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

THIRD SECTION

DECISION

Application no. 45916/21
Kristjan OOLO against Estonia
and 3 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 17 September 2024 as a Committee composed of:

Jolien Schukking*, President*,
Peeter Roosma,
Diana Kovatcheva*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicants listed in the appended table ("the applicants") on 8 September 2021;

the decision to give notice of the complaints raised under Article 6 § 1 of the Convention concerning the length of criminal proceedings against the applicants to the Estonian Government ("the Government") represented by their Agent, Mr Tim Kolk, Representative of Estonia to the European Court of Human Rights, and to declare inadmissible the remainder of the applications indicated as a partial decision in the appended table;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the length of the applicants' criminal proceedings.

2. The applicants were accused of causing insolvency of company P. by transferring the company's immovable property and trademarks to a subsidiary which subsequently rented the real estate out and sold the trademarks to third persons (hereinafter "criminal proceedings regarding P.'s insolvency"). The company's bankruptcy trustee lodged a criminal complaint

in relation to the circumstances causing P.'s insolvency on 21 March 2013. On 26 March 2013 the prosecutor's office forwarded the criminal case for investigation to the police. Between 14 and 20 May 2014 the applicants were interviewed as suspects in that case.

3. Prior to those events, other criminal proceedings had been initiated on 16 February 2012. These proceedings concerned embezzlement in company W., money laundering, and causing W.'s insolvency. W. was a wholly owned subsidiary of P. During those criminal proceedings on 21 March 2012 a preliminary investigation judge authorised wiretapping of the third applicant's (R. Kilk) phones. Furthermore, as W.'s bookkeeping documents were thought to be kept in a server located on the premises of company P., the latter's premises were searched on 20 April 2012. During this search various material, notably a protocol of P.'s board meeting concerning the restructuring of company P., were seized. That protocol was later used as evidence in the criminal proceedings regarding P.'s insolvency.

4. In the criminal proceedings regarding P.'s insolvency, the prosecutor submitted the indictment to the Tartu County Court on 27 May 2016. The applicants challenged the Tartu County Court's jurisdiction. The Supreme Court decided on 25 August 2016 that the case fell in the jurisdiction of the Harju County Court. The latter court committed the applicants for trial on 30 October 2016.

5. At the hearing on 9 January 2017, in response to the applicants' request to terminate the proceedings due to their excessive length, the prosecutor agreed that by that moment the proceedings had lasted for four years and ten months. The Harju County Court dismissed the request.

6. While the applicants were initially convicted by the Harju County Court on 28 May 2018, they were acquitted – on three separate instances (on 18 February 2019, 27 November 2019 and 3 September 2020) – by the Tallinn Court of Appeal. After examining the appeals on points of law lodged by the prosecutor's office, the Supreme Court quashed the appellate court's judgments twice (on 26 April 2019 and 28 May 2020) and remitted the case to the Tallinn Court of Appeal. The third judgment by the Tallinn Court of Appeal, acquitting the applicants, became final on 9 March 2021 when the Supreme Court refused to examine the third appeal on points of law lodged by the prosecutor's office.

7. The applicants referred to the excessive length of proceedings in their appeals against the initial judgment of the Harju County Court and against the first out of three judgments of the Tallinn Court of Appeal, and asked for the proceedings to be terminated on that ground. In their appeal on points of law against the first judgment of the Tallinn Court of Appeal the applicants stressed that they were not challenging the acquittal, but rather the reasoning of the appellate court in so far as it had not addressed some alleged procedural violations, including the question of the excessive length of proceedings. The

Supreme Court refused, in a summary decision, to examine their appeal on points of law.

8. The applicants did not lodge appeals on points of law against the second and third judgments of the Tallinn Court of Appeal, although they asked the proceedings to be terminated owing to their excessive length in the response submitted to the appeal on points of law lodged by the prosecutor's office against the Tallinn Court of Appeal's second judgment.

9. The domestic courts found, in a summary manner, without identifying the relevant starting point for assessing the length of proceedings and without going into details, that the criminal proceedings regarding P.'s insolvency had not lasted unreasonably long. The Supreme Court noted in its judgment of 26 April 2019 that the case was legally complex. It added that the issue of length of proceedings had to be addressed in the subsequent proceedings and – if necessary – the courts had a possibility to use a statutory remedy of alleviating punishment if reasonable time of proceedings had indeed been exceeded. In its judgment of 28 May 2020, the Supreme Court merely noted that its position as regards length of proceedings remained the same. The Tallinn Court of Appeal in its judgments of 27 November 2019 and 3 September 2020 referred back to the Supreme Court's reasoning, considering itself bound by it.

10. The applicants complain about the excessive length of the criminal proceedings.

THE COURT'S ASSESSMENT

A. Joinder of applications

11. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Alleged violation of Article 6 § 1 of the Convention

12. The Government argued that the applicants' complaint about excessive length of criminal proceedings was inadmissible due to non-exhaustion of domestic remedies. Notably, the applicants had no longer raised this complaint after being acquitted by the Tallinn Court of Appeal for the third time nor had they claimed compensation under Compensation for Damage Caused in Offence Proceedings Act (*süüteomenetluses tekitatud kahju hüvitamise seadus*).

13. The Court notes the applicants' counterargument that under domestic law appeal on points of law against acquittal meant that they would have had to challenge the operative part of the judgment, that is to say challenge their own acquittal. It would have – contrary to its aim – rendered the proceedings even longer and would not have been an effective remedy. The applicants

also questioned the effectiveness of the compensatory remedy in the particular circumstances of the case.

