CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF TÜRKIYE İŞ BANKASI v. FINLAND

(Application no. 30013/96)

JUDGMENT

STRASBOURG

18 June 2002

FINAL

18/09/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Türkiye İş Bankasi v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,

and Mr M. O'Boyle, *Section Registrar*,

Having deliberated in private on 28 May 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30013/96) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish bank, Türkiye İş Bankasi ("the applicant"), on 6 November 1995.

2. The applicant was represented before the Court by Mr O. Akinci and Mr A.N. Ortan, lawyers practising in Istanbul, Turkey. The Finnish Government ("the Government") were represented by their Agents, Mr H. Rotkirch, Director-General for Legal Affairs, Ministry of Foreign Affairs, and Mr A. Kosonen, Director, Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the civil proceedings in the applicant's case had been unreasonably lengthy as they had lasted five and a half years and the Court of Appeal of Helsinki had needed four years to render its decision.

4. On 15 January 1998 the Commission made a partial decision as to the admissibility of the application, deciding to adjourn the examination of the complaint concerning the length of proceedings and declaring the rest of the application inadmissible.

5. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

6. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

7. On 16 November 2000 having obtained the parties' observations on the admissibility and merits of the case, the Chamber declared the application admissible.

8. On 17 November 2000 the Section Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 8 August 2001, after an exchange of correspondence, he noted that there appeared to be no basis for reaching a friendly settlement.

9. The Chamber decided, after having consulted the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

10. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. On 17 August 1977 the applicant issued a letter of guarantee of 5,017,000 US Dollars (USD) to a Turkish company called TEK on behalf of a Finnish co-operative society called Metex. A Finnish bank, Kansallis-Osake-Pankki (KOP), issued a counter-guarantee in favour of the applicant.

12. On 28 April 1988, the City Court (*raastuvanoikeus, rådstuvurätt*) of Helsinki ordered KOP not to make any payments under the counter-guarantee for the bank guarantee in question.

13. On 29 September 1988 arbitration proceedings between Metex and TEK were initiated in Zurich, Switzerland, concerning a breach of the original delivery contract. The arbitration award was given on 7 March 1992.

14. On 15 November 1988 TEK made a call under the guarantee, as Metex had not fulfilled its contractual obligations. The same day the applicant transferred to TEK the sum of USD 1,661,164 on behalf of Metex under the guarantee, and informed its counterpart bank in Finland (KOP) about the operation.

15. On 18 November 1988 the Finnish bank informed the applicant that the counter-guarantee had expired on 18 August 1987 and that there was an injunction preventing payment.

16. On 1 December 1989 the applicant instituted civil proceedings against KOP before the City Court of Helsinki, claiming payment under the counter-guarantee. The case began on 4 December 1989 when the writ of summons was served on the respondent (KOP). Metex intervened in the

proceedings as a third party. Later, the applicant brought a further action which was served upon the respondent on 18 May 1990.

17. The City Court of Helsinki decided to apply Turkish law and appointed an expert. There were four oral hearings held before the City Court. It found in favour of the applicant on 22 November 1990, basing its judgment on the expert opinion. The court held that the applicant had made the payment specified in the action and shown that it was entitled to the amounts claimed. As the agreement had not been shown to be unreasonable, the City Court ordered KOP to pay the applicant the required amount of USD 1,661,164.

18. On 27 December 1990 KOP and Metex appealed against the decision to the Court of Appeal (*hovioikeus, hovrätt*) of Helsinki.

