CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 13102/03
by Jukka-Pekka NARINEN
against Finland

The European Court of Human Rights (Fourth Section), sitting on 13 December 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 Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 31 March 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jukka-Pekka Narinen, is a Finnish national who was born in 1957 and lives in Klaukkala. He is represented before the Court by Mr Pentti Lehtoruusu, a lawyer practising in Helsinki.

A. The circumstances of the case

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

The applicant is a former partner of a limited partnership company, which was wound up in 1993.

On 4 February 1994 its estate reported an offence against the applicant. On 4 July 1995 he was interrogated by the police for the first time on suspicion of, *inter alia*, offences of debtor's fraud and dishonesty as well as bookkeeping offences. He was detained from 4 to 6 July 1995. In June 1997 he was charged on twenty-one counts.

The proceedings before the District Court (*käräjäoikeus, tingsrätten*) of Helsinki began on 30 September 1997.

On 4 March 1999, at its 16th hearing, the District Court issued its judgment. It convicted the applicant of, *inter alia*, two aggravated debtor's frauds, two offences of debtor's dishonesty and five bookkeeping offences and sentenced him to one year and eight months imprisonment. He was ordered to pay some 723,400 Finnish Marks (FIM; corresponding to 122,000 euros (EUR)) to the estate and to reimburse its legal expenses.

He appealed to the Court of Appeal (*hovioikeus, hovrätten*) of Helsinki in May 1999, requesting an oral hearing in order to rehear seven witnesses as the District Court had allegedly overlooked their evidence. He further requested the court to conduct further investigations and that he be provided with the original requests for international investigatory assistance apparently made by the chief police officer. On 16 February 2001 he filed further submissions to the court, asking it to decide his case expeditiously and to dismiss the charges, alleging that the proceedings had been excessively lengthy.

On 25 March 2002, without having held an oral hearing, the Court of Appeal issued its judgment, rejecting his appeal. It ruled, *inter alia*, that "due to the mentioned ambiguities in the bookkeeping, it is not possible to provide clear evidence as to how [the applicant] transferred [the company's] assets to himself. Neither has [the applicant] clarified the ambiguities, although, as a partner of a limited partnership company, he has had many opportunities to do so." It further found that his other requests were unjustified or did not fall within its jurisdiction.

On 2 October 2002 the Supreme Court refused the applicant leave to appeal.

B. Relevant domestic law

Oral hearing in the Court of Appeal

Chapter 26, section 7 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*; Act 661/1978), as in force at the

relevant time, provided that a Court of Appeal was to hold an oral hearing when necessary.

According to the terms of the reservation made by Finland in accordance with Article 64 of the Convention, as in force at the relevant time, Finland could not guarantee a right to an oral hearing insofar as Finnish laws at the time of the events at issue did not provide such a right. This applied, *inter alia*, to proceedings which were held before the Court of Appeal.

COMPLAINTS

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

He complains, without invoking any Article that the Court of Appeal refused to hold an oral hearing.

He further complains, without invoking any Article that the principle of equality of arms was violated as the police and the domestic courts refused to conduct further investigations and as the police refused to provide him with copies of the requests for international investigatory assistance relating to his case.

He finally complains that the Court of Appeal disregarded the presumption of innocence laid down in Article 6 § 2 of the Convention by noting in its judgment that the applicant had not clarified the ambiguities in the bookkeeping and therefore allegedly shifted the burden of proof to him.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention about the length of the criminal proceedings, which started on 4 July 1995 and ended on 2 October 2002. Article 6 § 1, insofar as relevant, reads as follows:

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant's complaint about the lack of an oral hearing before the Court of Appeal falls to be examined under the above-cited Article 6 § 1. The Court notes that by its terms the scope of the Finnish reservation was, at

the relevant time, limited to relieving, among other tribunals, the Court of Appeal from the obligation to hold an oral hearing and finds that the reservation was valid and applicable to the Court of Appeal in the present case (see *Helle v. Finland*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44; *(see Tamminen and Tammelin v. Finland* (dec.), no. 33003/96, 28 September 1999). It follows that this complaint is incompatible *ratione materiae* within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant's complaints concerning the refusal to carry out further investigations and to submit him with copies of the international assistance requests fall to be examined under the above-cited Article 6 § 1 as well as Article 6 § 3 (b). Article 6 § 3 (b) reads as follows:

> " 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;..."

The Court notes that the Court of Appeal rejected the applicant's requests as being unjustified or as being outside its jurisdiction. The Court would underline that according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not the function of this Court to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. The examination of the case-file in the present case does not disclose any appearance of a violation of a fair trial in these respects. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. The applicant complains that the Court of Appeal shifted the burden of proof to him in stating that he had not explained his part in the bookkeeping ambiguities. He invokes Article 6 § 2 which reads as follows:

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

The Court recalls that, as a general rule, it is for the national courts to assess the evidence before them, while it is for the Court to ascertain that the proceedings considered as a whole were fair, which in case of criminal proceedings includes the observance of the presumption of innocence. Article 6 § 2 requires, *inter alia*, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused (see the *Barberà,*

Messegué and Jabardo v. Spain judgment of 6 December 1988, Series A no. 146, p 33, § 77). Thus, the presumption of innocence will be infringed where the burden of proof is shifted from the prosecution to the defence (see *Telfner v. Austria*, no. 33501/96, § 15, 20 March 2001).

Furthermore, while it is incompatible with Article 6 to base a conviction solely or mainly on the accused's silence or on a refusal to answer questions or to give evidence himself, in situations which clearly call for an explanation from the accused his silence, or other response, can be taken into account in assessing the persuasiveness of the evidence adduced by the prosecution (see, *mutatis mutandis*, *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, 49-50 and 51-52, §§ 45-47 and 54).

In the circumstances of the present case and assessing the proceedings as a whole, the impugned inference by the Court of Appeal was not the sole or main basis for his conviction, given that the District Court referred in its judgment to the evidence obtained from the witnesses and supporting written evidence. The Court further notes that the applicant was assisted by counsel throughout the proceedings. It has not been alleged that his counsel was in any way prevented from adducing evidence in support of the defence. It concludes that there is no indication that the requirements of either Article 6 §§ 1 or 2 have been infringed in this respect and rejects this part of the application as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of criminal proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President