



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

FOURTH SECTION

CASE OF T.K. AND S.E. v. FINLAND

(Application no. 38581/97)

JUDGMENT

STRASBOURG

31 May 2005

FINAL

31/08/2005

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 T.K. and S.E. v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 16 March 2004 and on 10 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 38581/97) 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 two Finnish nationals, T.K. and S.E. ("the applicants"), on 2 November 1997. The President of the Chamber acceded to the applicants' request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

2. The second applicant was represented by Mr Markku Fredman, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

3. The applicants alleged that the criminal proceedings against them had been excessive in length.

4. 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).

5. By a decision of 16 March 2004 the Court declared the application partly admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1963 and 1951 respectively. They were shareholders in two limited liability companies. It appears that at least S.E. was also in a management position in those companies. Both companies were in the process of being wound up from 1991.

A. The investigation

8. W., a lawyer working for the bank which was the main creditor of the companies, was appointed as the official receiver to control the assets of the companies. Having received a special auditor's reports about the companies W., on 21 October 1992, requested the police to investigate whether offences had been committed in the companies before they went into liquidation. The police interview of the official receiver began on 9 December 1992 and continued in January 1993. S.E. was questioned by the police for the first time on 25 May 1993. That day he was also arrested and a large number of documents were seized from both the applicants. T.K. was questioned by the police on 27 May 1993.

9. On 12 September 1994 the Supreme Court (*korkein oikeus, högsta domstolen*) revoked the seizure of the documents, as requested by S.E., as the time-limit of four months had passed since they had been seized and no charges had been brought against the applicants during that time. The decision became a precedent (KKO 1994:83).

10. The applicants were questioned several times in the course of the investigations during the period from May 1993 until 1995. It appears that the police investigations concerning the two companies came to an end in November 1993 and April or May 1995 respectively.

11. S.E. petitioned the Deputy Parliamentary Ombudsman, who in her decision of 28 February 1997 took the view that the pre-trial investigations should have been speedier.

B. The first examination of the case

12. The applicants were charged with offences as dishonest debtors. Writs of summons were served upon S.E. on 1 November 1994 and on 11 May 1995 and upon T.K. on 8 May 1995. Three oral hearings were held in the Espoo District Court (*käräjäoikeus, tingsrätten*) on 16 February 1995, 11 May 1995 and 29 June 1995. S.E. was absent from the first hearing due

to a lawful impediment. At the second hearing the complainants requested a deferral which was granted.

13. On 29 June 1995 the District Court ruled inadmissible the charges brought against the applicants, without considering their merits, on the grounds of their being in breach of procedural requirements. The District Court found that the complainants, i.e. the meeting of the debtors, had not requested that charges be brought against the applicants. The mere fact that the official receiver had made a request to that effect was not sufficient, as the practice at the time of the alleged offences required that the decision should be made by the meeting of the debtors. The District Court noted, however, that chapter 39, section 9 (3) of the Criminal Code (*rikoslaki, strafflagen*), which had entered into force after the commission of the alleged offences, allowed for the official receiver to request a prosecution. The District Court concluded that although the provision was of a procedural nature and as such applicable to offences committed prior to its entry into force, applying the provision in this case would lead to an unfavourable outcome for the applicants. Thus, the District Court decided not to apply the new provision, and accordingly, not to consider the merits of the charges.

14. In July 1995 the public prosecutor, the complainants and S.E. appealed. On 28 November 1996 the Helsinki Court of Appeal (*hovioikeus, hovrätten*) found that the official receiver had been entitled to request criminal proceedings against the applicants under chapter 39, section 9 (3) of the Criminal Code, as the application of that provision in the instant case neither affected the period of limitation nor subjected the applicants to a stricter criminal liability. The Court of Appeal revoked the District Court's decision and remitted the case.

15. On 27 January 1997 the applicants requested leave to appeal. On 7 May 1997 the Supreme Court granted them leave to appeal and invited the observations of the other parties. On 29 October 1997 the Supreme Court rejected the applicants' appeal for substantially the same reasons as those given by the Court of Appeal. The decision became a precedent (KKO 1997:171).

16. On 3 November 1997 the applicants lodged an application for an annulment. Further, they requested on 9 December 1997 that the Supreme Court postpone the consideration of the annulment until the European Court of Human Rights had given judgment and as the Supreme Court on 5 April 2001 had informed them that the case would be decided shortly, they requested again that the application be stayed. However, on 15 November 2001 they withdrew the application for an annulment.

