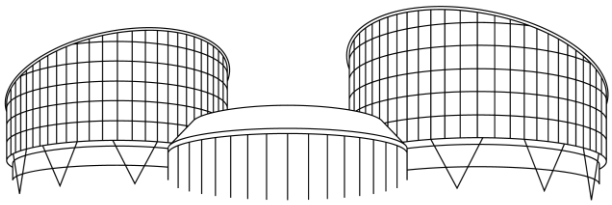

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HUOLTOASEMA MATTI EURÉN OY AND OTHERS v. FINLAND

(Application no. 26654/08)

JUDGMENT

STRASBOURG

19 January 2010

FINAL

19/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Huoltoasema Matti Eurén Oy and Others v. Finland,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 26654/08) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish limited liability company, Huoltoasema Matti Eurén Oy, and by two Finnish nationals, Mr Matti Vesa Eurén and Mr Ari-Pekka Eurén ("the applicants"), on 5 June 2008.

2. The applicants were represented by Mr Kari Marttinen, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 9 February 2009 the President of the Fourth Section decided to communicate the complaint concerning the length of the proceedings to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant company has its seat in Nastola and the second and third applicants live in Villähde and Orimattila respectively.

5. The applicant company has operated a service station in Nastola since 1965. The service station is located in the industrial zone of the municipality

which is situated in a groundwater basin. The second and third applicants are the only owners of the applicant company.

6. In 1998 new regulations concerning handling and storage of dangerous chemicals (including fuels for motor vehicles) entered into force and service stations needed to comply with these new requirements by 31 December 2002. In order to comply with the new regulations, the applicant company had to undertake some restructuring works.

7. On 1 March 2000 the Environmental Protection Act (*ympäristönsuojelulaki, miljöskyddslagen*, Act No. 86/2000) entered into force requiring, *inter alia*, an environmental permit to be held for activities which might cause environmental pollution. As the activities of the applicant company fell within the scope of application of the Act, it applied for an environmental permit for the restructuring works on 8 December 2000. More specifically, the application concerned an environmental permit for enlarging the storage capacity of liquid fuel.

8. On 20 March 2001 the Nastola Environmental Board (*ympäristölautakunta, miljönämnden*) granted the applicant company the permit and set several conditions for the restructuring works.

9. By letter of 17 April 2001, the Häme Regional Environment Centre (*ympäristökeskus, miljöcentralen*) appealed against the Board's decision to the Vaasa Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*) claiming that, despite the proposed protective measures, there was still a risk that the quality of groundwater could be jeopardised and that the environmental permit should therefore be withdrawn.

10. On 26 October 2001 the Administrative Court rejected the Centre's appeal but amended one of the conditions for the permit.

11. By a letter of 22 November 2001, the Centre appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), reiterating the grounds of appeal relied on before the Administrative Court.

12. On 11 February 2003 the Supreme Administrative Court quashed the decisions of the Board and the Administrative Court and referred the case back to the Board, ordering it to clarify whether it was possible to eliminate the risk of pollution of groundwater by using more efficient protective measures. The court found that the activity in question was to be compared to a new activity as regards the environmental permit as this was the first time that the effects of the activities on groundwater were being assessed. The environmental permit could not be granted as the applicant company had not shown that the proposed protective measures would eliminate the risk of pollution of the groundwater.

13. On 29 April 2005 the applicant company lodged an amended application for an environmental permit with the Nastola Environmental Board. More specifically, this application concerned an environmental

permit for reducing the storage capacity of liquid fuel. On 13 December 2005 the Board decided to grant the permit with several conditions.

14. By letter dated 18 January 2006 the Häme Regional Environment Centre again appealed against the Board's decision to the Vaasa Administrative Court, claiming that the environmental permit should be withdrawn.

15. On 29 December 2006 the Administrative Court rejected the appeal, considering that sufficient protective measures were included in the permit.

16. By letter dated 29 January 2007 the Centre appealed to the Supreme Administrative Court, reiterating the grounds of appeal relied on before the Administrative Court.

17. On 19 December 2007 the Supreme Administrative Court quashed the decisions of the Board and the Administrative Court. It found that, even though the protective measures proposed by the company diminished the risk of pollution of groundwater, they could not guarantee the protection of groundwater under all circumstances.

18. As the applicant company was refused the permit, it was ordered to close down the service station by 31 December 2008.

