



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

FOURTH SECTION

CASE OF VÄÄNÄNEN v. FINLAND

(Application no. 10736/03)

JUDGMENT

STRASBOURG

20 February 2007

FINAL

24/09/2007

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 Väänänen v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 30 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 10736/03) 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, Mr Toimi Väänänen (“the applicant”), on 27 March 2003. The applicant died on 22 June 2003. However, his widow Ms Irma Väänänen and his children Ms Oili Ruuska, Ms Kaija Tammilehto and Mr Harri Väänänen expressed their wish to pursue the application. For practical reasons Mr Toimi Väänänen will continue to be called “the applicant” in this judgment.

2. The applicant was represented by Mr Jouko Laurikkala, a lawyer practising in Helsinki. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 29 November 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings. 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1919 and lived in Helsinki.

5. In March 1985 the applicant underwent knee surgery in Palm Beach, Florida. On 15 June 1985 he was struck on the operated knee by G. Soon afterwards, an infection developed in the applicant's knee and he became disabled.

6. The applicant instituted civil proceedings against G. in the Circuit Court of Palm Beach County, which on 6 May 1988 ordered G. to pay the applicant 500,000 US dollars (USD) in pecuniary and non-pecuniary damages.

7. On 11 June 1989 G. died. As he had failed to pay the damages, the applicant lodged, on 9 September 1991, an action for damages against G.'s estate before the then Helsinki City Court (*raastuvanoikeus, rådstuvurätt*), claiming 2,008,500 Finnish Marks (FIM; corresponding to USD 500,000) plus interest. He alleged that his disability in movement and the operations which followed were caused by G.'s blow. On 27 November 1992 the defendant was summoned.

8. The City Court held its first hearing on 6 February 1992. At the second hearing on 4 June 1992 the applicant requested an adjournment in order to submit trial documents from the United States. He also asked for witnesses to be heard in the United States.

9. At the third hearing on 29 October 1992 the case was adjourned in order to allow the parties to submit questionnaires to the witnesses to be heard abroad.

10. At the fourth hearing on 19 November 1992 the case was adjourned in order to hear four witnesses in the United States by way of international legal assistance. The City Court obtained the witnesses' statements on 30 November 1993.

11. The applicant was, however, dissatisfied with the hearing of the witnesses, and requested that they be heard again. At its sixth hearing on 25 February 1994 the District Court (*käräjäoikeus, tingsrätten*; formerly the City Court) of Helsinki adjourned the case so that the witnesses could be heard again in Florida.

12. At the ninth hearing on 19 September 1995 the applicant asked the court to speed up the proceedings.

13. The witnesses' statements were received by the District Court on 26 January 1996. At the tenth hearing on 19 April 1996 the applicant requested the court to decide on the case. The defendant, however, requested an adjournment, and the applicant did not object.

14. At its fifteenth hearing on 23 May 1997 the District Court decided to ask for an expert opinion from the National Authority for Medicolegal Affairs (*terveydenhuollon oikeusturvakeskus, rättskyddscentralen för hälsovården*). The opinion was received on 31 October 1997.

15. At the seventeenth hearing on 21 November 1997 the case was adjourned upon the applicant's request to allow the parties to give their final statements and the applicant to submit a further expert opinion.

16. On 26 May 1998 the District Court declared the case closed and adjourned it in order to give a decision.

17. At its twentieth hearing on 18 September 1998 the District Court issued its judgment, dismissing the applicant's claims. It found no causal link between the blow and the infection. It further ordered the applicant to reimburse the defendant's legal expenses amounting to almost 30,000 euros (EUR).

18. On 15 October 1998 the applicant appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*). On 15 December 1999 the appellate court decided to ask for another expert opinion from the National Authority for Medicolegal Affairs. The expert opinion was received on 16 July 2001. Having been granted an extension of the time-limit for submitting his observations, the applicant's observations were filed with the court on 8 November 2001.

19. The Court of Appeal held an oral hearing on 19-21 December 2001. In its judgment of 13 March 2002 it ordered the defendant to pay the applicant 1,500 EUR in compensation for non-pecuniary damage for pain resulting from the blow but dismissed his other claims. The applicant was further ordered to reimburse the defendant's legal expenses incurred before the appellate court.

20. Meanwhile, on 18 January 2001, upon the applicant's application, the Deputy Chancellor of Justice (*apulaisoikeuskansleri, biträdande justitiekanslern*) considered that the proceedings before the court of first instance had been excessive in length. He also noted that the delay in the appellate court proceedings had been caused by the delay in receiving the expert opinion from the National Authority for Medicolegal Affairs. As the case was still pending before the domestic courts, he did not take any further action.

21. On 1 October 2002 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicant leave to appeal.

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

22. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down 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..."

23. The Government contested that argument.

24. It was undisputed that the period to be taken into consideration began on 9 September 1991 when the applicant lodged an action for damages before the District Court and ended on 1 October 2002 when the

Supreme Court rejected the application for leave to appeal. It thus lasted 11 years and 25 days.