14. The Court considers that it is not necessary to adopt a position on whether the applicants had exhausted domestic remedies, as their complaint is in any event inadmissible for following reasons.

15. The general principles regarding the assessment of the length of proceedings have been set out, among many other authorities, in *Pélissier and Sassi v. France* [GC] (no. 25444/94, § 67, ECHR 1999-II), and *Vegotex International S.A. v. Belgium* [GC] (no. 49812/09, §§ 150-52, 3 November 2022).

16. The domestic courts never defined the relevant period to be taken into account in assessing the length of the applicants' proceedings nor analysed the course of the proceedings in any detail, other than the Supreme Court noting that the case had been legally complex.

17. The Court does not agree with the applicants' assertion that the relevant period should be counted (at least as regards the third applicant) from 21 March 2012 (when a court authorised wiretapping of his phone) or from 20 April 2012 (when the premises of company P. were searched; see paragraph 3 above). It does not consider itself bound by the fact – referred to by the applicants – that at the trial hearing on 9 January 2017 the prosecutor seemed to implicitly accept the starting point of the relevant period to be the one suggested by the applicants (see paragraph 5 above). The Court observes that the two abovementioned procedural measures were taken in the context of different criminal proceedings concerning company W. While there appears to have been (at least some) overlap between the persons involved in companies W. and P., and even if company W.'s insolvency contributed to company P. becoming insolvent (owing to the links between the two companies, as pointed out by the applicants), the Court is not convinced by the applicants' assertion that the two sets of criminal proceedings essentially concerned the same subject matter. As regards the wiretapping of the third applicant's phone, the applicants did not claim that he had been aware of the surveillance measures taken in his respect (compare *Liblik and Others v. Estonia*, nos. 173/15 and 5 others, § 94, 28 May 2019). As regards the search, it appears that the premises of company P. were searched because company W.'s bookkeeping documents were believed to be held there. There is nothing to indicate that the abovementioned procedural steps marked the (actual) beginning of the criminal proceedings concerning company P.'s insolvency (criminal complaint in that regard having been lodged only about a year later) or that they had started to substantially affect the applicants for the purposes of assessing the length of those proceedings under Article 6 § 1. The fact that some of the evidence gathered in the proceedings concerning company W. was later used in the impugned criminal proceedings (see paragraph 3 above) does not alter this finding.

18. In the light of the above the Court agrees with the Government that the relevant period for calculating the length of proceedings in the present case started to run from May 2014 when the applicants were interviewed as suspects in that case (see paragraph 2 above). Accordingly, the proceedings lasted for six years and nine and half months. This period included the pre-trial investigation stage and the time during which courts at three levels of jurisdiction considered the applicants' case.

19. The Court agrees with the Supreme Court's assessment that the case was legally complex notwithstanding the applicants' assertion that the information on the actions that the applicants were suspected of could to a large extent be found in public databases. In this connection – while it undoubtedly contributed to the length of the proceedings – the fact that the Supreme Court twice remitted the case to the appellate court attests to the complexity of the legal issues before the courts.

20. There is no dispute between the parties that applicants could not be reproached for inappropriately prolonging the criminal proceedings against them.

21. As for the conduct of the authorities, the Court notes that the pre-trial investigation lasted for approximately two years, which cannot be considered unreasonably long. The Court does not agree that each period when the investigative authorities did not undertake any public or recorded investigative actions should be seen as a delay on their part, as suggested by the applicants.

22. The court proceedings at three levels of jurisdiction lasted for approximately four years and nine and half months. The applicants listed certain factors which in their opinion could be seen as inactivity or undue prolongation of the court proceedings. Admittedly, the initial wrong choice of a court (see paragraph 4 above) caused a few months' delay before the Supreme Court clarified which court should be seen as having jurisdiction. Apart from that, the Court does not consider that the five months that the Harju County Court took to deliver the judgment could be perceived as delaying the proceedings. Moreover, there is no evidence to suggest, as the applicants allege, that some other procedural steps (such as prosecutor's request for examination of additional witness, the said witness' failure to appear to a scheduled hearing and the prosecutor's subsequent withdrawal of that request) resulted in a considerable delay in the proceedings. Lastly, while the Supreme Court did quash the appellate court's judgments three times and remitted the case to the lower court, the Court does not find that this aspect, in and out of itself and without looking at the overall length of the proceedings, could lead to a finding that those proceedings had exceeded any reasonable duration.

23. The Court is mindful that the long criminal proceedings must undoubtedly have been arduous for the applicants, especially given the significant media interest in the case. However, the applicants have not

argued that they were detained or that any other restrictive measures were applied to them during the proceedings.

24. Making an overall assessment of the length of the proceedings, the Court therefore concludes that they did not go beyond what may be considered reasonable in the particular circumstances of the case (compare *Ekholm v Finland* (dec.), no. 5952/03, 10 July 2007).

25. Having regard to the above, the Court considers that the applicants' complaint 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,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 10 October 2024.

Olga Chernishova Deputy Registrar	Jolien Schukking President

Appendix

List of cases:

No.	Application no.[1]	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	45916/21*	**Kristjan OOLO** 1986 Tartu Estonian	Andrei SVIŠTŠ
2.	46402/21	**Kaie KILK** 1969 Tallinn Estonian	Tarmo PETERSON
3.	47701/21*	**Rein KILK** 1953 Tallinn Estonian	Tarmo PETERSON
4.	49607/21*	**Neeme RAIG** 1936 Kambja Estonian	Andrei SVIŠTŠ

[1] The applications followed by an asterisk (*) have inadmissible complaints.