

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

FOURTH SECTION

DECISION

Application no. 26813/09
Juha Mikael RAUTONEN
against Finland

The European Court of Human Rights (Fourth Section), sitting on 15 May 2012 as a Chamber composed of:

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 May 2009,

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 Juha Mikael Rautonen, is a Finnish national, who was born in 1970 and lives in Tampere. He is represented before the Court by Mr Mikko Lehti, a lawyer practising in Tampere. 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

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

3. On 13 November 2003 the applicant, together with four other persons, was questioned by the police as a suspect in a forgery that allegedly took place in July 2003.

4. On 7 December 2004 charges were brought against the applicant. A hearing before the Tampere District Court (*käräjäoikeus, tinsgrätten*) was scheduled for 7 May 2007 but it was cancelled due to the absence of two co-defendants.

5. On 21 October 2009 the Tampere District Court convicted the applicant of aiding and abetting forgery and sentenced him to pay 30 day-fines, in total 180 euros.

6. By letter dated 14 November 2009 the applicant appealed to the Turku Appeal Court (*hovioikeus, hovrätten*), requesting that his sentence be mitigated due to the excessive length of the proceedings. Subsequently, the applicant also claimed compensation under the new Act on Compensation for Excessive Duration of Judicial Proceedings.

7. On 25 May 2010 the Turku Appeal Court upheld the District Court's conviction but decided not to impose any sentence on the applicant. It found that there was reason to mitigate the sentence as a considerably long period had passed since the commission of the offence. As to compensation, the court found that the mitigation of the sentence in itself was a sufficient remedy and that the applicant could therefore not be granted any monetary compensation under the new Act.

8. By letter dated 15 July 2010 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), claiming that mitigation of the sentence was not sufficient compensation for the excessive length of proceedings.

9. On 8 February 2011 the Supreme Court refused the applicant leave to appeal.

B. Relevant domestic law and practice

Mitigation

10. According to Chapter 6, section 7, of the Penal Code (*rikoslaki*, *strafflagen*; as amended by Act no. 515/2003),

> "[i]n addition to what is provided above in Section 6, grounds mitigating the punishment that are also to be taken into consideration are;
>
> [...]

(3) a considerably long period that has passed since the commission of the offence; if the punishment that accords with established practice would for these reason lead to an unreasonable or exceptionally detrimental result."

11. In its judgment of 11 June 2004 (*KKO:2004:58*) the Supreme Court noted that, although there were no legal provisions justifying the dismissal of a criminal charge due to unreasonably lengthy proceedings, such a dismissal or declaring a case inadmissible might in some exceptional circumstances, for example if their duration ruled out a good defence, be the only effective remedy satisfying the requirements of Article 13 of the Convention. That was, however, not so in that precedent case. In considering whether there were grounds for applying Chapter 6, section 7, subsection 3, of the Penal Code, the Supreme Court held that it had to be decided *in casu* whether the duration of the proceedings (in the precedent case over five and a half years) had been unreasonable. It concluded that in that case there were no grounds to waive a sentence or to mitigate the sentence owing to the duration of the proceedings.

12. In its judgment of 15 June 2005 (*KKO:2005:73*), the Supreme Court, applying Chapter 6, section 7, subsection 3, of the Penal Code, reduced the sentence imposed upon the applicant by six months owing to the length of the proceedings that had lasted some ten years. The court imposed an immediate term of ten months' imprisonment, finding that it was not justifiable to mitigate the sentence further by suspending the term of imprisonment.

Compensation for excessive length

13. 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.

Fines

14. According to Chapter 2a, sections 1-3, of the Penal Code,

"Section 1 - *Number of day fines* (550/1990)

A fine shall be passed as day fines, the minimum number of which is one and the maximum number is 120.

...

Section 2 - *Amount of a day fine* (808/2007)

The amount of a day fine shall be set so that it is reasonable in view of the solvency of the person fined.

One sixtieth of the average monthly income of the person fined, less the taxes and fees defined by a Decree and a fixed deduction for basic consumption, is deemed to be a reasonable amount of a day fine. The maintenance liability of the person fined may decrease the day fine.

The primary basis for the calculation of the monthly income is the income of the person fined as indicated in the most recent taxation. If the income of the person fined cannot be reliably ascertained from the tax records or it has essentially changed since the most recent taxation, it may be assessed also on the basis of other information.

...

