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

SECOND SECTION

DECISION

Application no. 24031/22
Tommi Aleksi NOUSIAINEN
against Finland

The European Court of Human Rights (Second Section), sitting on 11 March 2025 as a Committee composed of:

Davor Derenčinović*, President*,
Gediminas Sagatys,
Juha Lavapuro*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 24031/22) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 May 2022 by a Finnish national, Mr Tommi Aleksi Nousiainen ("the applicant"), who was born in 1999, lives in Riihimäki and was represented by Mr E. Saros, a lawyer practising in Helsinki;

the decision to give notice of the application to the Finnish Government ("the Government"), represented by their Agent, Ms K. Oinonen, of the Ministry for Foreign Affairs;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

A. Criminal proceedings

1. The application concerns the alleged unfairness of criminal proceedings against the applicant, who was convicted of an assault of two persons committed in 2019 by altogether three persons, and who alleges that there was insufficient evidence to prove that he had been present at the crime scene and been one of the three persons who had participated in the assault.

2. The applicant was convicted by the District Court of altogether four counts of assault, including the assault at issue, and sentenced to conditional imprisonment of five months and 15 days. As regards the assault in question, the applicant had stated before the court that he did not remember whether he had been present at the crime scene. A witness, Mr R., who had been heard in person by the District Court, had confirmed in court the account which he had given during the pre-trial investigation and according to which he had seen the applicant knocking down an intervening man at the crime scene. Mr R. had identified the applicant at the crime scene as the third assaulter shortly after the events also on a photograph shown to him by an unidentified individual and had also recognised him as the third assaulter in the courtroom. Due to their positions, the injured parties either did not see the applicant at the crime scene or could not identify him. The court considered that the injured parties and Mr R. had described the events in a mutually consistent manner. The testimony of Mr R., who had observed the events as an outsider, had been the most detailed. The accounts of the injured parties and Mr R. had confirmed that all three defendants, including the applicant, had attacked the injured parties.

3. In his appeal to the Court of Appeal, the applicant complained about evidential matters, notably that only one witness, Mr R., had allegedly recognised him as having participated in the assault and had only done so on the basis of a photograph of him which had been shown to Mr R. after the events had taken place. The person who had shown the photograph to Mr R. had not been questioned.

4. At the Court of Appeal hearing in 2021 both injured parties, the applicant, the applicant's co-defendants and Mr R. were heard. Mr R., giving evidence by video link, could no longer recognise the applicant, who was present in the courtroom, as one of the three assaulters whom he had recognised in the proceedings before the District Court because of the considerable time that had passed since the events in question. Nor could the two other co-defendants remember whether the applicant had been present at the crime scene. The two injured parties had not been able to recognise the applicant but they could not exclude his presence either.

5. In its judgment, the Court of Appeal assessed Mr R.'s initial identification of the applicant and concluded that it had been reliable. The reliability of Mr R.'s recognition had particularly been supported by the fact that he had had an opportunity to compare the applicant to a photograph immediately after the assaults. It had been evident that the person showing the applicant's photograph at the crime scene had also recognised the applicant as the third perpetrator. The assaults had been committed in bright day light and Mr R. had been observing the incident from a close distance. The court considered that the personal circumstances of Mr R. due to his state of drunkenness did not undermine the reliability of the identification to a significant extent. Nor had any alternative course of events been presented

that could not be ruled out with certainty on the basis of the available evidence. In assessing the evidence in the case, the court concluded that there was no reason to draw conclusions different from those of the District Court on the ground that witness R. had no longer been able to recognise the applicant as one of the perpetrators in the main hearing of the Court of Appeal approximately two years after the incident. The applicant's appeal was thus dismissed.

6. The applicant requested that the Supreme Court grant him leave to appeal against the Court of Appeal's judgment, arguing that, as Mr R. had no longer been able to identify him as a perpetrator at the Court of Appeal hearing, there remained no evidence against him.

7. On 24 January 2022 the Supreme Court refused the applicant leave to appeal against the Court of Appeal's judgment.

B. Complaints

8. The applicant complained under Article 6 § 3 of the Convention that he had not been afforded the right to examine a witness against him: the person who had allegedly shown to Mr R. the photograph on the basis of which the latter had initially identified the applicant as perpetrator had never been questioned by the police or the domestic courts. The applicant argued that he had therefore not been able to challenge the evidence given by this person. The evidence given by Mr R. had been the sole and decisive evidence against him and had carried significant weight in his conviction. He pointed out that no identity parade was organised in the case and that Mr R. had withdrawn his identification at the Court of Appeal hearing.

