



KRIMINĀLTIESĪBU APAKŠNOZARE

CONSIDERATION OF CLAIMES CANCELLATION OF DECISIONS BY NATIONAL COURTS THAT HAVE ENTERED INTO FORCE BY THE SUPREME COURT OF FINLAND

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Introduction

In 1995, Finland has joined the European Union, which influenced the change of the national legislation, amendments to the Constitution in 1995, entered into force on 1.1.1998 with the regulations by which the procedure of the courts of appeal instance should be performed in accordance to the requirements set by the European Declaration of Human Rights¹.

In accordance with Article 1 of the Convention The High Contracting Parties shall provide to everyone, under their jurisdiction, the rights and freedoms defined in Section I of the Convention. This suggests that the primary responsibility for the implementation and enforcement in the Convention for the Protection of Human Rights and Fundamental Freedoms (later Convention) lies with national authorities. Accordingly, the complaint mechanism to the European Court is supplementary to the national systems of human rights protection. This subsidiary character is clearly stated in Art. 13 and p. 1, p. 35 of the Convention.

According to the Recommendation R (2000) 2 in exceptional cases, the most effective way to a new investigation of the case is for the applicant to return to an earlier stage. As an example, in particular, where the applicant after the decision Court of Human Rights is still suffering post

sentence of a national court as a consequence of serious adverse effects that cannot be fixed without a new investigation at the national level. An example of the consequences specified in the recommendation of a long prison sentence, which the convicted person is still serving².

Recommendation encouraged all Contracting Parties to ensure that their national legal systems have the necessary abilities to achieve, as far as possible, *restitutio in integrum*, and in particular to provide appropriate opportunities for case review, including the reopening of the case.

Although the Convention contains no provision imposing an obligation on Contracting Parties to provide in their national law for the re-examination or reopening of proceedings, the existence of such possibilities have, in special circumstances, proven to be important, and indeed in some cases the only, means to achieve *restitutio in integrum*. An increasing number of States have adopted special legislation providing for the possibility of such re-examination or reopening. In other States this possibility has been developed by the courts and national authorities under existing law.

The present recommendation is a consequence of these developments. It invites all Contracting Parties to ensure that their legal systems contain the necessary possibilities to achieve, as far as

possible, *restitutio in integrum*, and, in particular, provide adequate possibilities for re-examining cases, including reopening proceedings.

Currently, the national law of many European countries provides for the review of judicial decisions, which have entered into force, in order to remedy the consequences of the violations found by the European Court. In Austria, Bulgaria, Germany, Greece, Lithuania, Luxembourg, Malta, Norway, Poland, Slovenia, the United Kingdom, France, Croatia and Switzerland, internal law establishes such a right. A number of states clearly allow for the possibility of judicial review of decisions by a broad interpretation of general constitutional or legal provisions, such as Belgium, Denmark, Spain, Slovakia, Finland and Sweden. The jurisprudence of the other member countries of the Convention contains sufficiently flexible provisions, which, if necessary, can be interpreted so that the review of final judgments in the appropriate situation was possible.

Review by the Supreme Court of claims for abolishing the earlier decision of the court after recognition of ECHR article / articles of the Convention breach

Finland has ratified the Convention on the Protection of Human Rights and Fundamental Freedoms and thereby recognized it as a part of its legal system, and the jurisdiction of the European Court of Human Rights (ECHR), by virtue of Article 46 of the Convention, ipso facto and without special agreement – obligatory for interpretation and application of the Convention and its Protocols in cases of alleged violation. Accordingly, since the decision of the ECHR implies acceptance by the respondent State of specific measures for its execution, the person against whom the violation of the Convention has occurred should be able to apply to the competent court for review of the judicial act, give rise to the complaint with the ECHR, and to be sure that his application will be considered.

The analysis of all the reviewed cases by the Supreme Court (later SC) to cancel the earlier decision of national courts allows authors to conclude that the SC of Finland considers the cases of citizens' complaints on violation of constitutional rights and freedoms in a particular case and as an exception, digresses from performing the duties assigned by the ECHR judgments based on the provisions of the Convention, if such derogation is the only possible

way to avoid violations of the fundamental principles and norms of the Constitution and chapter 31 of the Procedural Code.

The authors believe that in spite of the commitments taken up by Finland to make every effort for the realization of the right to a fair trial, in practice, a formalistic approach has to be noted.

In particular, the Supreme Court often refers to the earlier decision KKO: 2008:24³, which established that a conviction does not mean that the earlier made decision of the national court should be lifted. Using the example of the decision KKO: 2008:24, the Court noted that the legislation of 1960, concerning the abolition of the sentence that came into force, does not fit into the situation relating to the decisions of the European Court of Human Rights. In the same decision, the court stated that the Finnish legislation does not include specific provisions for the abolition of national convictions and the grounds for re-examination of cases on the basis of a violation of the ECHR violations except those of Chapter 31 § 2 sub-paragraph 3 of the Procedural Code for the submission of the claim deadline.

