



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

FOURTH SECTION

CASE OF RAFAEL AHLKOG v. FINLAND

(Application no. 23667/06)

JUDGMENT

STRASBOURG

13 November 2008

FINAL

13/02/2009

This judgment may be subject to editorial revision.

In the case of Rafael Ahlskog v. Finland,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 23667/06) 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 Rafael Johannes Ahlskog (“the applicant”), on 6 June 2006.

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

3. On 20 December 2007 the President of the Fourth Section decided to communicate the application. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Kokkola.

5. On 4 September 1996 the applicant gave a directly enforceable guarantee to cover the debt of a limited liability company. The debt fell due on 31 March 1999 and was not paid.

6. On 30 June 1999 the creditor bank initiated civil proceedings in the District Court (*käräjäoikeus*, *tingsrätten*) requesting the company and the applicant, along with other persons, to pay the debt.

7. On 8 February 2000 the District Court asked the defendants to indicate clearly in writing whether or not they contested the claim, at the risk of a default judgment. The applicant and the company filed their statements of reply on 15 and 20 March 2000 respectively but failed to indicate clearly their position.

8. On 21 March 2000 the District Court gave a default judgment in which it ordered the applicant and the company to pay the debt. The judgment was served on 9 May 2000.

9. On 12 May 2000 the applicant lodged an appeal against the default judgment with the District Court requesting that the judgment be quashed and the claims of the creditor bank be rejected.

10. On 15 June 2000 the District Court ordered a stay of execution of the judgment.

11. The District Court proceedings comprised three different sets of civil proceedings which were joined on 7 May 2003. These were the applicant's claim for refund of benefit by unjust enrichment, the appeal against the default judgment and an action for damages, which was subsequently withdrawn.

12. On 6 February 2004 the court, after having held oral hearings in October and December 2003, quashed the default judgment and rejected the creditor bank's claims as far as the applicant was concerned.

13. In March 2004 all parties to the case appealed to the Appeal Court (*hovioikeus, hovrätten*). The applicant's appeal only concerned costs and expenses. The Appeal Court held an oral hearing in February 2006. On 4 April 2006 it upheld the District Court's judgment as far as the applicant was concerned.

14. The applicant did not apply for leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*) as he was no longer in need of legal protection. Consequently, the Appeal Court judgment became final on 6 June 2006.

THE LAW

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

15. 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..."

16. The Government contested that argument.

A. Admissibility

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The period to be taken into consideration began on 30 June 1999 when the creditor bank initiated civil proceedings in the District Court and ended on 6 June 2006 when the Appeal Court judgment became final. It thus lasted over six years and eleven months for two levels of jurisdiction, of which one level twice.

19. 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).

20. The Government argued that the proceedings as such were not very complex, but that the different claims made by the parties during the proceedings rendered them more complicated. The parties had requested extensions of time-limits in all three cases thirteen times altogether and, for example, on one occasion, the time-limit was extended by eight months. The applicant had three different counsel during the District Court proceedings, the appointment of whom was subject to separate decisions on at least four occasions between May 2001 and October 2003. A partiality claim was made by one of the defendants, both in the District Court and in the Appeal Court. Moreover, the oral hearing in the District Court was adjourned for two weeks as some of the witnesses, one of whom was appointed by the applicant, did not come to the hearing.

21. The Government further noted that the outcome of the case was positive for the applicant in the District Court and that he had not made an ordinary appeal but a counter-appeal concerning only his costs and expenses.

22. The applicant pointed out that he had had no influence over the conduct of the other parties or the witnesses in his case. Neither did the fact that he had had three different counsel prolong the proceedings but, quite the contrary, the excessively long proceedings were the reason for using three different counsel. It was irrelevant whether the outcome of his case had been positive in the District Court or that he had lodged a counter-appeal for costs and expenses. The applicant did not prolong the proceedings or make them more complicated.

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the claim considering that it was excessive as to *quantum* and that the award should not exceed EUR 2,000.

28. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 5,000 under that head.

B. Costs and expenses

29. The applicant also claimed EUR 1,647 (inclusive of value-added tax) for the costs and expenses incurred before the Court.

30. The Government considered the applicant’s claim reasonable.

31. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63).

32. In the present case, regard being had to the information in its possession, the above criteria and the fact that the application was examined under the joint procedure provided for under Article 29 § 3 of the

Convention, the Court considers it reasonable to award the applicant the claimed amount in full (inclusive of value-added tax).

C. Default interest

33. 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 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, 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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,647 (one thousand six hundred and forty seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 13 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President