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

FOURTH SECTION

CASE OF SUOMINEN v. FINLAND

(Application no. 37801/97)

JUDGMENT

STRASBOURG

1 July 2003

FINAL

24/07/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Suominen v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 June 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 37801/97) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Mrs Kersti Hannele Suominen ("the applicant"), on 17 April 1997.

2. The applicant, who had been granted legal aid, was represented by Mr Pauli Alankoja, a lawyer practising in Turku. The Finnish Government ("the Government") were represented by their Agents, Mr Holger Rotkirch, Director General for Legal Affairs, and Mr Arto Kosonen, Director, Ministry for Foreign Affairs.

3. The applicant alleged that she had been denied a fair trial as the District Court (*käräjäoikeus, tingsrätt*) refused, without giving a reasoned decision, to admit part of the evidence submitted by her.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 26 February 2002, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1942 and lives in Forssa.

9. The applicant was the owner and managing director of company X. Between 26 June 1991 and 16 February 1993 she had made arrangements with a bank to finance her company.

10. In the spring of 1993 the bank refused to grant any more loans and made a request that part of the existing loans be paid back.

11. On 24 February 1995 the bank instituted civil proceedings against the applicant before the District Court of Pori, seeking the return of loans made to her.

12. The applicant received an invitation dated 2 January 1996 to the preparatory hearing at the District Court. The purpose of the preparatory hearing was explained in the invitation, which indicated that the applicant had to list all the evidence she intended to present and what she intended to prove with each piece of evidence. She was also advised to present all the written evidence invoked.

13. The preparatory hearing was held on 25 January 1996. According to the applicant, she was prepared to hand in all the documents she wanted to submit as evidence. The presiding judge admitted only two of the documents and a list on which all the documents were listed. The applicant was allegedly told that the remaining evidence could be presented at the main hearing.

14. The main hearing was held on 8 February 1996. According to the applicant, she was denied the possibility to present the other evidence listed, because she had not submitted those documents earlier at the preparatory hearing. This is not mentioned in the minutes of the District Court.

15. On 15 February 1996 the District Court gave its judgment, accepting the bank's claims. The applicant's property was distrained. The applicant appealed to the Court of Appeal (*hovioikeus, hovrätten)* of Turku, requesting an oral hearing or that the case be referred back to the District Court. On 3 October 1996 the Court of Appeal refused the applicant's claims and upheld the District Court's judgment. The Court of Appeal reasoned that the applicant had not shown it to be probable that she had not been allowed, or had been unable, to invoke all evidence in the District Court. There was thus no reason to accept the documents which she had submitted to the Court of Appeal.

16. On 18 March 1997, the Supreme Court (*korkein oikeus, högsta domstolen)* refused the applicant leave to appeal.

17. The applicant did not have legal counsel until seeking leave to appeal to the Supreme Court.

II. RELEVANT DOMESTIC LAW

18. According to Chapter 5, section 10, paragraphs 1 and 3, of the Code of Judicial Procedure (1052/1991, *oikeudenkäymiskaari, rättegångsbalken*), the defendant must be exhorted to list, as far as possible, the evidence he intends to present and what is intended to be proved with each piece of evidence, and to state the postal addresses and telephone numbers of witnesses and other persons to be heard already in the summons.

19. According to Chapter 5, section 19, paragraph 3, of the Code of Judicial Procedure, the evidence that is going to be presented and what is intended to be proved with each piece of evidence must be determined in the preparatory hearing of the civil proceedings.

20. According to Chapter 5, section 21, paragraph 1, of the Code of Judicial Procedure, in the preparation of the case a party must without delay present his claims and the grounds for them and express his opinion on what the opposing party has presented. In addition, he must list all the evidence he intends to present and what is intended to be proved with each piece of evidence. He must also present all the written evidence invoked.

21. According to the Government Bill for the amendment of the Code of Judicial Procedure (HE 15/1990) the purpose of the preparation of a case is to

> "...establish the claims of the parties to the proceedings and the grounds on which they are based, as well as the issues on which the parties disagree. The preparation should also establish what evidence the parties are going to present, what is intended to be proved with each piece of evidence and whether there are possibilities to reach a friendly settlement. [...] The court should declare the preparation terminated as soon as the claims of the parties and the issues on which they disagree have been established, [and] when the pieces of evidence to be presented have been listed ..."

Furthermore, according to the Government Bill,

> "...a decision should already be made in the preparation as to what particular pieces of evidence shall not be admitted in the main hearing by virtue of Chapter 17, section 7."

22. According to Chapter 6, section 9 of the Code of Judicial Procedure in a case amenable to settlement a party must not in the main hearing invoke a circumstance or evidence that he has not invoked in the preparation of the case, unless he establishes a probability that he had a valid reason for not doing so.

