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. 32523/96
by Jukka HILDEN
against Finland

The European Court of Human Rights (Fourth Section) sitting on 14 September 1999 as a Chamber composed of

Mr G. Ress, *President*,
Mr M. Pellonpää,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 June 1996 by Jukka Hilden against Finland and registered on 6 August 1996 under file no. 32523/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Finnish national, born in 1955 and living in Helsinki.

He is represented before the Court by Mr Risto Kyytinen, a lawyer practising in Helsinki.

A. Particular circumstances of the case

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

The applicant was arrested on 6 July 1993 and detained on 7 July 1993 under suspicion of complicity in a murder. On 21 July 1993 he was charged, *inter alia*, with murder before the Vantaa District Court *(kihlakunnanoikeus, häradsrätt)*. He was accused of committing the murder of L together with K. The charge had already been brought against K on 22 April 1993 and there had been seven previous hearings in the case. In these hearings eight witnesses had given evidence in K's presence.

The applicant and K, who both had been on the scene of crime, denied having shot L and accused one another.

In the eleven hearings that followed the applicant's apprehension, the District Court heard evidence from the two accused and from six of the previously heard and twelve new witnesses, some of whom were called by the applicant.

In the hearing on 4 August 1993 the applicant's legal counsel stated that witnesses should be examined in the presence of the accused and the accused should be allowed to put questions to witnesses.

In the hearing on 18 August 1993 the Public Prosecutor called two witnesses ML and KS, among others. ML was the victim's girlfriend and KS an acquaintance of the accused. The Public Prosecutor requested evidence from these witnesses to be heard in the absence of the applicant and K. They had already given evidence in K's presence in the previous hearings. No objection from the applicant's part was entered in the record. Under Chapter 17, Section 34, Subsection 2, of the Code of Judicial Procedure *(oikeudenkäymiskaari, rättegångsbalken*, see below*)* the District Court accepted the Public Prosecutor's request. The applicant's legal counsel examined the witnesses. After the testimonies were given, the presiding judge summarised them to the applicant and K, who were then allowed to put further questions to the witnesses.

In the hearing on 25 October 1993 the District Court heard testimony from RS, an acquaintance of the applicant and K, in their absence. RS had earlier given evidence in K's presence. The applicant's legal counsel was able to examine the witness. When asked after the testimony, the applicant did not have further questions to RS. The witness KS gave testimony anew, this time in the presence of the applicant and K. The District Court also heard testimony from HT, who had already given evidence in the hearing on 21 July 1993. This time the Public Prosecutor requested HT to be examined without the applicant and K's presence, but the request was rejected. However, during HT's evidence the applicant and K were removed from the courtroom, as the District Court got the impression that the witness failed to tell what he knew when the accused were present. The applicant's legal counsel

continued to examine the witness. After HT's testimony, the presiding judge summarised it briefly to the applicant and K, who were then allowed to put further questions.

Other witnesses' testimonies before the District Court were heard in the presence of the applicant and K.

On 25 March 1994, the District Court convicted the applicant of murder and other offences and sentenced him to life imprisonment. It based the judgement on the testimonies of the two accused and the witnesses. When evaluating the testimony of the applicant, the District Court took into consideration that the applicant had had the opportunity to follow the news reports of the proceedings prior to his arrest.

Immediately after the pronouncement of the District Court's judgment, the applicant gave notice of his intention to appeal and asked for a copy of the reasons of the judgment. On 15 April 1994 the District Court informed the applicant's legal counsel that a copy of the District Court's record, including the judgment, could be fetched after 3 p.m. On the same day the applicant requested three weeks' extension of time for appeal. The District Court rejected the request on 19 April 1994. The time for appeal expired on 25 April 1994.

The applicant appealed against the judgment of 25 March 1994 and the decision of 19 April 1994 to the Helsinki Court of Appeal *(hovioikeus, hovrätt)*. On 7 February 1995, the Court of Appeal rejected the appeals. As regards the murder charge, it stated: (translation from Finnish) “There is no reason to change the District Court's judgment.”

On 21 December 1995, the Supreme Court *(korkein oikeus, högsta domstolen)* refused the applicant leave to appeal.

