CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30508/96
by Eila and Markku PITKÄNEN
against Finland

The European Court of Human Rights (Fourth Section), sitting on 4 March 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 6 February 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Eila and Markku Pitkänen, are a married Finnish couple, born in 1957 and 1955 respectively and resident in Helsinki. They were represented before the Court by Mr Heikki Salo, a lawyer practising in Helsinki. The respondent Government were represented by their Agents, Ms Irma Ertman, Deputy Director-General for Legal Affairs in the Ministry for Foreign Affairs, and Mr Arto Kosonen, Director in the same Ministry.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

In 1987 the applicants bought a real property from the owner of a neighbouring property, L., who had undertaken to tear down a lean-to which L. had constructed on the property purchased by the applicants before having had it split up into a separate property. The applicants and L. allegedly reached a further agreement to the effect that L. consented to the applicants' construction of a car shelter which would be connected to a new sauna building which L. agreed to construct on his own property instead of his existing sauna.

On 26 January 1988 the Helsinki Building Inspection (*rakennus-valvontavirasto, byggnadsinspektionen*) granted permission to demolish the lean-to.

Following that demolition, the Helsinki Building Board (*rakennuslautakunta, byggnadsnämnden*), on 23 February 1988, granted the applicants permission to construct a dwelling-house and a car shelter on their property. L. did not appeal but refused to construct the new sauna building to be connected to the applicants' dwelling.

In August 1988 L. was prohibited from using the sauna in his house as its chimney top was found to be partly under the roof level of the applicants' car shelter. The applicants' offer to have the chimney top extended was refused by L.

On 2 October 1990 representatives of the Building Board inspected the applicants' car shelter and found that it complied with the building permit.

In November 1990 L. brought a civil action against the applicants, demanding, *inter alia*, that they be ordered to tear down the car shelter which they had allegedly built in violation of the fire regulations. The Helsinki City Court (*raastuvanoikeus, rådstuvurätten*) held its first hearing in January 1991 but adjourned the case at L.'s request in anticipation of the Building Board's forthcoming decision.

On 29 January 1991 the Building Board dismissed L.'s objection against the outcome of the inspection on 2 October 1990 and confirmed that the applicants had constructed their buildings in accordance with the permit

delivered in 1988. The Board found that L. had contributed to the fact that he had been prohibited from using his sauna, having refused to carry out his own construction works as agreed with the applicants. Had he fulfilled his part of their joint agreement in accordance with the building permission granted to that effect, the roof of his and the applicants' respective buildings would have been at the same height. The Board considered that the dispute between the parties was to be resolved by the civil courts.

L. appealed to the County Administrative Court (*lääninoikeus, länsrätten*) of Uusimaa, arguing that while he had consented to the applicants' constructing up to the boundary line, he had not agreed to any construction on their part preventing him from using his current sauna and requiring him to take construction measures of his own. Although he had informed the applicants that his consent did not cover those aspects, they had not informed the Building Board accordingly. As a result the building permit and the approval of the applicants' construction works had been based on false premises.

In February 1991 the applicants filed a counter claim against L., demanding that he be ordered to carry out his part of their alleged agreement. The two suits were joined at the applicants' request. The City Court's second hearing was held on 7 March 1991 but the case was again adjourned at L.'s request.

On 17 September 1991 the County Administrative Court upheld the Building Board's decision of 29 January 1991. L. appealed further to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) and also requested the annulment of the Building Board's decision of 1988, whereby it had granted the applicants a building permit.

The City Court's third hearing was held on 19 September 1991. The case was again adjourned at L.'s request, as he had not yet received the County Administrative Court's decision of 17 September 1991.

On 10 October 1991 the Land Court (*maaoikeus, jorddomstolen*) of Southern Finland dismissed L.'s appeal against a refusal to move a marker indicating his and the applicants' joint boundary line.

The civil case was again heard on 16 January 1992 but was now adjourned at the request of both parties in anticipation of the Supreme Administrative Court's decision in respect of L.'s annulment request.

The City Court's fifth hearing was held on 24 September 1992 but the case was again adjourned at L.'s request. Following a sixth hearing on 28 January 1993 the City Court adjourned the case for the summoning of witnesses.

