



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

FOURTH SECTION

CASE OF TREIAL v. ESTONIA

(Application no. 48129/99)

JUDGMENT

STRASBOURG

2 December 2003

FINAL

02/03/2004

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 Treial v. Estonia,

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

Mr M. PELLONPÄÄ, *President*,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mr S. PAVLOVSKI, *judges*,

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

Having deliberated in private on 13 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 48129/99) 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 an Estonian national, Mr Arnold Treial ("the applicant"), on 9 December 1998.

2. The applicant was represented by Mrs M. Ploom, a lawyer practising in Tartu. The Estonian Government ("the Government") were represented by their Agents, Mrs M. Hion, First Secretary of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs, and Mr E. Harremoos, Special Advisor to the Mission of the Republic of Estonia to the Council of Europe.

3. The applicant alleged, in particular, that the length of the civil proceedings concerning his divorce and division of property was not reasonable.

4. The application was allocated to the First 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.

5. 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 (Rule 52 § 1).

6. By a decision of 3 December 2002 the Court declared the application partly admissible.

7. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicant was born in 1932 and lives in Otepää.

9. On 2 September 1977 he married a woman with whom he already had a son, born in 1962. On 3 February 1993 their son died.

A. Proceedings concerning divorce and division of property

10. On 3 February 1994 the applicant's wife filed with the Valga County Court (*Valga Maakohus*) an action for divorce and division of marital property, which included agricultural assets.

11. On 23 February 1994 the applicant filed against her an action for division of the inheritance of their son. The inheritance consisted of a house with adjacent buildings and two cars.

12. On 12 April 1994 the claims were joined by the court.

13. On 21 April 1994 the County Court held a hearing in the case and scheduled a further hearing for 24 May 1994.

14. On 9 May 1994 the County Court ordered, at the request of the applicant's wife, attachment of the property in order to ensure its preservation pending the resolution of her civil action.

The attachment was carried out by the court's bailiffs on 10 and 26 May 1994.

15. On 24 May 1994 the applicant was taken into custody in connection with the criminal proceedings instituted against him (see below).

16. Following his release from custody on 20 December 1994 the applicant filed, on 5 April 1995, an application with the County Court requesting that his civil case be transferred to another court alleging that the judge and the court were not impartial.

17. On 25 April 1995 the County Court imposed a fine on the applicant for having used insulting language in respect of the court both in his transfer application and at the hearings.

18. On 28 April 1995 the applicant requested that he be exempted from the fine. On 3 May 1995 the judge hearing the case withdrew. On 26 May 1995 the applicant informed the court that he had lost confidence in it and requested that all members of the court step down.

19. By a decision of 30 May 1995 the County Court dismissed both his requests. The decision was confirmed by the Tartu Court of Appeal (*Tartu Ringkonnakohus*) on 27 December 1995. Leave to appeal to the Supreme Court (*Riigikohus*) was refused on 13 March 1996.

20. On 3 June 1996 the applicant filed an action for divorce.

21. On 12 March 1997 and 30 September 1997 the judges of the Valga County Court withdrew from examining the applicant's and his wife's civil actions. In their decisions it was noted that that the applicant's written

submissions, in particular that of April 1995, were disrespectful of the court and hampered an objective examination of the cases.

22. On 29 October 1997 the cases were transferred by a higher court to the Viljandi County Court (*Viljandi Maakohus*) which on 3 November 1997 scheduled a hearing for 10 February 1998.

On that day the hearing was adjourned as the parties failed to appear before the court. The applicant had not informed the court of the reasons for his failure to attend. His wife could not attend as she was hospitalised from 19 January 1998 until 6 February 1998.

23. On 4 March 1998 the applicant asked the court to set a hearing date.

24. On 24 August 1998 the hearing was adjourned since, according to a medical certificate presented to the court, the state of health of the applicant's wife did not allow her to take part in it and it was not possible to decide on the divorce request without her presence.

25. On 29 September 1998 the applicant requested the court to hear the case without the presence his wife and to inquire whether she would agree to this.

In response to its inquiry of 8 October 1998 about the condition of health of the applicant's wife, the court was informed that she had still to receive treatment.

26. On 30 November 1998 the applicant's lawyer requested that the court fix a hearing date.

27. On 16 February 1999 the applicant's wife asked for the adjournment of a hearing scheduled for 22 February 1999 as her state of health had deteriorated and she needed to be hospitalised.

At the hearing on 22 February 1999, despite the applicant's request to proceed with the case, the court decided that the presence of the applicant's wife was necessary. Accordingly, it adjourned the hearing.

28. On 16 March 1999 the applicant's wife requested a higher court to transfer the case to the Tartu County Court, apparently because it was closer to her place of residence. Her request was refused in April 1999.

