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. 33003/96
by Kerttu TAMMINEN and Eija TAMMELIN
against Finland

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The European Court of Human Rights (Fourth Section) sitting on 28 September 1999 as a Chamber composed of

Mr G. Ress, *President*,
Mr M. Pellonpää,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 July 1996 by Kerttu TAMMINEN and Eija TAMMELIN against Finland and registered on 17 September 1996 under file no. 33003/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicants are Finnish nationals, born in 1930 and 1963 respectively and living in Korkeakoski, Finland.

They are represented before the Court by Mr Mika Ala-Uotila, a lawyer practising in Nokia, Finland

A. Particular circumstances of the case

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

In August 1993 a bank instituted civil proceedings against the applicants and some others before the Pihtipudas District Court *(kihlakunnanoikeus, häradsrätt)*. The bank claimed for repayment of a loan of about 450,000 Finnish marks from the applicants as they had stood surety for the principal debtors. The applicants opposed the claim. In two hearings before the District Court the principal debtors, one of the applicants and one witness called by the applicants (MT) gave evidence. On 17 December 1993 the District Court found for the plaintiff.

The applicants appealed to the Vaasa Court of Appeal *(hovioikeus, hovrätt)*. They asked the District Court's decision to be reversed and the action against them to be dismissed. They also requested the Court of Appeal to hold an oral hearing in order to hear evidence from MT again. On 7 November 1994 the Court of Appeal, without holding an oral hearing, reversed the District Court's decision as far as it concerned the applicants and dismissed the bank's action against them.

On 21 March 1995 the Supreme Court *(korkein oikeus, högsta domstolen)* granted the bank leave to appeal. In their submission to the Supreme Court the applicants, among other things, stated that they referred to all the facts and evidence they have produced to the District Court and to the Court of Appeal. They did not request an oral hearing. On 17 January 1996 the Supreme Court, in written proceedings, reversed the Court of Appeal's decision and confirmed the District Court's decision.

In February 1996 the applicants requested the Supreme Court to reopen the case arguing, *inter alia*, that the failure of the Supreme Court to hold an oral hearing before its decision of 17 January 1996 constituted a procedural error justifying the reopening. The request was rejected on 3 February 1997. According to the Supreme Court, an oral hearing before that court had not been called for in the circumstances of the case.

B. Relevant domestic law

According to Chapter 30, Section 20, Subsection 1, of the Code of Judicial Procedure *(oikeudenkäymiskaari, rättegångsbalk)*, the Supreme Court holds, when necessary, an oral hearing, where parties, witnesses and experts may be heard, and other evidence may be taken.

COMPLAINT

The applicants complain that they were not afforded a fair trial according to Article 6 § 1 of the Convention, as the Supreme Court reversed the Court of Appeal's decision

without holding an oral hearing. They maintain that in spite of Finland's reservation the Supreme Court should have held an oral hearing as its decision was based on evaluation of evidence and as Chapter 30, Section 20, of the Code of Judicial Procedure provided a right to an oral hearing. Furthermore, they argue that the Supreme Court should have at least asked them whether they requested an oral hearing.

THE LAW

The applicants complain that the lack of an oral hearing before the Supreme Court violated their right to a fair trial. They invoke Article 6 § 1 of the Convention, which in its relevant parts reads as follows:

> "In the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing … by [a] … tribunal…"

The reservation made by the Finnish Government in accordance with Article 64 (after the entry into force of Protocol No. 11 on 1 November 1998, Article 57) of the Convention, in respect of the right to a public hearing guaranteed by Article 6 § 1 of the Convention, read at the relevant time as follows:

> "For the time being, Finland cannot guarantee a right to an oral hearing insofar as the current Finnish laws do not provide such a right. This applies to:
>
> 1. proceedings before … the Supreme Court … in accordance with … Chapter 30, Section 20, of the Code of Judicial Procedure…"

The Court firstly notes that it appears that the applicants did not request the Supreme Court to hold an oral hearing. The Court, however, need not decide whether the applicants have exhausted the domestic remedies as required by Article 35 of the Convention, as the complaint is in any event inadmissible for the following reasons.

The Court recalls that when right of appeal exists under domestic law, Article 6 § 1 applies also to proceedings on appeal (see e.g. Delcourt v. Belgium judgment of 17 January 1970, Series A no. 11, pp. 13-15, §§ 25-26).

It is true that there was no hearing before the Supreme Court in the applicants' case. The Court notes the applicants' argument that since the right to an oral hearing before the Supreme Court was provided for by Chapter 30, Section 20, of the Code of Judicial Procedure, the reservation was inapplicable.

The Court recalls that when the Convention refers back to domestic law, compliance with such law is an integral part of the obligations of the Contracting States and the Court is accordingly competent to satisfy itself of such compliance where relevant. The scope of its task in this connection, however, is subject to limits inherent in the logic of the European system of protection, since it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see Lukanov v. Bulgaria judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 543, § 41). Similar considerations apply *mutatis mutandis* to the interpretation of the Finnish reservation, the scope of which is defined in part by a reference to domestic law.

In the present case the Supreme Court did not hold an oral hearing. In its decision of 3 February 1997 rejecting the applicants' request for reopening it explicitly stated that no hearing had been called for. This must be taken to mean that in the Supreme Court's opinion, Chapter 30, Section 20, of the Code of Judicial Procedure did not guarantee a right to an oral hearing in the circumstances of the applicants' case. Having regard to the terms of Section 20, the Court cannot find that this interpretation of domestic law was in any way arbitrary. The Court therefore accepts that the rejection of the oral hearing in the Supreme Court was in conformity with domestic law.

In view of the above and having regard to the terms of Finland's reservation, Finland was under no Convention obligation to ensure in respect of the Supreme Court that an oral hearing was held. While it is true that the effect of the reservation was to deny the applicant a right to an oral hearing before the Supreme Court, this result must be considered compatible with the Convention as a consequence of the operation of a valid reservation (see Helle v. Finland judgment of 19 December 1996, *Reports* 1997-VIII, pp. 2925-2926, §§ 44 and 47).

It follows that the application is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Georg Ress
President