



Court finds no violation of Finnish company's rights in Supreme Administrative Court's treatment of cartel case

In today's **Chamber judgment**¹ in the case of **SA-Capital Oy v. Finland** (application no. 5556/10) the European Court of Human Rights, unanimously, held that there had been:

no violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, and,

rejected as inadmissible complaints under Article 6 §§ 1 and 2 (right to a fair hearing/presumption of innocence).

The case concerned the applicant company's complaint that Finland's Supreme Administrative Court had relied on hearsay evidence about its role in an asphalt cartel and had increased a fine on it.

The Court found that the Supreme Administrative Court, which had been dealing with the case on appeal from a first-instance judgment, had had plentiful evidence of the company's involvement in the cartel and that the indirect, hearsay evidence had not been conclusive.

Given the complex nature of competition cases, the way in which the domestic court had gathered evidence from witnesses had been appropriate and the applicant company had been able to test those submissions.

Principal facts

The applicant, SA-Capital Oy, is a Finnish company with its head office in Rovaniemi (Finland).

After proceedings begun by the Competition Authority in 2004, the Market Court found in December 2007 that the company had been part of an asphalt cartel for contracts offered by the central government. It was found to have taken part in the territorial allocation of markets, some price fixing and in restricting the supply of asphalt mass. It was fined 75,000 euros (EUR).

The defendant companies, including the applicant company, and the Competition Authority all appealed to the Supreme Administrative Court, which in September 2009 overturned the first-instance decision. It found that a single nationwide cartel had existed between 1994 and 2002, affecting central and local government and the private sector.

The Supreme Administrative Court found that the applicant company had taken part in the cartel, at both central government and municipal level, in particular in Lapland and North Karelia, from May 1995 to February 2000. It increased the company's fine to EUR 500,000, which was determined according to the company's relatively small market share and the nature of its infringements in comparison with the cartel's main participants.

The Supreme Administrative Court based its decision on evidence that it had heard directly in court and on testimony that was heard in the Market Court, which included evidence which witnesses had either experienced themselves or had heard or inferred from others.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (right to fair hearing by a tribunal/right to examine witnesses or have them examined), the applicant company complained that the Supreme Administrative Court had relied on hearsay evidence from unidentified sources which it had not been able to examine or have examined.

Under Article 6 §§ 1 and 2 (right to fair hearing by a tribunal/presumption of innocence), it alleged that the Supreme Administrative Court had accepted that the standard of proof in competition law cases could be lower than the level of “beyond reasonable doubt” or of the “preponderance of evidence”. It also complained of a reversal of the burden of proof.

The application was lodged with the European Court of Human Rights on 25 January 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Ksenija **Turković** (Croatia),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court first decided that the company’s complaint that the Supreme Administrative Court had relied on hearsay evidence should be examined under Article 6 § 1 alone.

The Court noted that it had to examine the fairness of the proceedings as a whole, adding that cases involving competition law were often complex. Indeed, in the appeal involving the applicant company, the Supreme Administrative Court had had to carry out an assessment of several elements, involving a wide range of financial, factual and legal considerations.

The Court observed that the applicant company had been able to influence what evidence was adduced before the Supreme Administrative Court as it had been able to attend a preparatory meeting to discuss that issue. The applicant company had not requested other witnesses beyond the six who had been called to appear in the appeal court. The Court found overall that the way the Supreme Administrative Court had handled evidence from witnesses had been justified.

It also noted that the central issue which the Supreme Administrative Court had had to determine was the scale of the applicant company’s involvement in the cartel – whether it had concerned central government contracts or those awarded by local government and the private sector.

To that end, the Supreme Administrative Court had taken account of the testimony in the first-instance court and had heard its own witnesses, some of which had directly implicated the applicant company in the cartel. Although some of the witness evidence might have been hearsay, the Court was not convinced that the Supreme Administrative Court had relied on such evidence to a decisive extent.

The Court found that the proceedings as a whole had been fair: the Supreme Administrative Court had explained the relevant domestic and European Union law, and had taken account of Article 6 of the European Convention. The evidence had been open to challenge by the applicant company,

which had had the possibility to submit its own evidence to rebut that of the prosecution. The applicant company had thus been able to exercise its right of defence.

In conclusion, the Court held that in the circumstances of the case the extent to which the Supreme Administrative Court had relied on untested, indirect evidence had been justified.

Article 6 §§ 1 and 2

The Court observed that the Supreme Administrative Court's judgment had discussed the burden of proof and the applicable standards for it. The court had concluded that the Competition Authority had provided extensive evidence of a cartel while the defendants had not been able to refute the credibility of the evidence or the Competition Authority's conclusions.

The Court detected no sign that the principles set out by the Supreme Administrative Court and the way it had applied them were in conflict with Article 6 § 2 or that the court had been inclined beforehand to find the applicant company liable.

It could therefore not be said that the Supreme Administrative Court had shifted the burden of proof on to the applicant company or that the standard of proof had been arbitrary in any way. These complaints therefore had to be rejected as manifestly ill-founded and inadmissible.

Separate opinions

Judge Wojtyczek and Judge Koskelo expressed concurring opinions which are annexed to the judgment.

The judgment is available only in English.

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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.