

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 1679/10
by Tino Ari-Pekka LÖNNBERG
against Finland

The European Court of Human Rights (Fourth Section), sitting on 5 July 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 28 December 2009,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Tino Ari-Pekka Lönnberg, is a Finnish national who was born in 1981 and lives in Tampere. He was represented before the Court by Mr Mikko Lehti, a lawyer practising in Tampere.

A. The circumstances of the case

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

On 1 October 2009 the applicant was running errands with his friends when the police stopped his car. They suspected him of drunken driving and tested him for alcohol and drugs on the spot. The alcohol test was negative, but the drug test was positive for amphetamines and cannabis. The applicant was taken to a laboratory for blood and urine tests as well as for a clinical test.

On the same date the applicant was also questioned as a suspect by the police at the police station. A temporary driving ban was imposed and his driver's licence was confiscated.

Subsequently, on 3 November 2009, the laboratory tests showed no trace of drugs in the applicant's blood or urine.

On 4 November 2009 the driving ban was lifted by the police and the applicant's driver's licence was returned to him. An appeal against this decision lay to the Administrative Court.

On 4 November 2009 the police decided to terminate the pre-trial investigation in the matter. On 22 November 2009 the police concluded that the applicant had not committed any crime.

B. Relevant domestic law

Coercive Measures Act

According to section 11 of the Coercive Measures Act (*pakkokeinolaki, tvångsmedelslagen*, Act no. 450/1987, as amended by Act no. 646/2003), a bodily search including the taking of bodily samples (*henkilönkatsastus, kroppsbesiktning*) can be made on a person suspected on reasonable grounds of, *inter alia*, drunken driving or drug abuse.

According to section 12 of the Act, the provisions concerning search of premises are *mutatis mutandis* applied to the bodily search. If the bodily search is thorough, it needs to be conducted in a location intended for that purpose. If the bodily search is conducted by a person other than medical personnel, a witness should be present, if possible. An examination requiring medical expertise can only be conducted by a medical doctor. The bodily search cannot be conducted by a person of the opposite sex to the person searched, unless he or she is a member of the medical personnel. The only exception is the taking of a saliva sample for a DNA-test. Persons of the opposite sex, except the guardian of a minor, may not be present, unless the bodily search concerns taking blood or saliva samples or clinical examination of the state of intoxication. The bodily search may not cause significant inconvenience to the person to be searched.

An official with the power of arrest shall decide on a bodily search and giving of bodily samples. However, a police officer may carry out such measures without a warrant in urgent cases.

Remedies

According to section 118, subsection 3, of the Constitution anyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public function shall have the right to request that the civil servant or other person in charge of the public function be punished and that the public organisation, official or other person in charge of a public function be held liable for damages, as provided for in more detail by an Act.

Chapter 40, section 9, subsection 1, of the Penal Code (*rikoslaki, strafflagen,* as modified by Act no. 604/2002), provides that if a public official, when acting in office, intentionally in a manner other than that provided above in this Chapter violates or neglects to fulfil his official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effect and the other circumstances connected with the act, is not a petty offence, he shall be sentenced for violation of official duties to a fine or to imprisonment for a maximum period of one year.

Chapter 40, section 10, of the Penal Code (as modified by Act no. 604/2002) provides that if a public official, when acting in office, through carelessness or lack of caution, in a manner other than that referred to in section 5, subsection 2, violates or neglects to fulfil his or her official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effect and the other circumstances connected with the act, is not a petty offence, he shall be sentenced for negligent violation of official duties to a warning or to a fine.

According to Chapter 1, section 14, of the Criminal Procedure Act (*laki oikeudenkäynnistä rikosasioissa, lagen om rättegång i brottmål,* as modified by Act no. 647/2003), an injured party may bring a private prosecution only if the public prosecutor has decided not to press charges.

Under Chapters 3 and 4 of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*, Act no. 412/1974) proceedings may be brought against the State in respect of damage resulting from fault or negligence by its employees in the performance of their duties.