B. Relevant domestic law

The relevant domestic law as in force at the relevant time:

According to Chapter 17, Section 34, Subsection 2, of the Code of Judicial Procedure, the court may decide to hear a witness in the absence of a party, if the witness for fear of the party or for some other reason fails to tell what he knows about the matter, or if the party interferes with the witness's testimony or tries to confuse the witness. The testimony must be read to the absent party and he must be allowed to put further questions to the witness.

According to Chapter 25, Section 5, of the Code of Judicial procedure, a party who wishes to appeal against a District Court's judgment must give notice of his intention to appeal within seven days from the pronouncement of the judgment. Section 12, Subsection 1, of the Chapter provides that the time-limit for filing an appeal is thirty days from the day the judgment was pronounced.

According to Chapter 24, Section 4a, Subsection 2, of the Code of Judicial Procedure, a copy of a District Court's judgment must be available to a party who has given notice of his intention to appeal within three weeks from the pronouncement of the judgment in the registry of the District Court.

According to Chapter 25, Section 13, Subsection 1, of the Code of Judicial Procedure, if a party, who has given notice of his intention to appeal, cannot appeal within the time set

due to a legal impediment or some other acceptable reason, the District Court may set a new time limit for appeal.

According to Chapter 24, Section 4, of the Code of Judicial Procedure, an appellate court must not repeat the reasons of the lower court's decision when upholding the decision. When further reasons are found, they may be added.

COMPLAINTS

The applicant complains that he was not afforded a fair trial according to Article 6 of the Convention for the following reasons:

1. His conviction was based on the unreliable testimony of his co-accused, his testimony was not given the same weight as that of his co-accused, the evidence in his favour was not taken into account, and some of the witnesses' evidence was misinterpreted to his disadvantage in the District Court's reasoning. Furthermore, his conviction was against the principle of *in dubio pro reo*.

2. He was not allowed to be present in the courtroom when the witnesses were re-heard and, therefore, he did not have an equal opportunity with his co-accused to examine them.

3. He did not receive a copy of the District Court's decision within the legal time limit and he was not able to be in contact with his lawyer during the time for appeal, because he was sent to a prison almost two hundred kilometres away, and, thus, he did not have adequate time and facilities for the preparation of his appeal.

4. The Court of Appeal did not answer the arguments supporting his innocence nor give any reasons for its decision.

THE LAW

The applicant complains that he was denied the right to a fair trial contrary to Article 6 of the Convention.

Article 6 of the Convention in its relevant parts reads as follows:

> “1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> 2. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> b. to have adequate time and facilities for the preparation of his defence; ...
>
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

1. As regards the applicant's complaint that the assessment of the evidence given by him, his co-accused and the witnesses was erroneous, the Court recalls that it is not within its province to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings in their entirety were fair (see, *inter alia*, Eur. Court HR, Vidal v. Belgium judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 33; and Edwards v. the United Kingdom judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, § 34). It follows that this complaint, which merely concerns the evaluation of evidence, is manifestly ill-founded.

2. With regard to the applicant's complaint that he had to leave the courtroom when some of the witnesses were heard, it appears that the applicant raised this complaint only before the Supreme Court. The Court, however, need not decide whether the applicant has exhausted the domestic remedies as required by Article 35 § 1 of the Convention, as the complaint is in any event inadmissible for the following reasons.

In principle, all the evidence must be produced in the presence of the accused at a public hearing with a view to adversarial argument (see Eur. Court HR, Barberà, Messegué and Jabardo judgment of 6 December 1988, Series A no. 146, p. 34, § 78). The Convention organs have nevertheless accepted that in exceptional circumstances there may be reasons for hearing a witness in the absence of the person against whom the statement is to be made on condition that his lawyer is present (see no. 8395/78, Dec. 16.12.1981, D.R. 27, pp. 50, 54; and no. 11219/84, Dec. 10.7.1985, D.R. 42, pp. 287, 292). As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness was making his statement or at some later stage of the proceedings (see, *inter alia,* Eur. Court HR, Kostovski v. the Netherlands judgment of 20 November 1989, Series A no. 166, p. 20, § 41).