In practice, the Supreme Court of Finland, for example, in the decision (KKO: 2009:84)⁴ found that the European Convention on Human Rights as such does not oblige participating States to engage in the cancellation or annulment of the sentences of national courts in the statement of the European Court of violations of Article 6 of the Convention for fair trial. Prerequisites for further appeal, i.e. claim for annulment of the verdict and complaint application for judicial error (in particular this new case was solely about the complaint regarding a procedural error), it is necessary to assess each situation on the basis of the national law of the convention participant State.

During the period from 1995 to October 1, 2015 in 133 cases the ECHR found violations made by Finland of one or more articles of the Convention for the Protection of Human Rights and Fundamental Freedoms. On the basis of the European Court decisions in the recognition of a violation of articles of the Convention the applicants filed multiple actions for cancellation of prior decisions to the Supreme Court.

After reviewing all the decisions of the Supreme Court of Finland for the period of 2010-2014 years, the authors present the following data. During this period, the Supreme Court

of Finland issued just **156 decisions** to change previously made decisions of the national courts, of which after the recognition of the ECHR violations of articles of the Convention 39 claims were reviewed.

The authors emphasize that on the one hand the Convention and its Protocols are important for Finland as a Participant State, as well as the case law of the ECHR, which the Supreme Court constantly refers to.

On the other hand, SC applies current national constitutional and legislative provisions, in particular Procedure Code of 1960 with 2005 amendment to abolish the court order, which was previously imposed and has entered into force.

As a result of consideration of claims based on the decisions of the ECHR recognizing one or more violations of articles of the Convention – none of the earlier decisions by the national courts of Finland were immediately and completely abolished in all the articles of the allegations of coercive measures, the full amount of the damage or the size of the court costs.

At the same time, the SC of Finland decides to abolish all or part of the charges that came into force of the decisions handed down by national courts, complaints that have not been filed and reviewed by the ECHR in violation of articles of the Convention.

As such an example, the authors cite the demonstrative decision made by the Supreme Court of Finland in KKO: 2011:109, the Supreme Court twice in 2011 returned the criminal case of Jippii Group Oyj for the review by the Court of Appeal of Helsinki. The Supreme Court referred to 21§ of the Finnish Constitution and article 6 of the European Convention, which guarantees everyone the right to a fair trial and judicial precedents of the European Court.

The conclusion in the investigation of suspicions from 2000-2011 in economic crimes has arrived in 21.12.2012 when, after 24 hearings, the Court of Appeal of Helsinki found 14 accused to be not guilty, abolished all 26 counts in the indictment and ordered the state to pay the defendants approximately 4 million euros legal costs. In reaching a decision the court took into account the earlier rulings of the ECHR in violation of Article 6 of the Convention [*Foucher v. France*, 18.3.1997; *Kahraman v. Turkey*, 31.10.2006; *V. v. Finland*, 24.4.2007].

Two of the acquitted, Ilpo Kuokkanen and Harri Johannesdahl filed a complaint with the ECHR on the 15.6.2012. The applicants

complained under Article 6 of the Convention of the lack of a fair trial, as the prohibition of *reformatio in peius* was not respected. The court had acknowledged that this prohibition was valid in the Finnish legal system but it had still decided the case at hand in a manner that completely ignored this prohibition. The Court declares the application inadmissible.

According to the authors of the criminal case of senior Inspector Keijo Suuripää most fully represents the real picture of the recognition of judgments of the ECHR and the protection of human rights in Finland, the period of the proceedings compared to the size of the gained benefit and the final judgment.

Keijo Suuripää was elected Chairman of the police rally driving club called Handcuff Team Police Finland ry. In May 1998, the applicant took part in a rally in Belgium with a car he had rented. As he was bringing the car back to Finland, the Customs Authorities took note of the fact that the registration of the car had been changed. They started a criminal inquiry into the matter. On July 7, 1998, the Office of the Prosecutor General decided that a police investigation should be carried out into whether the applicant had been aware of the change in the registration. The money 18,000 FIM (approximately 3,000 EUR) in question had been intended expressly as financial support for the applicant (the navigator) and another policeman (the driver) in the rally.

22.6.2000 Court of Appeal reversed the charges of taking bribes and unintended malfeasance presented by district public prosecutor. The public prosecutor appealed to the Supreme Court, in its decision from 13.6.2002 Suuripää was sentenced to a fine at the rate of 40-day income for bribery and payment received from the state crime of economic benefits for 3.027 euros⁵.

The applicant appealed to the ECHR. There has accordingly been a breach of Article 6 § 1 of the Convention in respect of the lack of a verbal testimony and a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings.

After the judgment by the ECHR *Case of Suuripää v. Finland* on violation of Article 6 of the Convention the State Chancellor of Justice filed a lawsuit against the abolition of the Supreme Court decision from 13.6.2002 on the basis of procedural error, which could materially affect the final verdict. The Chancellor referred to a ruling by the ECHR from 12.1.2010 for

recognition of Finland's violation of Article 6, paragraph 1, when considering criminal cases, the Supreme Court ruled that a verbal testimony of Keijo Suuripää is not necessary.

In a case from 24.5.2012⁶ the SC referred to the Recommendation of the Council of Ministers of the Council of Europe – Recommendation No R (2000) 2⁷ on the re-examination of cases in national courts when the injured party did not have the time or opportunity to prepare his defence in the criminal proceedings. The ECHR found that the Supreme Court could not come to a decision and deal properly with the case without conducting verbal testimonies⁸.

