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. 60963/00
by Aila TIMPERI
against Finland

The European Court of Human Rights (Fourth Section), sitting on 23 March 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 28 June 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Aila Timperi, is a Finnish national, who was born in 1951 and lives in Oulu. She is represented before the Court by Mr Heikki Sillanpää, a lawyer practising in Forssa.

A. The circumstances of the case

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

The applicant was employed by the city of Forssa as an adviser in housekeeping, giving for instance cooking courses. Her employer made a report to the police, alleging that she had embezzled money.

The public prosecutor brought charges against the applicant for aggravated embezzlement *etc.* during the period September 1988 and November 1996, amounting to FIM 450,000 (EUR 75,684). The complainant, the city of Forssa, claimed damages. The applicant denied the charges as well as the other claims.

The District Court of Forssa (*käräjäoikeus, tingsrätten*) heard some twenty witnesses during four days. On 9 September 1997 the District Court, composed of a professional judge and three laymen, convicted the applicant and sentenced her to nine months' imprisonment. She was ordered to pay damages amounting to FIM 439,133 plus interest and legal costs. Insofar as the sentence was concerned, the judgment was not unanimous, as it was based on the opinion of three lay judges, whereas the professional judge in his dissenting opinion considered that one year and two months' suspended imprisonment was a sufficient sanction.

At this point, the public prosecutor ordered a further pre-trial investigation to be carried out as to what information the applicant's superiors and other employees of the complainant had in the spring of 1996 concerning income allegedly unaccounted for.

Subsequently, the applicant learned that lay judge T., who had examined the case in the District Court, was an employee of the complainant in her case.

The applicant appealed to the Turku Court of Appeal (*hovioikeus, hovrätten*), denying the charges. She argued that lay judge T. had been disqualified from deciding her case for the aforementioned reason. She also requested an oral hearing with a view to adducing more documentary evidence, rehearing a witness and hearing new witnesses. According to the applicant, the witness statements before the District Court were not properly entered into the minutes and only statements supporting the District Court's conclusions were included.

On 20 January 1999 the Court of Appeal gave judgment, finding that lay judge T. had not been disqualified and, having listened to the audio tapes

from the District Court's hearings and read the new pre-trial report, that the proposed new evidence would not clarify the matter further. Thus, holding an oral hearing was manifestly unnecessary. The Court of Appeal upheld the District Court's judgment.

The applicant requested leave to appeal to the Supreme Court, still denying the charges and requesting, at any rate, that her sentence be reduced. She maintained that lay judge T. had been disqualified from deciding her case. She also requested an oral hearing before the Supreme Court.

On 27 May 1999 the Supreme Court granted the applicant leave to appeal.

The Supreme Court gave judgment on 22 February 2000 (KKO 2000:21). As to the alleged disqualification, the Supreme Court found that lay judge T., who at the relevant time had worked as a special teacher employed by the city of Forssa, had not lacked impartiality. The Supreme Court, referring to the relevant provisions in domestic law, gave the following reasoning for its decision:

> In assessing whether a judge is disqualified, attention has to be paid also to the provisions in the European Convention on Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights. In light of the Human Rights Court's case-law, a judge must not hold a preconception or a have a prejudged view of the case in question or have a desire to favour one of the parties' interests (subjective impartiality). In addition, all legitimate doubts as to the judge's and the tribunal's impartiality must be eliminated (objective impartiality). In assessing impartiality from the last-mentioned point of view, attention has to paid to whether the judge's previous activities, his relations to the parties or the composition of the court from an objective point of view give a party reason to believe that impartiality is jeopardized.
>
> No one has indeed argued that lay judge T. would have been disqualified on subjective grounds. The question is what position should be taken on the fact that T. was an employee of the complainant, the city of Forssa. A party, such as the defendant in criminal proceedings, may understandably be worried, if the composition of the District Court includes a layman employed by the opposing party. Some weight may be given to the party's opinion of partiality based on employment, but what is decisive is whether the suspicion can be considered to be objectively justified. In assessing the case from this point of view the Supreme Court supposes that a layman cannot be considered disqualified merely on the ground that he is employed by a party to the proceedings. Attention has to be paid on the one hand to the size of the employer and the importance of the case in question to the employer and on the other hand to the character of the employee's functions. In the present case, by the end of 1997, the city of Forssa had 1,135 employees, including both permanent and temporary staff. Lay judge T., in his capacity as a temporary special teacher, was not part of the city's governing body nor had he any commission of trust. Neither was he involved in the housekeeping service in question. T. had a permanent post as a school welfare officer within the Lounais-Häme federation of municipalities vocational school, to which he could return when his temporary post ended. According to Timperi, special attention was paid to the guarantees of an impartial trial when the lay judges were chosen to sit

> in on the present case. In these circumstances, Timperi's doubts as to the impartiality of the court cannot be considered to be justified from an objective point of view.
>
> Thus, the Supreme Court finds that the afore-mentioned relationship between T. and the city of Forssa, the complainant in these criminal proceedings, is not such that it could justifiably call his independence and impartiality as a lay judge of the District Court into question. Thus, T. cannot be considered to be disqualified.

