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. 61110/00
by O.L.
against Finland

The European Court of Human Rights (Fourth Section), sitting on 5 July 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 14 July 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, O.L., is a Finnish national who was born in 1949. He was represented before the Court by Mr Heikki Kilpiä, a lawyer practising in Kurikka.

A. The circumstances of the case

The facts of the case, as submitted by the applicant and as they appear from the documents, may be summarised as follows.

The applicant has a daughter A., born on 4 December 1991. A.'s mother was E.Y., with whom the applicant cohabited periodically. During her pregnancy, E.Y. moved away from the family home.

In 1992 A. was placed into public care, living in E.Y.'s sister's family. Later the same year, the public care ended and E.Y. and A. moved back to the family home, where they lived until 1996, when E.Y. and A. moved away again.

Apparently in April 1997 E.Y. sent letters to the District Court *(käräjäoikeus, tingsrätten)* alleging that the applicant had sexually abused A.. On 9 May 1997 E.Y. was involuntarily hospitalised, having been diagnosed as suffering from schizophrenia. On the same day A. moved to live with the applicant.

On 17 June 1997 the Social Welfare Office *(sosiaalitoimisto, socialbyrån)* reported the applicant to the police for alleged sexual abuse of A.. Next day the parents and A. participated in a psychiatric examination at the hospital. On 27 August 1997 A. was taken to the children's hospital for psychiatric examinations, and after that, placed in a foster family.

On 11 March 1998 the Social Welfare Board (*sosiaalilautakunta, socialnämnden)* decided to take A. into public care. The Board took note of the child psychiatric examinations, according to which it was highly probable that the applicant had sexually abused A. and that E.Y. was unable to take care of A.'s emotional needs. It was in the best interest of A. to be placed into public care due to her traumatic childhood.

The Board referred the public care order to the County Administrative Court (*lääninoikeus, länsrätten*) of Vaasa for confirmation. On 14 April 1998 the applicant appealed against the order to the County Administrative Court, claiming, *inter alia*, that the County Administrative Court should not decide on the appeal until the criminal proceedings against him were over.

On 1 September 1998, after having held an oral hearing, the County Administrative Court confirmed the care order and refused the appeal. The court noted that the decision on the care order did not depend on the outcome of the ongoing criminal investigations against the applicant. The court went on to find as follows:

> "As regards the father, the care order is based on the doctor's report of 12 February 1998 on A.'s psychiatric examinations between 18 June 1997 and 19 January 1998. According to the report, it is highly probable that [the applicant] has sexually abused his daughter. [The applicant] has denied the accusations. ... The County Administrative Court finds it clear that neither of the parents is able to provide family circumstances which would not endanger the child's development. Support measures of open care are not possible. ..."

On 9 October 1998 the applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*). He requested the court to terminate the public care and to order that A. be examined by a psychologist R.K..

On 30 April 1999 the public prosecutor decided not to prefer charges against the applicant since there was insufficient evidence.

On 11 May 1999 the Supreme Administrative Court asked the National Authority for Medicolegal Affairs (*terveydenhuollon oikeusturvakeskus, rättskyddscentralen för hälsovården)* to deliver an opinion on the doctors' examinations and reports. It obtained an expert's opinion, according to which the examinations as well as the conclusions had been thorough and proper.

By its decision issued on 21 January 2000 the Supreme Administrative Court rejected the applicant's request for further psychological examinations and his appeal concluding, *inter alia*, as follows:

> "The public care order was based on the expert opinion resulting from the psychiatric examinations. However, it is unclear whether A. has been subjected to sexual abuse. This possibility cannot be excluded, either. According to the examinations it is undisputed that A. has become predisposed to sexuality, not suitable for a child of her age. It is also clear that living with a mentally ill mother has had negative effects on A.'s psychical development...."

At the moment the applicant has a right to visit his daughter twice a month for two hours.

B. Relevant domestic law

Pursuant to Section 16 of the Child Welfare Act (*lastensuojelulaki, barnskyddslag 683/1983 as amended on 9.2.1990/139)*, the Social Welfare Board shall take a child into care and provide substitute care for him or her if the child's health or development is seriously endangered by lack of care or other conditions at home, or if the child seriously endangers his or her health and development by abuse of intoxicants, by committing illegal acts other than a minor offence, or by any other comparable behaviour. Furthermore it is required that measures of assistance in open care are not appropriate or have proved to be inadequate, and that substitute care is considered to be in the best interests of the child.