The injured party did not have the time and facilities to prepare his or her defence in criminal proceedings, where the conviction was based on statements extracted under torture or on material which the injured party had no possibility of verifying, or where in civil proceedings the parties were not treated with due respect for the principle of equality of arms. Any such shortcomings must, as appears from the text of the recommendation itself, be of such a gravity that serious doubt is cast on the outcome of the domestic proceedings.

The decision from 24.5.2012 of the Supreme Court en banc of 12 judges overturned the earlier decision of the Supreme Court from 13.6.2002 and referred the case to the Judicial Chamber of the Supreme Court of five judges⁹. Trial Division of the Supreme Court consisting of 5 judges considered the case again on 08.10.2012. The state prosecutor demanded to sentence for receiving bribes and causing loss in economic benefits to the state by crime in the amount of 3.027 euros. In the new trial State prosecutor also claimed the loss to the state resulting from the economic benefits by committed crime in the amount of 3.027 euros. Suuripää also demanded that the Supreme Court, based on the abolishment of the decision, paid back the state penalty, loss to the state, the cost of witnesses and lawyers in the amount of 15,964 euros plus interest. The Supreme Court did not change the final result of the Court of Appeal as well as the demand for the return of Suuripää expenses previously paid to the state in a sum of 15,964 euros were left without review.

Also, according to the authors an important example of the lawsuit in the SC and a decision is the case of the former tax service expert Anna-Liisa Mariapori. Acting as a witness for the defence in court of Lappeenranta on the 3rd

of December 1997, which considered the case of tax offenses, Mariapori stated that senior tax inspectors Nissinen Grönroos has deliberately distorted the expert assessments in the tax decision not supported by the facts and that the inspectors are suspected of official crimes. The difference between the applicant's estimation of the defendant's taxable income and the estimation given by the tax inspectors was about 2.5 million Finnish Marks (about 494,000 euros). According to article 24 of the Criminal Code §10 Finnish court sentenced Mariapori to 4-month suspended prison sentence for defamation the person, and also ordered the state to transfer Mariapori books, CD-ROMs, as well as the possible copies, if in books and on subjects of manufacturing did not have any changes, Nissinen also had to pay for the anguish a sum of 5,000 euros. The court ordered Mariapori to pay legal costs to employees and the State Tax Service in the amount of 36 895.03 EUR, excluding accrued interest.

The European Court of Human Rights in *Mariapori v. Finland* (37751/07) on 6 July 2010 ruled that Finland in the verdict of Mariapori violated the 10th article of the Charter of Human Rights and the 1st paragraph of Article 6 of the Charter at the excessive length of the process. ECHR decided to pay compensation to Mariapori in a sum of 49,390 euros.

When considering a claim for an abolishment of the decision by the Supreme Court¹⁰ that has entered into force on the verdict, referring to the application in practice of Article 46 of the Convention believed that the ruling by the ECHR on *Mariapori v. Finland* not only obliges the Member States of the Treaty by the final judgment of the Treaty obligations and to pay compensation to victims, but also an obligation under the supervision of the European Committee of Ministers by the final supervision of the implementation of the decisions and the impact of the elimination of violations. At the same time, the Supreme Court referred to the earlier decision KKO: 2008:24, which established that a conviction does not mean that the earlier decision of the national court should be lifted anyway. As part of the criminal prosecution, the Supreme Court did not abolish criminal penalties, but only a consequence of the sentence, that is, repealed the probation period, which ended back in 31.7.2005. Officially Finland has fulfilled its obligations on the basis of the Resolution of the ECHR and the recommendations of the EU Parliament «Towards decriminalisation of

defamation», in accordance with which Finland has pledged to repeal all decisions on the limits of freedom in cases of libel and freedom of speech.

SC ruled that because the prosecution of Mariapori has not been lifted, there is no reason to oblige the government to compensate the cost of the Supreme Court. The Supreme Court found no reason to cancel the sentence in particular compensation damages to Nissinen in the amount of 5.000 euros. SC also ruled that designated compensation set by the European Court was sufficient for the state to cover legal expenses that Mariapori should compensate plaintiffs, due to there being no grounds for overturning a verdict in this part. In other parts of the claim SC has ruled that there is no viable cause for the abolition of the sentence pursuant to article 31 8§ Procedure Code of Finland. SC noted that Court of Appeal reversed the decision only in part of the criminal sentence, which, as stated above, was conditional and validity ended more than 6 years ago. This case clearly characterizes the State using the Supreme Court as a tool to evade execution of judgments of the European Court. This is just one of many such cases in which the SC of Finland adheres to this policy in the process of interpretation of the European Court.

According to the authors the most telling example in the application of constitutional or legislative rules, terms of cases, the size of the legal costs and the impact of the final decision of the Supreme Court of Finland for changes in legislation and the importance of this decision for the applicant to be considered at all stages of the national courts of Finland and of the ECHR. From 1994 to 2010, is the criminal process of brothers Kari and Jussi Uoti.