C. The second examination of the case

17. Meanwhile, on 11 February 1998 the District Court informed the parties that the case would be restored to its case-list. It was, however, adjourned several times as there were settlement negotiations going on between the applicants and the complainants. The time-limit for submission of observations was extended until 31 August 1998 upon request of the public prosecutor.

18. On 21 October 1998 a contract was signed between the complainants and the applicants, agreeing that they had no claims, either civil or criminal, against each other on the basis of the events mentioned above. According to the Government, the parties reached an agreement on compensation, whereas the applicants denied that the agreement concerned any form of compensation.

19. On 14 January 1999 the public prosecutor informed the District Court that he wanted to withdraw all the charges against the applicants, finding that his right to bring charges had ceased to exist as the complainants had withdrawn their claims.¹

20. However, at the oral hearing held on 8 February 1999 in the District Court S.E. requested notwithstanding the withdrawal that it be examined whether the complainants' prosecution request had been specific enough for charges to be brought and whether the period of limitation on the right to bring charges had become time-barred. The public prosecutor noted that at least three witnesses had died since the police investigations, and that he might have withdrawn the charges in any event as the proceedings had already lasted an unreasonably long time. It was announced by T.K. and the complainants that the case had been settled as far as they were concerned.

The District Court found on the same day that the public prosecutor could not withdraw the charges if there was an objection and that S.E. had the right to a decision in the matter. The case was adjourned until 15 March 1999 as far as S.E. was concerned. The charges against T.K. were removed from the docket and the decision was not appealed against.

21. On 15 March 1999 the District Court, having held an oral hearing, rejected one of the charges as time-barred and ruled the rest inadmissible, without considering their merits. In so far as the District Court refused to consider the merits, it found that the complainants had not particularised their allegations when reporting the alleged offences to the police in October 1992 or during the questioning of the official receiver in January 1993, and that the time-limit for requesting prosecution, as stipulated by the Decree Implementing the Criminal Code (*rikoslain*

¹ Following a withdrawal, the charge is removed from the docket, but no decision on it is handed down. The matter is cancelled and no longer pending, but it may be commenced again.

voimaannpanosta annettu asetus, förordningen om införande av strafflagen), had thus been exceeded.

22. The public prosecutor and S.E. appealed against the District Court's decision not to consider part of the charges. The case became pending before the Court of Appeal in April 1999.

On 15 August 2000 the Court of Appeal, noting that S.E. had a right to have the question of guilt examined and as part of that issue also whether the prosecution procedure had been in accordance with the law, found that the complainants had particularised their allegations sufficiently within the period of limitation, and therefore revoked the District Court's decision to rule the charges inadmissible. Instead, the Court of Appeal removed the charges from the docket as the applicants and the complainants had reached a settlement. Chapter 39, section 2 of the Criminal Code, as in force until the end of 1990, provided that a debtor could not be convicted if he had satisfied his creditor.

23. On 16 October 2000 S.E. applied to the Supreme Court for leave to appeal. The case was still pending before the Supreme Court when the European Court of Human Rights decided to give notice of the application to the respondent State. On 21 January 2002 the Supreme Court refused S.E. leave to appeal.

THE LAW

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

24. The applicants claimed to be victims of a breach of the reasonable time requirement of Article 6 § 1 of the Convention, which reads, in so far as relevant:

“In the determination of his civil rights... or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken into account

25. The applicants complained of a breach of the reasonable time requirement. The criminal proceedings had begun on 25 May 1993 and ended on 21 January 2002.

The Government agreed as to the moment of commencement, but contested the applicants' interpretation of when the proceedings had come to an end.

26. The Court reiterates that in criminal proceedings the “reasonable time” begins to run with “the official notification given to an individual by

the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 73). A person has been found to be subject to a “charge” when a preliminary investigation has been opened in his case and, although not under arrest, the applicant has officially learned of the investigation or has begun to be affected by it (see *Corigliano v. Italy*, judgment of 10 December 1982, Series A no. 57, § 34).

Conversely, it is also the case that such proceedings will end with an official notification to the accused that he or she is no longer to be pursued on those charges such as would allow a conclusion that the situation of that person can no longer be considered to be substantially affected (*X v. the United Kingdom*, no. 8233/78, Commission decision of 3 October 1979, §§ 64 and 65, unreported). This end is generally brought about by an acquittal or a conviction (including a conviction upheld on appeal). The Court has also recognised that proceedings can end through a unilateral decision taken in favour of the accused, including when the prosecution formally decides not to prosecute and when a trial judge terminates the proceedings without a ruling. More recently, the Court has found that criminal proceedings ended when the prosecution informed the accused that it had discontinued the proceedings against him (*Šleževičius v. Lithuania*, no. 55479/00, § 27, 13 November 2001, unreported) and when a domestic court found that an accused was unfit to stand trial by reason of his psychiatric condition (*Antoine v. the United Kingdom*, (dec.) no. 62960/00, ECHR 2003-VII), even though in both cases there remained a theoretical possibility that the charges against the applicant could one day be pursued.