THE LAW

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

19. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

20. The Government contested that argument.

A. Admissibility

21. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

22. As to the period to be taken into consideration, the parties disagree on whether these proceedings should be regarded as one set or two separate sets of proceedings.

23. The Government maintained that there had been two sets of proceedings of which the first set had started *vis-à-vis* the applicants on 6 June 2001 when they submitted their statements on the appeal of the Regional Environment Centre and ended with the Supreme Administrative Court's decision on 11 February 2003, lasting thus about one year and seven months at two levels of jurisdiction. On 29 April 2005 the applicants had submitted a new application for an environmental permit which had been granted on 13 December 2005. The second set of proceedings started *vis-à-vis* the applicants on 16 February 2006 when they submitted their statements on the second appeal of the Regional Environment Centre and ended with the Supreme Administrative Court's second decision on 19 December 2007, lasting thus close to one year and eight months at two levels of jurisdiction. In the Government's view the two sets of proceedings had not concerned the same environmental application throughout the proceedings.

24. The applicants pointed out that in its first decision of 11 February 2003 the Supreme Administrative Court had referred the matter back to the Environmental Board, ordering it to clarify whether it would have been possible to eliminate pollution of groundwater by using more efficient protective measures. The Board had left the matter unsolved until the applicants renewed their application. The application of 29 April 2005 had not been a new application in the sense that it would have started a completely new process but had only contained technical amendments to the first application of 8 December 2000. These amendments had been exactly those requested by the Supreme Administrative Court in its decision of 11 February 2003. The subject-matter of the proceedings had not changed at any point and the proceedings as a whole should thus be regarded as comprising only one set of proceedings.

25. The Court firstly reiterates that, in respect of separate sets of proceedings, for the purposes of calculating the period to be taken into consideration, the Court has only considered such proceedings *in toto* where the proceedings are indissociable and concern essentially the same dispute ('*contestation*'); for example, where proceedings on the merits of a claim are followed by enforcement proceedings (see *Di Pede v. Italy*, 26 September 1996, § 22-24, *Reports of Judgments and Decisions* 1996-IV; *Bhandari v. the United Kingdom*, no. 42341/04, § 17, 2 October 2007; and *Rangdell v. Finland*, no. 23172/08, § 31, 19 January 2009).

26. The Court notes that the period to be taken into consideration began *vis-à-vis* the applicants at the latest on 6 June 2001 when they submitted their observations on the Regional Environment Centre's appeal which was

pending in the Administrative Court. The proceedings continued uninterrupted until 11 February 2003 when the Supreme Administrative Court quashed the earlier decisions and referred the case back to the Environmental Board, ordering further clarifications to be made. The Court considers that the decision of 11 February 2003 by the Supreme Administrative Court cannot be regarded as a final decision as the matter was referred back to the Board where it remained pending.

27. Both parties agree that on 29 April 2005 the applicants submitted an application for an environmental permit. It must thus be determined whether this application concerned the same subject-matter as the previous one or whether it was a new application introducing a different subject-matter. The Court notes that both applications concerned an environmental permit which was needed for the restructuring works of the service station. In the first application the applicants applied for an environmental permit for enlarging the storage capacity of liquid fuel, in the second one they wanted to reduce the said storage capacity. The Court finds this difference, however, irrelevant as the environmental permit was needed in any event to perform restructuring works on the site, which was a precondition for that the service station could continue functioning. The applications must therefore be regarded as having concerned the same subject-matter, and accordingly the proceedings comprised only one set of proceedings for the purposes of Article 6 § 1 of the Convention (see also *Ekholm v. Finland*, no. 68050/01, § 62, 24 July 2007: *Cravcenco v. Moldova*, no. 13012/02, § 49, 15 January 2008; *Boboc v. Moldova*, no. 27581/04, § 27, 4 November 2008; and *Trzaskalska v. Poland*, no. 34469/05, § 36, 1 December 2009).

28. The proceedings, which had begun *vis-à-vis* the applicants on 6 June 2001, lasted thus uninterrupted until 19 December 2007 when the Supreme Administrative Court gave a final decision in the case. The proceedings lasted thus *in toto* over six years and six months at two levels of jurisdiction, both levels twice.

29. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

30. The Government maintained that the two separate sets of proceedings had been swift. The Supreme Administrative Court had had a clear and well-justified reason to refer the case back to the Environmental Board. The reconsideration of the matter once the additional clarifications had been acquired had been in the best interest of the applicants.

