Article reads, insofar as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal..."

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

### *Length of the proceedings*

The applicant complained that the proceedings had exceeded a reasonable time, lasting over eleven years.

As regards the period to be taken into account under Article 6 § 1, the Court reiterates that in criminal matters the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he

would be prosecuted or the date when preliminary investigations were opened. "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, p. 33, § 73).

As to the present case, the Court observes that a criminal complaint against the applicant was first lodged on 11 May 1990 for the alleged non-delivery of one machine. However, at that time the applicant and the plaintiffs agreed that the ownership dispute should be dealt before the District Court as a civil matter. It was only in June 1996 when it was reported to the police that the applicant had committed an aggravated embezzlement. Apparently in February 1997 criminal investigations began concerning another alleged aggravated embezzlement committed in Sweden. In October 1997 he was charged in connection with the offence in Finland. The proceedings came to an end on 19 September 2001 when the Supreme Court refused leave to appeal.

The applicant alleged that the proceedings began on 11 May 1990, thus lasting over 11 years. However, in the circumstances described above, the Court considers that the applicant would appear only to have been substantially affected by the charges against him as from June 1996. On that view the proceedings lasted no more than five years and three months. However, for the reasons set out below it does not need to decide this question.

Having regard to the Finnish Court of Appeals' reasoning concerning the length of proceedings, the question arises whether the applicant may still claim to be a victim of a violation of the Convention.

In this regard the Court recalls 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 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 the *Eckle v. Germany*, cited above, § 66; *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001).

Applying these principles in the present case, the Court notes in the first place that the Court of Appeal rejected the applicant's request that the charges should be declared inadmissible or dismissed due to the allegedly excessive length of the proceedings, noting that the proceedings were lengthy but not excessively so. However, it expressly noted the reasonable time requirement when imposing the sentence and then afforded redress with specific mention of the length of the proceedings. On this point it is

recalled that, despite the gravity of the offence in question, the applicant was given a suspended sentence of one year and three months and supplementary fines instead of imprisonment. The Court of Appeal held expressly that the time element stood out as being the mitigating factor. The Court finds that the reduction in sentence on account of the length factor was measurable in the present case, and had a decisive impact on the applicant's sentence. In the Court's view this conclusion is not affected by the phrase in the Court of Appeal's judgment to the effect that the reasonable time requirement of Article 6 had not been violated. This formulation should, however, be seen in the context of the Court of Appeal's discussion as to whether the length of proceedings justified the inadmissibility or dismissal of the charges. While the Court of Appeal held that it did not, it clearly took the exceptional length of the proceedings into account as a decisive factor speaking in favour of a suspended sentence.

In these circumstances, the Court concludes that the Finnish courts had taken specific note of the issues arising under Article 6 § 1 and had provided adequate redress in respect of the lengthy proceedings.

The applicant cannot, therefore, complain to be a victim of a violation of his right to proceedings within a reasonable time, as guaranteed under Article 6 § 1.

It follows that the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*The presumption of innocence*

The applicant complained that the evidence against him was insufficient to prove his guilt. The Court recalls that the taking of evidence is governed primarily by the rules of domestic law and it is in principle for the national courts to assess the evidence before them, including whether there is sufficient evidence to establish guilt. Its task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair.

The Court notes that the applicant was assisted by counsel throughout the proceedings. It has not been alleged that counsel was in any way prevented from adducing evidence in support of the defence. In the circumstances of the case and assessing the proceedings as a whole, the Court finds no indication that the Court of Appeal, contrary to Article 6 § 2 of the Convention, started from the presumption that the applicant had committed the offence with which he had been charged. Nor does it find any other appearance of unfairness in the proceedings in question.

It follows that this part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President