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

SECOND SECTION

DECISION

Application no. 56825/15
Jouni Esko RAUTIAINEN
against Finland

The European Court of Human Rights (Second Section), sitting on 11 January 2022 as a Committee composed of:

Egidijus Kūris, *President,*
Pauliine Koskelo,
Gilberto Felici, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 November 2015,

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 Jouni Esko Rautiainen, is a Finnish national, who was born in 1960 and lives in Kuopio.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for 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. Compensation proceedings

4. The applicant participated in the activities of the WinCapita investment club in 2007. In 2008 the police began an investigation into the activities of that club. The applicant filed a police report regarding those activities on

31 December 2008, also requesting compensation for the damage he had suffered.

5. On 8 January 2009 the applicant was questioned as a suspect by the police. At the end of the interrogation, the applicant "demanded punishment" and claimed damages "from the perpetrator", without specifying from whom or on what specific factual or legal basis.

6. Subsequently, in the criminal proceedings against the two leading figures of the investment club, the Public Prosecutor decided not to pursue any compensation claims and such claims were severed, to be tried in separate compensation proceedings. Consequently, the applicant was asked by the Vantaa District Court (*käräjäoikeus, tingsrätten*) to submit his compensation claims to that court. The applicant did so by letter dated 4 January 2011, identifying as respondents the two leading figures of the investment club. His case was pending on 17 January 2011.

7. On 16 June 2011 the National Bureau of Investigation (*keskusrikospoliisi, centralkriminalpolisen*) decided to end the pre-trial investigation in respect of the applicant and he was thus no longer under suspicion.

8. The Vantaa District Court then asked the applicant whether he still wished to pursue his compensation claims against the leading figures of the investment club. On 19 July 2011 the applicant informed the Vantaa District Court that he did wish to maintain his compensation claims. The court informed him on the same day that the compensation proceedings would start only in December 2011, that is to say, after a judgment was expected to be delivered in the criminal case. The District Court started to examine the compensation claims only after the criminal proceedings had become final in July 2013.

9. On 24 January 2014 the Vantaa District Court confirmed a settlement between the applicant and one of the leading figures of the investment club on the compensation issue. The latter was ordered to compensate the damage suffered by the applicant.

10. The applicant did not request enforcement of the settlement by the National Enforcement Authority. Instead, by letter dated 28 February 2014, the applicant sought execution of the settlement before the Legal Register Centre (*Oikeusrekisterikeskus, Rättsregistercentralen*).

2. Proceedings in respect of excessive length

11. By letter dated 27 September 2011, the applicant lodged a compensation claim with the Vantaa District Court concerning the alleged excessive length of the compensation proceedings. He requested that the court compensate him 6,000 euros (EUR) for the excessive length of the compensation proceedings, which had by then already lasted two years and nine months, counted from the filing of the police report on 31 December

2008. He asserted that this interpretation was in conformity with the Court's case-law.

12. On 14 April 2014 the Vantaa District Court rejected the applicant's claims relating to the compensation for excessive duration of the proceedings. It found that the applicant's compensation claim had been pending before that court for about three years and, if calculated from the filing of the police report, about five years. According to the domestic law, for a complainant the time started to run at the beginning of the District Court proceedings. The case had been exceptionally extensive and complex and the applicant had no means to accelerate the proceedings. Had the criminal and compensation proceedings not been severed, the duration would most likely have been even longer. In total 1,805 persons had claimed compensation before the Vantaa District Court and 1,288 settlements had been confirmed by that court during the same period of time as when the applicant's settlement was confirmed. The applicant's interest in the case was not very great, due to the amount of compensation claimed, which was about EUR 6,000. Therefore, the court found that the duration of the compensation proceedings had not been excessive.

13. By letter dated 3 May 2014, the applicant appealed to the Helsinki Appeal Court (*hovioikeus, hovrätten*), arguing that the duration of the compensation proceedings should have been counted from 31 December 2008 onwards, when he first presented his compensation claims to the police, or, at the latest, from 8 January 2009 onwards when he was interrogated as a suspect. Moreover, the compensation proceedings had lain dormant for some time and they had not yet been terminated as the settlement had not yet been executed. Also, for the applicant, the amount of EUR 6,000 was not insignificant.

14. On 16 February 2015 the Appeal Court upheld the District Court decision of 14 April 2014. In addition to the reasoning of the District Court, it found that, according to the domestic law, length of proceedings was to be assessed in the same way as in the Court's case-law. It appeared that in situations such as the present one, the domestic law differed from the Court's case-law. The Parliamentary Legal Affairs Committee had also noticed this difference but had considered that there was no need to amend the domestic law, as such an amendment would place complainants in different positions, depending on whether their compensation claims were examined in the context of criminal proceedings or as a separate civil matter. According to the Court's case-law, the execution phase could also be included in the duration of proceedings. However, in the present case the execution was not yet delayed. Even if the length of the proceedings were calculated according to the starting and ending points suggested by the applicant, the compensation proceedings had not been excessively long.

