CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF HAGERT v. FINLAND

(Application no. 14724/02)

JUDGMENT

STRASBOURG

17 January 2006

FINAL

17/04/2006

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 Hagert v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 13 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 14724/02) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Mrs Maili Hagert ("the applicant"), on 25 March 2002.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

3. On 23 October 2003 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Helsinki.

Background

5. In November 1994 400,000 US dollars were transferred from the applicant's Swiss bank account to a Finnish bank account. According to the applicant, the intention was that the money should go into her Finnish bank account. It appears that her husband, B, organised the operation but transferred the money allegedly by mistake to his own account. Soon after,

that same amount was transferred from B's account to an account which belonged to a company, C. The applicant and B had a right to use that account.

Distraint order and subsequent administrative proceedings

6. The bailiff noticed that the money had passed through B's account and, on 19 April 1995, seized the amount from C's account as there were recovery proceedings against B relating to unpaid taxes.

7. On 9 May 1995 the applicant appealed against the distraint order to the County Administrative Board (*lääninhallitus, länsstyrelsen*) of Uusimaa, arguing that the assets belonged to her and could not, thus, be seized for the payment of B's personal debts. On 12 May 1995 the County Administrative Board stayed the execution of the order.

8. On 31 January 1996 the County Administrative Board instructed the applicant, under chapter 4, section 10 of the Execution Act (*ulosottolaki, utsökningslagen*) as in force at the relevant time, to take proceedings against B, the bank and the Tax Office of Uusimaa (*verovirasto, skatteverket*) within three months from the service of the decision and to inform the bailiff of the institution of proceedings. A failure to do so would lead to the payment of the debts to the creditors, who had applied for enforcement. The applicant did not appeal.

Ownership proceedings

9. On 12 April 1996 the applicant instituted proceedings against the bank (which had allowed the assets in C's account to be seized), the Tax Office (at the request of which the distraint order was issued) and B (whom the bailiff assumed to be the owner of the assets), requesting that the District Court (*käräjäoikeus, tingsrätten*) of Helsinki confirm that she was the owner of the assets.

10. It appears that the District Court invited the bank's and the Tax Office's responses to the summons during the first quarter of the year 1997. From March 1997 they made several requests, which the District Court granted, for an extension of the time allowed for their submissions. They filed their responses on 19 and 22 May 1997 respectively, urging the court to invite the applicant to supplement the summons.

11. Over a year later, on 18 June 1998, the District Court invited the applicant to do so by 24 July 1998. Following her request for an extension of the time-limit, the court received her submission on 15 August 1998.

12. In the preparatory hearing on 3 November 1998 the applicant among others requested an extension, which was granted. The principal hearing was held on 12 January 1999.

13. On 26 January 1999 the District Court dismissed the applicant's claims, finding that she had lent the moneys in issue to C and, thus, no

longer had a right to dispose of the assets. She could only be considered to have an equivalent claim against C.

14. On 23 February 1999 the applicant appealed. On 25 May 2000 the Helsinki Court of Appeal (*hovioikeus, hovrätten*) overturned the District Court's judgment and revoked the distraint order, finding the applicant to be the rightful owner of the assets in question. The bailiff was ordered to return the seized amount to her when the judgment became final.

15. On 20 July 2000 the bank and the Tax Office requested leave to appeal. On 16 May 2001 the Supreme Court (*korkein oikeus, högsta domstolen*) granted leave to appeal.

On 27 December 2001 it overturned the Court of Appeal's judgment, upholding the District Court's judgment.

16. The applicant's subsequent request that the case be re-opened was refused by the Supreme Court on 26 March 2003.

II. RELEVANT DOMESTIC LAW

17. As in force at the relevant time chapter 4, section 10 (321/1929) of the Execution Act (*ulosottolaki*; *usökningslagen*) provided that a third party claiming to be the owner of movable property subject to a distraint order should be issued with an instruction to institute proceedings before the District Court with a view to having the claim of ownership decided. At the time, there was no provision in the Execution Act allowing a third party to institute proceedings without having received such an instruction.

The provision was amended with effect from 1 December 1996.

18. Under chapter 16, section 4, subsection 1 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*, as amended by Act no. 1052/1991 and in force at the relevant time) the District Court could adjourn criminal proceedings on request by a party, for example if the said party wished to adduce further evidence. The court could not adjourn a hearing *proprio motu* save on special grounds. Under subsection 2 any party, who considered that the proceedings before the District Court were being unjustifiably delayed by an adjournment, had the right to lodge a complaint (*kantelu, klagan*) with the Court of Appeal within 30 days from the date of the adjournment.

The provision in question was repealed with effect from 1 October 1997, when new provisions generally prohibited adjournments.

THE LAW

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

19. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, 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..."

A. Preliminary objection and admissibility

20. In so far as the Government argued that the applicant had never objected to the extension requests made by the defendants, the Court reiterates its case-law according to which the possibility to lodge a complaint under the Code of Judicial Procedure has not been considered an effective remedy (see *Kangasluoma v. Finland*, no. 48339/99, §§ 47-48, judgment of 20 January 2004).

21. The Court also observes that the courts had in their possession all the information they needed to address the reasonableness of the duration of the proceedings in the applicant's case. In these circumstances, notwithstanding the fact that she did not make an explicit request to expedite the proceedings, the courts cannot be said to have been denied the opportunity which the rule of exhaustion of domestic remedies is designed to afford to States, namely to put right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

22. It follows that the complaint about the length of the proceedings cannot be rejected for failure to exhaust domestic remedies under Article 35 § 1 of the Convention. The Court notes that the complaint is neither manifestly ill-founded within the meaning of Article 35 § 3. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into account

23. As to the period to be taken into account, the applicant took the view that the proceedings had begun with the distraint order in April 1995 and that they had still not come to an end.