9. Furthermore, the applicant complained under Article 6 § 1 of the Convention that he had not had a fair trial as the domestic courts had not taken into account the evidence in his favour and as the reasoning in the judgments was thus insufficient to a degree which violated his right to a fair trial.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 §§ 1 and 3 of the Convention due to the impossibility to challenge witness evidence

10. The applicant complained under Article 6 § 3 of the Convention that he had not been able to challenge the evidence given by the unidentified person who had allegedly shown his photograph to Mr R. and that Mr R.'s witness statement had been the sole and decisive evidence against him and had carried significant weight in his conviction.

11. The relevant principles on the defendant's right under Article 6 §§ 1 and 3 (d) of the Convention to examine witnesses against him are laid down,

inter alia, in *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100 et seq., ECHR 2015).

12. In so far as the applicant complained about a breach of his defence rights under Article 6 §§ 1 and 3 (d) in respect of the examination of the unidentified person having shown the applicant's photograph at the crime scene, it appears from the case file that the applicant had asked the Court of Appeal to hold an oral hearing and that he himself, his co-defendants and Mr R. be heard as witnesses. The applicant did not ask any other persons to be heard at the oral hearing, even if he could have done so, failing thus to exhaust effective domestic remedies. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

13. In so far as the applicant must be understood to complain about a breach of Article 6 §§ 1 and 3 (d) in respect of the examination of witness R., the Court notes that he had the opportunity to question Mr R. in person and to challenge the reliability of his initial identification during the hearings before the District Court and the Court of Appeal. This part of the application must therefore be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 6 § 1 of the Convention due to the assessment of evidence and the courts' reasoning

14. The Court further notes that the applicant is dissatisfied with how the domestic courts assessed the evidence before them and reasoned their judgments. In particular, the applicant claimed that he had been convicted despite the fact that, before the Court of Appeal, none of the persons who had been present at the crime scene could confirm that he had participated in the attack.

15. The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before them, establish facts and interpret domestic law. The Court will not, in principle, intervene, unless the decisions of the domestic courts appear arbitrary or manifestly unreasonable and provided that the proceedings as a whole were fair, as required by Article 6 § 1 (see, for example, *Nemtsov v. Russia*, no. 1774/11, §§ 87-88, 31 July 2014; and *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015). Moreover, domestic court judgments should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Article 6 § 1 cannot be understood as requiring a detailed answer to every argument (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I; and *Stepanyan v. Armenia*, no. 45081/04, § 35, 27 October 2009).

16. It appears from the case file that during the pre-trial investigation witness R. had given an account according to which he had seen the applicant knocking down an intervening man at the crime scene. Mr R. had recognised the applicant at the crime scene as the third assaulter from a photograph and had also identified him in the courtroom during the District Court proceedings. The District Court found the testimony of Mr R., who had observed the events as an outsider, to be the most detailed and had established on that basis the applicant's presence at the crime scene. The Court of Appeal saw no reason to draw any conclusions different from those of the District Court on the ground that Mr R. had no longer been able to recognise the applicant as one of the perpetrators in the main hearing of the Court of Appeal following the passage of time. It appears from the judgment of the Court of Appeal that witness R. did not withdraw the identification at the Court of Appeal hearing, as the applicant had alleged, but that he was no longer able to identify the applicant as the perpetrator due to the passing of time. The Court considers that the fact that the Court of Appeal relied on an earlier identification of the applicant does not render the domestic decisions, in the circumstances of the case, arbitrary or manifestly unreasonable. Moreover, both the District Court and the Court of Appeal assessed the reliability of the identification in their judgments and took into account any factors possibly having an effect on that reliability.

17. Having regard to the foregoing, the Court further finds that, contrary to what the applicant alleges, the domestic courts' reasoning explaining on what they had based the applicant's conviction was sufficient.

18. It follows that this part of the application must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 April 2025.

Dorothee von Arnim
Deputy Registrar

Davor Derenčinović
President