



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

FOURTH SECTION

CASE OF T. AND OTHERS v. FINLAND

(Application no. 27744/95)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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. and Others 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 9 September 2003 and on 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 27744/95) 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 four Finnish nationals, T., A., J. and S., ("the applicants"), on 12 June 1995.

2. The applicants, who had been granted legal aid, were represented by Mr O. Pohjakallio, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director, Ministry of Foreign Affairs.

3. The applicants alleged, amongst other complaints, that the criminal proceedings they had initiated against the City of Helsinki and eight public officials who had taken part in implementing public care measures and treatment in respect of S, had been excessively long.

4. By a decision of 9 September 2003, the Court declared the application admissible as far as the length complaint was concerned.

5. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. T. and A. are the father and mother of J. and S. and were born in 1949. J. was born in 1975 and S. was born in 1985. The applicants live in Helsinki.

A. Public care proceedings, access restrictions and criminal proceedings against T.

7. In September 1990 the parents and the social welfare authority were informed by day care staff that S. had been playing “sexually coloured” games with other children. S. stated that an older boy had initiated the games.

8. On 29 January 1991, S. was admitted to the A. hospital for examinations. In February 1991 the parents and the social welfare authorities were informed of the hospital’s conclusion that S. had been subjected to incest by T. It was suspected that T. had also sexually abused J. T., A. and J. denied the accusations. On 26 March 1991 S. was transferred to a children’s home.

9. On 20 June 1991 the parents requested that S. be discharged from the children’s home. This request was refused and on 26 June 1991 S. was placed in public care by decision of the Director of the Social Welfare and Health Care Board, which was endorsed by the Board on 27 June 1991.

10. On 11 July 1991 the Board ordered that S. be taken into public care for an indefinite period of time, with a review of the care plan to take place at the latest in September 1991. The Board took note of an opinion of 12 March 1991 of psychologist M.S., Dr P.T. and another expert to the effect that there was an incestuous relationship at least between S. and T. S. was deemed to be in need of safe conditions away from his home, so as to prevent a continuation of the incestuous relationship. S. was also in need of therapy which in order to be successful required that he be provided with stable conditions.

11. On 11 July 1991 the Social Welfare and Health Care Board also decided to request an investigation into whether S. had been the victim of a sexual offence. On the basis of the pre-trial investigation the public prosecutor subsequently charged T. with sexual abuse.

12. On 13 March 1992 T.’s appeal against the care order was refused by the County Administrative Court. The court noted that the examinations both at the Family Advice Centre and the hospital had to some extent been

conducted in a tendentious manner and some of S.'s statements had been wrongly interpreted. Although the conclusion by the hospital staff that S. had been subjected to incest could not therefore be fully endorsed, the investigation results could not be wholly disregarded. The court went on to find that the care order would not be lifted.

13. On 8 October 1992 the Helsinki City Court (*raastuvanoikeus, rådstuvurätten*) acquitted T. of the incest charges. It found it established that S. had been subjected to sexual abuse, but noted the contradictory testimony as to whether the abuse had been inflicted by T. The results of the examinations of S. were also open to differing interpretations.

14. On 12 and 22 October 1992 A. demanded that the care of S. be terminated in light of T.'s acquittal and his having moved out of the home.

15. On 10 December 1992 the Social Welfare and Health Care Board refused the request, considering that the conditions for continued public care were still met. It also restricted access to S.

16. On 28 December 1992 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) refused the parents' appeal against the County Administrative Court's decision of 13 March 1992.

17. On 19 July 1993, further restrictions on access to S. were imposed.

18. On 16 September 1993 the County Administrative Court upheld the public care order. The court considered, on the one hand, that T.'s acquittal of the incest charges was not decisive when assessing whether the public care of S. needed to be continued. The home environment had seriously jeopardised S.'s development. On the other hand, the family circumstances had changed since S.'s placement in public care, A. now being capable of providing the necessary care. Since S.'s possible return to live with A. was to be prepared and gradually implemented, the public care order could not yet be revoked. The court went on to revoke the access restrictions as being unlawful. When heard in private, S. had expressed his longing to go home and his wish to see his parents as frequently as possible. It further ordered the social authorities to allow unsupervised visits.

