



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

FOURTH SECTION

CASE OF STARK AND OTHERS v. FINLAND

(Application no. 39559/02)

JUDGMENT
(Striking out)

STRASBOURG

9 October 2007

FINAL

09/01/2008

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 Stark and Others v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 5 December 2006 and on 18 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 39559/02) 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 three Finnish nationals, Mr Alpo Antero Stark, Mr Matti Autio and Mr Martti Junttari ("the applicants"), on 1 November 2002.

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

3. The applicants complained that the impossibility for them to have access to a court under Finnish law to challenge a decision by which their fishing rights had been restricted had violated Article 6 § 1 of the Convention.

4. On 5 December 2006, the Fourth Section of the Court declared the application partly admissible.

5. Both parties filed submissions with the Registry in the context of friendly settlement negotiations (Article 38 § 1 (b) of the Convention and Rule 62 of the Rules of Court). No settlement was reached.

6. On 10 July 2007, the Government submitted a unilateral declaration and invited the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention. On 14 August 2007 the applicants filed a written response to the Government's request.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1937, 1945 and 1942, respectively. The first and second applicants live in Kaakamo and the third applicant in Kittilä.

8. The applicants are fishermen operating in the maritime area at the mouth of the Kemi River by the city of Tornio. They fish small fish and rear salmon in private waters in the flow area of the Kemi River. The second applicant fishes also in waters leased from the State.

9. In 1971 Finland and Sweden concluded the Frontier Rivers Agreement (*Suomen ja Ruotsin välinen rajajokisopimus, gränsälvsoverenskommelsen mellan Finland och Sverige; SopS 53-54/1971*), which included provisions on the right to fish in the Tornio River and its channels. The Fishing Regulation (*kalastussääntö, fiskestadgan*) was annexed to the Frontier Rivers Agreement. The Fishing Regulation was amended in 1979 and 1987 whereby the Finnish-Swedish Frontier Rivers Commission (*rajajokikomissio, gränsälvskommissionen*), established under the Frontier Rivers Agreement, was given the right to preserve certain fish species, or prohibit or restrict fishing using certain equipment or gear, if this was deemed necessary in order to safeguard future fish stocks. The fish to be protected in the area was the wild salmon of Tornio River.

10. In June 1987 Finland and Sweden decided to discontinue the application of the Fishing Regulation. Subsequently, an Act for the Fishing in the Tornio River Fishing Area (*kalastuksesta Tornionjoen kalastusalueella annettu laki; lag om fiske i fiskeområden i Torne älven; 494/1997*, “the Tornio Fishing Act”) was passed. According to section 3 of the said Act the Ministry of Agriculture and Forestry of Finland (“the Ministry”) was authorised to restrict fishing, *inter alia*, if this was deemed necessary in order to safeguard future fish stocks.

11. By virtue of the Tornio Fishing Act, the Ministry issued Decision no. 496/1997 (“the 1997 Decision”), prohibiting all salmon and trout fishing throughout the year and all fishing with stationary gear during the period from 1 May until 5 July. The restrictions extended to the maritime area of the Kemi River belonging to the city of Tornio, i.e. the fishing waters used by the applicants.

12. The local fishing association of Kaakamo–Ruottala challenged the lawfulness of the 1997 Decision before the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*). In its judgment of 15 January 1999, the court declined to examine the merits of the appeal, finding that the 1997 Decision was not in the nature of an administrative decision resolving or dismissing a case and subject to appeal.

13. By Decision no. 319/1998 (“the 1998 Decision”), the Ministry continued the fishing prohibition and restriction.

14. Despite the above-mentioned decisions, the applicants continued fishing using stationary gear. They considered the decisions unlawful as, in their view, there were only implanted salmon in their fishing waters.

15. On an unspecified date the public prosecutor brought charges against the applicants for breaching the Tornio Fishing Act. On 21 December 2001 the Tornio District Court (*käräjäoikeus, tingsrätten*) dismissed the charges, ruling that the 1998 Decision violated the applicants' constitutional right to the peaceful enjoyment of their possessions as wild salmon existed only accidentally in their fishing waters. Thus the 1998 Decision was contrary to the Tornio Fishing Act and the Constitution. By virtue of section 107 of the Constitution, the 1997 Decision should not have been applied.

16. On 16 May 2002, the Ministry continued the fishing prohibition and restriction, (no. 369/2002; “the 2002 Decision”), however allowing professional fishermen to fish with stationary gear salmon and whitefish between 3 July and 15 September and trout between 3 July and 31 August.

17. Following an appeal by the public prosecutor, the Rovaniemi Court of Appeal (*hovioikeus, hovrätten*) quashed the decision of the District Court by its judgment of 28 June 2002, finding that the applicants had breached the Tornio Fishing Act and ordered each of them to pay 20 day-fines.