The Supreme Court furthermore, noting that the Court of Appeal had found that holding an oral hearing would not have clarified the matter, saw no reason to differ. It upheld the applicant's conviction, but reduced the sentence to nine months' suspended imprisonment.

B. Relevant domestic law

Chapter 13, section 1 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*), as in force at the material time, provided in relevant part:

> "...The following shall be the legal grounds for disqualification [of a judge]: when the judge is related by blood or marriage to one or the other party in a manner where marriage is prohibited under chapter 2 of the (1734) Marriage Code, including cousinship by blood although not by marriage; when the judge is the opposing party or a public opponent of a party; when the judge or his or her relative here listed has an interest in the case, when they stand to obtain particular benefit or suffer particular loss as a result of it; when the judge has served as a judge in the case in another court; when the judge has served as an advocate or a witness in the case; or when the judge has previously, on the orders of a court, decided a part of the case; or when the judge has a similar case pending before another court. ..."

According to the District Court Act section 10, the provisions of law concerning disqualification of a judge apply also to laymen.

COMPLAINTS

1. The applicant complains, under Article 6 § 1 of the Convention, that she has been denied a fair trial by an independent and impartial tribunal in that lay judge T. at the District Court was disqualified from deciding her case as he was an employee of the complainant.

2. The applicant also complains, under Article 6 §§ 1 and 3 (d) of the Convention, that her right to obtain the attendance and examination of witnesses on her behalf was violated before the Court of Appeal and the Supreme Court and that she was denied a fair trial in that the higher courts did not allow her to submit further documentary evidence. Finally, she complains about the lack of an oral hearing before the higher courts.

THE LAW

The applicant complains that the District Court was not an independent and impartial tribunal. The applicant also complains about the admissibility of document evidence, the lack of an oral hearing and that the rights of the defence were violated before the higher courts. She alleges violations of Article 6 of the Convention, which reads in relevant part:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"

1. The applicant, referring to the case of *Holm v. Sweden* (judgment of 25 November 1993, Series A no. 279-A), argues that lay judge T. was disqualified from deciding the case before the District Court on the ground that he was an employee of the complainant.

The Court notes that the case raises questions of impartiality rather than independence proper. The existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, that is to say whether the judge held any personal prejudice or bias in a given case, and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, *inter alia*, the *Fey v. Austria* judgment of 24 February 1993, Series A no. 255, p. 12, §§ 27, 28 and 30).

As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary. Under the objective test, when determining whether there were ascertainable facts capable of raising doubts as to the impartiality of a judge, even appearances may be of a certain importance.

In the present case there is no reason to doubt the personal impartiality of lay judge T. in the absence of any proof. As regards his objective impartiality, the Court observes that the case can be distinguished from the case of *Holm v. Sweden* cited above, in which the applicant brought a private prosecution for aggravated libel against an author of a book and claimed damages from a publishing house indirectly controlled by a political party. The defendants and five out of nine of the members in the jury at the District Court were active within that political party. In that case the Court, having first noted that the mere fact that domestic law gave the defence the benefit of certain safeguards that were not applicable to the applicant did not as such constitute a legitimate reason to fear a lack of independence and impartiality of the part of the jurors,

placed emphasis *inter alia* on the links between the five jurors and the defendants and the political nature of the disputed passages of the book. The Court concluded that the independence and impartiality of the District Court was open to doubt and that the applicant's fears in this respect were objectively justified.

While it is true that lay judge T., who was one out of a composition of four, was an employee of the complainant in the present case, the Court recalls that in each individual case it must be decided whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Pullar v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 794, § 38). The Court accepts the reasoning given in the Supreme Court's judgment cited above and thus, does not find it established that there were objective grounds to call into question the impartiality of lay judge T. in deciding the case against the applicant. Accordingly, there is no appearance of a violation of Article 6 § 1 in this respect.

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

2. The applicant alleges a violation of Article 6 §§ 1 and 3 (d) of the Convention in that before the higher courts she was not allowed to refer to further documentary evidence, to have a witness reheard or to hear new witnesses.

The Court first recalls that its task is not to examine whether the applicant was guilty or innocent of the offences of which she was convicted. The admissibility of evidence and related questions are primarily matters for regulation by national law and it is in principle for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings as a whole, including the way in which the evidence was taken, were fair (see *Doorson v. the Netherlands,* judgment of 26 March 1996, *Reports* 1996-II, p. 470, § 67).

The Court considers that there is no indication that the domestic courts acted arbitrarily or otherwise exceeded their margin of appreciation in deciding on the admissibility of evidence and thus, the facts relied on in support of the complaints do not disclose an appearance of any violation.

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

3. As to the complaint about the lack of an oral hearing before the Court of Appeal and the Supreme Court, the Court recalls the Finnish reservation to the Convention, which has been found valid (see *Helle v. Finland*, judgment of 19 December 1997, *Reports* 1997-VIII, p. 2925, § 44, and *TH-tekniikka Oy:n konkurssipesä v. Finland* (dec.), no. 35897/97, 28 September 1999) and which at the material time exempted the reserving

State from the obligation to hold hearings, *inter alia*, before courts of appeal and the Supreme Court.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court

Declares inadmissible, by a majority, the applicant's complaint concerning the alleged violation of his right to have the case tried by an impartial tribunal.

Declares unanimously the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President