19. In the criminal proceedings against T., the prosecutor's and the Social Welfare and Health Care Board's appeals were rejected by the Helsinki Court of Appeal (*hovioikeus, hovrätten*) on 8 February 1994. The court found that the Social Welfare Board had no standing to bring charges against T. As for the merits, the court found that the charges had to be examined mainly on the basis of S.'s own statements and the observations of his play, given that the investigations forming the basis for the charges had been limited to him alone. The court found that S. had been subjected to leading questions, in part exerting pressure on him. Some of his answers had been wrongly understood. During part of the investigation period S. had been isolated from his parents, which might have affected his behaviour negatively. In particular in view of the differing expert opinions concerning

the investigation methods, the Court of Appeal could not find the charges proven.

20. On 3 June 1994 S. was returned to A.'s home and on 8 June 1994 the public care order was revoked by the Social Welfare and Health Care Board. On 23 January 1995 the Supreme Administrative Court refused the parents' appeal in so far as it concerned the decision of 10 December 1992, upheld by the County Administrative Court on 16 September 1993, to continue the public care. The Supreme Administrative Court noted that the public care had ended on 3 June 1994 and that the conditions for revoking the care had not yet been met at the time of the challenged decisions.

B. Criminal proceedings initiated by the applicants

21. On 21 June 1994 the applicants initiated private prosecution proceedings and proceedings for damages against the City of Helsinki and eight officials who had taken part in implementing the public care examinations and treatment in respect of S. The applicants accused the officials as well as S.'s therapist *inter alia* of having abused their public office in subjecting S. to inappropriate investigation methods and in drawing erroneous conclusions from the resultant findings. The public prosecutor did not join the private prosecution but participated in the trial *ex officio*.

22. Hearings were held before the District Court (*käräjäoikeus, tingsrätten*) of Helsinki on 24 August and 2 November 1994. During the third hearing on 18 January 1995 the public prosecutor suggested that a police investigation be carried out into the alleged offences and that an opinion be obtained from the National Authority for Medico-Legal Affairs (*terveydenhuollon oikeusturvakeskus, rättskyddscentralen för hälsovården*; "the Medico-Legal Authority").

23. No police investigation was conducted however and on 3 March 1995 the police requested the Medico-Legal Authority to submit an opinion. On 30 May 1995 the Authority requested senior physician S.H. to submit an expert opinion. He returned the documents on 5 July 1995 without however submitting any opinion. On the same day another request was made to professor E.R.

24. On 5 September 1995 the A. hospital was asked to provide the Medico-Legal Authority with the patient records, video tapes and any other relevant material which were then forwarded to E.R. This expert's opinion was received on 27 October 1995.

25. On the same day the police reminded the Medico-Legal Authority that it had not yet submitted its opinion. On 16 November 1995 the police was informed that the Medico-Legal Authority had found it necessary to seek further expert opinions.

26. On 12 December 1995 the police again reminded the Medico-Legal Authority that its opinion was still outstanding.

27. On 15 May 1996 the Medico-Legal Authority requested child psychotherapist H-O.P. and psychologist S.T. to submit expert opinions. On 19 July 1996 the Authority reminded H-O.P. that no opinion had been received. S.T.'s opinion was received on 30 July 1996.

28. On 9 September 1996 the Medico-Legal Authority requested H-O.P. and S.T. to submit more detailed expert opinions.

29. On 18 October 1996 the police again reminded the Medico-Legal Authority that its opinion was still outstanding. H-O.P.'s opinion was received by the Authority on 31 October 1996.

30. On 14 January 1997 the Medico-Legal Authority submitted documentary evidence to S.T. in order to facilitate the preparation of a more detailed expert report. An expert meeting was organised by the Authority on 7 February 1997.

