EUROPEAN COURT OF HUMAN RIGHTS

243
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Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
VILHO ESKELINEN AND OTHERS v. FINLAND

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment[1] in the case of ***Vilho Eskelinen and Others v. Finland*** (application no. 63235/00).

The Court held:

- by 12 votes to 5, that **Article 6 § 1** (right to a fair hearing) of the European Convention on Human Rights was applicable, and
- by 14 votes to 3, that there had been a **violation of Article 6 § 1** of the Convention as regards the length of the proceedings;
- unanimously, that there had been **no violation of Article 6 § 1** as regards the lack of an oral hearing;
- by 15 votes to 2, that there had been a **violation of Article 13** (right to an effective remedy);
- unanimously, that there had been **no violation of Article 1 of Protocol No. 1** (protection of property) taken alone or in conjunction with **Article 14** (prohibition of discrimination).

Under Article 41 (just satisfaction) of the Convention, and by 13 votes to 4, the Court awarded each of the applicants 2,500 euros (EUR) in respect of non-pecuniary damage and EUR 9,622.11, jointly, for costs and expenses. (The judgment is available in English and French.)

1. Principal facts

The case was introduced by Vilho Eskelinen, Arto Huttunen, Markku Komulainen, Lea Ihatsu and Toivo Pallonen as well as the heirs of the late Hannu Matti Lappalainen (Päivi, Janne and Jyrki Lappalainen). They were born in 1955, 1953, 1954, 1956, 1937, 1957, 1983 and 1981 respectively and are all Finnish nationals living in Sonkakoski or Sonkajärvi (Finland).

Mr Eskelinen, Mr Huttunen, Mr Komulainen, Ms Ihatsu, Mr Pallonen and Mr Hannu Matti Lappalainen all worked for the Sonkajärvi District Police. Under a collective agreement of 1986, they were entitled to a special allowance for working in a remote area. When that allowance was withdrawn in 1988, they were given individual wage supplements to make up the difference.

[1] Grand Chamber judgments are final (Article 44 of the Convention).

On 1 November 1990, after being moved to another duty police station even further away from their homes, the applicants lost their individual wage supplements. They maintain, however, that the Kuopio Provincial Police Command promised them compensation.

On 3 July 1991 the Ministry of Finance refused a request for authorisation to pay each applicant a monthly individual wage supplement of 500-700 Finnish marks (EUR 84-118). The applicants subsequently lodged an application for compensation, which was rejected.

The applicants appealed, asking for an oral hearing to prove, among other things, that they had been promised compensation. Their appeal was rejected on the ground that, at the relevant time, only the Ministry of Finance (and not the provincial police command) could authorise compensation. The court also found that no compensation had been awarded in other similar cases.

The applicants appealed again, requesting an oral hearing and emphasising that allowances had been granted to other police personnel in similar circumstances. On 27 April 2000 the Supreme Administrative Court found that the applicants had no statutory right to the individual wage supplements and that it was unnecessary to hold a hearing, given that the alleged promises made by the provincial police command had no bearing on the case.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 October 2000 and declared admissible on 29 November 2005. On 21 March 2006, the Chamber of the Court dealing with the case relinquished jurisdiction in favour of the Grand Chamber, under Article 30[1] of the Convention. A hearing took place in public in the Human Rights Building, Strasbourg, on 20 September 2006.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (French), ***President***,
Luzius **Wildhaber** (Swiss),
Christos **Rozakis** (Greek),
Nicolas **Bratza** (British),
Peer **Lorenzen** (Danish),
Françoise **Tulkens** (Belgian),
Giovanni **Bonello** (Maltese)
Riza **Türmen** (Turkish),
Matti **Pellonpää** (Finnish),
Kristaq **Traja** (Albanian),
Mindia **Ugrekhelidze** (Georgian),
Anatoli **Kovler** (Russian),
Lech **Garlicki** (Polish),
Javier **Borrego Borrego** (Spanish),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),

[1] Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Egbert **Myjer** (Dutch),
Danutė **Jočienė** (Lithuanian), ***judges***,

and also Erik **Fribergh**, ***Registrar***.

3. Summary of the judgment[1]

Complaints

The applicants complained under Article 6 § 1 about the excessive length of the proceedings and the lack of an oral hearing. They further complained under Article 1 of Protocol No. 1 that they had lost their entitlement to a special allowance and had received no compensation. Under Article 14, they maintained that they were treated differently from other police personnel. They also relied on Article 13.

Decision of the Court

Article 6 § 1

Applicability of Article 6

According to Article 6 of the Convention, every one has the right to a fair trial, notably within a reasonable time, in the determination of his or her civil rights. For Article 6 to apply there must be a "right" and it must be "civil" in character. In this case the Government questioned the applicability of Article 6 on two grounds, namely as to whether there was a "right" and as to whether it was "civil" in nature.

As to the first point, the Court concluded that the applicants could claim to have had a right on arguable grounds and that there was therefore no bar to the applicability of Article 6 in this respect.

