

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

FIRST SECTION

DECISION

Application no. 38967/10
Jüri METS
against Estonia

The European Court of Human Rights (First Section), sitting on 7 May 2013 as a Chamber composed of:
Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 28 June 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Jüri Mets, is an Estonian national who was born in 1983 and lives in Tallinn. He is represented before the Court by Mr A. Pilv, a lawyer practising in Tallinn.

2. The Estonian Government ("the Government") are represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

1. Criminal proceedings

4. On 31 October 2002 criminal proceedings were initiated in respect of the applicant, who was suspected of fraud.

5. On 2 April 2003 he was taken into custody. He was released on 30 April 2003. An obligation not to leave his place of residence was imposed on him.

6. In the meantime, on 7 April 2003 the applicant's property, including his share in a house and his bank accounts, was attached. One of the bank accounts was released on 7 July 2004; the house was attached until 11 April 2007. The remaining bank accounts were released by a judgment of the Tartu Court of Appeal (see paragraph 9 below).

7. In August 2007 the applicant was committed for trial before the Viru County Court.

8. On 29 April 2009 the Viru County Court convicted the applicant of fraud.

9. By a judgment of 23 November 2009 the applicant was acquitted by the Tartu Court of Appeal. It was noted in the judgment that the applicant had no right to compensation under the Unjust Deprivation of Liberty (Compensation) Act (*Riigi poolt isikule alusetult vabaduse võtmisega tekitatud kahju hüvitamise seadus*) for the period of detention from 2 April to 30 April 2003, since his detention had been ordered because he had evaded the criminal proceedings; in such a case the law did not provide for compensation.

10. On 28 January 2010 the Supreme Court declined to accept an appeal lodged by the Public Prosecutor's Office.

2. Claims for compensation before the administrative authorities

11. On 22 February 2010 the Ministry of Justice rejected the applicant's claim for compensation for the pecuniary and non-pecuniary damage he had allegedly sustained as a result of the criminal proceedings. The Ministry was of the opinion that the length of the proceedings before the courts – two years and five months – had not been excessive, and that eleven months of that period were attributable to the applicant.

12. On 31 March 2010 the Police and Border Guard Board ("the Board") rejected a claim by the applicant for compensation. In respect of the deprivation of liberty it was noted that the applicant had not appealed against the Tartu Court of Appeal's judgment whereby it had been determined that he was not entitled to compensation. With regard to the criminal proceedings, it was found that the case had been complicated and

that no unlawful measures had been taken in respect of the applicant. The Board considered that no non-pecuniary or pecuniary damage had been proved that would justify an award of compensation. The applicant was informed in the Board's refusal that a complaint against its decision could be lodged with the Tallinn Administrative Court within thirty days.

13. On 3 May 2010 the State Prosecutor's Office refused to pay the applicant compensation for the pecuniary and non-pecuniary damage he claimed in respect of the criminal proceedings against him. The State Prosecutor's Office considered that the restrictions imposed on the applicant during the criminal proceedings (attachment of his property, obligation not to leave his place of residence) had been lawful and not exceptionally harsh.

3. Claim for compensation before the administrative court

14. On 4 May 2011 the applicant lodged with the Tallinn Administrative Court a claim for compensation for pecuniary damage caused by the criminal proceedings. The case (no. 3-11-1108) was transferred to the Tartu Administrative Court, which had jurisdiction over the matter. By amendments he had made to his claim on 4 and 26 April 2012, the applicant had also claimed compensation for the non-pecuniary damage allegedly caused by the excessive length of the criminal proceedings and the obligation not to leave his place of residence. In the course of the proceedings before the Administrative Court the applicant also referred to his application pending before the European Court of Human Rights (that is, the present case) and mentioned the sum proposed to him by the Government under the friendly-settlement procedure.

15. By a judgment of 30 November 2012 the Tartu Administrative Court granted the applicant's claim in part. It awarded him 1,800 euros (EUR) as compensation for the non-pecuniary damage caused by the excessive length of the criminal proceedings and the obligation not to leave his place of residence. In determining the sum of the award, the court also made reference to the sum proposed to the applicant in the friendly-settlement procedure. The compensation claim for pecuniary damage was dismissed.

B. Relevant domestic case-law

16. In a judgment of 22 March 2011 in the case of *Osmjorkin* (no. 3-3-1-85-09) the Supreme Court declared the State Liability Act (*Riigivastutuse seadus*) unconstitutional in so far as it did not provide for compensation for non-pecuniary damage caused by excessive length of a preliminary investigation in criminal proceedings, and awarded the complainant a sum of money. It further considered that the enactment of a special regulation for compensation for damage arising from criminal proceedings was required (for a more complete summary of the judgment, see *Raudsepp v. Estonia*, no. 54191/07, §§ 38-42, 8 November 2011).

COMPLAINTS

17. The applicant complained under Article 6 § 1 and Article 13 that the criminal proceedings had been excessively lengthy, and that there had been a lack of effective remedies in this regard.

18. He further complained about his deprivation of liberty (Article 5) and conditions of detention (Article 3), the attachment of his property (Article 8 and Article 1 of Protocol No. 1), the disclosure of information to the media during the preliminary investigation by the police investigator (Article 6 § 2), of pressure by the investigator in order to obtain a confession from him (Article 10), and of an infringement of his right to education (Article 2 of Protocol No. 1).