31. On 25 June 1997 the Medico-Legal Authority reminded H-O.P. that no opinion had been received from him.

32. On 30 June 1997 a supplementary opinion was likewise requested from E.R.

33. On 4 July 1997 H-O.P. was again reminded that that no further opinion had been received from him.

34. On 18 July 1997 and 8 August 1997 respectively the Authority received the supplementary opinions of E.R. and H-O.P.

35. Meanwhile, the case had been before the District Court on 31 May and 22 November 1995, 29 May and 4 December 1996 and 21 May 1997. On each occasion the case had been adjourned in anticipation of the Medico-Legal Authority's opinion.

36. The Medico-Legal Authority's opinion was delivered on 14 November 1997, its conclusion being that the investigation into the suspected sexual abuse of S. had been conducted in accordance with approved and generally applied practice in the beginning of the 1990's. For reasons of competence, the Authority limited itself to reviewing the professional conduct of child psychiatrist L.K. of the Family Advice Centre, of child psychiatrist R.H. at the A. hospital and of V.-M.T., senior physician at the said hospital. Referring to the expert opinions it had obtained, the Authority detected no errors or deficiencies in the conduct of those three officials, taking into account the practice applied at the relevant time.

37. Attached to the Authority's opinion was a list of the material available to it for the purpose of drawing up its opinion. The material included minutes from the earlier proceedings before the Helsinki District Court and the Uusimaa County Administrative Court as well as various other material in the form of written statements, case records and audio and video recordings.

38. At its next hearing on 3 December 1997 the District Court heard as expert witnesses the three authors of the opinions submitted to the Medico-Legal Authority for the preparation of its own opinion.

39. The case was next heard on 14 January, 15-16 April, 2 June, 10-11 June and 26 August 1998. The subsequent hearing scheduled for 29 September 1998 was cancelled since the presiding judge had died.

40. The next hearings were held on 12 February, 10 March and 16 April 1999. The following hearing scheduled for 6 May 1999 was cancelled due to the new presiding judge's illness. The next hearings were held on 11 June and 2 September 1999.

41. According to the applicants, the presiding judge who had taken over the case towards the end of 1998 refused to allow any questions by the applicants' representative as to the scientific qualifications of the experts consulted by the Medico-Legal Authority.

42. Four other expert witnesses were also heard in the District Court but the presiding judge who had taken over the case refused to allow the hearing of two counter experts proposed by the applicants (A. and H.-S.) and whereby they had sought to prove that the Medico-Legal Authority's opinion had not been prepared in accordance with scientific standards.

43. On 29 October 1999 and after having dealt with the case on 23 occasions the District Court delivered its judgment, finding that none of the alleged offences had been proved by the applicants. The applicants were ordered to pay the defendants' costs in the amount of FIM 840,000 (over EUR 140,000). This amount was accumulating FIM 7,000 in interest per month and the Bailiff levied execution on one third of A.'s and J.'s salaries.

44. The applicants appealed to the Helsinki Court of Appeal and requested a re-hearing. They proposed to hear experts A. and H.-S. They were granted two extensions of one month each in order to file and complete their appeal.

45. In its judgment of 27 March 2002 the Court of Appeal upheld the District Court's conclusions without having held a re-hearing. As the lower court had applied the relevant provisions as in force on 1 October 1997 the Court of Appeal applied them likewise. As a consequence, it could have held an oral hearing under chapter 26, section 7 of the Code of Judicial Procedure had it found that necessary. It noted however that there was no dispute as to the contents of the written testimony recorded in the District Court's minutes. Whereas no question arose as to the credibility of witnesses there was disagreement as to how the written expertise should be interpreted. Given that the joint opinion of A. and H.-S. had already been recorded in the minutes and given the other evidence at its disposal, the Court of Appeal concluded that an oral hearing was not necessary.

46. The applicant parents were ordered to pay the defendants' fees and costs but the court lifted the applicant children's obligation to participate jointly in their reimbursement.

47. On 22 November 2002 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicants leave to appeal. In seeking such leave the applicants had argued, *inter alia*, that the lower courts had refused to take oral evidence from expert A. since his written testimony had been recorded in the minutes of the criminal proceedings against T. By failing to examine A. in the criminal proceedings initiated by the applicants the lower courts had violated the principle of immediacy in the taking of evidence. Furthermore, no decision had been recorded and no reasons had been given for the courts' refusal to take oral expert testimony from H.-S. The District Court's refusal had occurred after a prior agreement to the contrary.