23. According to Chapter 17, section 7 of the Code of Judicial Procedure (571/1948) if a piece of evidence that a party wishes to present pertains to a fact that is not material to the case or that has already been proven, or if the fact can be proven in another manner with considerably less inconvenience or cost, the court may not admit this piece of evidence.

24. According to Chapter 25, section 14, paragraph 2, of the Code of Judicial Procedure (1052/1991), as in force at the relevant time, in case the

appellant wishes to present new evidence in support of his appeal, he must inform the court of such evidence and must also mention which facts he intends to prove with the new evidence, and give the reasons for not having presented the evidence earlier. A comparable provision has been included in section 17 (1) (165/1998) of the existing Chapter 25 of the Code of Judicial Procedure.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

25. The applicant complained that she did not receive a fair hearing as she was prevented from presenting all the evidence she wanted to present. The District Court refused to admit the evidence at the main hearing, without giving a reasoned written decision, although it had made an oral decision to the contrary at the preparatory hearing. She invoked Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

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

26. The Government disagreed, emphasising that the applicant had been informed about the proceedings at the preparatory hearing in the invitation to the hearing. This was also evident from the applicant's application as she had prepared a list of all the documents she had wanted to present, including information as to what she intended to prove with each piece of evidence. She had also mentioned that she had copied all the documents she wanted to submit as evidence at the preparatory hearing. The judge had admitted, however, only two of the documents and the list of evidence prepared by the applicant.

27. The Government noted that in her appeal to the Court of Appeal the applicant had admitted that she had been allowed to speak and say a few words as to her own evidence in the preparatory hearing. The applicant's contention according to which she had been told at the preparatory hearing that the remaining evidence could be presented at the main hearing must have been based on a misunderstanding.

28. The Government further observed that the judge of the preparatory hearing had known what evidence the applicant wished to present and what she intended to prove with that evidence. The District Court had assessed which pieces of evidence were relevant for the consideration of the bank's claims. The evidence which, contrary to the applicant's wishes, had not been

admitted had had no relevance to the decision in the case. This had consisted of, first, evidence concerning issues which the applicant had not challenged at the District Court. As the applicant had admitted in the District Court, the debts mentioned in the bank's claims had become due for payment and had not been paid. She had also admitted the securities given in respect of her loans. Secondly, any evidence meant to prove the loss allegedly suffered by the applicant in consequence of the plaintiff's measures should have been presented in a separate counterclaim as it was not evidence challenging the evidence submitted by the plaintiff for the consideration of the claims at issue. Thirdly, part of the evidence had not been decisive for the case concerning the recovery of debts. Under Chapter 17, section 7 of the Code of Judicial Procedure the court may not admit irrelevant evidence. The Court of Appeal had likewise had an opportunity to assess the lawfulness of the procedure followed by the District Court, as well as its compliance with the requirements of Article 6 § 1 of the Convention.

29. The Government noted that the fact that the applicant had not been able to present new evidence in the Court of Appeal had been based on Chapter 25, section 14 (2) of the Code of Judicial Procedure, as in force at the material time. By virtue of this provision the Court of Appeal had not taken new evidence into account. The applicant must have been aware of this because in the appeal instructions attached to the District Court's decision, it was explicitly stated that in a civil case in the Court of Appeal the appellant may not invoke facts or evidence other than those which have been presented in the District Court, unless she sufficiently proves that she was not able to invoke the fact or evidence in question in the District Court or that she otherwise had a valid reason for not doing so.

30. The applicant emphasised that the domestic courts had refused, without reasoning, to admit the evidence she had wanted to submit. She argued that if the District Court had found part of the evidence offered to be irrelevant, such a decision should have been recorded in the minutes of the preparatory hearing and reasons should have been given. As was admitted by the Government, the refusal to admit part of the evidence submitted by the applicant, as well as the reasoning for such a decision, was missing.

31. The applicant noted that she had not been legally represented at the preparatory hearing and that, as a layperson, she had not understood that she was meant to request that all her claims be recorded in the minutes of the hearing.

32. The applicant argued that the fact that the District Court's minutes of the case had not included the District Court's decision not to accept the evidence offered by the applicant, had also been the reason for the Court of Appeal's dismissal of her appeal in this respect. As the evidence rejected by the District Court had been assessed as "new" evidence before the Court of Appeal, the Court of Appeal could not have taken it into account. Therefore,

the District Court's failure to give a reasoned decision for not accepting the evidence offered had caused the applicant's loss of her rights before the Court of Appeal. Even though the Court of Appeal had examined the case in accordance with law, it had not redressed the District Court's failure. The applicant had not therefore received a fair trial.

33. The Court recalls first, in accordance with its case-law, that the requirement of equality of arms applies in principle to civil cases as well as to criminal cases. As regards litigation involving opposing private interests, equality of arms implies that each party must be afforded a reasonable opportunity to present their case – including their evidence – under conditions that do not place them at a substantial disadvantage *vis-à-vis* their opponent. However, the requirements inherent in the concept of "fair hearing" are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge (see, for example, *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, §§ 32-33).