27. Turning to the present case, the Court finds that the proceedings began with the seizure on 25 May 1993. As to T.K., they came to an end on 8 February 1999 when the charges were removed from the docket and as she did not object to it, it could not reasonably be said that her situation remained “substantially affected”. For S.E.’s part the Court reiterates that on 15 August 2000 the Court of Appeal removed the charges from the docket, which was not objected to by the other parties. As regards the subsequent proceedings, Article 6 § 1 applied under its “civil head”, as S.E.’s right to a good reputation was arguably at issue. For his part, the proceedings thus ended with the Supreme Court’s decision of 21 January 2002.

Consequently, the Court finds that the proceedings lasted for about five years and eight months in respect of T.K. and eight years and eight months in respect of S.E.

B. Reasonableness of the length of the proceedings

28. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and

having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

29. The Court observes that the case concerned economic crimes. It notes the applicants' arguments that the book-keeping material and auditor's reports were available from the start of the pre-trial investigations and that the Deputy Parliamentary Ombudsman in her decision of 28 February 1997 took the view that the investigations should have been speedier. The Court also takes note of the Government's contention that the documentary material ran to 28,000 pages and that a total of 21 people were questioned, and that the case was assigned only to a few police officers owing to the experience required. The Government's argument that the handling of the case had been complicated by the occurrence of many parallel inter-related proceedings was however contested by the applicants. Furthermore, the Court notes the procedural complications, which have been outlined above. It is satisfied that the case was complex.

30. As to the conduct of the authorities, the Court notes that the applicants were questioned by the police for the first time in May 1993. Charges were brought against S.E. on 1 November 1994 and against S.E. and T.K. in May 1995, i.e. about one and a half years and two years later respectively.

The District Court held three oral hearings from 16 February 1995 and rendered its decision on 29 June 1995. Those proceedings thus took about five months. The Court of Appeal gave its decision on 28 November 1996, which is one year and five months after the District Court's decision. The Supreme Court, having granted leave to appeal, rejected the appeal on 29 October 1997, which is eleven months after the Court of Appeal's decision. The first round of the court proceedings took two years and eight months for three instances, which was not excessive as such.

Following the re-introduction in the District Court's case-list on 11 February 1998, the case was adjourned several times. According to the Government, this was explained by the settlement negotiations, whereas the applicants denied the occurrence of more than one meeting and a few telephone discussions. On 21 October 1998 the complainants and the applicants reached a settlement. On 14 January 1999 the public prosecutor decided to withdraw the charges. On 8 February 1999 the District Court acceded to S.E.'s request that the case be examined notwithstanding the withdrawal of the charges. The charges against T.K. were removed from the docket and that decision became final. As to S.E., the District Court rendered its decision on 15 March 1999, i.e. over one year and four months after the first examination had come to an end. The Court of Appeal gave its decision on 15 August 2000, which is one year and five months after the

District Court's decision. On 21 January 2002 the Supreme Court refused S.E. leave to appeal, i.e. within about one year and five months from the Court of Appeal's decision.

The Court is struck by the fact that all this time was spent on procedural disputes and that a trial on the merits never took place. Against the background that the case had been pending for several years already when the first examination of the case had come to an end, the second examination of the case discloses periods of inactivity.

31. As to the conduct of the applicants, the Court notes the Government's assertion that the applicants requested postponements. It is clear from the facts outlined above that the application for an annulment of the Supreme Court's decision of 29 October 1997 did not prevent the second examination of the case by the District Court and the Court of Appeal. By the time it reached the Supreme Court for the second time in 2000, the application for an annulment had been pending for nearly three years. The parties disagree as to whether the existence of the annulment application impeded the handling of the subsequent leave to appeal matter. Be that as it may, the responsibility for diligence and proper administration of justice lies primarily with the authorities and they must themselves take appropriate steps to ensure that proceedings progress without undue delay. As to the standstill in the proceedings from February to October 1998, it can be explained by the fact that the District Court was awaiting the outcome of the parties' negotiations with a view to reaching a settlement.