19. The reporting officer of the Court of Appeal was assigned to the case on 20 February 1992.

20. The case was examined by the Court of Appeal, without an oral hearing, on the basis of written observations submitted by the parties. In the proceedings before the Court of Appeal, the applicant submitted its observations on 10 January 1991, further observations on 19 February 1991, a rejoinder to further observations on 15 October 1992, a further rejoinder to further observations of Metex on 16 March 1994, and a request to expedite the proceedings on 16 December 1994. Metex submitted a request to expedite the proceedings on 9 January 1991, its notice of further observations on 30 May and 2 October 1991, further observations and evidence on 29 November 1991, 21 January 1992, 23 April 1992, 18 June 1992 and 5 November 1992. Metex also submitted a rejoinder to the rejoinder of the applicant on 16 March 1994, further observations on 15 and 18 April 1994 and a translation of its observations on 18 May 1994. KOP submitted further observations on 26 June 1992 and a rejoinder to the said rejoinder of the applicant on 16 March 1994.

21. The case was finally brought before a Chamber of the Court of Appeal on 16 December 1993.

22. In a judgment of 30 November 1994 the Court of Appeal set aside the City Court's judgment, finding that the applicant should, prior to making the payment, have confirmed that it was obliged to make payment under the guarantee and that the TEK's claim was not to be considered fraudulent or an abuse of rights. The court found that the applicant had not shown that it had fulfilled its obligations in that respect.

23. The applicant sought leave to appeal from the Supreme Court, (*korkein oikeus, högsta domstolen*) which, on 17 May 1995, refused the applicant leave to appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. Before the Court the applicant complained that its right to a trial "within a reasonable time" had not been respected and that there had accordingly been a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

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

A. Period to be taken into consideration

25. The Court has already found, in its decision of 16 November 2000 as to the admissibility of the case, that the proceedings at issue started on 4 December 1989. The period to be taken into consideration, however, began on 10 May 1990 when the Convention entered into force with respect to Finland. The case was then pending before the City Court of Helsinki. The proceedings ended on 17 May 1995 when the Supreme Court refused the applicant leave to appeal. Accordingly, the proceedings to be taken into consideration lasted five years and seven days.

B. Reasonableness of the length of the period in issue

26. The Government submitted that the case was very complex as the City Court received evidence written in a foreign language and Turkish law was applied to the case. The court also heard evidence from an expert on the contents of Turkish legal provisions. The parties' observations were translated during the proceedings before both the City Court and the Court of Appeal. All this complicated the examination of the case, which can also be considered somewhat complex for other reasons.

27. The Government further noted that the appeals of KOP and Metex were received by the Court of Appeal on 27 December 1990. After the initial observations, numerous documents by the different parties were submitted to the Court of Appeal, which pronounced its judgment on 30 December 1994. The Government stressed that for each set of further observations the case-file had to be returned to the reporting officer as the study of the case could proceed only after the reporting officer had assessed whether the observations involved any relevant information that would affect the decision. According to the Government, the length of the proceedings was thus also due - if only in part - to the conduct of the parties, including the applicant. The period for which the case was pending before

the City Court (about eleven months) can be considered very reasonable under the circumstances.

28. In so far as the proceedings before the Court of Appeal need to be considered, the Government noted that the arbitration proceedings between Metex and TEK lasted for three-and-a-half years, ending on 7 March 1992. It was necessary to evaluate the outcome of the arbitration proceedings in the judgment of the Court of Appeal. The Court of Appeal also had to interpret and apply Turkish law. Moreover, it was necessary to translate numerous documents during the Court of Appeal proceedings. The Government also emphasised that the number of cases pending before the Court of Appeal was very high at the time. They recalled that, according to the Court's case-law, such a temporary backlog does not involve liability on the part of the Contracting State provided that the State takes efficient remedial action with the requisite promptness. Even if the period of four years during which the proceedings were pending before the Court of Appeal cannot be regarded as a short one, the Government considered that the proceedings were not unreasonably long.

The Government further noted that the proceedings before the Supreme Court took less than three months.

Finally, the Government submitted that there were no exceptional grounds for an urgent consideration of the case, since the parties were two financially sound banks and no special grounds for urgency had been shown.