On 19 February 1993 the Supreme Administrative Court dismissed L.'s request for annulment of the Building Board's decision of 23 February 1988. The court held that an error had indeed been committed during the Building Board's examination of the applicants' request for a building

permit. The court noted however the nature of L.'s written undertakings vis -à-vis the applicants which had led to the error, the manner in which their car shelter had been built as well as the fact that it would be easy to arrange for the smoke from L.'s sauna to be evacuated in a manner acceptable from the point of view of fire safety. The court therefore considered that the Building Board's decision of 23 February 1988 did not violate L.'s rights, nor was it necessary in the general interest to annul that decision. The court furthermore dismissed L.'s appeal against the County Administrative Court's decision of 17 September 1991.

In April 1993 L. extended his civil action against the applicants by bringing further claims partly based on different legislation. At the City Court's seventh hearing on 11 May 1993 it took evidence from the applicants' witnesses K. and P. The case was again adjourned at L.'s request.

At the eighth hearing on 31 August 1993 witnesses A. and V. were heard at L.'s request and witness H. was heard at the request of the applicants. The case was adjourned at both parties' request so as to enable them to lodge further submissions in writing.

At the City Court's ninth hearing on 23 November 1993 one further witness was heard at the applicants' request and another witness at L.'s request. The parties requested permission to make their final pleadings in writing and the case was adjourned for judgment at a later date.

Each of the nine hearings was presided over by a different judge.

Due to a national reorganisation of the courts of first instance the case was transferred to the Helsinki District Court (*käräjäoikeus, tingsrätten*; formerly the City Court). In its judgment of 3 March 1994 it found that the Supreme Administrative Court's decision of 1993 had not given rise to *res judicata*. The District Court, moreover, accepted L.'s extended action for consideration. It considered that whereas P. was the only witness who could have testified regarding the true character of the alleged agreement between the applicants and L., P.'s testimony had not been so detailed and certain that it could be regarded as decisive evidence that L. had agreed to tear down the whole of his lean-to. The court therefore found it established that the applicants had understood all along that L. had not intended to tear down the whole of his lean-to. By constructing the car shelter in the manner established they had effectively prevented L. from using his sauna. The applicants were therefore ordered to demolish their shelter and to restore L.'s lean-to into its original state. It followed that the applicants' counter suit had to be dismissed.

The applicants were ordered to pay L. FIM 2,850 (EUR 479.35) in compensation for the damage which the construction of their shelter had caused to his lean-to. They were ordered to pay a further FIM 3,000 (EUR 505.56) a year (as from 1990) in compensation for the impossibility for L.

to use his sauna. They also had to reimburse L.'s costs in the amount of FIM 32,668,50 (EUR 5,494.45).

As regards the extent of the damages suffered by L., the District Court based itself exclusively on A.'s testimony. After the District Court's judgment the applicants filed a criminal complaint against him, suspecting that he had committed perjury.

The applicants appealed against the District Court's judgment and later supplemented their appeal with a copy of the record of the pre-trial investigation into the suspected perjury which in their view showed that A.'s testimony had not been truthful.

On 9 February 1995 the Helsinki Court of Appeal (*hovioikeus, hovrätten*) dismissed the applicants' appeal and upheld the District Court's judgment, including its reasons. The Court of Appeal refused to take into account the pre-trial investigation record concerning A., as it had been submitted out of time and no special reasons militated in favour of accepting it as evidence. The applicants were ordered to pay L.'s costs in the amount of FIM 2,500 (EUR 420.47).

On 7 September 1995 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicants leave to appeal.

In order to tear down their car shelter and restore L.'s lean-to the applicants were to obtain permission from the Building Inspection. In an opinion to the Supreme Court dated 22 February 1995 the Building Inspection nevertheless considered that the District Court's demolition order was "not an equitable solution", since the only change needed from the point of view of fire safety would be to extend L.'s chimney top to a point 80 centimetres above the applicants' car shelter. The Building Inspection would therefore not permit the car shelter to be torn down and such demolition would be contrary to the general interest by spoiling the appearance of the neighbourhood and violate both local planning regulations and general regulations on fire safety.