31. The applicants pointed out that they had not at any stage appealed against any of the decisions taken in their case nor had they complicated the case or contributed to its length in any way. The proceedings had been very

important to the applicants as without the environmental permit they had been forced to close down their business. Due to the length of the proceedings the applicants had suffered great financial loss.

32. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

33. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

34. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. THE REMAINDER OF THE APPLICATION

A. Complaint concerning the right to property

35. The applicants also complained under Article 1 of Protocol No. 1 to the Convention that the rejection by the Supreme Administrative Court of their application for an environmental permit had constituted an interference with their right to peaceful enjoyment of their possessions, and that this interference had been unlawful and disproportionate.

36. The Court notes that it is clear that the applicants had a possession and that there was an interference with their right to use their property, as the rejection of their application for the environmental permit had adverse effects for their business (see the case *Fredin v. Sweden (no. 1)*, 18 February 1991, Series A no. 192, in which the revocation of the applicants' permit to exploit gravel was considered as control of use of property). In the present case the interference was based on the Environmental Protection Act which required an environmental permit for activities possibly causing environmental pollution. The law was sufficiently clear, foreseeable and accessible to the public.

37. The Court points out that it is in the first place for the national authorities to interpret and apply the national law (see *Chappell v. the United Kingdom*, 30 March 1989, § 54, Series A no. 152-A). Nothing in the Supreme Administrative Court's decision suggests that it was contrary to Finnish law, in fact the decision was in accordance with that court's established case-law. The rejection of the request for an environmental permit was thus lawful and pursued the general interest, namely protection of the environment.

38. As to the proportionality, the Court notes that the applicants were not able to continue the business legally without the environmental permit and

that the service station had to be closed down. They still own the premises but it is difficult to see how any other activity could be started there as the real estate has been designated in the local town plan to be used as a service station only. The applicants have apparently not been awarded any compensation so far but it is possible for them to file such a claim against the State.

39. On the other hand, the applicants did not have any legitimate expectation to be granted the environmental permit since this was their first application. They must have been aware of the fact that environmental protection had become increasingly important. Moreover, the States enjoy a wide margin of appreciation in this context. As there was an absolute prohibition on polluting water, any action possibly presenting such a risk would result in the authorities refusing to grant a permit. As polluted groundwater is very difficult, sometimes even impossible, to purify, it is understandable that there is a strong general interest involved.

40. The Court concludes that a fair balance was struck between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Complaints concerning Article 14

41. Lastly, the applicants complained that the decision by the Supreme Administrative Court had been discriminatory, firstly, as service stations had been treated differently from other types of activity, and secondly, as service stations situated in different regions in Finland had been treated differently.

42. Assuming that Article 14 would apply to the present case, the Court points out that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). It cannot be said that service stations and other types of activity would be in an analogous situation as they may involve very different risks for the environment. As to service stations situated in other regions, it might be that the Regional Environment Centres have different views on this issue but it is the task of the higher domestic courts to harmonise the case-law in this respect. The Court notes that the Supreme Administrative Court's case-law has been consistent on this issue.

43. The Court considers therefore that also this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicants claimed 1,858,000 euros (EUR) in respect of pecuniary damage.

46. The Government contested the claim for pecuniary damage and pointed out that the present proceedings before the Court had only concerned the length of the administrative proceedings. There was no causal link between the damage suffered and the alleged violation of the "reasonable time" requirement under Article 6 of the Convention. The applicants had not made any claim for compensation for non-pecuniary damage. No compensation should therefore be awarded under this heading.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Costs and expenses

48. The applicants also claimed EUR 81,541.93 for the costs and expenses incurred before the Court.

49. The Government considered that the hourly rate applied had been very high and that the general costs such as postage, telephone and copying costs should not be compensated separately as they had already been included in counsel's fee. The applicants had also submitted a vast amount of material not relevant to the present case which had only concerned the length of the administrative proceedings. In any event, the applicants' claim was too high as to *quantum* and the total amount of compensation awarded to them should not exceed EUR 2,500 (inclusive of value-added tax).

50. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to *quantum*. In the present case, regard being had to the documents in its possession, the above criteria and to the fact that the Court has found a breach only in respect of the length complaint, the Court considers it reasonable to award to the applicants the sum of EUR 2,500 for the proceedings before the Court.

C. Default interest

51. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to them, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President