Pursuant to Chapter 1, Section 6 of the Criminal Proceedings Act (*laki oikeudenkäynnistä rikosasioissa*, *lag om rättegång i brottmål*; 689/1997) the public prosecutor has to raise charges if there is a *prima facie* case against the suspect.

COMPLAINTS

The applicant complained, under Article 6 of the Convention, about the excessive length of the proceedings.

The applicant also complained, under Article 6 § 2 of the Convention, that the authorities and courts had violated the presumption of innocence in considering the public care of A., since the public prosecutor preferred no charges against him.

Finally the applicant complained, invoking Article 13 of the Convention that the domestic courts refused to order A. to undergo further examinations even though it would have been in the best interests of both of them. Thus he had no possibility to restore his reputation or to have A. live with him.

THE LAW

The applicant complained, invoking Articles 6 and 13 of the Convention, about the length of proceedings, breach of the presumption of innocence and the domestic courts' refusals to order further examinations.

A. Article 6 of the Convention

Article 6 provides, in relevant part:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

1. The length of the proceedings

The Court considers that, for the purposes of Article 6, the proceedings concerning the public care of A. began on 11 March 1998, when the Social Welfare Board decided to place A. in public care. The proceedings ended on 21 January 2000 when the Supreme Administrative Court issued its decision. The period to be considered is therefore one year, ten months and ten days.

The Court reiterates that the "reasonableness" of the length of the proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria; the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in dispute (see, among other authorities, *Comingersoll v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

The Court considers that the case was not a very complex one.

The Court notes that the case was pending before the County Administrative Court for four and a half months, which cannot be considered unreasonable. Nor can the length of the proceedings before the Supreme Administrative Court, one year and three months, be considered unreasonable, taking into account that the court obtained various statements and comments from the parties in the case and a statement from the National Authority for Medicolegal Affairs.

In conclusion, regard being had to all circumstances of the case, the length of the time complained of cannot be regarded as unreasonable.

It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. Presumption of innocence

The applicant complained about the failure to observe his Article 6 § 2 right by various domestic authorities and courts. The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 is one of the elements of the fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, § 35). It prohibits the premature expression by the tribunal itself of the opinion that the person charged with the criminal offence is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, § 37). It also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41).

The scope of Article 6 § 2 is not limited to criminal proceedings that are pending (see *Allenet de Ribemont,* cited above, § 35). Article 6 § 2 may also be applicable where the criminal proceedings proper have terminated in an acquittal and other courts issue decisions voicing the continued existence of suspicion regarding the accused's innocence or otherwise casting doubt on the correctness of the acquittal (see in particular the following judgments: *Sekanina v. Austria*, judgment of 25 August 1993, Series A no. 266-A, § 30; *O. v. Norway*, no. 29327/95, §§ 34-38, ECHR 2003-II and *Y v. Norway*, no. 56580/00, §§ 43-47, ECHR 2003-II (extracts)).

The Court notes that the public care proceedings in the present case did not give rise to a "criminal charge" against the applicant. The issue is

whether the public care proceedings were nevertheless linked to the criminal proceedings in such a way as to fall within the scope of Article 6 § 2. The Court observes that the criminal investigations were not as such decisive for the issue of public care nor was there any link or dependence between the two. In this particular case, although the prosecutor did not prefer charges against the applicant, the decision to place A. into public care was legally and factually distinct. Regardless of the conclusion reached in the criminal investigation against the applicant, the public care case was thus not a direct sequel to the former.

The Court further finds that the impugned ruling of the Supreme Administrative Court in no way stated that the applicant was criminally liable with regard to the charges which the prosecutor had dropped. By stating that the possibility of sexual abuse could not be excluded the Supreme Administrative Court decision was thus not incompatible with, and did not "set aside", the public prosecutor's decision (see, *mutatis mutandis*, *Lundkvist v. Sweden* (dec.), no. 48518/99, ECHR 2003-XI).

In sum, the Court concludes that Article 6 § 2 was not applicable to the proceedings relating to the public care of A. and that there is no appearance of a violation of this provision in the instant case.

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Article 13 of the Convention

The applicant complained under Article 13 of the Convention about the lack of an effective remedy. Article 13 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."

According to the Court's case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 131, § 52).

The Court has above found that the applicant's complaints under Article 6 §§ 1 and 2 of the Convention are manifestly ill-founded. It follows that the applicant does not have an "arguable claim" and his complaint does not attract the guarantees of Article 13 of the Convention. This part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President