COMPLAINTS

The applicant complained under Articles 5 and 8 of the Convention that he had been suspected of a crime, deprived of his right to liberty and personal integrity and that his privacy was violated when he had been apprehended and forced to undergo a bodily search. He could not have any of these issues examined by a court. There had been no court order authorising the bodily search, nor was there an effective remedy which would have allowed the issue to be examined by the courts after the event. The applicant claimed that Article 8 had been violated, having regard to the deficient legislation and the extensive powers of the police in this area.

THE LAW

Complaint under Article 5 of the Convention

The applicant complained under Article 5 of the Convention that he had been suspected of a crime, and deprived of his right to liberty and personal integrity when arrested and compelled to provide breath, blood and urine samples. Furthermore, he could not have lawfulness of any of these matters examined by a court.

Article 5 of the Convention reads in the relevant parts as follows:

> "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:
>
> ...
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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 notes that Article 5 § 1 (b) and (c) of the Convention are applicable to the applicant's situation. There was a proper ground for his arrest as there existed a reasonable suspicion that the applicant was driving under the influence of alcohol and/or drugs. Furthermore, the Court finds that the applicant was lawfully detained to allow laboratory tests to be conducted. This was an obligation prescribed by law and bringing the applicant to a laboratory and detaining him for that purpose was necessary "in order to secure the fulfilment of [that] obligation" (see *McVeigh v. the*

United Kingdom, Commission's report of 18 March 1981). Accordingly, this part of the application is manifestly ill-founded and must thus be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

The Court notes that the applicant appears rather to be complaining about what happened after his release, namely about the fact that he was suspected of a crime in the absence of reasons and the lack of access to a court to challenge the bodily search. As concerns the former, Finnish law provides for a possibility to obtain compensation from State funds for an unjustified arrest. As the applicant has not applied for this, this part of the application must be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention. As concerns the latter issue, the Court finds that this question is better dealt with under Articles 8 and 13 of the Convention.

Complaint under Articles 8 and 13 of the Convention

The applicant complained under Article 8 of the Convention that his right to respect for private life had been violated as Finnish law, according to which the police can without any intervention, consent or supervision of a public prosecutor or a court conduct a bodily search, was contrary to the Convention. There was thus a lack of access to a court to challenge the bodily search.

Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court notes that, in essence, the applicant is complaining about the fact that he did not have an effective remedy to complain about the manner in which the bodily search was conducted. For this reason the complaint must also be examined under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] 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."

The Court reiterates its case-law to the effect that Article 13 cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 24 April 1988, § 52, Series A no. 131).

The Court finds that in the present case there is no serious ground for maintaining that the conduct of the Finnish authorities gives rise to an appearance of a violation of Article 8 of the Convention. The applicant has not claimed that the conduct of the Finnish authorities when taking breath, blood and urine samples was contrary to the provisions of the Coercive Measures Act. He has not shown any excessive use of force on the part of the police officers concerned, or any breach of domestic law on the part of the medical personnel when taking the samples. The Finnish authorities cannot therefore arguably be said to have breached Finnish law. Nor is there any arguable claim that the interference with the applicant's right to respect for private life was not necessary in a democratic society or was disproportionate to the legitimate aim pursued. Nor can it be argued that no safeguards existed to prevent the arbitrary taking of samples or that the manner in which such were taken failed to respect his human dignity. Had there been a breach of domestic provisions, for example, if excessive force had been used, the applicant could have invoked criminal and civil remedies.

The Court concludes that there is no arguable claim of violation of Article 8 of the Convention and, consequently, no entitlement to a remedy under Article 13 of the Convention has been made out as regards the alleged misconduct of the Finnish authorities. Accordingly, Article 13 is not applicable in the instant case. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must thus be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court

Declares unanimously the complaint under Article 5 of the Convention inadmissible;

Declares by a majority the complaint under Article 8 of the Convention inadmissible;

Declares by a majority the complaint under Article 13 of the Convention inadmissible.

Lawrence Early
Registrar

Nicolas Bratza
President