



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

FOURTH SECTION

CASE OF VIENONEN AND OTHERS v. FINLAND

(Application no. 36989/05)

JUDGMENT

STRASBOURG

24 March 2009

FINAL

24/06/2009

This judgment may be subject to editorial revision.

In the case of Vienonen and Others 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 36989/05) 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 four Finnish nationals, Mr Uolevi Vienonen and Mrs Anja Lehtonen, Mrs Marja Kyrölä and Mrs Kirsi Alastalo on behalf of their deceased husband and father Unto Lehtonen’s estate (“the applicants”), on 26 September 2005.

2. The applicants were represented by Mr Jaakko Ylinen, a lawyer practising in Forssa. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 6 December 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants live in Kuusjoki, Perniö, Tuohittu and Humppila respectively.

5. The first applicant and Mr Lehtonen were from 1989 to 1991 members of the board of directors of a local bank which subsequently went bankrupt. On 30 December 1993 the successor property management company of the bank, which was owned by the Finnish State, initiated civil proceedings before the Salo District Court (*käräjäoikeus, tingsrätten*), claiming compensation from the first applicant and Mr Lehtonen. The company claimed that the first applicant and Mr Lehtonen along with other persons had caused the bank damage exceeding 134 million euros (EUR) through accepting loan applications and neglecting their duty to supervise the acts of the management. Later the amount of damages claimed was lowered to EUR 90 million.

6. The District Court held preparatory meetings in the case on 8 March 1994, 8 November 1995, 9-10 January 1996 and 25 January 1996. On 5 February 1996 the court gave an interlocutory judgment concerning succession issues and the application of the statute of limitations. During the preparatory meetings the parties agreed to wait for the outcome of other proceedings which were closely related to the case and could provide additional information for its resolution. After the preparatory meetings the case was processed only in writing. The judge responsible for the case was changed a number of times and the parties, despite several attempts, were not able to settle the case.

7. During the District Court proceedings the first applicant and Mr Lehtonen, among others, requested that the proceedings be terminated and that the complaints of the successor company be either rejected or dismissed without examining the merits. They maintained that, according to the Convention, proceedings should be terminated within a reasonable time. That rule had not been complied with in their case and the proceedings should therefore be discontinued.

8. On 9 March 1996 Mr Lehtonen died and his estate, comprising his wife and two daughters, continued the case on his behalf (hereafter the second applicant).

9. On 29 June 2004 the District Court decided to accept the applicants' request and dismissed the case without examining the merits. The court stated that from the point of view of procedural economy it would be wise to await the outcome of the related proceedings which, however, had lasted longer than expected and were still pending. The case was very complex and it was expected that a judgment would only be rendered in a few years'

time. The applicants had tried to accelerate the proceedings by proposing a settlement on several occasions. The proposals had all been rejected by the successor company. The court concluded that the length of the proceedings was already excessive, that the proceedings could not be accelerated and that the only effective remedy was to dismiss the case without examining the merits.

10. The successor company appealed to the Turku Appeal Court (*hovioikeus, hovrätten*), which on 29 November 2004 quashed the District Court decision and referred the case back to the District Court. The court found that Finnish law did not give a possibility to reject or dismiss a case without examining the merits in a situation where the proceedings had exceeded a reasonable time. Neither the Convention nor the European Court required that in such cases the proceedings should be terminated. The successor company had, as a separate legal person, according to Article 6 § 1 of the Convention and the Finnish Constitution, a right to have its case considered by a court. This meant that it had a right to have a final decision in the case even if the length of the proceedings had already been excessive.

11. On 12 April 2005 the Supreme Court (*korkein oikeus, högsta domstolen*) refused leave to appeal.

12. On 13 June 2005 the District Court made a proposal for the settlement of the case. According to the terms of the settlement, the applicants, along with other persons, were to pay EUR 17,000 each to the plaintiff who would then receive a total sum of EUR 297,000 from the defendants. It was acknowledged in the settlement that the proceedings in the case had been unreasonably long. In part IV of the settlement it was, however, stipulated that

“[t]he District Court proposes that after an agreement is reached the defendants would commit not to take any legal action in the European Court of Human Rights regarding the unreasonable length of the proceedings.”

13. The proposal was accepted by the successor company on 17 June 2005 and by the applicants on 21 June 2005. On 22 June 2005 the District Court issued a decision confirming the settlement. No appeal lay against this decision.

14. The Deputy Parliamentary Ombudsman (*eduskunnan apulaisoikeusasiamies, riksdagens biträdande justitieombudsman*) had already found on 19 June 2003 that the proceedings had exceeded a reasonable time.

II. RELEVANT DOMESTIC LAW

15. According to Chapter 20, section 5, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*, as in force at the relevant time) it was not possible to appeal against a decision confirming a settlement but it was possible to contest it by lodging an action for invalidity with the court which had confirmed the settlement, on the basis that the content of the settlement was unclear or that the settlement was concluded with subterfuge. No time-limit was fixed for lodging such an action.