On 20 August 1997 the Helsinki District Court convicted A. of perjury and sentenced him to nine months' conditional imprisonment. It found it established that he had deliberately omitted various relevant information from his testimony in L.'s civil case against the applicants. In the light of this judgment the applicants requested the Supreme Court to reopen the proceedings.

L. died in November 1997, having sold his property.

On 8 March 2000 the Supreme Court granted the applicants' request for a reopening of the proceedings in so far as they had been ordered to compensate L. for the damage which the construction of their car shelter had caused to his lean-to as well as to pay him the costs incurred in the proceedings before the lower courts. The Supreme Court referred to A.'s conviction of perjury.

Referring to its decision of 16 May 1997, the Supreme Court declined to examine anew the applicant's request for a re-opening of the case in respect the order requiring them to demolish the car shelter, to restore L.'s house into its state prior to the construction of the shelter as well as to pay L. annual compensation for the fact that he was prevented from using his sauna.

As of November 2002 the current owners of L.'s house had not requested, and the authorities had not enforced, the aforementioned three orders.

In re-opening part of the case the Supreme Court instructed the applicants to file, within three months, a new action against L. before the District Court. They initiated such proceedings against L.'s successors on 30 May 2000 and supplemented their statement of claim on 28 May 2001 in light of the defendants' written observations. The court's preparatory hearing was held on 5 June 2002.

On 13 August 2002 the parties reached a settlement whereby L.'s successors undertook to reimburse the applicants the amount of FIM 2,850 (EUR 479.35; i.e. the compensation which the applicants had paid to L.) as well as a further sum of EUR 5,045.64. L.'s insurance company undertook to reimburse EUR 3,363.76 of the costs paid by the applicants. The sums were to be divided between the applicants and their insurance company as later agreed. The applicants and L.'s successors declared that they had no further claims against one another whether in relation to the proceedings initiated in May 2000 or to any previous court proceedings or related events.

The settlement was approved by the District Court on 23 August 2002.

COMPLAINTS

1. The applicants complain under Article 6 § 1 of the Convention that they were denied a fair hearing within a reasonable time before an independent and impartial tribunal established by law.

The various proceedings, taken together, lasted almost twelve years.

Each of the nine hearings for taking evidence were presided over by a different judge.

Moreover, the first set of civil proceedings were repeatedly adjourned by the first-instance court pending the outcome of the administrative court proceedings which the District Court's own judgment in any case effectively nullified. As a result the applicants received two final judgments neither of which could be complied with without violating the terms of the other. The dispute between the applicants and L. has therefore never been effectively resolved.

Furthermore, while the administrative court proceedings were pending the District Court allegedly refused to hear any of the witnesses proposed by the applicants. When it eventually agreed to hear those witnesses, the

District Court questioned the accuracy of their testimony of events four years earlier. The court also permitted L. to extend his action against the applicants three and a half years after the first set of civil proceedings had begun. The District Court's adjournments and its partiality favoured L.'s action to the applicants' detriment. For instance, the evidence which eventually led to A.'s conviction of perjury had already been adduced by the applicants in the civil proceedings but the District Court did not take that evidence into account.

The applicants furthermore complain that they had no effective remedy within the meaning of Article 13 of the Convention and that they have been discriminated against contrary to Article 14 of the Convention, not having been placed on an equal footing with L.

2. In their observations of 12 September 1998 the applicants also complain under Article 6 § 1 of the Convention that the Court of Appeal refused to hold an oral hearing in the first set of civil proceedings.

3. Finally, in their observations of 12 September 1998 the applicants complain that their property rights have been infringed, contrary to Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicants complain that they were denied a fair hearing within a reasonable time before an independent and impartial tribunal established by law. They received two final judgments – one by a civil court and another one by an administrative court – neither of which they could comply with without violating the terms of the other. The dispute between them and L. was therefore not finally resolved and the various proceedings, taken together, lasted almost twelve years.

Each of the hearings where the first-instance court took evidence were presided over by a different judge. The court also permitted L. to extend his action against the applicants three and a half years after the civil proceedings had begun. The proceedings were adjourned repeatedly and the court favoured L. Even though the evidence which eventually led to A.'s conviction of perjury had already been adduced by the applicants in the civil proceedings, the court did not take that evidence into account.