The late 80's saw an investigation of economic crime, where LSP-bank suffered losses amounting to about 134 million euros from unpaid real estate investments. The suspect in this case was a businessman and lawyer Kari Uoti in December 1997 affidavit of liability for perjury did not report part of their property during the preliminary investigation on suspicion of serious tax crimes related to the sale of shares in 1993 of Interbank. Kari Uoti believed that during the criminal investigation into suspicions from the 90s, and also in the investigation of serious crime of the debtor he had no obligation to report his personal assets to their bankruptcy property manager and that the suspect had the right to remain silent.

Jussi Uoti was declared bankrupt in 1997 and

ordered in December 1998 under oath to make an inventory of the bankruptcy estate. At the same time, he was charged with the crime of tax debtor for the amount of the debt of 87 million euros and tax fraud under aggravating circumstances. Suspect affidavit of liability for perjury concealing from the bankruptcy administrator of the property, transferred to offshore companies.

In 1999, the district court of Helsinki sentenced Jussi Uoti to 5 years and 8 months, and Kari Uoti to 6 years in prison, which came into force in 2001, after consideration of the case by the Court of Appeal in Helsinki. The authors agree with the conclusion of a professor and a judge of the ECHR from Finland (1995 – 2008) and the reviewer's doctoral thesis by Kari Uoti (doctoral thesis on the subject of a fair trial before the Court written during his incarceration). It should also be borne in mind that the national court should be aware not only of the European Convention on Human Rights, but also occurred on its base established legal practice because the law enforcer shall also comply with the legal norms arising from decisions of the European Court of Human Rights [Pellonpää. 2005, p.61.].

21.3.2006 the district Court of Salo rendered the decision which sentenced Kari Uoti for a grievous offense as the debtor to 6 months and 20 days in jail and former director of the Bank Interbank Juha Sorvisto to one year and 6 months in prison, as well as ordering payment of damages of more than 12 million euros to property bankruptcy management company Arsenal.

7.1.2007 ECHR found a violation of Article 6 of the Convention and pointed to the long-term of procedural time with the case of Kari Uoti starting in August 1994 and lasting 11 years and 7 months and has ordered the respondent State to pay 5.220,24 Euros for legal costs compensation. October 23, 2007, the ECHR ruled that the case of Jussi Uoti holds that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention taken together; has been no violation of Article 6 § 2 of the Convention.

The court of second instance commuted his sentence in Helsinki with Kari Uoti to serve 4 months in prison. Finland's Supreme Court in its judgment from 04.17.2009 indicated that Uoti had no right to evade testifying under oath, found him guilty of the crime and sentenced to 5 months and 10 days imprisonment.

Four days after that 21.04.2009 the ECHR found a violation by Finland of Article 6 § 1 of

the Convention similar to the case of *Marttinen v. Finland*. Four days later, on April 21, 2009, the Court delivered its judgment in the case *Marttinen v. Finland* (no. 19235/03, 21 April 2009) in which it found that there had been a violation of the applicant's right to silence and his right not to incriminate himself guaranteed by Article 6 § 1 of the Convention "... *The application of the right not to incriminate oneself [as provided for in the Convention] to the debt recovery procedure might hinder effective enforcement without cause*".

The Supreme Court of 20.10.2009, for the first time, with reference to the recognition of a violation by Finland in *Marttinen v. Finland* abolished criminal conviction of Kari Uoti, as well as freeing him from paying the bankruptcy mass of 2.189.982, 62 USD and 3.006.754,91 DEM.

At the same time, this solution cannot be considered to have completely abolished the previous sentence. While cancelling a prior ruling by the Supreme Court in regards to the prison sentence of 5 months and 10 days, the court has not overturned decision that Kari Uoti previously imputed in terms of weight of the total Bankruptcy payments of 1.187.981,63 EUR and 1.557.181,76 USD (this ruling should not be confused with the verdict of the Court of Appeal of Helsinki from 30.03.2001 which defined a punishment of 6 years).

In December 2006, the district Court of Salo sentenced Jussi Uoti to 1 year and 2 months in prison. The Court of Appeal of Turku has determined criminal penalties of imprisonment for 11 months for tax fraud in a large scale (shares of the company housing and property valued at more than 11.4 million euros) in accordance with paragraph 1 of persecution.

In 2008, Jussi Uoti submitted a claim for abolishment of the sentence the Court of Appeal of Turku and 2.12.2010, the Supreme Court ruled that the required information during an investigation of bankruptcy has been associated with a criminal case under consideration and based on the legal practice of the European Court of Human Rights of a crime suspect was not obliged, in this situation, to assist in clarifying his guilt when he was accused of a felony of the tax debtor. On 2.12.2010 in its decision the Supreme Court quashed the charge brought against Jussi Uoti as a felony tax debtor. 2 count – forgery of a document – The sentencing court found sufficient and final penalty appointed by

absorption of less severe by stricter punishment. The court freed Jussi Uoti from covering legal costs of bankruptcy estate in the district and appellate court in the amount of 170.756,09 euros. The rest of the appellate court decision SC left unaltered.

Among those convicted by Court of Appeal of Turku in 2006, together with Kari Uoti was the former director of Interbank Juha Sorvisto, sentenced to 1 year and 6 months imprisonment. The court also awarded damages to the Arsenal bank of 11 million euros.