THE LAW

A. Alleged violation of Article 6 of the Convention

19. The applicant complained that the criminal proceedings against him had been excessively lengthy. He relied on Article 6 § 1 of the Convention, which reads as follows:

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

20. The Government called on the Court to declare the application inadmissible on account of an abuse by the applicant of his right of petition. Firstly, the Government submitted that the applicant had intentionally failed to inform the Court of the domestic proceedings he had initiated to claim compensation for the allegedly excessive length of criminal proceedings, which were pending when he submitted his reply to the Government's observations. Secondly, in those domestic proceedings the applicant had referred to the friendly-settlement negotiations, which had been in breach of the applicable confidentiality requirement.

21. The applicant did not comment on the first point. In respect of the second issue he submitted that he had only disclosed the information at the court hearing and not publicly. He had been unaware that this was not allowed and he had been unable to afford to pay his lawyer to take part in the court hearing in question. There had been no malicious intent.

22. The Court considers that it may leave open the issue whether, in the circumstances of the present case, the applicant's failure to inform it of further developments in his case, and the breach of the confidentiality of the friendly-settlement negotiations, must be considered to represent an abuse

of the right of application, because the application is in any event inadmissible for the reasons set out below.

23. The Government argued that the applicant had not exhausted domestic remedies before lodging an application with the Court. They considered that after the domestic remedies had been made use of and just satisfaction awarded, the applicant could no longer be considered a victim of the alleged violation.

24. The applicant argued that he had not received full compensation for the violations of the Convention. In particular, the sum awarded had been insufficient and inferior to sums previously awarded by the Court, and it had also only related to one of the violations. The applicant submitted that he had not appealed against the Tartu Administrative Court's judgment of 30 November 2012 because he had lacked the financial means to do so.

25. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V, with further references to the cases of *Eckle v. Germany*, 15 July 1982, § 69 et seq., Series A no. 51; *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

26. The issue as to whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation. As it has already held in other length-of-proceedings cases, the question whether he or she has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. It is the Court's settled case-law that where the national authorities have found a violation and their decision constitutes appropriate and sufficient redress, the party concerned can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Cocchiarella*, cited above, § 72; *Apicella v. Italy* [GC], no. 64890/01, § 70, 29 March 2006; and *Holzinger v. Austria (no. 1)*, no. 23459/94, § 21, ECHR 2001-I).

27. The Court observes that in the present case the criminal proceedings in respect of the applicant lasted from 31 October 2002 to 28 January 2010, that is, seven years and three months.

28. On 30 November 2012 the Tartu Administrative Court found that the applicant had sustained non-pecuniary damage as a result of the excessive length of the criminal proceedings and the obligation not to leave his place of residence. It awarded the applicant EUR 1,800.

29. The Court therefore considers that the Administrative Court in substance acknowledged the infringement complained of.

30. As regards the question whether the redress afforded was adequate and sufficient, the Court reiterates that in length-of-proceedings cases one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded. The amount depends, in particular, on the characteristics and effectiveness of the domestic remedy (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 202 and 205, ECHR 2006-V, and *Apicella*, cited above, § 91).

31. The Court can also perfectly well accept that a State which has introduced a remedy which is designed to afford compensation will award amounts which – while being lower than those awarded by the Court – are not unreasonable, on condition that the relevant decisions, which must be consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly (see, *mutatis mutandis*, *Scordino*, cited above, § 206).

32. Turning to the sum awarded to the applicant by the domestic courts, the Court finds that the compensation granted in the present case is almost at the same level as the sums awarded for comparable delays by the Court in previous cases. As concerns the length of the compensation proceedings before the administrative court, the Court observes that those proceedings lasted for one year and six months at one level of jurisdiction. This period cannot be considered excessive (compare, for example, *Gagliano Giorgi v. Italy*, no. 23563/07, §§ 72 and 73, 6 March 2012). Moreover, it appears that the applicant initially claimed compensation for pecuniary damage only, and that in fact his claim for non-pecuniary damage was dealt with by the administrative court in about eight months (see paragraphs 14 and 15 above). Lastly, the Court notes that although it has no information about the execution of the Tartu Administrative Court's judgment, no allegations about any delays in that connection have been raised.

33. In these circumstances, the Court holds that the applicant can no longer be considered to be a victim of the alleged violation of Article 6 § 1 of the Convention in respect of the excessive length of the proceedings. It follows that the complaint in that regard is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Alleged violation of Article 13 of the Convention

34. The applicant complained that that there had been no remedy available for his complaint of excessive length of criminal proceedings. He relied on 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."

35. The Court observes at the outset that despite the Estonian Supreme Court's ruling in the *Osmjorkin* case, in which the Supreme Court called for the enactment of special regulations concerning compensation for damage arising from criminal proceedings (see paragraph 16 above), no pertinent legislative amendments have yet been adopted. The Court considers that the enactment of legislation clearly establishing grounds and speedy procedures for awarding compensation for excessively lengthy proceedings would contribute considerably to legal certainty in this field. However, the Court's task is not to assess a State's legislation – or its absence – in the abstract.

36. In the present case, the Court has already found that the applicant lost his victim status because the administrative courts in substance acknowledged a violation of his right to a fair criminal trial within a reasonable time and he was awarded compensation for the ensuing non-pecuniary damage (see paragraphs 27 to 33 above). Thus, the applicant had at his disposal an effective remedy developed by the practice of the courts, which he made use of.

37. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Other alleged violations of the Convention

38. The applicant also made a number of complaints concerning the criminal proceedings and various restrictions imposed on him in this context. He cited Articles 3, 5, 6 § 2, 8 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1 to the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President