34. The Court then reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. Article 6 § 1 obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, inter alia, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29).

35. In the present case the Court notes that the Government does not dispute that the applicant had prepared a list of all the documents she had wanted to present as her evidence in the case and that she had copied all the documents mentioned in the list. The applicant having offered them to the District Court judge as her evidence in the preparatory meeting, the judge had admitted only the list and two of the documents. It is left unclear whether the applicant was given the impression that she could present all the evidence at the main hearing or not. The answer to that question is, however, irrelevant as the main issue here is whether the court's decision to refuse to admit the evidence submitted by the applicant was given in a reasoned decision, allowing the applicant a possibility of appealing against it.

36. The Court notes that, even though a domestic court has a certain margin of appreciation when choosing arguments in a particular case and admitting evidence in support of the parties' submissions, an authority is obliged to justify its activities by giving reasons for its decisions. The Court notes that it is not its task to examine whether the court's refusal to admit the evidence submitted by the applicant was well-founded; it falls to the national courts to determine questions of that nature.

37. The Court emphasises that a further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (c.f. *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001, unreported).

38. In the light of the foregoing considerations, the Court considers that the applicant did not have the benefit of fair proceedings in so far as the court's refusal to admit the evidence proposed by her was concerned. The lack of a reasoned decision also hindered the applicant from appealing in an effective way against that refusal. This is shown by the Court of Appeal's decision to reject the request to consider the evidence on the ground that it should have been adduced in the District Court and that the applicant had not shown that she had not been allowed, or had been unable, to do so.

There has therefore been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

40. The applicant sought compensation for pecuniary damage in the amount of 100,497,697.46 euros (EUR) arising from the loss of her business and patents. That had caused also the loss of her income and pension rights as well as her creditability. The applicant also claimed the sum of EUR 28,418,361.90 in compensation for non-pecuniary damage arising from suffering and anxiety caused by the alleged violation.

41. The Government noted that there was no causal link between the facts of the alleged violation and any pecuniary damage. Accordingly, no compensation under this heading should be awarded. The Government

emphasised that it should be recalled that the present case before the Court concerns the admissibility of evidence and not the substance of the dispute before Finnish courts. They also noted that the sums claimed were wholly unreasonable.

42. In so far as the compensation for non-pecuniary damage was concerned, the Government found the sum claimed by the applicant excessive. Should the Court find a violation of Article 6 § 1 of the Convention, the Government considered that the amount to be awarded should not exceed EUR 1,700. The Government left the assessment of the final amount to the Court's discretion, to be made on equitable basis.

43. The Court cannot speculate as to what the outcome of the domestic proceedings would be if the requirements of Article 6 § 1 had been complied with. In view of this, there is no causal link between the violation and the alleged pecuniary damage. On the other hand, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be made good by the mere finding of a violation. The Court, making its assessment on an equitable basis, awards the applicant EUR 2,000 in respect of non-pecuniary damage, dismissing the remainder of the applicant's claims for just satisfaction.

B. Costs and expenses

44. The applicant also claimed the reimbursement of EUR 8,780.89 in respect of the expenses incurred by her personally, and the reimbursement of EUR 818.80 (including value added tax) in respect of the costs and expenses of the previous counsel, and EUR 2,934.10 (including value added tax) in respect of the costs and expenses of the present counsel, which she had incurred for her representation before the national courts and before the Convention institutions.

45. The Government noted that the applicant's claims related to the proceedings before the Strasbourg control organs, where the applicant had had some costs and expenses. At any rate, the Government noted that part of the costs and fees claimed concerned the applicant's complaint concerning lack of an oral hearing which complaint was declared inadmissible by the Court. The costs and expenses related to that complaint could not be awarded.

In the Government's view, the applicant's claim for the expenses incurred by her personally appeared excessive and considered a total amount of EUR 500 reasonable under this heading. As far as the claim for costs and expenses of the applicant's present counsel are concerned, the Government considered the claimed rate of EUR 150 per hour excessive and that the rate should not exceed EUR 117. Reimbursement should be reduced accordingly.

The Government left it to the Court's discretion to decide on the final amount of costs and expenses, to be assessed on an equitable basis.

46. Making its assessment on an equitable basis and taking into account the fact that the applicant's complaint concerning the lack of an oral hearing was declared inadmissible, the Court awards the applicant EUR 2,300 in respect of the proceedings before the Court and for the domestic costs together with any relevant value added tax, from which must be deducted EUR 630 already received in legal fees from the Council of Europe by way of legal aid.

C. Default interest

47. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, ECHR 2002-...).

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 2,300 (two thousand three hundred euros) in respect of costs and expenses less EUR 630 (six hundred thirty euros);
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President