24. The Government were of the opinion that the period to be taken into account had begun on 12 April 1996 and ended on 27 December 2001. The

administrative procedure was distinct from the subsequent civil proceedings and thus it could not be taken into account. Further, the applicant had not appealed against the County Administrative Board's decision.

25. The Court observes that the assets, the owner of which the applicant claimed to be, were subject to a distraint order from 19 April 1995. She was not able to challenge the distraint order effectively before 31 January 1996 when the County Administrative Board issued her with an instruction to institute proceedings before the District Court. She instituted such proceedings on 12 April 1996.

26. The Court reiterates that in civil matters the reasonable time may begin to run, in some circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 15, § 32). This is the situation in the applicant's case, since she could not seize the District Court before receiving an instruction within the meaning of chapter 4, section 10 of the Execution Act, as in force at the relevant time (*mutatis mutandis*, see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, p. 33, § 98).

27. Consequently, in the present case, the reasonable time stipulated by Article 6 § 1 started to run on the day the applicant lodged her appeal against the distraint order, which she did on 9 May 1995. The Court finds that the proceedings ended with the Supreme Court's judgment of 27 December 2001. Thus, they lasted about six years and eight months.

2. 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 was 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. As to the complexity of the case, the Court notes the Government's argument that the case involved a large amount of documentary evidence, such as deposit certificates, bank statements and deposit and withdrawal receipts concerning transactions between the applicant, B and three different companies from 1989 to 1995. The courts also received oral evidence from a number of witnesses. According to the Government, the complexity of the case was also shown by the courts' diverging conclusions. The Court accepts that the case was complex.

30. Having regard to the amount of money involved, the Court does not doubt the importance of what was at stake.

31. As to the conduct of the applicant, the Court notes the Government's argument that the application for a summons and the documentary evidence

as submitted by the applicant to the District Court had been unclear and the fact that she requested postponements. The Court notes that this, which has not been denied by the applicant, delayed the proceedings. The Court further observes that, following the County Administrative Board's decision of 31 January 1996, it took the applicant over two months to institute proceedings before the District Court.

32. As to the conduct of the authorities, the Court observes that the County Administrative Board received the applicant's appeal on 9 May 1995. It stayed execution on 12 May 1995, received the responses to the appeal in July 1995 and subsequently communicated them to the applicant for comments. The County Administrative Board rendered its decision on 31 January 1996.

It thus took the County Administrative Board nine months to examine the appeal against the distraint order. The Court considers that no particular problem of delay arises in this context.

33. The Court finds that the District Court proceedings took over two years and nine months. Having received the application for a summons, on 12 April 1996, it appears that it took the District Court about a year to issue a summons. Having received the defendants' written responses in May 1997, it took the District Court another year before it invited the applicant's observations, which were received in August 1998. The Court finds no sufficient explanation for these periods of inactivity. The District Court held a preparatory hearing on 3 November 1998 and postponed the examination of the case until January 1999. It held a principal hearing and rendered judgment on January 1999. Once the court had received the applicant's observations, the Court considers that it acted with due swiftness.

34. The Court of Appeal pronounced judgment about one year and four months after the District Court's judgment. It did not hold an oral hearing. The Court considers that these proceedings do not give rise to any issues as such.

35. Having received the request for leave to appeal on 20 July 2000, it took the Supreme Court about ten months to grant the request. It took the court a further seven months to pronounce judgment. The Court accepts the Government's argument that despite its complexity, the applicant's case was dealt with more speedily than the average, which was eighteen months in 2001.

36. In sum, the Court concludes that there were delays in the proceedings before the District Court for which it has found no sufficient explanation. It holds therefore that there has been a violation of Article 6 § 1 on account of the length of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

37. The applicant also complained, under Article 1 of Protocol No. 1 to the Convention, that she had been illegally deprived of her property as her assets had been seized for the purpose of payment of B's debts. The provision reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

38. The Court observes that the Supreme Court did not find the applicant to be the owner of the assets in issue. It recalls that domestic court regulation of property disputes according to domestic law does not, by itself, raise any issues under Article 1 of Protocol No. 1 to the Convention. The Court has only limited power to deal with alleged errors of fact or law committed by the national courts, to which it falls in the first place to interpret and apply the domestic law (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 56, ECHR 2004-...).

39. In the circumstances of this case the applicant's complaint about an interference with her property rights discloses no appearance of any violation. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

40. Lastly, the applicant complained without relying on any Convention provision that she had been discriminated against. She did not specify on what basis she considered herself a victim of discrimination. The Court has examined the complaint under Article 14 of the Convention, which reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

41. The Court notes that the applicant has not particularised her allegation. On the facts of the case, there is no indication of discrimination. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 400,000 US dollars plus 11 per cent interest and 25,000 euros (EUR) in respect of damage caused by the malicious accusation made to the National Bureau of Investigation. She also requested that the Court of Appeal judgment be reinstated. She did not specify whether her claims related to pecuniary or non-pecuniary damage.

44. The Government considered that there was no causal link between any pecuniary damage and the allegedly lengthy proceedings. In so far as the applicant can be understood to have claimed non-pecuniary damage, the Government considered the claim excessive as to *quantum*. The award should not exceed EUR 1,000.

45. The Court declines to issue consequential orders or declaratory statements such as that requested by the applicant (see *e.g. Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 451).

The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects the claim under this head. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 1,500 under that head.

B. Costs and expenses

46. The applicant did not seek reimbursement of her costs and expenses before the Court.

Accordingly, the Court makes no award under this head.

C. Default interest

47. 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. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage plus 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 amount at a rate [2]equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President