Moreover, while the administrative court proceedings remained pending the civil court refused to hear any of the witnesses proposed by the applicants. When those witnesses were eventually heard, the court questioned the accuracy of their testimony of events four years earlier.

The applicants principally invoke Article 6 § 1 of the Convention which reads, in its pertinent parts, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The Government consider the complaint manifestly ill-founded in so far as concerns the length of the two sets of civil proceedings. The first set lasted four years and nearly ten months at three levels, even though it had entailed the joinder of two actions, one of which had been extended during the proceedings. Both parties had adduced extensive witness testimony and other evidence. The length of the civil proceedings had been due mainly to the conduct of the parties: though the case had been adjourned mostly at the request of L., counsel for the applicants had never objected to any of those requests and had himself sought an adjournment on three occasions. The case had been somewhat complex and the court's decision to await the outcome of the administrative proceedings had been normal and reasonable, since the object of both proceedings had remained the same. Once the administrative proceedings had ended the first-instance court had held three hearings within seven months, whereas the proceedings in the appeal court and the Supreme Court had lasted only ten and five months respectively.

The second set of civil proceedings lasted from May 2000 to August 2002, totalling two years and nearly three months before one court. That case had not been ready for examination until the applicants had filed their supplementary claims in May 2001. The case had been quite complex and included two successors to L. as well as an insurance company.

The Government furthermore consider that the re-opening proceedings fall outside the scope of Article 6.

As for the fairness of the first set of civil proceedings, the Government do not contest the applicants' affirmation that each of the nine hearings for taking evidence was presided over by a different judge. Nevertheless, since the witness testimony had been audio-taped and transcribed and the court file had contained written claims and observations by the parties, each judge had been familiar with the object of the litigation and aware of what had occurred during the previous hearings.

The Government submit, moreover, that in the same set of proceedings the applicants had waited until the sixth hearing before calling witnesses. Their allegation that the court had dismissed their earlier requests to hear witnesses was not supported by the hearing minutes.

To the Government, the applicants' right to build a car shelter on their property and to retain that construction had been determined finally – in the negative – by the Court of Appeal's decision of 9 February 1995. They had failed to remove the shelter in spite of having been so ordered in that decision. The Building Inspection's view that the applicants should not be granted a demolition permit had not been binding on the Supreme Court. In the alternative, the applicants could also have sought permission to raise the

height of the shelter's roof. Under domestic law it had not been open to L. to have the shelter demolished at the applicants' expense.

The Government conclude that the applicants had failed to comprehend the distinction between, on the one hand, the administrative proceedings resulting in their permission to erect a car shelter and, on the other hand, the civil proceedings for the purpose of determining their possible responsibility for damages caused to L. and his property and, if so determined, ordering them to restore the building to its original state and compensating L. Even if a building has been erected with the necessary permission, its use may cause a neighbour inconvenience such that he or she can seek compensation therefor under the Act on Adjoining Properties (no. 26/1920).

The applicants maintain that the overall duration of their case before domestic courts and authorities – involving two sets of civil proceedings as well as administrative proceedings, land court proceedings, criminal proceedings against A. and two sets of re-opening proceedings – amounted to almost twelve years, which was unreasonable. As the criminal proceedings against A. and the proceedings for having the civil proceedings re-opened was a prerequisite for the final settlement of the case, they cannot be disregarded when assessing whether the case was handled within a reasonable time. The case was not particularly complex and the proceedings were at no point delayed by the applicants. Ultimately the State was responsible for ensuring that the proceedings progressed without unreasonable delay.

In the first set of civil proceedings the various presiding judges accepted to adjourn the case in anticipation of the outcome of the administrative proceedings initiated by L. In the second set of civil proceedings the preparatory hearing in June 2002 was held only after the applicants had repeatedly urged the District Court to accelerate the proceedings. For the purposes of Article 6, the overall proceedings should be considered to have started when the applicants' building permit acquired legal force in 1988. Ten years later the case remained pending in the form of extraordinary proceedings before the Supreme Court.

The applicants contend that until the sixth hearing before the District Court their requests that the court hear witnesses, conduct an inspection *in situ* and view a video recording had not been recorded in the minutes. The court further failed to take account of the testimony of H.H., who had been present in 1989 when L.'s representative had orally authorised the applicants to complete the construction of their car shelter.