In the case of Case of *Sorvisto v. Finland*¹¹ ECHR found a violation of Article 6 § 1 and 13 of the Convention on account of the excessive length of civil court proceedings and the lack of effective mean of juridical protection in this respect. The Court also ordered the respondent State to pay non-pecuniary damage as well as for resulting costs and expenses.

When considering a claim for abolition of Sorvisto's sentence, SC pointed out that the recognition of a violation by the ECHR is not a valid reason to cancel the decision of the national court in accordance with section 4 § 8 Chapter 31 of the Procedural Code for abolition of the previous sentence ruled by the court and as a result has dismissed the claim.

Also, in the case of the Uoti brothers the LSP Bank lawyer Ari Lehtonen was convicted for 4 years and 6 months imprisonment with an estimate damages of 23.5 million euros. On the 17.2.2003 The Supreme Court rejected his case review and Lehtonen filed a complaint with the ECHR. The ECHR found that in the Case of *Lehtonen v. Finland*, no. 11704/03. 13 June 2006. Holds that there has been a violation of Article 6 § 1 and a violation of Article 13 of the Convention. Despite the violations of the Convention, the Supreme Court examined the three claims made by Ari Lehtonen, two of which were dismissed and one is currently under consideration.

In the case of Kari Uoti, former professor of commercial law (stripped of his rank after the verdict) and Doctor of Law, Ari Huhtamäki, was convicted under article of non-confidence to the debtor for concealing assets of Kari Uoti during the bankruptcy. When considering a claim from 22.6.2010 for abolition of the criminal conviction, the Supreme Court ruled that, although the case mentions the overturned verdict for Kari Uoti and the charges were dropped, this does not mean that the accusation directed at Huhtamäki can be dismissed. September 29, 2009 Huhtamäki filed

a complaint with the ECHR and on the 6 March 2012 European Court of Human Rights holds that there has been no violation of Article 7 of the Convention.

**The value of the judgment by the ECHR
on *Marttinen v. Finland*
for further changes to the legislation
of Finland**

A particular important role in the jurisprudence of Finland was played by a decision from 2009 by ECHR *Marttinen v. Finland* and subsequent ruling by the Supreme Court to abolish an earlier criminal conviction of Kari Uoti, which marked the beginning of revisions in Finnish legislation and subsequent amendments, which provide guarantees for suspects in criminal cases in accordance with the universally recognized norms of international law. The Ministry of Justice has recognized that the current system in which users of the law directly apply § 1 § 21 of the Constitution of Finland, as well as the International Covenant on Civil and Political Rights, and orders relating to legitimate judicial practice agreements on civil rights, did not work so that the control procedure of Bankruptcy was sufficiently clear and predictable. Ministry of Justice of Finland, in January 2010 has appointed a working group to amend the Law on Bankruptcy and renovate 17th chapter of the Procedural Code. Finnish Bankruptcy Law, as amended, came into force on 01.01.2013, the effect of the new article "Protection against self-incrimination" 5 a § [31.1.2013 / 86] entered into force on 31.1.2013: "If the debtor is a suspect in pre-trial investigation or accused of a crime, he is not obliged to give the bankruptcy administrator information on the facts on which the suspicion is based".

Nevertheless, the authors also stress that the case of *Marttinen* lasted for more than 9 years and under consideration of the application for abolition of the sentence SC ruled that the grounds for the quashing of the final decision of the court stated in accordance with chapter 31 § 8 are not available. Basis for refusal of *Marttinen* criminal conviction abolition by the Supreme Court are in reference to the case of Kari Uoti KKO: 2009:80 and national legislation. SC pointed out in the decision that the court ruling on human rights with the delay shows that *Marttinen* should not have been sentenced to pay a court fine for failing to appear in court. *Marttinen* still has not paid his court fine imposed for failure to appear in court

as well as not substitute the payment of a fine by serving a prison sentence. The Supreme Court determined that the amount of the fine imposed by the court expired five years after the decision of the court, so a decision on the payment of the fine is no longer enforceable. Subsequently *Marttinen* was not hurt, and no longer suffers from the negative consequences of a decision on the payment of the fine. Thus, the Supreme Court held that in this case there are no grounds on which the court decision that has entered into force might be revoked in accordance with Chapter 31, § 8 of the Procedural Code.

And further reference to the decision KKO: 2009:80 in the case of Kari Uoti was applied by the Supreme Court more than 50 times, but this time as basis for not sufficient grounds to justify an abolition of the sentence.

**Review by the Supreme Court of claims
from 12.12.2014 regarding
a breach of the *ne bis in idem* principle**

The authors also cite as an example to 4 ECHR decisions against Finland from 20 May 2014. In two of them the ECHR found a violation of the principle of *ne bis in idem* and Article 4 of Protocol No. 7 to the Convention and ordered the respondent State to pay compensation for moral damages and all the legal costs [Case of Glantz, Nykänen, Häkkä, Pirtimäki]. All four, as well as J. Kangasvieri T. Rintala with reference to the recognition of violations of the ECHR from 20.05.2014, have applied for abolition of the earlier decisions.

12.12.2014 The Supreme Court found in all 6 of the decisions that the conditions of revocation should be evaluated on the basis of national legislation, even if the basis of an application is a conviction of the ECHR.