29. By a judgment of 1 December 1999 the Viljandi County Court dissolved the marriage between the applicant and his wife. At the applicant's request it allowed him additional time to modify and specify his property claim, which he submitted to the court on 21 January 2000.

30. In the continuing proceedings concerning division of property a hearing scheduled for 4 September 2000 was adjourned at the request of both parties who wanted to call certain witnesses.

A hearing on 20 September 2000 was also adjourned as the parties requested that additional witnesses be heard.

31. On 14 November 2000 the applicant unsuccessfully requested the removal of the judge.

32. A hearing took place on 20 November 2000.

33. By a judgment of 4 December 2000 the Viljandi County Court rejected the applicant's ex-wife's action for division of marital property for lack of proof that such property existed and accepted part of the applicant's claim concerning the inheritance of their son. The inheritance was divided up so that the applicant was to receive one of the cars and his ex-wife the rest of the property.

34. On 20 December 2000 the applicant, being dissatisfied with the way the inheritance was divided by the court, filed an appeal against the judgment with the Tartu Court of Appeal which, on 30 April 2001, quashed in part the County Court judgment and remitted the claim concerning the division of inheritance to it for a new examination.

On 4 December 2001 the applicant's former wife filed a counteraction claiming part ownership of the house left by their son. She also requested the County Court to take an interim measure ordering the applicant not to dispose of the property pending the outcome of the proceedings. By a decision of 18 March 2002 the County Court allowed the request.

On 25 March 2002 the applicant replied in writing to his ex-wife's claim.

35. On 27 March 2002 the County Court held a preliminary hearing. It requested the parties to submit additional evidence by 20 May 2002 and scheduled a further hearing for 20 June 2002.

As the applicant's former wife could not submit the requested evidence by the set date for health reasons, she requested an extension of the time-limit.

On 23 and 28 May 2002 the applicant filed further observations.

36. On 19 June 2002 the applicant's ex-wife requested a postponement for one month of the hearing scheduled for the following day due to her illness.

37. On 20 June 2002 the County Court decided to adjourn the case for an indefinite period.

38. In September 2002 the applicant and his ex-wife filed further observations

39. On 2 December 2002 the County Court held another preliminary hearing where it heard 7 witnesses. As the parties requested that additional witnesses be heard the court scheduled a further hearing for 2 April 2003.

40. At the hearing on 2 April 2003 the County Court heard 3 more witnesses. Each party requested however the hearing of another witness from their side, who both lived in different towns and were of poor health and advanced age. The court allowed their request and adjourned the examination of the case until these witnesses were heard.

41. The applicant's former wife's witness was to be heard on 25 April 2003 in Otepää. However, the date did not suit the witness and her questioning was postponed.

On 15 May 2003 the Viljandi County Court requested that the applicant's witness be examined by the City Court in Tallinn where the witness was

living. In its request the County Court noted that a difficulty with the case was that it involved circumstances dating back several decades, complicating the collection of evidence.

B. Criminal proceedings

42. On 20 May 1994 the Valga police, acting upon an application of the applicant's wife alleging ill-treatment by her husband, initiated criminal proceedings against the applicant for having caused his wife grievous bodily harm.

43. On 24 May 1994, pursuant to a court order, the applicant was taken into custody.

On 1 June 1994 the applicant was additionally charged with assault in respect of two other persons as well as unlawful possession of a firearm.

44. On 2 July 1994 the applicant was ordered to undergo a psychiatric examination and to be committed to a hospital. The examination took place from 1 September 1994 until 2 November 1994 in the Tallinn Psychiatric Hospital which declared him mentally fit.

45. The applicant was released from custody on 20 December 1994 and on 15 May 1995 the criminal proceedings against him were discontinued on the ground that the acts committed by him did not amount to a criminal offence and that the assault victims did not wish to pursue the charges.

C. Various proceedings for damages

46. Upon his release from custody in December 1994 the applicant discovered that some of his property, which had been placed in his wife's care following the court order of 9 May 1994, had gone missing.

On 30 November 1995 the applicant filed with the Tartu City Court (*Tartu Linnakohus*) a civil action against the Government claiming compensation for damage suffered as a result of his unlawful detention. In particular, he claimed moral damages for his arrest and placement in a psychiatric hospital as well as damages for lost property and for the loss of profit he would have made from his farming activities.

47. By judgment of 2 May 1997 the City Court allowed in part the applicant's lawsuit. It rejected the applicant's claim concerning the loss of property items on the grounds of lack of proof that the loss was due to the actions or omissions of the authorities. It noted that it was the applicant's wife who had been left in charge of the common property and that the proceedings for its division were still pending. It also rejected the claim concerning loss of profit.

