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. 36321/97
by Janne LAAKSONEN
against Finland

The European Court of Human Rights (Fourth Section) sitting on 7 September 1999 as a Chamber composed of

Mr G. Ress, *President,*
Mr M. Pellonpää,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr I. Cabral Barreto,
Mr V. Butkevych, *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 28 May 1997 by Janne Laaksonen against Finland and registered on 3 June 1997 under file no. 36321/97;

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 citizen, born in 1973 and resident in Helsinki.

He is represented before the Court by Mr Sami Heikinheimo, a lawyer practising in Helsinki.

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

A. Particular circumstances of the case

On 15 December 1995, the Jyväskylä District Court *(käräjäoikeus, tingsrätt)* convicted the applicant, *inter alia*, of an aggravated drug offence and sentenced him to six years' imprisonment. The time for appeal expired on Monday 15 January 1996. The applicant's appeal was entry stamped on 16 January 1996 at the registry of the District Court. On 26 June 1996 the Vaasa Court of Appeal *(hovioikeus, hovrätt)* decided to dismiss the appeal as being out of time.

The applicant sought leave to appeal from the Supreme Court *(korkein oikeus, högsta domstolen)*. He claimed that he had posted the appeal to the post-office box address of the District Court on Friday 12 January 1996 by first class mail. The Post Office had informed the public that the post sent by first class would get to the recipient the next working day. The applicant also claimed that the District Court's post-office box should have been emptied at the end of office hours. He, therefore, alleged that either there had been a delay in the post or the District Court's officials had not emptied the box duly. He claimed that since his appeal had arrived out of time because of negligence of some public officials, it should have been examined. On 28 November 1996 the Supreme Court refused the applicant leave to appeal.

B. Relevant domestic law

According to Chapter 25, Section 12, Subsection 1, of the Code of Judicial Procedure *(oikeudenkäymiskaari, rättegångsbalken)*, the time-limit for filing an appeal against a District Court's judgment is thirty days from the judgment. According to Subsection 2, the appeal must be delivered to the registry of the District Court no later than on the expiry date of the time for appeal.

Section1, Subsection 1, of the Act of Sending Certain Documents to the Courts *(laki eräiden asiakirjain lähettämisestä tuomioistuimille, lag om insändande av vissa handlingar till domstolar,* 7.5.1965/248*)* provides that appeals may be sent by post at the appellant's own risk. According to Section 2 of the same Act, a document sent by post is considered to have arrived when it has been delivered to the recipient.

COMPLAINTS

The applicant complains that he has been denied his rights to a fair trial and to an effective remedy and his right of appeal in criminal matters.

The applicant firstly argues that a delay in the post cannot be regarded as an acceptable reason for dismissing his appeal.

He secondly claims that his appeal should have been considered to have arrived within the time for appeal, as it allegedly arrived in time to the District Court's post-office box. It cannot be held against him that the box is not emptied at the end of office hours each day, especially when the post-office box address is given in the appeal directions.

The applicant invokes Articles 6 and 13 of the Convention and Article 2 of Protocol No. 7 to the Convention.

THE LAW

1. The applicant complains that he was not afforded a fair trial and that he was denied the right of appeal, as his appeal against the District Court's decision was dismissed for having been lodged out of time. He invokes Article 6 of the Convention and Article 2 of Protocol No. 7, which, in so far as relevant, read as follows:

Article 6 of the Convention

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing by... [a] tribunal ..."

Article 2 of Protocol No. 7

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law."

The Court recalls that Article 6 § 1 of the Convention does not itself guarantee a right of appeal. However, where such a right exists under domestic law, Article 6 § 1 applies also to proceedings on appeal (see e.g. Eur. Court HR, Delcourt v. Belgium judgment of 17 January 1970, Series A no. 11, pp. 13-15, §§ 25-26). In criminal cases a right of appeal is provided for by Article 2 of Protocol No. 7.

Article 6 § 1 of the Convention does not, however, prevent the Contracting States from regulating access to appeal jurisdictions. The exercise of a right of appeal may, *inter alia,* be subjected to reasonable time-limits. Rules concerning time-limits within which appeals have to be lodged undoubtedly serve the purpose of assuring a proper administration of justice (see e.g. no. 8407/78, Dec. 6.5.1980, D.R. 20, pp. 179-180, and no. 10857/84, Dec. 15,7,1986, D.R. 48, p. 106). However, the rules in question, or the application of them, should not prevent litigants from making use of an available remedy (see Eur. Court HR, Pérez de Rada Cavanilles v. Spain judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3255, § 45).

In the present, case it cannot be said that the relevant domestic rules in question prevented the applicant from lodging his appeal in time. The Court notes that the time-limit for filing an appeal is thirty days. The Court further notes that the applicant essentially complains of the evaluation of whether he had complied with the domestic rules concerning

the time-limit for an appeal. The Court recalls, however, 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. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or lodging of appeals (see the above-mentioned Pérez de Rada Cavanilles judgment, p. 3255, § 43; and Eur. Court HR, Tejedor Garćia v. Spain judgment of 16 December 1997, *Reports* 1997-VIII, p. 2796, § 31). It follows that the Court cannot examine whether the applicant's appeal was lodged in accordance with to the domestic rules. Furthermore, the examination of the application does not disclose any evidence that the Court of Appeal's decision to dismiss the applicant's appeal as being out of time was arbitrary and, thus, contrary to the guarantee of a fair trial within the meaning of Article 6 § 1 of the Convention.

As regards the applicant's complaint concerning Article 2 of Protocol No. 7, the Court, for the same reasons as those stated above, finds no violation of the rights and freedoms set forth in that Article.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant also complains that he was refused his right to an effective remedy according to Article 13 of the Convention, which provides that:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Assuming that the applicant means to argue that he did not have an effective remedy against the District Court's decision, the Court notes that the applicant would have been able to challenge this decision before the Court of Appeal, had he followed the rules concerning the time-limit for an appeal. Dismissal of an appeal because of a failure to comply with such rules does not constitute a violation of Article 13 of the Convention.

It follows that this complaint too is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

The Court thus concludes that the application as a whole must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Georg Ress
President