15. By letter dated 12 April 2015, the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds given for

the appeal already presented before the Appeal Court. He also claimed that the length of those proceedings concerning the compensation for excessive length should be taken into account when assessing the overall excessive length. According to the applicant, the proceedings had by then already lasted for six years and three months and were still pending for execution.

16. On 28 May 2015 the Supreme Court refused the applicant leave to appeal.

17. By letter dated 23 July 2015, the applicant complained to the Parliamentary Ombudsman (*eduskunnan oikeusasiamies, riksdagens justitieombudsman*), *inter alia*, of the length of the proceedings.

18. On 5 August 2015 the Parliamentary Ombudsman found that he had already pointed out, in 2012, that the domestic law did not comply with the Court's case-law as far as the starting point of the proceedings for a complainant was concerned. However, the Parliamentary Legal Affairs Committee had taken an opposite view of the matter. As he had already drawn the legislator's attention to this issue, there was no reason to take any measures in the matter.

B. Relevant domestic law and practice

19. The Act on Compensation for Excessive Duration of Judicial Proceedings (*laki oikeudenkäynnin viivästymisen hyvittämisestä, lagen om gottgörelse för dröjsmål vid rättegång;* Act no. 362/2009) entered into force on 1 January 2010. The Act provides for a party a right to receive compensation from State funds whenever judicial proceedings concerning that party have been excessively long.

20. When evaluating the length of the proceedings, in addition to the length itself, the nature and scope of the subject-matter, the actions of the parties, authorities and courts in respect of the proceedings as well as the importance of the subject-matter to a party are to be taken into consideration pursuant to section 4 of the Act. Moreover, the case-law under Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the European Court of Human Rights of the Council of Europe is also to be taken into account.

21. According to section 5 of the Act, the period to be taken into account starts in civil and non-contentious civil matters when action is initiated before a court; in criminal matters when the competent authority has notified the defendant of a crime he is suspected of having committed or when a suspicion that he has committed a crime has had an essential bearing on his position; or when a claim made by a complainant has become pending before a court.

22. Chapter 10, section 11, subsection 2, of the Penal Code (*rikoslaki, strafflagen*, as modified by Acts no. 347/2013 and 356/2016) provides the following:

> "If compensation or restitution has been paid or ordered to be paid after the issue of the decision referred to in section 2, subsection 3, the forfeiture may be enforced to a correspondingly reduced amount. If the forfeiture has already been enforced, the Legal Register Centre may, on the written application of the person in question, order that the amount be paid from State funds. Notwithstanding what is provided elsewhere in law on the obligation of secrecy, the person in question has the right, for preparation of the application, to receive from the Legal Register Centre information on the enforcement of the forfeiture sanction referred to above. If more than one application is made on the basis of the same offence, the applications shall be decided at the same time, unless this causes unreasonable hindrance to the applicants. If the enforced forfeiture sanction is insufficient to cover the payment of all the debts, payment shall be made in proportion to the size of the debts, applying as appropriate the provisions of Chapters 17 and 18 of the Bankruptcy Act (120/2004). A person who is dissatisfied with the decision of the Legal Register Centre may file an action at the place of domicile of the plaintiff or at the Helsinki District Court. The action shall be filed within one month of the date of the decision of the Legal Register Centre. If several actions are filed on the basis of applications that were made on the basis of the same offence, the actions shall be considered by the District Court where the first action was filed. Other district courts shall transfer the actions for the consideration of said District Court. The State, represented by the Legal Register Centre, is the respondent in such a case."

COMPLAINT

23. The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings had been incompatible with the "reasonable time" requirement.

THE LAW

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

24. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

1. The parties' submissions

(a) The Government

25. The Government noted that, under the Finnish legal system, a claim for compensation of an injured party in a criminal matter was a civil matter by nature, and, if it was processed separately from the criminal proceedings, the civil procedure was followed. It was also very common to settle such claims. The processing of such a compensation claim began when it was filed with the court or presented before the court. If the period of time counted for assessing the length of the civil proceedings began at different points of time depending on whether the matter was heard in connection with a charge or

separately in a civil procedure, injured parties in criminal cases would unjustifiably be placed in unequal positions, depending on how their claims were processed. The interpretation adopted by the Court in *Nousiainen v. Finland* (no. 45952/08, 23 February 2010) could not lead to a universally valid conclusion that the point in time when the authorities were informed of the compensation claim should regularly be taken as the starting point for the length assessment. Such interpretation could lead to a situation in which the compensation claim was lodged before a suspect had been identified in pre-trial investigation, meaning that civil proceedings could be delayed even without any identified suspect or existence of any criminal proceedings. Therefore, in the Government's view, the starting point for the length assessment should be when the compensation claim was pending before the District Court.