Reiterating the high turnover of judges presiding the hearings for the taking of evidence, the applicants point out that the judge presiding at the delivery of the judgment was not the one who had signed it.

The applicants maintain that the civil courts wrongly considered themselves competent to adjudicate a matter which had already been determined finally in prior administrative proceedings, namely the

applicants' right to erect a car shelter. As a result of the contradictory outcome of the respective proceedings the applicants were unable to execute the Court of Appeal's decision ordering them to demolish their car shelter and to rebuild L.'s lean-to. As was clear from the Building Inspection's opinion it would not grant the applicants permission to demolish the existing shelter.

A. Alleged partiality of the first-instance court in the first set of civil proceedings

Under Article 35 of the Convention the Court may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

The Court finds that the applicants did not raise, in the first set of civil proceedings, their complaint to this Court that the first-instance court was partial. It follows that this particular complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Lack of an oral hearing on appeal in the first set of civil proceedings

In their observations of 12 September 1998 the applicants also complained under Article 6 § 1 of the Convention that the Court of Appeal refused to hold an oral hearing in the first set of civil proceedings.

The Court notes that the proceedings in question ended in 1995, whereas this complaint was introduced only in 1998, which is more than six months after the final domestic decision of relevance to this grievance.

It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Alleged unfairness of the first set of civil proceedings

The Court notes at the outset that in a court-approved settlement of August 2002 L.'s successors and insurance company undertook to reimburse the applicants certain compensation and costs. In the same vein the parties declared that they had no further claims against one another, whether in relation to the second set of civil proceedings initiated in May 2000 or any previous court proceedings or related events.

The Court considers, in the light of the parties' submissions, that this complaint raises serious issues of fact and law under the Convention, including the question whether the applicants can still claim to be "victims" within the meaning of Article 34, given the terms of the aforementioned

settlement. The determination of these issues therefore requires an examination of the merits of the complaint. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

D. Remaining complaints

The remaining complaints under Article 6 concern the length of the proceedings and the allegedly contradictory outcome of the first set of civil proceedings and the administrative court proceedings which allegedly led to a continuing, unresolved dispute with the owner of the neighbouring house. This situation allegedly also violates Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. More particularly, the applicants have argued that even though the Court of Appeal's judgment of 1995 ordering the applicants to demolish their car shelter, to restore the neighbouring house into its state preceding the construction of the car shelter and to pay the neighbour compensation for preventing the use of his sauna has been neither enforced nor invoked by the current owners of the adjacent property, that judgment remains legally valid, even though at the time of constructing their car shelter the applicants acted in accordance with the relevant laws and regulations. The ongoing *de facto* "easements" created by the orders issued by the Court of Appeal impact negatively on the market value of the applicants' property.

The Court notes that in 2000 the Supreme Court reopened the civil proceedings in so far as the applicants had been ordered to pay certain damages and costs to L. That matter was resolved by virtue of the settlement which the applicants and L.'s successors reached in the course of a second set of civil proceedings in 2002 and in which they declared that they had no further claims against one another. No further proceedings are pending between these parties.

Moreover, while L. still possessed the neighbouring house the authorities did not enforce the court orders of 1995 obliging the applicants to demolish their car shelter and to restore L.'s house to its state prior to the construction of the shelter.

The Court finally finds no indication that the current owners of late L.'s house have taken any steps to obtain such enforcement or to obtain annual compensation for being prevented from using their sauna.

In these particular circumstances the Court is not persuaded that the ongoing *status quo* is detrimental to the applicants' interests. On the understanding that the court orders of 1995 issued against the applicants will no longer be enforced, the Court therefore concludes that they can no longer claim to be "victims" of a Convention violation within the meaning of Article 34.

Accordingly, in so far as the applicants have alleged that the contradictory outcome of the proceedings led to an unresolved dispute with their neighbours, this complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

The Court considers however, in the light of the parties' submissions, that the complaint regarding the length of the proceedings raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging their merits, the complaints regarding the total length of the proceedings and the fairness of the first set of civil proceedings;

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President