CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF TOIVE LEHTINEN V. FINLAND (no. 2)

(Application no. 45618/04)

JUDGMENT

STRASBOURG

31 March 2009

FINAL

30/06/2009

This judgment may be subject to editorial revision.

In the case of Toive Lehtinen v. Finland (no. 2),

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 10 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 45618/04) 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 Toive Lehtinen ("the applicant"), on 23 December 2004.

2. The applicant was represented by Mrs Tiina Nysten, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 9 June 2008 the President of the Fourth Section decided to give notice of the application concerning the length of the proceedings to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

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

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Tampere. He was the principal partner in a construction company, *Toprakenne Ky Toive Lehtinen* (limited partnership), which was wound-up in 1991.

6. On 8 May 1995 the SSP Bank (hereinafter "SSP") initiated civil proceedings to enforce various debts against the applicant. The applicant was summoned on 17 May 1995. Subsequently the applicant filed a counter-claim, which was eventually joined to the original claim on 5 January 1996.

7. Between 4 December 1995 and 28 May 1998 a total of ten preparatory hearings and three main hearings were organised.

8. During the same period the District Court issued six partial decisions. The decisions concerned requests to grant the applicant free legal aid, to dismiss the opposing legal counsel, to declare the trial material classified, to declare one claim inadmissible, to relieve the applicant's counsel of his tasks and to order the claimant to provide certain documents as evidence.

9. On 24 June 1998 the District Court gave its judgment, ordering the applicant to pay some 1,487,603 euros (EUR) with interest to SSP and dismissing all of the applicant's counter-claims.

10. In his appeal the applicant challenged the judgment in its entirety as well as the earlier decisions of the District Court not to dismiss the opposing counsel and the refusal to order the claimant to produce certain documents as evidence. He requested that the case be remitted to the District Court and that an oral hearing be held before the Court of Appeal (*hovioikeus, hovrätten*) with regard to the missing documents or – if the case was not remitted – with regard to the entire case. He further requested that he be exempted from paying SSP's legal fees or at least the value-added tax (VAT) on the fees. He also requested reimbursement of his own legal fees.

11. On 30 November 1999 the Court of Appeal remitted the case to the District Court, ordering SSP to provide three specified documents (minutes from various board meetings) at the hearing before the District Court and allowing the applicant to provide some additional evidence which had previously been refused by the District Court.

12. The proceedings became pending before the District Court on 27 March 2000. Between 31 May 2000 and 26 March 2001 a total of three preparatory hearings and five main hearings were organised.

13. On 6 September 2000 the District Court ordered SSP to provide various additional documents, including the above-mentioned ones. All but two of the requested documents were provided on 30 October 2000. The missing documents were no longer in the possession of SSP or they had not been found.

14. On 5 June 2001 the District Court decided on the case for the second time, finding that the examination of the previously presented evidence, the new evidence and the new hearing of all the witnesses did not give rise to any new conclusions. The judgment was essentially the same as the one given in the first set of proceedings.

15. In his appeal the applicant requested that the judgment be quashed, that an oral hearing be held, and that he be exempted from paying SSP's

legal fees or at least the VAT thereon. He also requested reimbursement of his own legal fees. In the addendum to his appeal he requested the Court of Appeal to order the missing documents to be provided and to remit the case again to the District Court since the judgment did not specify the new evidence nor address the issue of changed witness statements. He also claimed that the judge had been biased.

16. On 21 February 2003 the Court of Appeal dismissed the applicant's request to have the case remitted again to the District Court and held that it was plausible that the missing documents were not in the possession of SSP. It further found that the judge in question had not been biased and that there was no indication that the new evidence had not been taken into consideration. In regard to the latter, the Court of Appeal added that, in any event, the relevant witnesses would be heard again.

17. After having held an oral hearing over four days the Court of Appeal upheld the decision of the District Court on 25 September 2003. The applicant was exempted from paying VAT on the legal fees incurred before the Court of Appeal, but the court held that since he had not requested an exemption before the District Court, the exemption did not apply to legal fees incurred at that stage.

18. On 24 June 2004 the Supreme Court (*korkein oikeus, högsta domstolen*) granted leave to appeal with regard to the issue of exemption from the payment of VAT on the legal fees incurred before the District Court. Leave to appeal was refused as regards the remainder of the case.

19. On 18 March 2005 the Supreme Court gave its judgment on the VAT exemption.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

20. The applicant complained under Article 1 of Protocol No. 1 that his property had not been protected as the national courts had dismissed his request to order SSP to pay him part of the selling price of a housing company. It had been held, against the view of the applicant, that even the shares owned by him personally had been collateral, not just the ones owned by the wound-up company. The applicant claimed that SSP had never provided the relevant documentation despite the direct order by the Court of Appeal.

21. Article 1 of Protocol No. 1 to the Convention, for its relevant parts, reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions" ...

22. As it has been stated in many cases previously it is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair (see *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140).

23. The Court notes that in the present case the complaints in essence relate to the examination of evidence during the domestic proceedings, which is a task for the national courts. There is nothing whatsoever to indicate that the domestic courts' decisions were arbitrary or that the proceedings disrespected the applicant's procedural guarantees under Article 1 of Protocol No. 1.

24. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

25. 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..."

26. The Government contested that argument.

A. Admissibility

27. The Court notes that the complaint about the length of the civil proceedings 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 17 May 1995 when the applicant was summoned. The proceedings ended on 18 March 2005. The proceedings thus lasted some nine years and ten months for three levels of jurisdiction, of which two levels 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 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).

30. The Government argued that the main reason for the delay in the proceedings was the fact that the case had been examined twice on two levels of jurisdiction at the applicant's request. The decision to remit the case had been justified and necessary. However, by making not just one but two requests to have the case remitted, the applicant had accepted the unavoidable delay caused by the eventual re-examination of his case. The Court of Appeal had contributed to safeguarding the applicant's right to pursue his action and had considered his request to outweigh the possible inconvenience of a delay in the proceedings.

31. The Government further stated that the evidence in the case had been exceptionally extensive. The list of written evidence in the first judgment had been nine pages long and the courts had heard approximately 20 witnesses on three separate occasions. A large number of preparatory hearings had been arranged. Also, both parties had requested several prolongations for their submissions and the Government argued that at least six months' delay in the proceedings was attributable to the applicant.

32. The applicant stressed that the reason for the remittal of the case had been a wrong decision by the District Court which had left him with no choice. He also pointed out that the change of a judge in the District Court had resulted in a delay that could not be attributed to him.

33. 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).

34. Having examined all the material submitted to it, the Court considers that the Government have not put forward sufficient facts or arguments 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage for mental suffering and distress.

37. The Government considered the claim excessive as to *quantum*. As the amount claimed relates to both of the applicant's complaints and only one of the complaints was communicated to the Government for observations, the award should not exceed the amount of EUR 3,500 in total.

38. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000.

B. Costs and expenses

39. The applicant also claimed EUR 1,811.70 for the costs and expenses incurred before the Court.

40. The Government considered that the award should not exceed EUR 900 (inclusive of value-added tax) as only one of the applicant's two complaints had been communicated to the Government for observations.

41. 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 to the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs and expenses for the proceedings before the Court.

C. Default interest

42. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand 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 31 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President