



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

FOURTH SECTION

CASE OF TOIVE LEHTINEN v. FINLAND

(Application no. 43160/98)

JUDGMENT

STRASBOURG

22 May 2007

FINAL

22/08/2007

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 Toive Lehtinen 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 16 May 2006 and on 3 May 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 43160/98) 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 a Finnish national, Mr Toive Vili J. Lehtinen (“the applicant”), on 3 April 1998.

2. The applicant was represented by Mr Mika Ala-Uotila, a lawyer practising in Nokia. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, among other things, that the length of the proceedings in his case had been excessive.

4. By a decision of 16 May 2006, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1944 and lives in Tampere. He was a principal partner in a construction company, *Toprakenne Ky Toive Lehtinen*, which was wound-up in 1991.

Original proceedings

7. On 6 July 1992 the Tampere District Court (*raastuvanoikeus, rådstuvurätten*; later *käräjäoikeus, tingsrätten*) issued a judgment in bankruptcy proceedings involving the applicant's company. Some creditors' claims were reserved for final determination in civil proceedings which had been initiated before the District Court by companies A.N.K., A.H.K. and A.K. On 2 September 1992 the applicant was summoned. On an unspecified date the applicant submitted that he also had monetary claims against the plaintiffs.

8. The first hearing was held on 12 October 1992. Having held ten hearings, the District Court issued three judgments on 25 November 1994. It ordered the wound-up estate of the applicant's company to pay some 400,000 Finnish marks (FIM, about 67,275 euros (EUR)) to company A.H.K. and some FIM 180,000 (about EUR 30,274) to company A.K. It dismissed A.N.K.'s claim as unfounded. It also declared the applicant's claims inadmissible.

9. On 23 December 1994 the applicant appealed to the Turku Court of Appeal (*hovioikeus, hovrätten*), requesting that the cases be remitted to the District Court for re-examination together with the applicant's counter-claims, which had been remitted to it on 15 December 1994 by the Court of Appeal (see paragraph 20 below). Alternatively, he requested an oral hearing. In his later submission of 20 May 1996 he also challenged the impartiality of one of the District Court judges.

10. The Court of Appeal issued three judgments on 28 November 1996. It declined to return the cases to the District Court, noting that the claims against the estate of the applicant's wound-up company had been examined by the District Court prior to the Court of Appeal's decision to remit his and the estate's counter-claims with a view to joining them to the original proceedings. The Court of Appeal also rejected the applicant's request for an oral hearing and his complaint about alleged bias as being manifestly ill-founded.

11. On 3 October 1997 the Supreme Court refused the applicant leave to appeal.

12. On 2 April 1998 the applicant lodged an application for annulment of those decisions, challenging the impartiality of Justice J.T. of the Supreme Court.

13. Having obtained submissions from Justice J.T. and the applicant, the Supreme Court accepted that Justice J.T. had not been impartial and annulled its previous decisions on 9 September 1999. It also declared the requests for leave to appeal admissible for reconsideration.

14. On 23 November 1999 the Supreme Court, sitting in a new composition, refused the applicant leave to appeal.

15. On 11 June 2001, in reply to the applicant's request, the Supreme Court refused to reopen the proceedings. On 27 May 2003 the Supreme Court rejected the applicant's further complaints in the extraordinary proceedings.

Counter-claim proceedings

16. In the context of the examination of the creditors' assets, the applicant filed counter-claims on 26 August 1993 against companies A.N.K., A.H.K. and A.K. before the Tampere District Court. The counter-claims concerned debt and damages claims relating to construction contracts.

17. At the fifth hearing of the original proceedings held on 20 September 1993 the District Court declined to examine the counter-claims. It agreed with the three companies that these suits could not be joined to the original proceedings as they had been filed with the wrong district court.

18. In October 1993 the applicant appealed to the Turku Court of Appeal.

19. The applicant filed two submissions with the Court of Appeal after the expiry of the time-limit for appealing. He also asked it to speed up the proceedings, referring to the ongoing original proceedings before the District Court, where judgment was expected in October 1994.

20. On 15 December 1994 the Court of Appeal quashed the District Court's decisions of 20 September 1993 concerning the forum and referred the counter-claims back to the Tampere District Court.

21. On 15 March 1995 the applicant requested the District Court not to examine his counter-claims before the original proceedings had acquired legal force.

22. On 27 January 2000 the applicant requested the District Court to resume the proceedings.

23. On 17 April 2000 the District Court requested the applicant to specify his claims and the grounds relied on in order to expedite the proceedings.

24. Meanwhile, according to the Government, the parties had initiated negotiations for a friendly settlement. The District Court fixed 31 May 2000 as the deadline for reaching a friendly settlement.