32. The Government contested the applicants' assertion about having had to live in great uncertainty for an unreasonably long time as they had never been convicted or been under any threat of punishment or liability for damages. According to the applicants, the proceedings had caused T.K. distress and S.E. prolonged unemployment and mental illness. Both had also been caused severe financial difficulties. Having regard to the seriousness of the charges, and also to the financial repercussions of a finding of guilt although no action for damages had yet been brought against the applicants, the Court does not doubt the importance of what was at stake up to the delivery of the District Court's decisions in the second examination of the case. It was only at a relatively late stage, following the settlement and the withdrawal of the charges, that the stakes were reduced.

33. The Court considers that the proceedings were excessive in length. In particular, the lack of progress in the pre-trial investigations, which was pointed out also by the Deputy Parliamentary Ombudsman, and in the second examination of the case caused a delay for which the Court does not find a sufficient justification.

Accordingly, the period of time that elapsed in the present case was in breach of the reasonable time requirement. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. Under the head of non-pecuniary damage the first applicant claimed 20,000 euros (EUR) for suffering and distress caused by the length of the proceedings.

Under the head of pecuniary and non-pecuniary damage, considering that these could not be separated from one another as his career had suffered from the loss of reputation and relying on *Allenet de Ribemont v. France* (judgment of 10 February 1995, Series A no. 308) and *Ferraro v. Italy* (judgment of 19 February 1991, Series A no. 197-A), the second applicant claimed EUR 50,000 as compensation for the loss of his reputation, career, finances and health. The lengthy proceedings had led to self-isolation, depression and even thoughts of self-destruction. He had been hospitalised twice and his ability to work had been severely reduced.

36. As to pecuniary damage, the Government argued that there was no causal link between the alleged violation and any pecuniary damage. They pointed out that the present case concerned the length of proceedings and not the substance of a dispute before the domestic courts. As to non-pecuniary damage, the Government considered the claims excessive as to *quantum*. Were the Court to find a violation, the applicants should be awarded compensation not exceeding EUR 1,000 per person.

37. The Court finds that there is no causal link between the violation found and the alleged pecuniary damage. Consequently, there is no justification for making any award under this head. The Court accepts that the applicants have certainly suffered non-pecuniary damage, such as distress and frustration resulting from the excessive length of the proceedings, which is not sufficiently made good by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the first applicant EUR 3,000 and the second applicant EUR 5,000 under this head.

B. Costs and expenses

38. The first applicant claimed reimbursement for her own work and various expenses in the total amount of EUR 1,500.

The second applicant, who had been represented by counsel from October 2001, claimed reimbursement for his own work and various expenses in the amount of EUR 500 and for the legal fees and expenses of his counsel in the amount of EUR 6,823.14.

39. The Government contested the applicants' entitlement to compensation for their own work. Further, the Government left it to the Court's discretion, whether they had submitted sufficient documents to support their claims. The Government agreed that the second applicant had incurred some costs and expenses before the Strasbourg institutions. However, the number of hours claimed to have been spent by the lawyer on the case and the hourly rate also appeared somewhat excessive. The applicants had personally prepared the majority of the case file from the beginning of the proceedings in 1997 until October 2001 when the representative had been engaged by the second applicant. In addition, the representative's invoice included translation costs in the amount of EUR 1,851 although no details of those costs had been provided. The Government considered that the total amount of compensation for costs and expenses for the second applicant should not exceed EUR 1,500 (without value-added tax).

40. The Court finds that the claims under this head have been fully substantiated only as far as the fees and expenses of the representative are concerned. Those cover the period following the giving of notice of the application to the respondent State and they can be considered to have been actually and necessarily incurred. The Court reiterates that under Article 41 of the Convention no awards are made in respect of the time or work put into an application by the applicant as this cannot be regarded as monetary costs actually incurred by him or her. However, the Court considers it reasonable that the applicants be awarded compensation for their various expenses such as copying and postage, having in particular regard to the fact that since lodging the initial application in 1997 they have updated the case-file on several occasions in pace with the domestic proceedings. The second applicant may be awarded such compensation for expenses incurred prior to engaging his representative.

In these circumstances, the Court awards the first applicant EUR 400 and the second applicant EUR 300 for incidental expenses. In addition, the Court awards the second applicant EUR 6,823.14 (including value-added tax) for the costs of counsel under this head.

C. Default interest

41. 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* that there has been a violation of Article 6 § 1 of the Convention;
- 2.. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) to the first applicant EUR 3,000 (three thousand euros) and to the second applicant EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (ii) to the first applicant EUR 400 (four hundred euros) and to the second applicant EUR 7,123.14 (seven thousand one hundred and twenty-three euros fourteen cents), in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 31 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President