When considering a claim Mikko Nykänen, the Supreme Court referred to the decision *Pirtimäki v. Finland*¹². Even assuming that it had in fact been the applicant who was making the tax declaration in both cases, the circumstances were still not the same: making a tax declaration in personal taxation differs from making a tax declaration for a company as these declarations are made in different forms, they may have been made at a different point of time and, in the case of the company, may also have involved other persons.

According to the claim by Rintala H2013 / 244 from 12.12.2014 the Supreme Court refused to

examine the allegations of the tax fraud on a large scale in other parts of the charges and referred the case to the judicial board composed of five judges.

When considering a claim for abolition of the sentence in the KKO: 2014:95¹³ the Supreme Court pointed out that the decision of the ECHR does not imply that the finding of a violation of the Convention require the abolition of the sentence. In the jurisprudence of the Supreme Court there are many cases, which request dismissal of such decisions made by national courts.

SC noted that the decision of the KKO: 2009:80 concerning the circumstances (self-incrimination suspect in bankruptcy), which was not taken into account in the legislation adequately, but which was later rectified. According to the SC it would be difficult to apply a fundamentally new trial prerequisites as an additional method of legal protection at the stage of appeal, putting the parties of process in difficult situation. Therefore, SC determined that the correction or cancellation of the final sentence could cause problems to the other parties of the process and make it difficult to determine the possibility for clarification of the case in the new proceedings.

Although the ECHR stated a violation of human rights, the SC felt it was irrelevant that the procedure in the Court of Appeal corresponded to the interpretation of the legislation active at that time, which had in the decisions of the Supreme Court of the KKO: 2010:45; KKO: 2010:46, and the KKO: 2010:82 on the contents of the principle of prohibition of *ne bis in idem*.

The Supreme Court decision in the case of Kaj-Erik Torsten Glantz consists of 34 pages and 26 references to the decisions of the ECHR and 12 references to the earlier decisions of the Supreme Court, which provides a ground for refusal for abolition of the verdict by the national court. The Supreme Court referred to Chapter 31 § 8 of the Procedural Code, according to which the sentence in a criminal case can be revoked in favour of the defendant, if the decision was based on a clearly erroneous application of the law. Supreme Court has revoked an action of only one of 8 counts in the rest of the claim and referred the case to the judicial board of the five judges.

The authors refer to the dissenting opinion of Judge Huovila in this case. In 2005 amendments to Chapter 31 part 2 § 3 of the Procedure Code of Finland came into force. Resolution refers to situations where the European Court of Human Rights or other international court or the supervisor in the proceedings pointed to a procedural error.

In many decisions, the Supreme Court established that the conditions of revocation should be evaluated on the basis of national legislation, even if the basis of an application is a conviction of the ECHR. According to this estimated including the acknowledged whether Court of Human Rights recognized by the inaccuracies so great that in accordance with Chapter 31, § 1, paragraph 4 of the Procedural Code, could significantly affect the outcome of the case. The starting point is still determined by the fact of violation of human rights, procedural error, as well as a violation of the procedure in this position in the proceedings.

When considering a claim for abolition of Jouni Kangasvieri's previous criminal convictions by Court of Appeal, the Supreme Court in its decision from 12.12.2014 referred to the ECHR ruling handed down in the recognition of Finland violation of Article 4 of Additional Protocol 7 of the Convention. In considering the general aspects of the assessment for legal remedies relating to the practice of estimated changes that came into force by the verdict, the Supreme Court referred to the judgment of the Court of the European Union. When referring to the verdict in the case *Transportes Jordi Besora, C-82/12, EU: C:2014:108*, the Court recalled the importance of the principle of the force of law and the legal order of the European Union and the national legal system. The Supreme Court noted that it is important to the stability of the law and legal relations to ensure a proper implementation of justice.

Kangasniemi in his claim demanded the abolition of the decisions by the district and appellate courts, as well as part of the damages awarded in four serious tax crimes. SC determined that verdicts for serious tax offenses are not changed or cancelled. In fact there is also no reason for change or cancellation as part of legal redress sentence on the basis of these crimes. SC noted Kangasniemi requirements in this part.

The authors note the inconsistency of the position by the Supreme Court and refer to one of the court-abolished sentences, not previously considered by the ECHR. The authors have already referred to the abolition of all charges for tax crimes in *Jippii Group Oyj*. Also, the Supreme Court considered a claim for cancellation of Heikki Kotamaa's final judgment of the court in which Kotamaa demanded the abolition of the punishment of 4 counts of tax crimes on a large scale and accounting offenses, and the refund of expenses made to the lawyers and witnesses.

Kotamaa referred to the earlier decision KKO: 2008:45, in which the verdict of the district and appellate courts has been cancelled under Chapter 31 § 8 point 3 of the Procedural Code. The Supreme Court referred to the decision *Zolotukhin v. Russia*¹⁴ on 10.2.2009 a violation of article 4 of the Protocol number 7 to the Convention.

The Court takes the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second “offence” in so far as it arises from identical facts or facts which are substantially the same.