II. RELEVANT DOMESTIC LAW AND PRACTICE

48. Under Chapter 16, section 4(2) of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*), as amended by Act No. 1052/1991 and in force at the relevant time, any party who considered that the proceedings before a District Court were being unjustifiably delayed by an adjournment had the right to lodge a complaint (*kantelu, klagan*) with a Court of Appeal within 30 days from the date of the adjournment. Under the said provision the District Court could adjourn the case upon request by a party, for example if the said party wished to adduce further evidence. The court could not adjourn the hearing *proprio motu* save on special grounds.

49. In a decision of 16 October 1997 (No. 3755) the Helsinki Court of Appeal held that an adjournment in a civil case on the grounds, *inter alia*, of a pending criminal case concerning the same complainant had not been unjustified. The Supreme Court did not grant leave to appeal.

50. In a decision of 12 September 1995 (No. 3870), the Turku Court of Appeal held that an adjournment in a criminal case had not been unjustified, given the reasons for the request for adjournment and the extent of the case.

51. The provision in Chapter 16, section 4(2) of the Code of Judicial Procedure was repealed as from 1 October 1997, when new provisions prohibited adjournments as a general rule.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

52. The Government considered that the applicants failed to exhaust the available domestic remedies as they did not complain about any of the District Court's decisions to adjourn the proceedings. Nor did they avail

themselves of any other national remedy such as the Parliamentary Ombudsman or the Chancellor of Justice.

53. The applicants contended that the remedies referred to by the Government were not such as to require exhaustion.

54. With regard to the Government's preliminary objections concerning the alleged non-exhaustion of domestic remedies, the Court notes that the remedies referred to by the Government were not effective remedies which the applicant was required to exhaust (see *Kangasluoma v. Finland*, no. 48339/99, § 48, 20 January 2004). The Court therefore rejects the preliminary objections.

II. ALLEGED VIOLATION OF ARTICLE 6 (1) OF THE CONVENTION

55. The applicants complained under Article 6 § 1 of the Convention that the length of the private prosecution proceedings and proceedings for damages exceeded a reasonable time. Article 6 § 1 reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations 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

56. The applicants' complaint relates to the length of proceedings which began in June 1994 when the applicants initiated private prosecution proceedings and proceedings for damages against the City of Helsinki and eight of its officials. The proceedings ended on 22 November 2002 when the Supreme Court refused the applicants leave to appeal.

57. There was no dispute over when the proceedings began or ended.

58. Consequently, the Court finds that the proceedings lasted for approximately 8 years and 5 months.

B. Reasonableness of the length of the period in issue

59. 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, among many other authorities, *Philis v. Greece*

(no. 2), judgment of 27 June 1997, *Reports* 1997-IV, § 35, and *Portington v. Greece*, judgment of 23 September 1998, *Reports* 1998-VI, § 21).

60. The applicant emphasized that the proceedings were delayed for almost three years in the District Court due to the Medico-Legal Authority's procrastination in delivering its opinion. They suffered financial and other hardship not least as a result of their obligation to pay, before their appeal had been decided, the very significant costs which the District Court had awarded to the defendants. Contrary to the Government's assertion, it was the public prosecutor who requested that the District Court seek an opinion from the Medico-Legal Authority. The applicants had only requested a supplementary investigation by the police. The case was adjourned from January 1995 to December 1997 without the applicants having any means of accelerating the submission of the Authority's opinion. It was necessary to have the opinion before any witnesses could be heard. The hearing of the witnesses then lasted about one year and five months, which was within a normal time-frame. Given that the case involved some 6,000 pages of documentation, the applicants considered that no blame could be placed on them for having requested an extension of the time-limit for filing and completing their appeal to the Court of Appeal.