A. Admissibility

25. The Court notes at the outset that the applicant died on 27 March 2003, after having lodged his application under Article 34 of the Convention. It recalls that in various cases in which an applicant died in the course of the Convention proceedings it took into account the statements of the applicant's heirs or of close members of his family expressing their wish to pursue the application (see, *inter alia*, *Kalló v. Hungary*, no. 30081/02, § 24, 11 April 2006). The Court considers that the applicant's heirs, who had stated their intention of continuing the proceedings, have a legitimate interest in obtaining a finding that there had been a breach of the applicant's right guaranteed by Article 6 § 1 of the Convention to have his case heard within a reasonable time (see, *mutatis mutandis*, *Dalban v. Romania* [GC], no. 28114/95, §§ 1 and 39, ECHR 1999-VI).

Accordingly, the Court finds that the applicant's heirs have standing to continue the present proceedings.

26. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). Only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *H. v. France*, judgment of 24 October 1989, Series A no. 162-A, p. 21-22, § 55).

28. The Court notes that the application concerned proceedings of some complexity, during which several witnesses were heard in the United States by way of international legal assistance and several expert opinions were requested from the National Authority for Medicolegal Affairs. The Court considers, however, that even though the case was of some complexity it cannot be said that this in itself justified the entire length of the proceedings.

29. As to the conduct of the parties, the Court notes that the proceedings before the City Court (later replaced by the District Court) took some seven years. The Government submitted that although the case was adjourned seven times in order to obtain witness statements from abroad and expert

opinions from the National Authority for Medicolegal Affairs, the adjournments were ordered by the court only when there was a special reason for doing so. In the applicant's view, the hearings had not been handled properly nor within a reasonable time; he had asked the District Court to expedite the proceedings and on 19 April 1996 he was ready to have a decision taken on the case. The Court finds that the time elapsed before the court of first instance appears to have been exceptionally lengthy. However, the Court notes that on 19 November 1992 that court decided, upon the applicant's request, to hear four witnesses in the United States by way of international legal assistance. The witnesses' statements were obtained on 30 November 1993. Furthermore, on 25 February 1994 it decided to re-hear the witnesses in the United States. The witnesses' statements were received on 26 January 1996. During those periods the proceedings were stayed, which prolonged them by one year and almost two years, respectively. The Court finds that these delays of some three years were not solely the Finnish authorities' responsibility.

30. Turning to the proceedings before the Court of Appeal, the Court does not find any convincing explanation for the almost three and half year time taken. It is to be noted that it took some fourteen months before the appellate court requested an expert opinion from the National Authority for Medicolegal Affairs. It further took some nineteen months for the National Authority for Medicolegal Affairs to issue its opinion. The Government argued that the case was not urgent within the meaning of the Court of Appeal's rules of procedure. They also explained the delay by the fact that the first expert doctor could not issue the requested opinion within the set time-limit and observed that the court's officials asked the National Authority for Medicolegal Affairs six times to issue its opinion. The applicant, for his part, reiterated that he also asked the appellate court several times to speed up the proceedings and that he did not consider that it was necessary for the National Authority for Medicolegal Affairs to consult so many doctors in his case.

31. The Court for its part does not find sufficient justification for the above-mentioned delays in the Court of Appeal proceedings, which it considers incompatible with the diligence required under Article 6 § 1. It recalls 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, for example, *Salesi v. Italy*, judgment of 26 February 1993, Series A no. 257-E, § 24, *T. and Others v. Finland*, no. 27744/95, § 65, 13 December 2005).

32. The time taken by the Supreme Court to refuse leave to appeal was reasonable.

33. The Court concludes that in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the overall length of the proceedings was excessive and failed to satisfy the reasonable

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

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. The applicant’s heirs claimed EUR 1,000,000 in respect of non-pecuniary damage.

36. The Government contested the claim. They submitted that the finding of a violation would in itself constitute sufficient just satisfaction.

37. The Court has found that the applicant’s close heirs may claim compensation for non-pecuniary damage (see, *inter alia*, *Ernestina Zullo v. Italy* [GC], no. 64897/01, § 149, 29 March 2006). The Court considers that the applicant must have sustained non-pecuniary damage such as distress and frustration resulting from the excessive length of the proceedings. As there were delays in the proceedings which cannot be attributable to the authorities (see paragraph 29 above), the Court considers it reasonable to award the applicant’s heirs EUR 6,000 under that head.

B. Costs and expenses

38. The applicant’s heirs also claimed EUR 12,200 (inclusive of value-added tax, “VAT”) for the costs and expenses incurred before the Court.

39. In their memorial the Government regarded the applicant’s claim as excessive. They took the view that any amount to be awarded under this head should not exceed EUR 2,000 (inclusive of VAT).

40. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are recoverable only in so far as they relate to the violation found. In the present case the Court has declared some of the applicant’s complaints inadmissible. Having regard to the nature of the case, the Court considers it reasonable to award the applicant’s heirs EUR 3,000 for their costs and expenses in connection with the proceedings before the Court.

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. *Declares* the remainder of the application admissible;
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's heirs, 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 6,000 (six thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) inclusive of value added tax 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President