On the second, the Government had argued that Article 6 was not applicable since, under the Court's case-law, disputes concerning servants of the State such as police officers over their conditions of service were excluded from its ambit.

The Court recalled that, with a view to removing uncertainty in previous case-law in this area, in the judgment of *Pellegrin v. France* (see press release no. 698 of 8.12.1999) the Court had introduced a functional criterion based on the nature of the employee's duties and responsibilities. The Court had ruled that the only disputes excluded from the scope of Article 6 § 1 were those concerning public servants whose duties typified the specific activities of the public service in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities. A manifest example of such activities was provided by the armed forces and the police.

After reviewing the operation of this functional criterion, the Court concluded that it had not simplified the analysis of the applicability of Article 6 in proceedings to which a civil servant was a party or brought about a greater degree of certainty in this area. The Court considered that *Pellegrin* should be understood in the light of the earlier case-law as constituting a first

[1] This summary by the Registry does not bind the Court.

step away from the previous principle that Article 6 did not apply to the civil service. It reflected the basic premise that certain civil servants, because of their functions, were bound by a special bond of trust and loyalty towards their employer. It was evident from the cases decided since, that in very many Contracting States access to a court was accorded to civil servants, allowing them to bring claims for salary and allowances, even in relation to dismissal or recruitment, on a similar basis to employees in the private sector. The domestic system, in such circumstances, perceived no conflict between the vital interests of the State and the right of the individual to protection.

The Court therefore decided to adopt a new approach in this area, according to which in order for the respondent State to be able to rely on the applicant's status as a civil servant to exclude the application of Article 6, two conditions had to be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant was in a sector or department which participated in the exercise of power conferred by public law was not in itself decisive. In order for the exclusion to be justified, it was not enough for the State to establish that the civil servant in question participated in the exercise of public power or that there existed, to use the words of the Court in the *Pellegrin* judgment, a "special bond of trust and loyalty" between the civil servant and the State, as employer. The State would also have to show that the subject matter of the dispute in issue was related to the exercise of State power or that it had called into question the special bond. Thus, there could in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There would, in effect, be a presumption that Article 6 applied. It would be for the respondent Government to demonstrate, first, that a civil-servant applicant did not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant was justified.

In the case under review it was not disputed that the applicants had all had access to a court under national law. Accordingly, Article 6 § 1 was applicable.

Compliance with Article 6

Reasonable time

The period to be taken into consideration for determining whether the reasonable time requirement had been complied with started to run on the day the applicants lodged their application with the County Administrative Board, on 19 March 1993, because they could not seize the County Administrative Court before receiving, on their rectification request, a decision which could be appealed against. The proceedings ended with the Supreme Administrative Court's decision of 27 April 2000. They had therefore lasted over seven years.

Having had regard to the particular circumstances of the case, the Court concluded that there were delays in the proceedings before the County Administrative Board for which it had found no sufficient explanation. There had therefore been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings.

Lack of an oral hearing

As regards the applicants' complaint that they had been denied an oral hearing, the Court noted that they had not been prevented from requesting an oral hearing, although it had been for the courts to decide whether a hearing was necessary. The administrative courts gave consideration to the request and provided reasons for not granting it. Since the applicants had been given ample opportunity to put forward their case in writing and to comment on the submissions of the other party, the requirements of fairness had been complied with and there had been no violation of Article 6 § 1 on account of the lack of an oral hearing.

Article 13

The Court found that there had been no specific legal avenue whereby the applicants could have complained of the length of the proceedings in question with a view to expediting the determination of their dispute. There had therefore been a violation of Article 13 in that the applicants had no domestic remedy whereby they could enforce their right to a hearing within a reasonable time as guaranteed by Article 6 § 1.

Article 1 of Protocol No. 1 alone or in conjunction with Article 14

The applicants complained under Article 1 of Protocol No. 1, either taken alone or in conjunction with Article 14, that the national authorities and courts had wrongfully applied the national law when refusing their claim.

The Court recalled that for a claim to be regarded as an "asset" attracting the protection of Article 1 of Protocol No. 1 it had to have a sufficient basis in national law, for example where there was settled case-law of the domestic courts confirming it. In the case under review it followed from the implementing instruction that the applicants did not have a legitimate expectation of receiving an individual wage supplement since, as a consequence of the change in duty station, the entitlement to the wage supplement ceased. Nor was there under the domestic law any right to be compensated for commuting costs.

As regards Article 14 of the Convention, there could be no room for its application unless the facts at issue fall within the ambit of one or more of them.

In the circumstances the Court found that there had been no violation of Article 1 of Protocol No.1 to the Convention either taken alone or in conjunction with Article 14.

The following dissenting opinions are annexed to this judgment:
Partially dissenting opinion of Mrs Jočienė;
Joint dissenting opinion of Mr Costa, Mr Wildhaber, Mr Türmen, Mr Borrego Borrego and Mrs Jočienė.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*