In that part, in which the Court of Appeal sentenced Kotamaa to personal income tax on tax evasion, court determined that it is indisputable that the scheduled increase in the tax for the tax period 1998 and 1999 were finally assigned to the indictment on 18.2.2008. Then the Court of Appeal had to leave the accusation without consideration. Therefore, the questionable circumstances of the proceedings are the basis of which a final judgment of the Court can be cancelled due to miscarriage of justice. Despite the fact that in accordance with Chapter 31, § 2 point 2 of the Procedural Code the deadline has expired prior to Kotamaa submitting his claim to the Supreme Court.

Nevertheless, the Supreme Court ruled that the verdict of the Appeal Court is to be cancelled under Chapter 31 § 8 of the Procedural Code, because this verdict is based on clearly erroneous application of the law. The Supreme Court reversed the decision of the Court of Appeal from 16.6.2009 regarding tax crimes on a large scale and in terms of the consequences of punishment, as well as part of the costs of defence and the witnesses, and sent the case back for a new trial in the Court of Appeal.

Kari-Pekka Pietiläinen appealed to the Supreme Court, citing a ruling by the Court on 22.9.2009 and the final judgment of the ECHR from 18.11.2009, in which the Court found that the Court of Appeal had to allow the applicant's lawyer to represent him, even in his absence. The agenda of the Court did not indicate that one day of absence will be regarded as the absence of the entire hearing. The Court found that in violation of paragraph 1 of Article 6 of the Convention in conjunction with sub-paragraph “a” of paragraph 3 of Article 6 of the Convention. According to § 31 Section 2, paragraph 2, of the Procedural Code a complaint may be filed within 6 months from the date when the verdict came into effect. In accordance with § 31, chapter 2, paragraph 3 of the legal proceedings in Finland Pietiläinen had

to refer the case for consideration no later than 22.3.2010. Pietiläinen submitted an appeal to the Supreme Court on 17.5.2010 or later. On this basis, the case was dismissed.

Results and evaluation

In judicial practice, the Supreme Court saw a small proportion of cases, which warranted extraordinary conditions where appeals were assessed in connection with the new decisions by the ECHR in the applicant's favour. At the same time the principle of equality does not require that the breach of procedural procedure that is filed within the stipulated period would lead to the annulment of claim for the cancellation of prior ruling on the basis of the ECHR judgments. In recent decisions, the Supreme Court increasingly and repeatedly refers to the decisions and case law of the ECHR, in detail justifying the reason for refusal, referring to international practice and its own case law. In practice, after finding a violation of the ECHR by the respondent State of Articles of the Convention, none of the earlier decision were abolished completely, and the timing of consideration of cases as well as the amount of legal costs point to a weak defence of human rights and the need for radical change of the existing situation in the judicial system. On the other hand 251 examined claims, to change a previous conviction or return cases in the lower courts, point to the imperfections of judicial system in Finland.

During the study, 133 ECHR judgments against Finland in the period 1995 – 2015 year were analysed, which found violations of articles of the Convention. From this analysis, consideration of the grounds for rejection of claims absolving prior rulings by the national courts the authors make the following conclusions.

1. In accordance with the provisions of Article 46 of the Convention, interpreted by taking into account the recommendations of the Committee of Ministers of the Council of Europe NR (2000) 2 on January 19, 2000 “to review the cases and resumption of proceedings at domestic level following judgments of the European Court of Human Rights”, the basis for judicial review of the act due to new circumstances is not only based of violation by Finland established in the European Court but also the Convention or the Protocols. In this regard, it should be appreciated that a judicial act is subject to review in the event that the applicant continues to suffer the adverse

effects of such an act and paid compensation to the applicant awarded by the Court pursuant to Article 41 of the Convention does not provide a remedy and freedoms.

2. When a court considers whether to revise the judicial act a causal link between the breach of the ECHR Convention and the adverse consequences that the applicant continues to suffer should be considered.

3. The principle of the presumption of innocence, provisions of paragraph 2 of Article 6 of the Convention, is one of the main aspects of a fair trial in the criminal case law.

4. On the basis of Article 46 of the Convention, taking into account recommendations for revision in case of violation of the procedural rights of individuals found by the European Court, the Supreme Court in the revision of the judicial act must eliminate the violation of the Convention or the Protocols thereto. The Supreme Court must take the same stance as a court in Strasbourg and adopt a final judicial act, instead of taking the decision to return the case to the appellate court.

Conclusions and evaluation

Based on the study of the Supreme Court of Finland's decisions, it is possible to make the following conclusions. The Supreme Court, after the decision by the ECHR against Finland in the review of cases and applications for cancellation of the sentence, makes decisions by applying national legislation and guided by the protection of national government agencies and are not guided by the principles of the rule of international law.

The European Court of Human Rights has repeatedly pointed out that the execution of the decision rendered by any court must be regarded as an integral part of a fair justice – otherwise, if the national legal system permits that a final, binding judicial decision may remain unfulfilled, “right to a court ‘becomes illusory (Case of *Hornsby v. Greece*)¹⁵. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (art. 6).

