CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18363/02
by Esa PUOLAKKA
against Finland

The European Court of Human Rights (Fourth Section), sitting on 14 June 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 17 December 2001,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the partial decision of 26 October 2004,

Having regard to the observations submitted by the respondent Government and the letter from the applicant's lawyer,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Esa Puolakka, is a Finnish national, who was born in 1948 and lives in Joensuu. He is represented before the Court by Mr Lassi Ropponen, a lawyer practising in Pieksämäki.

The circumstances of the case

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

On 31 December 1993 the Finnish Savings Bank – SSP Oy (which later became the Property Management Corporation Arsenal (*Omaisuuden-hoitoyhtiö Arsenal-SSP Oy, Egendomsförvaltningsbolaget Arsenal – SSP Ab*; "Arsenal-SSP" hereinafter) instituted civil proceedings against 24 defendants, including the applicant, who was the managing director of the Savings Bank of Northern Carelia (which had in 1992 merged into the Finnish Savings Bank – SSP Oy, later replaced by the Arsenal-SSP). Arsenal-SSP sought damages amounting to 75,400,000 Finnish Marks (FIM; corresponding to 12,681,370 euros (EUR)) plus 16 per cent interest as from 31 January 1994 for allegedly granting credit negligently in 1988-1991 and for subsequent credit losses.

In his written submissions to the District Court the applicant requested, *inter alia*, the court to declare the action inadmissible or dismiss the claims on the grounds of alleged defects in the application for a summons and on the grounds that, due to the merger, the plaintiff did not have standing to lodge the action. It was contended that, in any case the former Finnish Savings Bank had not transferred its claims to the Arsenal-SSP in the merger and had not issued a valid decision to institute the proceedings for damages. The applicant also requested the dismissal of the claims as the Savings Bank of Northern Carelia had granted him a discharge from liability concerning the years 1988-1993. As regards the period of time from 1990, he maintained that the board of trustees was informed according to the new Savings Bank Act and that even the Finnish Savings Bank had, after the merger, granted a discharge from liability. The plaintiff contested his claims on all points.

On 15 February 1996 the District Court upheld the plaintiff's claims. It dismissed the applicant's grounds for declaring the case inadmissible.

The District Court found, *inter alia*, that the applicant, as the managing director of the Savings Bank of Northern Carelia, had acted negligently as loans had been granted without adequate security (*turvaava vakuus, tryggande säkerhet*) and without ascertaining the clients' solvency and to an extent which was not proportionate to the bank's own capital resources. It further held that the Savings Bank of Northern Carelia had overvalued securities and that these actions had caused the bank damage.

The District Court did however adjust the applicant's liability to 20 per cent of the actual damages, thus amounting to FIM 5,953,470.39 (EUR 1,001,302). It ordered the applicant jointly and severally with the other defendants to reimburse the plaintiff's legal expenses of FIM 2,000,000 (EUR 336,375).

All parties to the proceedings appealed to the Court of Appeal (*hovioikeus, hovrätten*) of Eastern Finland.

On 26 February 1998 the Court of Appeal, after a preparatory hearing and an oral hearing, took its decision by two votes to one. It dismissed the plaintiff's appeal and discharged the applicant from all damages claims, and ordered the plaintiff to reimburse the applicant's legal expenses in the District Court and the Court of Appeal.

On 9 February 1999 the Supreme Court (*korkein oikeus, högsta domstolen*) granted the plaintiff leave to appeal. Having held an oral hearing, the Supreme Court issued its judgment reversing the Court of Appeal's judgment on 19 June 2001. It accepted four claims against the applicant and held that he had caused the plaintiff damage amounting to FIM 32,900,000 (EUR 5,533,382). It held the applicant jointly and severally liable for the damages with the other defendants, however reducing the damages to the sum of FIM 3,360,000 (EUR 565,111). It quashed the Court of Appeal's judgment as regards the legal expenses and ordered the applicant to reimburse the plaintiff's legal expenses in the District Court in an amount of FIM 38,095.24 (EUR 6,407) and held him liable, jointly and severally with the other defendants, to pay FIM 50,000 (EUR 8,409) plus interest in respect of the costs of the Supreme Court proceedings.

COMPLAINTS

The applicant complained under Articles 6 and 13 of the Convention that the length of the civil proceedings was excessive as they lasted over eight years.

THE LAW

By a letter dated 9 March 2005, the applicant's representative informed the Court that the applicant wished to withdraw his application.

The Court finds that the applicant no longer wishes to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the

Convention and its Protocols which require the examination of the application to be continued. Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and to strike the application out of its list of cases.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President