25. On that date, a preparatory hearing was held as the parties had not reached a settlement. The applicant requested, *inter alia*, that the presiding judge be replaced.

26. On 9 June 2000 the District Court decided that the presiding judge should be replaced.

27. On 5 December 2001 the District Court, presided over by another judge, held a preparatory hearing. The preparatory hearing continued on 7 January 2002.

28. On 22 February 2002 the District Court rejected the applicant's counter-claims as being time-barred.

29. The applicant appealed to the Court of Appeal. It held an oral hearing on 26 August 2003.

30. On 17 October 2003 the Court of Appeal upheld the decisions, except for that concerning A.H.K., which was remitted to the first-instance court for fresh consideration.

31. The Supreme Court refused the applicant and A.H.K. leave to appeal on 26 August 2004.

32. Subsequently, the applicant requested the District Court to continue its consideration of his counter-claims against A.H.K. According to the information provided by the applicant on 2 November 2006, these proceedings were still pending.

THE LAW

I. SCOPE OF THE ISSUES BEFORE THE COURT

33. In his submission to the Court of 2 November 2006 the applicant maintained that the higher courts did not have at their disposal all the minutes of the District Court.

34. The Court notes that the case has been delimited by the decision on admissibility which related to the alleged violation of Article 6 § 1 of the Convention on the grounds of the excessive length of the proceedings. The applicant's complaint of 2 November 2006 is outside the compass of that decision. Accordingly, the Court will limit its examination to the complaint declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

35. The applicant claimed to be a victim of a violation 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 and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken into account

36. In the applicant's view the original proceedings and counter-claim proceedings were interrelated and should have been considered together by the domestic courts. In particular, it was the District Court's decision of 20 September 1993 not to join his counter-claims to the original proceedings that caused the delay.

37. The Court notes at the outset that the two sets of proceedings were not examined jointly before the domestic courts. It recalls the domestic courts' decisions to the effect that there were good reasons not to examine the applicant's counter-claims together with the original claims (see paragraphs 8 and 10 above). The Court for its part sees no reason to criticise that approach. Although simultaneously pending before the domestic courts, the two sets of proceedings cannot be considered together for the purposes of assessing the reasonableness of the length of the overall proceedings. That being said, the Court cannot overlook their interdependency, since the second set of proceedings could only move forward once the original proceedings had come to an end.

38. It was undisputed that the original proceedings began on 2 September 1992 when the applicant was summoned. The Supreme Court refused leave to appeal some five years and one month later, on 3 October 1997. However, on 2 April 1998 the applicant lodged an application for an annulment with the Supreme Court and the proceedings resumed on 9 September 1999. They came to an end on 23 November 1999 when he was again refused leave to appeal. This latter phase lasted almost one year and eight months. While it is true that the examination of an annulment or reopening request, being extraordinary remedies, does not fall within the ambit of Article 6 § 1 (see, *inter alia*, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 31, § 86), the Court notes that in the instant case the applicant contested the impartiality of one of the judges and the Supreme Court annulled its previous decision because of his bias. It re-examined the application for leave to appeal. The Court will accordingly take this period into account when assessing the reasonableness of the length of the proceedings. Thus, the period to be taken

into consideration lasted almost six years and nine months for three levels of jurisdiction.

39. The Court observes that the counter-claim proceedings were initiated on 26 August 1993, when the original proceedings were already pending. The bulk of the proceedings came to an end eleven years later on 26 August 2004, when the Supreme Court refused leave to appeal. However, after that the proceedings against A.H.K. resumed and they are apparently still pending.

B. Reasonableness of the length of the proceedings

40. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. The application concerned civil proceedings lodged by three creditors against the applicant and the estate of his construction company, in the context of which the applicant, as a debtor, had contested the claims and lodged counter-claims. In the applicant's view the case was complex because procedural provisions, since repealed, applied. The Government argued that the related counter-claim proceedings which were pending at the time rendered the case somewhat complex. The Court finds that the cases examined in the two sets of proceedings were of some complexity. That fact, however, cannot in itself explain why the proceedings took so long.

42. As to the original proceedings, the Court notes that they took almost two years and three months before the District Court. That court held ten hearings. The Court of Appeal gave its judgment on 27 June 2000, some two years after the District Court's judgment. That court did not hold an oral hearing. Finally, it took some ten months for the Supreme Court to decide whether to grant leave to appeal. A further one year and eight months were taken up by the annulment proceedings.