THE LAW

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

16. The applicants complained that the length of the civil 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...”

17. The Government contested that argument.

A. Admissibility

18. The Government pointed out that the domestic proceedings had ended with a settlement which had been accepted by all parties and had been confirmed by the District Court. According to the terms of the settlement, the applicants had agreed to pay to the plaintiff EUR 17,000 each and had agreed not to take any legal action in the European Court with respect to the excessive length of the proceedings. The Government claimed that the applicants were thus no longer victims within the meaning of Article 34 of the Convention.

19. Moreover, the Government claimed that the applicants had not contested the settlement under Chapter 20, section 5, of the Code of Judicial Procedure. They had thus not exhausted the domestic remedies available to them.

20. The applicants claimed that they had accepted the settlement only in order to put an end to years of uncertainty, not because they had been happy with its contents. The applicants had had no other choice but to accept the settlement in order to end the proceedings. They pointed out that the contents of the settlement did not relate to the same issue as the one before the Court, namely the length of the proceedings.

21. The Court notes that the Government has not raised any arguments concerning Article 37 but has claimed instead that the applicants are no longer victims within the meaning of Article 34 of the Convention. Thus the question is whether the applicants may continue to claim to be victims of a violation of Article 6 § 1 of the Convention on the grounds of the length of the civil proceedings in view of the settlement confirmed on 22 June 2005 by the District Court.

22. An individual can no longer claim to be a victim of a violation of the Convention when the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51, for the application of this principle in the context of judicial settlements, see *Inze v. Austria*, 28 October 1987, § 32, Series A no. 126, and in the context of judicial settlements and Article 6, see *Schlader v. Austria* (dec.), no. 31093/96, 7 March 2000).

23. Applying these principles in the present case, the Court notes that the District Court stated already in its judgment of 29 June 2004, and subsequently in the settlement of 22 June 2005, that the proceedings in the case had been unreasonably long. However, no redress whatsoever was afforded to the applicants either during the court proceedings or in the settlement agreement, which only dealt with the merits of the compensation issue. Therefore, the Court considers that the applicants can still claim to be victims of a breach of the “reasonable time” requirement as required by Article 34 of the Convention.

24. As to the Government’s other admissibility argument, the Court notes that the decision of 22 June 2005 confirming the settlement was a final decision in the sense that no appeal lay against it. However, it was possible to contest it by lodging an action for invalidity with the court that had confirmed the settlement. This remedy was thus of an extraordinary character which, according to the Court’s case-law, does not as a rule constitute an effective remedy within the meaning of Article 35 of the Convention unless it is established under domestic law that a request for such proceedings in fact could be considered as an effective remedy (see, *mutatis mutandis*, *X. v. Switzerland*, 8850/80, Commission’s decision of 7 October 1980, 22 D.R. 232). Furthermore, the applicants were satisfied to reach a settlement in the case and had no need to contest its validity.

25. As to the effectiveness of a remedy, the Court reiterates that the only remedies that must be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient (see, among others, *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI). The Court has already found that, under Finnish law, there is no specific legal avenue whereby the applicants could complain of the length of the civil proceedings with a view to expediting the determination of their dispute (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 82, ECHR 2007-).

26. The Court concludes that the remedy in question was not effective in the applicants' case as it could not have remedied their situation. The Government's objection that domestic remedies have not been exhausted must therefore be rejected.

27. Consequently, 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

28. The period to be taken into consideration began on 30 December 1993 when the civil proceedings were initiated before the District Court and ended on 22 June 2005 when the District Court issued a decision confirming the settlement. It thus lasted almost 11 years and 6 months at three levels of jurisdiction, of which one level twice.

29. 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).

30. The Government maintained that, after the District Court's decision of 29 June 2004, the case had been examined very swiftly. The case had been very complex and it had related to several other complex sets of proceedings pending at the same time. Although the overall length of the proceedings did not appear to meet the requirements under Article 6 § 1 of the Convention the Government claimed that the total sum, which the applicants had to pay to the plaintiff, had been very much reduced from the original claim, and that this reduction had remedied the applicants' situation.

31. The applicants claimed that the Government had not submitted any acceptable reason why the proceedings had not been brought to a conclusion within a considerably shorter time frame. It had not even been claimed that the applicants had delayed the proceedings. The applicants claimed that none of the domestic courts had assessed the impact of the excessive duration of the proceedings on the applicants.

32. 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).

33. 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

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 first applicant claimed 30,000 euros (EUR) and the other applicants EUR 10,000 each in respect of non-pecuniary damage.

36. The Government did not express an opinion on the matter.

37. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the first applicant and Mr Lehtonen’s estate EUR 10,000 each in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicants also claimed EUR 9,276.30 plus interest for the costs and expenses incurred before the domestic courts and EUR 3,813.51 (including value-added tax) plus interest for those incurred before the Court.

39. The Government contested the claim for the costs and expenses incurred before the Court considering that it was excessive as to *quantum* and that the award should not exceed EUR 3,100 (including value-added tax).

40. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 3,800 (including value-added tax) for 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 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 applicants, 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 10,000 (ten thousand euros) to the first applicant and Mr Lehtonen's estate each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,800 (three thousand eight hundred euros) to the applicants jointly, plus any tax that may be chargeable to them, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President