48. On 27 January 1998 the Tartu Court of Appeal upheld the judgement of the first instance court concerning the loss of property items. It revoked the judgment with respect to the claim of loss of profit and remitted it to the

City Court for a new consideration. It also reduced the amount of moral damages payable to the applicant.

On 22 April 1998 the Supreme Court refused to grant the applicant leave to appeal.

49. Subsequently, the applicant filed new claims for damages against the Government in connection with his arrest and loss of property. Proceedings in respect of these claims were all terminated on the grounds that the matter had already been decided by a final judgment.

50. The applicant also brought civil proceedings against the judge who had authorised the attachment of property on 9 May 1994, the police investigator involved in his criminal case and his wife, claiming compensation for damage caused to the property by their unlawful acts. On 18 December 2000 the Võru County Court (*Võru Maakohus*), in order to establish a list of the applicant's property and the extent of possible damage, suspended the proceedings pending the entry into force of the judgment of the Viljandi County Court concerning the division of marital and inheritance property between the applicant and his wife.

THE LAW

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

51. The applicant complained that the proceedings for divorce and division of property had not been concluded within a reasonable time, as required by Article 6 § 1 of the Convention, the relevant part of 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”

52. The Government contested that assertion.

A. Period to be taken into consideration

53. The Government maintained that the length of the proceedings should be assessed separately in respect of each claim. Thus, the proceedings for divorce lasted from 3 February 1994, when the applicant's wife filed her action, until 1 December 1999, when the Viljandi County Court gave a partial judgement dissolving the applicant's marriage. The proceedings for division of marital property lasted from 3 February 1994 until 4 December 2000, the date on which the County Court decided on the claim. The Government argued that other claims submitted in the course of the civil proceedings, although part of the same case, should not be taken

into account as the applicant had not disputed the length of the trial concerning these claims.

54. The Court observes that the proceedings began on 3 February 1994, when the applicant's wife filed an action for divorce and division of marital property. On 23 February 1994 the applicant submitted a claim for division of the inheritance property left by his deceased son. On 12 April 1994 the trial court joined these claims for examination in one case.

The Court notes that it was these proceedings which formed the object of the applicant's complaint under Article 6 of the Convention and which it declared admissible.

The claim for divorce was decided 1 December 1999, when the Viljandi County Court gave a partial judgment. The continuing dispute over division of property, which comprised both marital assets and inheritance, was partially resolved on 4 December 2000. The proceedings relating to the remaining claim of division of the inheritance are still pending before the first instance court.

The overall length of the proceedings instituted in February 1994 has so far amounted to over nine years and nine months.

However, as the Convention entered into force in respect of Estonia on 16 April 1996, the period before that date lies outside the Court's jurisdiction *ratione temporis*. Consequently, the Court can only consider the period of seven years and seven months, which have elapsed after 16 April 1996, although it will take into account the stage reached in the proceedings on that date (see, among other authorities, *mutatis mutandis*, *Yagci and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, p. 16, § 40).

B. Reasonableness of the length of proceedings

55. The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among other authorities, *Pélissier and Sassi v France* [GC], no. 25444/94, § 67, ECHR 1999-II).

1. The parties' submissions

56. The Government argued that the case as a whole was complicated as in the course of the proceedings the parties had constantly submitted new and supplementary claims. The applicant also had seized different courts with claims which were interdependent and in some cases identical. Moreover, the list of marital property was relatively extensive and included agricultural assets the division of which was more difficult than would have been the case with ordinary household items.

57. It was argued that the parties significantly contributed to the length of the proceedings. The applicant did not exercise his procedural rights in good faith, acting in an abusive manner. His improper behaviour, for which he was fined, led to the withdrawal of the judges and the transfer of the case to another court in October 1997. In 1998-1999 the court could not hear the case because of the prolonged illness of the applicant's wife, which prevented her from attending. It was not possible to proceed with the case, which involved delicate and personal matters, without the presence of both parties. The court verified the reasons for the adjournment requests of the applicant's wife by requesting information about her state of health and her ability to participate in the proceedings. As soon as her health improved, the court decided on the divorce at the first hearing on 1 December 1999. The hearings on the property issue in September 2000 were adjourned at the request of the parties. It was submitted that the lack of legal representation of both parties contributed to the delay in the proceedings.

58. As regards the conduct of the authorities, the Government admitted that there were delays in the proceedings before the Valga County Court, some of which were occasioned by the withdrawal of the judges. However, most of delays occurred prior to the entry into force of the Convention in respect of Estonia on 16 April 1996. Following the transfer of the case to the Viljandi County Court in October 1997 no further delays could be attributable to the courts.

59. In sum, the Government considered that the overall length of the proceedings during the relevant period remained within the limits of a reasonable time as the main delays in the proceedings were due to the conduct of the parties.