43. The Court finds that there were no long periods of inactivity at any stage of the proceedings. However, the overall length would have been shorter if the initial composition of the Supreme Court had not been partial. Since the applicant's challenge had been successful, the time taken by the annulment proceedings cannot be attributable to him. Furthermore, apart from challenging the impartiality of one of the District Court judges after the expiry of the time-limit for appealing, it has not been shown that the applicant's conduct contributed to the length. While the proceedings before the different court instances, including the extraordinary proceedings, may not appear excessive when taken separately, the Court considers that the overall length of the proceedings of almost six years and nine months failed

to meet the “reasonable time” requirement (see, *inter alia*, *Kocsis v. Hungary*, no. 2462/03, 11 April 2006). There has therefore been a violation of Article 6 § 1 of the Convention in respect of these proceedings.

44. Turning to the counter-claim proceedings, which started on 26 August 1993, the Court notes that they lasted eight and half years before the District Court. The Government argued that the applicant's conduct had contributed to the length, since, for example, he had requested the replacement of the presiding judge. The Court observes that the proceedings were first stayed between 20 September 1993 and 15 December 1994 because the District Court had to await the outcome of the Court of Appeal's decision concerning the correct forum. That accounted for a delay of almost fifteen months. Moreover, the proceedings were interrupted between 15 March 1995 and 27 January 2000, i.e. for a period of over four years and ten months. Although it was the applicant who had requested that the counter-claim proceedings should not be examined until the final judgment in the original proceeding had been given, the Court has found above (see paragraph 43) that the latter proceedings were excessive in length. Furthermore, on 9 June 2000, the District Court upheld the applicant's request that the presiding judge should be replaced in the counter-claim proceedings. After that there was a period of inactivity of almost seventeen months before the District Court, presided over by a new judge, held a new preparatory hearing on 5 December 2001.

45. As to the Court of Appeal proceedings, the Government submitted that that court had to examine the merits of the case and the length of time taken – about one year and eight months – was reasonable. The Court also considers that these proceedings do not as such give rise to any problems of length. The ten-month period taken by the Supreme Court to refuse leave to appeal was also reasonable.

46. Finally, the Court notes that on 17 October 2003 the Court of Appeal remitted the counter-claims against A.H.K. to the District Court, where the proceedings resumed after the Supreme Court's decision of 26 August 2004. Over two years after the remittal (in November 2006) those proceedings are still pending.

47. The Court concludes that also the overall length of the counter-claims proceedings to date has been excessive and has failed to meet the “reasonable time” requirement. It holds therefore that there has been a violation of Article 6 § 1 in respect of the counter-claim proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed EUR 100,000 in respect of pecuniary and non-pecuniary damage for suffering and distress and for loss of his health and profession due to the lengthy proceedings.

50. The Government saw no legal basis for compensating the alleged pecuniary damage. As to non-pecuniary damage, the amount to be awarded should not exceed EUR 2,500.

51. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

52. The applicant sought reimbursement for his own work, loss of time and costs in the total amount of EUR 24,115.42 in respect of the national proceedings and EUR 1,006.62 in respect of the proceedings before the Court. The applicant also claimed EUR 10,600 (exclusive of value-added tax, “VAT”) for his lawyer's costs and expenses incurred before the Court.

53. The Government submitted that the legal expenses related to the domestic proceedings were not incurred in seeking to prevent the violation of the Convention. Further, only one of the applicant's six complaints had been declared admissible by the Court. They also considered his representative's invoicing undocumented. The Government took the view that the amount to be awarded under this head should not exceed EUR 2,500 (inclusive of VAT).

54. The Court recalls that where there has been a violation of the Convention it may award the applicant not only the actual and necessary costs of the proceedings in Strasbourg, insofar as reasonable in *quantum*, but also those incurred before the domestic courts for the prevention or redress of the violation (see, *inter alia*, *I.J.L.*, *G.M.R. and A.K.P. v. the United Kingdom (Article 41)*, nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001). However, under Article 41 of the Convention no awards are made in principle in respect of the time or work put into an application by the applicant himself as this cannot be regarded as monetary costs actually incurred by him.

55. The Court does not consider that the costs in the domestic proceedings were incurred in order to prevent or obtain redress for the

matter found to constitute a violation of the Convention. The claim made in respect of these costs must therefore be rejected. As concerns the proceedings in Strasbourg, it recalls that it has only found a violation in respect of the complaint about length of proceedings, the other five complaints having been rejected as inadmissible. Having regard to the nature of the case, the Court considers it reasonable to award the applicant EUR 2,500, inclusive of VAT, covering costs and expenses for the proceedings before the Court.

C. Default interest

56. 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 in respect of both the original and the counter-claim proceedings;
2. *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, the following amounts:
 - (i) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five hundred euros) 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President