Section 3 - *Total amount of the fine* (550/1999)

The total amount of the fine is equal to the number of day fines times the amount of a day fine.

..."

15. Chapter 2a, section 4, of the same Code provides the following:

"Section 4 - *Passing a conversion sentence* (578/2008)

A person who has been sentenced to a fine and from whom the collection of the fine has failed, shall be ordered to imprisonment in lieu of the unpaid fine. A conversion sentence shall be passed for an unpaid threat of a fine, the collection of which has failed, if the court has imposed it in order to ensure the conduct of court proceedings or pursuant to the Enforcement Code (705/2007). Any other threat of fine may not be converted into imprisonment."

COMPLAINT

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

THE LAW

17. The applicant complained under Article 6 of the Convention that the length of criminal proceedings against him had been excessive. Article 6 of the Convention reads as follows:

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

18. The Government argued that the applicant could no longer be considered as a victim because the excessive length of proceedings had been expressly acknowledged and remedied by the Appeal Court. The mitigation

of the applicant's sentence was substantial in its amount as it concerned the whole sentence. The redress was thus express and quantifiable and it made good any violation concerning the excessive length of proceedings. Moreover, the applicant also claimed monetary compensation for the excessive length, which claim was rejected by the Appeal Court. The applicant could thus no longer claim to be a victim.

19. The Government also argued that the applicant had not exhausted all domestic remedies as he had not appealed about the compensation issue to the Supreme Court.

20. The applicant maintained that he had exhausted all domestic remedies available, including the new compensation remedy.

21. The Court notes that the period to be taken into consideration for the purposes of the "reasonable time" requirement began on 13 November 2003 when the applicant was questioned by the police as a suspect. It ended on 25 May 2010 when the Appeal Court delivered its judgment. The applicant's appeal to the Supreme Court only concerned the excessive length issue. The criminal proceedings against the applicant lasted thus some 6 years and 6 months at two levels of jurisdiction.

22. The Court notes that the applicant had exhausted all domestic remedies as he had appealed against the length issue to the Supreme Court. The Government's objection concerning the non-exhaustion must therefore be rejected.

23. The Court notes that the core question is whether the applicant may continue to claim to be a victim of a violation of Article 6 § 1 of the Convention on the grounds of the length of criminal proceedings against him in view of the fact that his sentence was mitigated.

24. An individual can no longer claim to be a victim of a violation of the Convention when the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; for the application of this principle in the context of Article 6, see *Lüdi v. Switzerland*, 15 June 1992, § 34, Series A no. 238; and *Schlader v. Austria* (dec.), no. 31093/96, 7 March 2000).

25. In this regard the mitigation of a sentence on the ground of excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Eckle v. Germany*, cited above, § 66; *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001; *Cocchiarella v. Italy* [GC], no. 64886/01, § 77, ECHR 2006-V; and *Morby v. Luxembourg* (dec.), no. 27156/02, ECHR 2003-XI).

26. Applying these principles in the present case, the Court notes that the Appeal Court expressly upheld the substance of the applicant's length complaint when it stated that it was taking into account the length of the proceedings in waiving his sentence. It can therefore be said that the applicant was afforded express and quantifiable redress for the breach of the reasonable time requirement (see *Beck v. Norway*, cited above, §§ 27-29; see also *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X). As to the sufficiency of this redress, for the Court the amount of the day-fines imposed is not relevant as those amounts reflect in the Finnish system the accused's earnings. More important is to note that day-fines can be converted into a prison sentence. For the Court it is sufficient that, regardless of its content, the whole sentence was waived by the Appeal Court which thereby provided the applicant immediate relief *vis-à-vis* his length complaint.

27. Moreover, the Court notes that the Appeal Court also examined in its judgment the possibility of granting the applicant monetary compensation due to the excessive length of the proceedings but finally rejected this claim. The applicant was able to challenge this outcome before the Supreme Court which did not grant him leave to appeal. The compensation issue was thus assessed by two different domestic courts which both found that there was no need to grant any additional compensation.

28. In conclusion, the Court, exercising its supervisory function, is satisfied that the redress given by the Appeal Court, when immediately waiving the whole sentence to remedy the applicant's length complaint, was sufficient. The applicant can therefore no longer claim to be a victim of a breach of the "reasonable time" requirement as required by Article 34 of the Convention.

29. It follows that this application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court

Declares by a majority the application inadmissible.

Fatoş Aracı Deputy Registrar	Lech Garlicki President