61. The Government submitted that the length of the proceedings was not unreasonable. When they commenced in the District Court on 21 June 1994, the applicants' charges and claims for damages were deficiently prepared: except for two adjournments necessitated by the death of the first presiding judge and the temporary illness of her successor all of them were requested by the applicants themselves, initially in order to adduce further evidence and, in January 1995, for the purpose of obtaining an opinion from the Medico-Legal Authority. While conceding that the delay in the submission of the opinion of the Medico-Legal Authority was rather long, the Government noted that it was caused in part by the fact that the experts who were asked to submit their opinion failed to meet their deadlines, though repeatedly reminded thereof by the police and the Authority. Due to the small number of child psychiatrists willing to act as experts of the Authority they were constantly overloaded with work.

62. The Government noted, however, that when the Medico-Legal Authority's opinion could be considered by the District Court in December 1997, the case was again adjourned repeatedly at the request of the applicants, for a total of about one year and five months. Moreover, in the Court of Appeal the applicants requested an extension of the time-limit for submitting and completing their appeal. Finally, the Government underlined that the proceedings concerned a complex case with a file consisting of thousands of pages.

63. As far as the length of the proceedings is concerned, the Court notes that the proceedings in the District Court were adjourned for almost three

years while it awaited the Medico-Legal Authority's opinion. This fact alone explains a significant part of the delay in the proceedings.

64. The Court observes that the case was of a certain complexity, and new to the Medico-Legal Authority (see, *mutatis mutandis*, see *Nuutinen v. Finland*, no. 32842/96, § 108, ECHR 2000-VIII). It also appears that the research methods used in child abuse cases was at the time subject to debate.

65. That said, it took the Medico-Legal Authority almost three years to obtain the different opinions it had required and to formulate its report. This caused a delay in the District Court proceedings for which the Court does not find sufficient justification and which it considers incompatible with the diligence required under Article 6 § 1. It reiterates that it is for States to organise their judicial systems in such a way that their courts can meet the Convention's requirements, which includes the manner in which they obtain the necessary expert evidence (see *e.g. Salesi v. Italy*, judgment of 26 February 1993, Series A no. 257-E, § 24).

66. Accordingly, the Court cannot regard the length of the proceedings as reasonable.

67. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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. Pecuniary damage

69. Under the head of pecuniary damage, the applicants claimed a sum of EUR 61,645.89, asserting that the delay increased the legal costs they had to pay to the defendants. The applicants arrived at this sum by subtracting five years, which in their view was an acceptable length of proceedings, from the total length of the proceedings (3 032 days – 1 825 days = 1 207 days) and then calculating the share of the fees for the period of delay, arriving at the above-mentioned claim of EUR 61,645.89 (EUR 15, 411.47 each).

70. The Court accepts that there is a causal link between the violation found and the alleged pecuniary damage insofar as the length of the proceedings increased the expenses which the applicants were ordered to pay to the defendants. The Court does not, however, find it established that the whole sum claimed under this head can be attributed to the delay in

respect of which a violation has been found. Therefore, having regard to equitable considerations, the Court awards the applicants EUR 1,000 each by way of pecuniary damage.

B. Non-pecuniary damage

71. Under the head of non-pecuniary damage, the applicants claim EUR 10,000 each. The sum is based on an estimate. The Government considered the sum far too excessive. 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 compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicants EUR 2,000 each under this head.

C. Costs and expenses

72. The applicants sought reimbursement of EUR 8,601 for costs and expenses incurred in the proceedings before the Court.

73. The Government noted that the hours taken for items of work by the counsel were not specified in the invoice, which hindered proper estimation of the workload needed. They also submitted that only the complaint considering the length of the proceedings could be taken into account under this heading. It considered that a reasonable sum for costs and expenses in the present case was EUR 2,000.

74. Taking into account the circumstances of the case, the fact that a part of the case was declared inadmissible, and the legal aid paid to the applicants, the Court considers it reasonable to award the applicants EUR 500 each for their costs and expenses.

C. Default interest

75. 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. *Held* that there has been a violation of Article 6 § 1 of the Convention;

2. *Held*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 1,000 (one thousand euros) each in respect of pecuniary damage;
- (ii) EUR 2,000 (two thousand euros) each in respect of non-pecuniary damage;
- (iii) EUR 500 (five hundred euros) each in respect of costs and expenses;
- (iv) 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. *Dismissed* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President