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

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FIRST SECTION

Application no. 46131/19
Kari Risto Kalevi TOIVANEN
against Finland
lodged on 26 August 2019

STATEMENT OF FACTS

The applicant, Mr Kari Risto Kalevi Toivanen, is a Finnish national who was born in 1958 and lives in Sulkava.

A. The circumstances of the case

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

The applicant is a lawyer who was granted permission to act as trial counsel before the domestic courts on 30 January 2014. In 2014 and 2015, over a period of about ten months, he sent emails to several judges and authorities, criticising them and requesting them to take measures in his case. Because of these emails, the Board on Trial Counsel (*oikeudenkäyntiavustajalautakunta, rättegångsbiträdesnämnden*, hereinafter "the Board") took the matter *ex officio* for examination in order to see whether the applicant still complied with the requirements for trial counsel. On 22 October 2015 the Board unanimously withdrew the applicant's permission, finding that he was manifestly not suitable to act as trial counsel.

By letter dated 19 December 2015 the applicant appealed against the decision of the Board to the Helsinki Court of Appeal (*hovioikeus, hovrätten*).

On 29 August 2016 the Court of Appeal, sitting as a bench of three judges, examined the applicant's case at an oral hearing and announced that its decision, which would be in the applicant's favour, would most likely be delivered within 30 days.

However, on 23 November 2016, the acting Chief Justice of the Court of Appeal announced, without any further explanation and - in the applicant's view - without any valid legal reason, that the case would be transferred to a bench sitting in an extended composition of seven judges.

Another oral hearing by the bench of seven judges was held on 2 January 2017. The applicant did not attend.

On 17 March 2017 the Court of Appeal rejected the applicant's appeal and upheld the Board's decision by 5 votes to 2.

By letter dated 15 May 2017 the applicant appealed against the decision of the Helsinki Court of Appeal to the Supreme Court (*korkein oikeus, högsta domstolen*). He argued that the Court of Appeal had committed a procedural error when his case, after it had already been decided, had been transferred to a bench of seven judges in order to change the positive outcome of the case to a negative one. The bench of three judges had decided to accept the applicant's appeal and to quash the decision of the Board by 2 votes to 1 whereas the bench of seven judges had upheld the Board's decision by 5 votes to 2. Moreover, the acting Chief Justice of the Court of Appeal had been biased, since earlier in 2014 she had reported the applicant to the police after the latter had sent an email allegedly containing threats to the Court of Appeal in the same matter.

On 8 August 2017 the Supreme Court granted the applicant leave to appeal.

On 28 February 2019 the Supreme Court upheld the decision of the Court of Appeal by 3 votes to 2. The majority of the Supreme Court Justices found that the acting Chief Judge of the Court of Appeal had not been biased in deciding in the applicant's case for the mere reason that she had forwarded the applicant's email containing threats to the police, since that issue had concerned a different matter. This was the standard practice in all cases concerning threats to personnel's security. She had not filed a report to the police but had only forwarded the email to them. The threatening email had not been part of the case file for the present case and it had not contained any criticism against the acting Chief Justice.

According to the Supreme Court's majority, the Court of Appeal had not committed a procedural error when the applicant's case had been transferred to an extended composition. The acting Chief Justice had explained that the issue at stake was a matter of principle and it had had extensive consequences. In her decision-making, she had paid attention to the fact that

the legislation on trial counsel was relatively new and there was not much case-law on the subject, and that a withdrawal of permission was a more severe interference with one's fundamental rights than refusal of a permission. The bench of three judges was also going to deviate from the unanimous decision of the Board. The majority of the Supreme Court accepted these grounds and held that the case had entailed a difficult balancing exercise between different fundamental rights. The Court of Appeal had held a new oral hearing in the presence of the bench of seven judges. The principal nature of the case and its extensiveness had, objectively taken, supported the transfer of the case to the bench of seven judges. According to the domestic law, such a transfer could be made, and often was made, only after the view of the bench of three judges was known. The majority thus found that the acting Chief Justice had not exceeded the discretion awarded to her by the domestic legislation and there had thus been no procedural error.

As for the dissenting Justices, they found that the procedure in the Court of Appeal had been unusual. In their view, the principal nature and extensiveness of the case must have become known already before the bench of three judges held an oral hearing in the case. Although the procedure in the Court of Appeal could not be regarded as erroneous on the basis of any particular domestic law provision, it had been a procedure for which, taken as a whole and taking into account the nature of the subject-matter, the applicant had had, in the circumstances of the case, a reasoned and objective ground to question the fairness and impartiality of the Court of Appeal. The procedure at the Court of Appeal had thus violated the right to a fair trial, guaranteed by the Constitution and the European Convention of Human Rights. The decision of the Court of Appeal should therefore have been quashed. As to the alleged bias of the acting Chief Justice, the dissenting Justices agreed with the majority.

B. Relevant domestic law

According to section 8 c, subsections 1 and 3, of the Act on Courts of Appeal (*hovioikeuslaki, hovrättslagen*, Act no. 56/1994, as amended by Act no. 568/2015, in force until 31 December 2016):

> "*Extended composition and plenary*
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> The President of a court of appeal may transfer a judicial case or its necessary parts to be examined in a plenary or an extended composition if, when deliberating on the matter or a part of it, it appears that the composition would be deviating from the previous case-law of the Supreme Court or that of the deciding court or another court of appeal. An extensive and otherwise a principal matter or its part can also be transferred to the examination of a plenary or an extended composition. A matter where an oral hearing has been held or will be held, cannot be transferred to an extended composition or to a plenary court without a particular reason.
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> ...

The extended composition of an appeal court comprises seven judges. An extended composition is chaired by the President and composed of those judges who have previously sat in the matter and are still on active duty as well as of a necessary number of additional judges drawn from among the permanent judges."

COMPLAINTS

The applicant complains under Article 6 of the Convention that his right to a fair trial was violated because the Court of Appeal re-examined his case without a valid legal reason. He further complains under the same Article that the acting Chief Justice of the Court of Appeal was biased since she had had a misconceived idea of the applicant's case already when she had contacted the police because of the allegedly threatening email.

QUESTIONS TO THE PARTIES

1. Is Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present case? If so, did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention?

2. Was the court which dealt with the applicant's case impartial, as required by Article 6 § 1 of the Convention?