



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

1959 · 50 · 2009

FOURTH SECTION

**CASE OF OY HOPOTIHOI SUOMEN LELUKAMARIT TOY &
HOBBY LTD AND MATTI KANGASLUOMA v. FINLAND**

(Application no. 38158/07)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

**In the case of Oy Hopotihoi Suomen Lelukamarit Toy & Hobby Ltd
and Matti Kangasluoma v. Finland,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Fatos Araç, *Deputy Section Registrar*,

Having deliberated in private on 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 38158/07) 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 limited liability company Oy Hopotihoi Suomen Lelukamarit Toy & Hobby Ltd and by a Finnish national Mr Matti Kangasluoma (“the applicants”), on 2 September 2007.

2. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 20 October 2008 the President of the Fourth Section decided to communicate the complaint concerning the length of the proceedings and the lack of remedies in that respect 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant company has its headquarters in Rovaniemi. The second applicant was born in 1949 and lives in Kauniainen.

5. The applicant company is a limited liability company, the shares of which are fully owned by the second applicant. The second applicant is the only member of the board of directors of the applicant company.

6. On 5 December 1997 the Tax Office of Länsi-Suomi (*verovirasto, skatteverket*) requested that a distraint order be issued and the property of the applicant company seized for the second applicant's unpaid taxes. The Tax Office had initiated a police investigation which had revealed that the registration documents of the applicant company had been forged. It was assumed that the company had been created in order to protect the second applicant's business and assets.

7. On 9 and 10 December 1997 the property of the company was seized in accordance with Chapter 4, section 10 of the Execution Act (*ulosottolaki, utsökningslagen*), as in force at the relevant time.

8. On 17 December 1997 the applicant company apparently appealed against the distraint order, arguing that its property could not be seized for the second applicant's unpaid taxes. The result of the appeal is not known.

9. On 30 December 1997 the second applicant was declared bankrupt. The property seized prior to the bankruptcy was transferred to the bankruptcy estate on the basis of section 45 of the Bankruptcy Act (*konkurssisääntö, konkursstadgan*). This terminated the seizure procedure. It was decided on 13 March 1998 that the seized property could be liquidated and it was actually sold in November and December 1998.

10. On 27 November 1998 the second applicant was convicted for having forged the company registration documents and sentenced to three years' imprisonment. This judgment became final on 31 August 2000.

11. On 8 December 1998 the applicant company filed an action against the second applicant's bankruptcy estate and requested the court to order the sequestration of the value of the seized property, which was in the bankruptcy estate's possession, and to confirm the company's ownership of this property.

12. By a decision of 4 June 1999 the Seinäjoki District Court (*käräjäoikeus, tingsrätten*) refused to apply interim measures.

13. On 21 March 2001 the District Court dismissed the action without considering the merits. The court found that the seizure of the applicant company's property had already acquired legal force and that the procedure in that respect had ended. As the value of the property was still in the possession of the bankruptcy estate, it was not too late to determine to whom the property had belonged. The applicant company had been registered in spite of the fact that the registration documents were forged. As the second applicant had acted *mala fide*, he could not take advantage of the registration and the property in question had thus never been transferred to the company. The second applicant could thus be equated with the company vis-à-vis his debtors. The company was therefore not in need of judicial relief.

14. On 15 April 2001 the applicant company complained to the Vaasa Appeal Court (*hovioikeus, hovrätten*).

15. On 14 October 2002 the Appeal Court quashed the District Court's decision of 21 March 2001 and referred the case back to the District Court. It found that the grounds given by the District Court were not such that it could conclude that the company was not in need of judicial relief. It should not have dismissed the action without considering the merits.

16. On 8 April 2004 the District Court rejected the applicant company's complaint. It found that, even though the registration of the company did have a constitutive effect, it could not correct the illegalities committed by the second applicant in the registration procedure. The applicant company was not a separate legal person at the moment when the second applicant was declared bankrupt and the personal property of the second applicant could thus be transferred to his bankruptcy estate.

17. On 6 May 2004 the applicant company appealed to the Appeal Court, claiming, *inter alia*, that it had acquired a legal personality and requesting the court to hold an oral hearing.

18. On 30 July 2004 the Appeal Court decided to apply the filtering procedure and rejected the request for an oral hearing. It upheld the District Court's judgment without examining the case any further.

19. On 26 September 2004 the applicant company appealed to the Supreme Court (*korkein oikeus*, *högsta domstolen*) claiming, *inter alia*, that the filtering procedure could not be used in the case and that the length of the proceedings was already excessive.

20. On 11 January 2005 the Supreme Court granted the applicant company leave to appeal.

21. On 12 April 2005 the Supreme Court quashed the Appeal Court's decision and referred the case back to it. The court found that, in general, a limited liability company was established by registration. When such a company had been registered, it could be dissolved only in accordance with the Limited Liability Companies Act. The said Act did not contain any provision according to which possible illegalities found after the registration would lead to the invalidity of the registration. Bearing this in mind, the court concluded that the case was not so clear that the conditions for using the filtering procedure were fulfilled.

22. On 5 June 2006 the Appeal Court held an oral hearing. On 13 July 2006 the Appeal Court quashed the District Court's judgment of 8 April 2004 as the second applicant's bankruptcy estate had acknowledged the applicant company's claim as far as the ownership of the seized property was concerned. The bankruptcy estate was ordered to pay back the value of this property, about 37,800 euros, to the company.