18. The applicants sought leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*), which was refused on 11 June 2003.

THE LAW

APPLICATION OF ARTICLE 37 OF THE CONVENTION

A. The Government's request to the Court to strike the case out of its list and the applicants' objections thereto

19. On 10 July 2007, the Court received the following declaration from the Government:

“1. The Government note that the efforts with a view to securing a friendly settlement of the case have been unsuccessful.

2. In this situation, the Government wish to express – by way of a unilateral declaration – their acknowledgement of the lack of access to a court within the meaning of Article 6 § 1 of the Convention in the circumstances of the present case.

3. Consequently, the Government are prepared to pay each of the applicants in compensation for non-pecuniary damage EUR 7,000 (seven thousand euros). In their view, this amount would constitute adequate non-pecuniary redress for the impugned absence to a court, and thus an acceptable sum in this case.

4. The Government are furthermore prepared to reimburse the applicants' costs and expenses in a global amount of EUR 4,150 (four thousand one hundred and fifty euros), inclusive of value-added tax. In their view, this amount could reasonably be considered to correspond to what has actually been incurred by the applicants and as sufficient compensation for their costs and expenses in the proceedings in the present case, and also acceptable as to quantum.

5. In the light of the above, the Government would suggest that the circumstances of the present case allow your Court to reach the conclusion that there exist no other reason, as referred to in Article 37 § 1 (c) of the Convention, justifying your Court to discontinue the examination of the application, and that, moreover, there are no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the further examination of the case by virtue of that provision. Accordingly, the Government invite your Court to strike the application out of its list of cases. “

20. The applicants disagreed, contending that the examination of the case should be continued. While accepting that the Court had already decided comparable issues in a case essentially similar to the present (see paragraph 24 below), the applicants emphasised that the Government had not taken any measures to fulfil their obligations under the Convention given that individuals in their situation still did not have access to a court. In their unilateral declaration, the Government had not undertaken to take any general measures to change the situation. As to the compensation offered, there were no grounds why the applicants should not receive at least EUR 8,000 which had been awarded in the afore-mentioned case. Lastly, the applicants claimed EUR 8,821.55 for costs and expenses.

B. The Court's assessment

21. The Court recalls that on 5 December 2006, it declared admissible the applicants' complaint concerning lack of access to a court in order to challenge the effects of the fishing restriction on them. The remainder of the application, including the applicants' complaints under Articles 7, 14 and Article 1 of Protocol No.1 to the Convention, were declared inadmissible.

22. Article 37 of the Convention provides that the Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the application.”

Article 37 § 1 *in fine* includes the following proviso:

“However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

23. The Court recalls that under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration filed by the respondent Government even if the applicant wishes the examination of the case to be continued. In deciding whether or not it should strike the present case out of its list, the Court will examine carefully the terms of the declaration made by the Government in the light of the principles emerging from its case-law, in particular its judgments in cases such as *Tahsin Acar v. Turkey* [GC] (no. 26307/95, §§ 75-77, ECHR 2003-VI); *Meriakri v. Moldova* ((striking out), no. 53487/99, 1 March 2005); *Swedish Transport Workers Union v. Sweden* ((striking out), no. 53507/99, 18 July 2006); *Van Houten v. the Netherlands* ((striking out), no. 25149/03, ECHR 2005-IX) and *Kalanyos and Others v. Romania* ((no. 57884/00, § 25, 26 April 2007)).

24. The Government's declaration contains an acknowledgment that the applicants did not have access to a court within the meaning of Article 6 § 1 of the Convention in order to challenge the fishing restriction imposed by the Ministry by its 2002 Decision. The Court recalls that it found a violation of Article 6 § 1 in the case of *Posti and Rahko v. Finland* (no. 27824/95, ECHR 2002-VII), which raised a similar issue of lack of access to a court.

25. The Court is satisfied that the amount offered by the Government in compensation for non-pecuniary damage – EUR 7,000 to each of the applicants – constitutes adequate non-pecuniary redress for the impugned lack of access to a court. Moreover, it considers that the sum proposed by them for the reimbursement of costs and expenses – totalling EUR 4,150 – could reasonably be considered to correspond to what has actually and necessarily been incurred by the applicants, who had been granted legal aid, and is reasonable as to quantum.

26. Against this background, the Court considers that it is no longer justified, within the meaning of Article 37 § 1 (c) of the Convention, to continue the examination of the present application, and finds no reasons which would require the further examination of the case (Article 37 § 1 *in fine*). Accordingly, the remainder of the application should be struck out of the list.

27. In accordance with Rule 43 § 3 of the Rules of Court, the present judgment will be forwarded to the Committee of Ministers to allow the latter to supervise the execution of the Government's undertakings. In the event that the Government fail to pay the sums set out in their declaration within three months of the date of delivery of the present judgment, simple interest will be payable at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein (Rule 43 § 3 of the Rules of Court);
2. *Decides* to strike the remainder of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English, and notified in writing on 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President