29. The applicant maintained that no acceptable justification had been put forward to explain the conduct of the Court of Appeal. It emphasised that the proceedings took a very long time, considering that the case was not complicated. According to the applicant, the fact that Turkish law had to be applied did not affect the complexity of the case as the Court had heard a legal opinion of a Turkish expert appointed by the City Court. Even though several sets of observations were submitted to the Court of Appeal, the period of four years before that instance could not be regarded as reasonable. The applicant pointed out that the reporting officer was assigned only on 20 February 1992, i.e. fourteen months after the appeals had been received. It was further noted by the applicant that the case was finally brought before the Court of Appeal on 16 December 1993 and the decision was rendered on 30 December 1994, i.e. over one year later, after a request to expedite the proceedings. Finally, the applicant stressed that the increasing number of cases pending before the Court of Appeal could not be regarded as a valid reason.

30. As to the reasonableness of the length of proceedings, the Court recalls that it must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the

applicant (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, 25 March 1999, § 67, and the Philis v. Greece (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

31. The Court accepts that the establishment of the relevant facts was of a certain complexity, taking into account that Finnish courts were obliged to apply Turkish law in the case at issue. However, this was a more difficult task for the City Court than for the Court of Appeal which benefited from the work already done by the City Court in this respect.

32. As regards the conduct of the applicant, the Court does not find that it impeded the speed of the proceedings. In particular, in the proceedings before the Court of Appeal, the Court notes that the applicant, which had not appealed against the City Court's decision, submitted its first two sets of observations during the first months the case was pending before the court and at a time when the Court of Appeal had not yet assigned a rapporteur to the case. However, the third and fourth sets of observations were submitted by the applicant at a later stage of the proceedings, the last one being dated 16 March 1994.

33. As regards the conduct of the authorities, the Court first points out that the applicant did not claim that the City Court or the Supreme Court had affected the length of the proceedings. In respect of the Court of Appeal proceedings the Court notes that it took the Court of Appeal some fourteen months to assign a reporting officer to the case and over a year to render a decision after the case was finally submitted. However, it must be borne in mind that the applicant had also lodged further observations on 16 March 1994, i.e. after the final submission of the case. Some further observations were submitted by other parties even later in April and May 1994. While the Court is satisfied that it was necessary to examine the parties' submissions carefully before rendering a decision, it is conceivable that at least some of the delays could have been avoided if the reporting officer had been assigned to the case earlier.

34. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of proceedings complained of, in particular that of the proceedings before the Court of Appeal, was excessive and failed to satisfy the reasonable time requirement There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

36. The applicant did not seek compensation for pecuniary damage other than its costs and expenses (see below). Without explicitly claiming compensation for non-pecuniary damage either, the applicant submitted, however, that the legal proceedings had affected its relationship with its counterpart banks.

37. The Government noted that no compensation under this heading could, accordingly, be awarded. Were the Court to take the view that compensation for non-pecuniary damage should be awarded, the Government regarded the sum of FIM 10,000 (equivalent to 1,680 euros) as reasonable but left it to the Court's discretion to award the applicant compensation for non-pecuniary damage.

38. Having regard to the circumstances of the case, the Court finds that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage, if any, sustained by the applicant.

B. Costs and expenses

39. The applicant sought reimbursement of 407,864 Finnish marks (FIM), equivalent to 68,597.80 euros, and 12,826,400 Turkish liras for costs and expenses incurred in the proceedings before the Finnish courts and the Court in Strasbourg.

40. In their memorial the Government invited the Court to make an award only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. The Government considered the sum of FIM 10,000 (equivalent to 1,680 euros) for the applicant's costs and expenses to be reasonable in the present case.

41. Applying the principles laid down in its case-law and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant 7,500 euros for its costs and expenses together with any value-added tax that may be chargeable.

C. Default interest

42. According to the information available to the Court, the statutory rate of interest applicable in Finland at the date of adoption of the present judgment is 11% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 of the Convention;

2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros) in respect of costs and expenses, together with any value-added tax that may be chargeable;
   (b) that simple interest at an annual rate of 11% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and notified in writing on 18 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE	Nicolas BRATZA
Section Registrar	President