23. On 11 September 2006 the applicant company appealed to the Supreme Court, claiming that the estimation of the value of the property had been too low.

24. On 5 March 2007 the Supreme Court refused leave to appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

25. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, and that there had been no effective remedy in that respect.

26. Article 6 § 1 of the Convention reads in the relevant parts as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

27. Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

28. The Government contested these arguments.

A. Admissibility

29. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

30. The period to be taken into consideration began on 8 December 1998 when the applicant company filed a civil action and ended on 5 March 2007 when the Supreme Court refused leave to appeal. It thus lasted some eight years and three months at three levels of jurisdiction, of which two levels twice and one level three times.

31. 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).

32. The Government maintained that the case had been exceptionally complex as it had been legally unclear whether the applicant company could have validly acquired the property in question. This complexity was reflected by the fact that the Supreme Court had granted the applicant company leave to appeal in the first set of proceedings. The case had been

referred back to a lower court twice. In the Government's view the procedural delays resulting from these referrals could not be attributed to the Government. As concerns the second applicant, the Government pointed out that the legal problem delaying the proceedings had been due to the offences committed by him as the legal status of the applicant company had been unclear. However, each court had considered the case as expeditiously as possible. As to the Article 13 complaint, the Government argued that the applicants did not have an arguable claim under Article 13.

33. The applicants maintained that the proceedings had clearly been too long and that they had not in any way delayed the proceedings. The legal problem had not been complicated but the national courts had had different views about it.

34. 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).

35. 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.

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

37. As to the Article 13 complaint, the Court sees no reason to depart from its findings that no specific remedy against unreasonable length of civil proceedings is available under Finnish law (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 82, ECHR 2007-).

38. In this connection it notes that, under Finnish law, the applicants were at no stage of the proceedings able to request a domestic court to expedite the conduct of the proceedings or to file a claim for compensation either during their course or following their termination (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 186, ECHR 2006-V).

39. There has accordingly been a breach of Article 13 of the Convention.

II. REMAINDER OF THE APPLICATION

40. The applicants also complained that the applicant company had been illegally deprived of its possessions and that the closing down of the company had restricted their freedom of trade.

41. As to the freedom of trade, the Court notes that the applicants do not claim that they were denied a licence or authorisation to run a business but that the distraint order and the subsequent bankruptcy rendered them unable to run the business. Freedom of trade as such is not guaranteed by the Convention. It follows that this complaint must be rejected as being

incompatible *ratione materiae* within the meaning of Article 35 §§ 3 and 4 of the Convention.

42. As far as the deprivation of possessions is concerned, it should first be noted that the applicants apparently never exhausted domestic remedies with respect to the seizure. Even assuming that they did, the interference, until the property was returned to the applicant company, resulted from a measure to secure the payment of taxes. As to the proportionality, it is recognised by the Court that a Contracting State, not least when framing and implementing policies in the area of taxation, enjoys a wide margin of appreciation and the Court will respect the legislature's assessment in such matters unless it is devoid of reasonable foundation (see *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 60, Series A no. 306-B). The Court finds no indication that the relationship between the means employed and the aims pursued was not proportionate in the present case.

43. However, the applicants did lodge a civil action as regards the ownership of the property. The Court has stated several times that in all States Party to the Convention the legislation governing private-law relations between individuals includes rules which determine the effects of these relations with respect to property and, in some cases, compel a person to surrender a possession to another. In such cases the passing of property, resulting from legal limitations inherent in private property and succession rights, should not be considered as constituting a deprivation of possessions for the purposes of the second sentence of Article 1 of Protocol No. 1 to the Convention (see for example *S.Ö., A.K., Ar.K. v. Turkey* (dec.), 31138/96, 14 September 1999). It follows that these complaints must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicants claimed 341,290.65 euros (EUR) plus interest in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

46. The Government contested these claims. As to the pecuniary damage, there was no causal link between the alleged violations of Articles 6 and 13 of the Convention and any pecuniary damage suffered. Consequently, there was no justification for making any award under this heading. As to the non-pecuniary damage, the Government considered that the applicants' claim was too high as to *quantum* and that the compensation for non-pecuniary damage should not exceed EUR 3,500 in total.

47. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicants EUR 4,500 in total in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicants also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts as well as before the Court.

49. The Government contested these claims. The Government maintained that the costs and expenses in the domestic proceedings did not relate to the length of proceedings. As concerned the costs and expenses incurred before the Court, the Government maintained that they were not specified and that no compensation should be paid for the applicants' own time and work. In any event, the applicants' claims were excessive as to *quantum* and any award under this head should not exceed EUR 1,000 (inclusive of value-added tax).

50. 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*, 25 August 1998, § 63, *Reports of Judgments and Decisions* 1998-VI). 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. As to the costs and expenses incurred before the Court, the Court notes that the applicants were not represented by counsel. It considers it reasonable to award the applicants jointly the sum of EUR 500 (including any value-added tax).

C. Default interest

51. 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 complaints concerning the excessive length of the proceedings and the lack of an effective remedy in that respect admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Articles 6 § 1 and 13 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 4,500 (four thousand five hundred euros) to the applicants in total, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five 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 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatos Araç
Deputy Registrar

Nicolas Bratza
President