60. The applicant submitted that the case was stalled before the first instance court for a considerable period and that he did not obstruct the proceedings.

2. The Court's assessment

61. The Court considers that the case involved a certain degree of complexity on account of the apparent difficulty in establishing the facts and collecting evidence in respect of the parties' claims which they modified and supplemented during the proceedings. However, this alone cannot justify the length of the proceedings.

62. As regards the conduct of the applicant, the Court notes that on several occasions, notably in April and May 1995 and in November 2000, the applicant challenged the judges of the court dealing with his case. His behaviour in 1995 was deemed abusive to the point that the judges felt compelled to withdraw from his case, causing a delay in the proceedings.

In 1998 and 1999 the trial court adjourned three hearings on account of the prolonged illness of the applicant's wife, which made it impossible for her to attend. In September 2000, the trial court adjourned two scheduled

hearings at the request of both parties who wanted to call additional witnesses. In June 2002 the case was again adjourned on the grounds of the poor health of the applicant's ex-wife. In 2003 the requests of the parties for examining further witnesses led to the scheduling of several additional hearings.

While it is true that that the conduct of the parties contributed significantly to the length of the proceedings, the Court reiterates that even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious trial required by Article 6 § 1 (see *Pafitis and others v. Greece*, judgment of 26 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 458, § 93).

63. As regards the conduct of the authorities, the Court observes that a part of the case is still pending before the first instance court since its introduction in February 1994.

It notes the Government's admission that there were delays imputable to the courts prior to 16 April 1996, the date of entry into force of the Convention in respect of Estonia. It finds no reason to hold otherwise.

The subsequent period, however, is also not immune from criticism. After the applicant's objection to the judges in May 1995, leading to the ancillary proceedings which ended on 13 March 1996, there was no movement in the case until its transfer on 29 October 1997 to the Viljandi County Court, which scheduled a hearing for 10 February 1998. It pronounced on the question of divorce on 1 December 1999, having previously fixed only three hearings for the years 1998-1999, all of which were adjourned due to the illness of the applicant's wife.

The Court reiterates however that in cases relating to civil status, what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (see, for example, *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I). In the present case, it took nearly five years and ten months, of which three years, seven months and fifteen days fall directly within the Court's competence *ratione temporis*, for the first instance court to decide on the divorce claim.

Following the adoption of a partial judgment on divorce on 1 December 1999 the next hearing in the continuing property proceedings was scheduled only for September 2000. The second judgment in the case, given in 20 December 2000, was quashed by the Court of Appeal on 30 April 2001. However, a new consideration of the case began 11 months later, on 27 March 2002.

As regards the connection, alleged by the Government, between the different sets of proceedings instituted by the applicant, the Court finds no indication that the delays and adjournments in the proceedings at issue were

occasioned by the proceedings concerning damages for the alleged loss of property or that the former proceedings were in any way dependant on the outcome of the latter.

64. In the light of the above, the Court considers that the authorities not only failed to take measures to expedite the proceedings, but were also responsible for significant delays after 16 April 1996.

Having also regard to the total length of the proceedings, which has amounted to seven years and seven months in the period covered by its competence *ratione temporis*, the Court finds that the applicant's case was not heard within a reasonable time.

65. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 720,708 Estonian kroons (EEK) for pecuniary damage and EEK 1,500,000 for non-pecuniary damage (46,199 and 96,156 euros (EUR), respectively), that he suffered in connection with the seizure of property.

68. The Government disputed both claims, submitting that they were not related to the case under consideration. They maintained that in respect of the length of the proceedings, the finding of a violation would constitute in itself sufficient just satisfaction.

69. As regards the pecuniary damage, the Court finds that the applicant has failed to demonstrate that the damage pleaded was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making any award to him under that head (see *mutatis mutandis*, *Kudla v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

70. The Court considers that the applicant suffered damage of non-pecuniary nature, such as distress and frustration resulting from the protracted length of the proceedings. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000.

B. Costs and expenses

71. The applicant sought the reimbursement of EEK 23,800 (EUR 1,521) for costs and expenses incurred in the various domestic and Strasbourg proceedings.

72. The Government contended that the sum was excessive and asked the Court to award an amount it considered fair.

73. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for example, *Nielsen and Johnson v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

It notes that the sum claimed by the applicant essentially related to the proceedings for damages both before the domestic authorities and this Court. It recalls that by a decision of 3 December 2002 it declared inadmissible the applicant's complaint concerning the seizure of property and his claim for compensation under Article 1 of Protocol No. 1.

Having regard to the information in its possession and the above criteria, the Court awards the applicant EUR 300 under this head.

C. Default interest

74. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* unanimously
 - (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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 300 (three hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President