26. The Government maintained that the compensation proceedings ended when a settlement was concluded and confirmed by the District Court. The procedure before the Legal Register Centre was entirely separate from the court proceedings. According to Chapter 10, section 11, subsection 2, of the Penal Code, a complainant in criminal proceedings could apply for compensation from the Legal Register Centre in cases where proceeds of crime had been ordered forfeit to the State and the forfeiture sanction had been enforced. Compensation from State funds was payable to the complainant only to the extent to which forfeiture of the proceedings of crime had been enforced. The enforcement of many WinCapita judgments was still pending and it was difficult to foresee on what date the payment of compensation to the applicant would take place. In any event, the provisions on the length of proceedings did not protect parties against the failure of the opposing party to pay the requested amount voluntarily and against the resulting delay.

27. The Government argued that the civil proceedings before the first and only instance took three years, two months and 19 days. Since these proceedings were stayed pending the outcome of criminal proceedings, the civil proceedings in the applicant's case lasted *de facto* only six months and 21 days. In total 1,805 persons claimed damages before the Vantaa District Court and 1,288 settlements were confirmed by that court during the same period of time as when the applicant's settlement was confirmed. The consideration of the compensation claims jointly with the criminal matter would not have accelerated the proceedings but delayed them. The applicant's application was therefore manifestly ill-founded and should be declared inadmissible under Article 35 §§ 3 (a) and 4 of the Convention.

(b) The applicant

28. The applicant noted that he had wanted to settle the case as he wanted to speed up the compensation proceedings and have the compensation paid rapidly. He did not, however, have any means to accelerate the enforcement

of the settlement, the execution of which had not even started yet. A settlement could be assimilated to a court ruling and therefore the enforcement should be included in the calculation of the length of the proceedings. There was a contradiction between the Finnish legal practice and the case-law of the Court, and therefore a statement should have been requested from the Parliamentary Constitutional Law Committee when the Compensation Act was enacted.

29. The applicant emphasised that it was possible to lodge a compensation claim at different points of time, and that therefore the length of the civil proceedings could also vary, even in the same matter. The different position of the complainants was thus created by different factual circumstances. All complainants were treated in an equal manner, since all of them were asked during the pre-trial investigation whether they wanted to claim compensation for damages. The pre-trial phase was an integral part of a fair trial, and it would be unreasonable for a complainant if this phase were not included in the duration of the civil proceedings. It was not relevant whether the perpetrator was known or not. What was relevant was that the pre-trial investigators acted quickly and did not prolong the investigation. The applicant pointed out that he was first interrogated as a suspect on 8 January 2009 and therefore it was clear that the duration of the compensation proceedings should start from that date. As the compensation proceedings had already lasted for more than seven years and were still on-going, it was clear that they had not been conducted within a reasonable time.

2. The Court's assessment

30. The Court notes that the parties disagree on the dates to be taken as the starting date and the ending date of the compensation proceedings in question.

31. As to the starting date, the Court observes that the applicant requested compensation on 31 December 2008 when he filed a police report and on 8 January 2009 when he was questioned as a suspect. However, he only identified the leading figures of the investment club as respondents in the compensation proceedings in his submissions of 4 January 2011. Therefore, the period for the purposes of calculating the length of proceedings started to run only from that moment in time.

32. As to the ending date, it is clear that the final decision in the present case was given by the Vantaa District Court on 24 January 2014. However, the parties views differ as to the inclusion of the execution phase.

33. According to the Court's well-established case-law, the execution phase also falls within the scope of Article 6 since execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). However, in the present case, the applicant did not request the National Enforcement Authority to execute the

decision of 24 January 2014 but, instead, he had recourse to a mechanism managed by the Legal Register Centre. This phase does not therefore form a part of the compensation proceedings and is not to be taken into account in the overall length. The ending date is thus 24 January 2014 when the settlement became final.

34. Therefore, the period to be taken into consideration was three years and 21 days for one level of jurisdiction.

35. The Court reiterates that the reasonableness of the length of 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 the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

36. In the present case, there was a particularly long period of inactivity on the authorities' part due to the fact that it was decided to sever the compensation claim from the criminal proceedings and to start the examination of the compensation claims in separate compensation proceedings only after a judgment was issued in the criminal case. Once the compensation proceedings started, they were conducted swiftly in less than seven months. A decision not to severe the proceedings would probably not have made the proceedings any faster. As to the applicant's conduct, it does not appear from the case file that he in any way contributed to prolonging the proceedings.

37. The Court considers that although the underlying criminal proceedings against the leading figures of the investment club can be regarded as complex both from the factual and legal points of view, the compensation proceedings themselves were not legally complex. However, the high number of claimants did add some complexity to them. In total 1,805 persons claimed compensation before the Vantaa District Court and 1,288 settlements were confirmed by that court during the same period of time as when the applicant's settlement was confirmed. Furthermore, as regards what was at stake for the applicant in the proceedings, the monetary compensation of EUR 6,000 may not have been insignificant to him but it does not strike as very significant either.

38. Having examined all the material submitted to it and taking into account its case-law on the subject, the Court finds that in the instant case the length of the proceedings was not excessive and thus met the "reasonable time" requirement.

39. For the above reasons, the application is manifestly ill-founded and should be declared inadmissible under 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 February 2022.

Hasan Bakırcı Deputy Registrar	Egidijus Kūris President