In the present case the applicant was ordered to leave the courtroom when the witnesses ML, KS, RS and HT gave evidence against him. ML was the victim's girlfriend and KS, RS and HT were acquaintances of the accused. The order was given in accordance with Chapter 17, Section 34, Subsection 2, of the Finnish Code of Judicial Procedure (see above). It appears that in this case, in order to obtain unreserved statements, the District Court had adequate reasons for ordering the applicant to leave the courtroom. Furthermore, when the applicant was ordered to leave the courtroom, his legal counsel remained in the courtroom and examined the witnesses. The applicant was allowed to re-enter the courtroom before the witnesses left, informed of the contents of the statements given in his absence and allowed to put further questions to the witnesses pursuant to the above-mentioned provision. Moreover, the testimonies of these witnesses were only a part of the evidence, which the District Court's judgment was based on. The Court finds that, in these circumstances, the applicant enjoyed the guarantees secured under Article 6 § 3(d) of the Convention to a sufficient extent. As the co-accused K cannot be regarded as the applicant's opponent in the case, the fact that K had been present when the witnesses had given evidence in previous hearings has no significance in this respect.

3. As to the applicant's complaint that he did not have adequate time and facilities for the preparation of his appeal to the Court of Appeal, the Court firstly notes that the time for appeal against the District Court's judgment of 25 March 1994 was thirty days from the pronouncement of the judgment with the main grounds for the conviction. The applicant's legal counsel received a copy of the judgment with its reasons of forty-three pages on

15 April 1994, which was ten days before the time for appeal expired. According to the District Court's decision of 19 April 1994 and the Court of Appeal's decision of 7 February 1995, the copy of the District Court's judgment was at the applicant's disposal within the legal time-limit.

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 domestic legislation. The Court's role is confined to ascertain whether the effects of such an interpretation are compatible with the Convention (see e.g. Eur. Court HR, Pérez de Rada Cavanilles v. Spain judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3255, § 43; and Tejedor Garćia v. Spain judgment of 16 December 1997, *Reports* 1997-VIII, p. 2796, § 31). The Court cannot, therefore, examine whether the applicant received a copy of the judgment within the legal time-limit according to the domestic regulations.

It is true that the evidence presented before the District Court consisted of several long testimonies and the case file, including the District Court's records, amounted to several hundreds, if not thousands of pages. However, the applicant and his legal counsel had become familiar with all the material and the testimonies during the proceedings before the District Court. In these circumstances, the Court considers that receiving the District Court's judgment in writing ten days before the time to appeal expired was not incompatible with Article 6.

The applicant also complains that he was not able to discuss his appeal with his legal counsel in person because he was sent to a prison almost two hundred kilometres from where the counsel lived. The Court recalls that the possibility for an accused to confer with his representative is a fundamental element in the preparation of the defence. It is evident that the distance between the applicant and his legal counsel was likely to make the discussions about the appeal in person more difficult. However, there is no indication of any actual restrictions on the legal counsel's visits. Furthermore, there is no evidence that the applicant had opposed his transfer to the prison in question. Moreover, there is nothing to indicate that the applicant's right to correspondence or telephone calls with his legal counsel were subjected to any restrictions. This being so, the Court finds no appearance of a breach of the applicant's right to adequate facilities for the preparation of his appeal in this respect.

The Court finds that the applicant enjoyed the guarantees secured under Article 6 § 3(b) of the Convention as regards the above mentioned aspects concerning time and facilities to prepare the appeal.

4. The applicant finally complains that the Court of Appeal did not give reasons for its decision. The Court accepts that under specific circumstances the absence of reasons in a court decision might raise an issue as to the fairness of the procedure, which is guaranteed by Article 6 § 1 of the Convention. The Court further points out that it does not follow from the said Article that reasons given by a court should deal specifically with all points which may have been considered by one party to be essential to his case (see no. 10857/84, Dec. 15.7.1986, D.R. 48, pp. 106, 150-151). In dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see Garcia Ruiz v. Spain judgment of 21 January 1999, § 26, to be published in the official reports of the Court).

In the present case the District Court explained the reasons for its judgment at length. The Court of Appeal concluded, as far as the murder charge was concerned, that there was no reason to change the District Court's judgement. Therefore, it appears that the Court of Appeal accepted the District Court's reasons as such. In these circumstances, the Court finds no appearance of a breach of the applicant's right to a fair trial according to Article 6 § 1 in this respect.

The Court concludes that the complaints are, for the above mentioned reasons, manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and, thus, the application as a whole must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously, / by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Georg Ress
President