Regarding the position of the ECHR on the implementation of their decrees, is it assumed that the specific means by which the national legal system will run, is placed on the respondent State in accordance with Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, obligation are elected as a general rule, by the respondent State, provided that these

means will be compatible with the findings of the relevant decision of the European Court of Human Rights; resolve the issues of interpretation and application of national legislation should be conducted by national authorities, namely the judiciary; such discretion as to the manner of execution of the European Court of Human Rights reflects the freedom of choice inherent obligation under article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the fundamental obligation of States parties to ensure certain rights and freedoms. Case of *Scordino v. Italy* (no. 1), no. 36813/97. March 29, 2006. Since the national judicial act is not subject to revision in the international jurisdiction, the state made a commitment to adopt the final judgments of the ECHR, which require abolition of prior judicial decisions made in the framework of national jurisdiction and must be entered in the national legislation of a mechanism to restore the rights of applicants.

For example, in *Matti Kangasluoma v. Finland*¹⁶, the ECHR unanimously concluded that there had been a violation of Article 6 § 1 of the Convention and noted that the respondent State has not brought any examples of legal practice, showing the ability to rectify this situation by means of such legal remedies. The Court found that the respondent State failed to demonstrate to the Court that the applicant's situation would be corrected with the help of preventive or compensatory measures after he would use these remedies. The authors emphasize that the Supreme Court has left the 9 claims by Kangasluoma without consideration.

Some countries have already developed and adopted the relevant legislation (for example, Slovakia, Bulgaria, France, Russia, Serbia etc.), while others have gone through a broad interpretation of the existing rules on the review of cases.

The authors concluded that despite numerous references to the case law of the ECHR, the Supreme Court of Finland decides by national legislation, in particular Procedure Code in 1960. Therefore, despite the fact that the first attempts were made for the implementation of the legal system of the Finnish judicial precedent as a source of law in the form of judgments and commitment of their decisions, and the mechanism for the functioning of judicial precedent requires improvement and amendments to the legislation.

According to the authors there a distinct lack of compatibility of Article 6 of the Convention

with the regulatory provisions of the Finnish legislation, in particular in a Procedural Code of Finland having no grounds for overturning a verdict, based on the recognition by the ECHR, with violations of articles of the Convention, leading Supreme Court of Finland not making decisions on abolition of prior court decisions which have entered into force, thereby avoiding both the implementation of decisions made by the ECHR and severe need to improve and update the national legal system to guarantee opportunities *restitutio in integrum* for the injured party.

References

- ¹ HE 184/1997 [the Government Bill for the enactment of the Openness of Government Activities Act (HE 184/1997)].
- ² Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgements of the European Court of Human Right. (Adopted by the Committee of Ministers on 19 January 2000 at the 694th meeting of the Ministers' Deputies) i. 3.
- ³ Judgment of Supreme Court, case of Selistö on 14.03.2008.
- ⁴ Judgment of Supreme Court, case of Eino Laaksonen on 27.10.2009.
- ⁵ Judgment of Supreme Court KKO: 2002:51, 13.6.2002.
- ⁶ Judgment of Supreme Court R2010/116, 24.5.2012.
- ⁷ Recommendation No R (2000) 2. Art. 12.
- ⁸ "...in the circumstances of the present case, the Supreme Court could not adequately resolve the applicant's case without holding an oral hearing", para 48. ECHR, Case of *Suuripää v. Finland*.
- ⁹ Judgment of Supreme Court H2010/116, 24.5.2012.
- ¹⁰ Judgment of Finnish Supreme Court, KKO: 2011:100, 22.11.2011.
- ¹¹ Case of *Sorvisto v. Finland*, no 19348/04, 13 January 2009.
- ¹² Case of *Pirtimäki v. Finland*. Application no 35232/11, 20 May 2014.
- ¹³ Judgment of Supreme Court of Finland KKO: 2014:95. Case of Glantz, 12.12.2014.
- ¹⁴ Case of *Zolotukhin v. Russia*. No. 1493903. 10 February 2009.
- ¹⁵ Case of *Hornsby v. Greece*. Application no.18357/91, 19 March 1997.
- ¹⁶ Case of *Kangashuoma v. Finland*, Application no.48339/99, 20 January 2004.

Anotācija

Rakstā tiek pētīts spēkā stājušos tiesas nolēmumu pārskatīšanas pamatojums un procedūra sakarā ar Eiropas Cilvēktiesību tiesas konstatētajiem Eiropas Cilvēktiesību un pamatbrīvību aizsardzības konvencijas pārkāpumiem lietas izskatīšanā Somijas Augstākajā tiesā, sakarā ar ko iesniedzēs vērsies Eiropas Cilvēktiesību tiesā.

Autori pauž viedokli, ka Konvencijas 6. panta nepietiekoša korelācija ar Somijas likumdošanas aktiem izvirza nepieciešamību nacionālajā tiesību sistēmā uzlabot cietušās puses *restitutio in integrum* garantijas.

Аннотация

В статье рассматриваются основания и процедура пересмотра судебных постановлений, вступивших в законную силу, после установления Европейским Судом по правам человека нарушения положений Конвенции о защите прав человека и основных свобод при рассмотрении Верховным судом Финляндии дел, в связи с принятием решения, по которому заявитель обращался в Европейский Суд по правам человека.

По мнению авторов, недостаточная совместимость 6 статьи Конвенции с нормативными положениями финского законодательства требует необходимости улучшения в национальной правовой системе возможностей гарантий *restitutio in integrum* для потерпевшей стороны.