

FINLAND / FINLANDE
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Criminal proceedings

Legal basis

Code of Judicial Procedure (4/1734)

Chapter 31 - Extraordinary Channels of Appeal (109/1960)

Complaint

Section 1 (109/1960)

(1) On the basis of a complaint on the basis of procedural fault, a final judgment may be annulled:

- (1) if the court had no quorum or if the case had been taken up for consideration of the merits even though there was a circumstance on the basis of which the court should have dismissed the case on its own motion without considering the merits;
- (2) if an absent person who had not been summoned is convicted or if a person who had not been heard otherwise suffers inconvenience on the basis of the judgment;
- (3) if the judgment is so confused or defective that it is not apparent from the judgment what has been decided in the case; or
- (4) if another procedural error has occurred in the proceedings which is found or can be assumed to have essentially influenced the result of the case.

(2) Deciding the main claim in a court that does not have territorial jurisdiction is not a basis referred to in subsection 1 to annul a final judgment. (135/2009).

Section 2 (109/1960)

(1) If a person wants to file a complaint on the basis of procedural fault, he or she shall deliver the letter of complaint to the proper Court of Appeal or, if it pertains to a judgment of a Court of Appeal or the Supreme Court, to the Supreme Court.

(2) If the complaint is based on the circumstances mentioned in Section 1(1) or (4), the complaint shall be filed within six months of the date when the judgment became final. In the case referred to in Section 1(2), the period shall be calculated from when the person filing the complaint received notice of the judgment.

(3) If a law enforcement or supervisory body competent in the supervision of international human rights obligations notes a procedural error in the consideration of a case, a complaint may regardless of subsection 2 be made within six months of the date when the final judgment of the supervisory body in question was given. (666/2005).

Reversal of a final judgment

Section 8 (109/1960)

A final judgment in a criminal case may be reversed to the benefit of the defendant:

- (1) if a member or official of the court, the prosecutor or a representative or counsel of a party has, in connection with the case, been guilty of criminal conduct that may be assumed to have influenced the result of the case;
- (2) if a document that has been used as evidence was false or its contents did not accord with the truth and the person who gave the document was aware of this, or if a witness or expert witness has deliberately given a false statement and it may be assumed that the document or the statement has influenced the result; (732/2015)
- (3) if reference is made to a fact or piece of evidence that has not been presented previously, and its presentation would probably have led to the acquittal of the defendant or to the application of less severe penal provisions to the offence, or there are compelling reasons, with consideration to what is referred to here and to what otherwise is found, to reconsider the question of whether or not the defendant had committed the offence for which he or she has been convicted; or
- (4) if the judgment is manifestly based on misapplication of the law.

Section 8a (360/2003)

A final judgment on a confiscatory sanction in a criminal case may be reversed to the benefit of the defendant:

- (1) if the conditions referred to in Section 8(1), (2) or (4) exist;
- (2) if reference is made to a fact or piece of evidence that had not been presented previously, and its presentation would probably have led to rejection of the request for confiscation or to the imposition of an essentially lighter confiscatory sanction, or there are otherwise compelling reasons, with consideration to what is referred to here and to what otherwise is found, to reconsider the question of the confiscatory sanction; or
- (3) if the charge for the offence on the basis of which the confiscatory sanction was imposed has subsequently been rejected as unproven, or otherwise as a result of the rejection of the charges there would not have been grounds for imposing the confiscatory sanction.

Section 9c (1290/2003)

(1) A final judgment on a confiscatory sanction in a criminal case may be reversed to the detriment of the respondent:

- (1) if the circumstances referred to in section 8(1) or 8(2) exist and can be assumed to have influenced the fact that a confiscatory measure had not been imposed or that it had been imposed essentially more lightly than how it should have been imposed; or
- (2) if reference is made to a fact or a piece of evidence that had not been presented previously, and its presentation would probably have led to the

imposition of a confiscatory measure or to the imposition of an essentially more severe confiscatory sanction.

(2) The judgment may not be reversed on the grounds referred to in subsection 1(2), unless a probability is established that the party could not have referred to the fact or piece of evidence before the court which passed the judgment or on appeal, or that he or she had another justified reason not to do so.

Section 10 (109/1960)

(1) A request for the reversal of a judgment in a civil case and to the detriment of the defendant in a criminal case or in the case referred to in Section 9c to the detriment of the respondent in a criminal case shall be made within one year of the date on which the requester became aware of the circumstance upon which the request is based or, if the request is based on the criminal conduct of another, on the date on which the pertinent judgment became final. However, the period referred to above shall not be calculated from a date earlier than when the judgment whose reversal is requested became final. If the request in a civil case is based on the circumstance referred to in Section 7, subsection 1(4), the period shall be calculated from when the judgment became final. (1290/2003)

(2) A request for the reversal of a judgment in a civil case may no longer be made after five years have passed from the time when the judgment became final, unless compelling reasons are presented in support of the request.

Examples of relevant case-law

Decision of the Supreme Court (KKO:1998:33)

Following the Court's judgment of 25 February 1997 in case *Z v. Finland* (22009/93), the Agent of the Government sent a letter to the Deputy Chancellor of Justice asking him to consider taking action by requesting the partial annulment of the domestic judgment in order to implement the Court's judgment. The Deputy Chancellor of Justice made such a request.

On 19 March 1998, the Supreme Court decided, referring to Article 8 of the Convention, to reverse the relevant domestic judgments to the extent they concerned the classification period of the applicant's medical documents and ordered the documents to be kept classified for a longer period of time (40 years instead of 10). In addition, the names and social security numbers of the parties may not be disclosed to third parties during the classification period. The Supreme Court relied on Chapter 31, Section 8, subparagraph 4 and Section 14, subsection 1 of the Code of Judicial Procedure as well as the Convention and the relevant domestic legislation concerning the openness of judicial procedure and found that the domestic judgment was manifestly based on misapplication of the law.

Decision of the Supreme Court (KKO:2008:24)

On 14 March 2008, the Supreme Court (by 4 votes to 1) ruled, with respect to the Court's judgment of 16 November 2004 in case *Selistö v. Finland* (56767/00) finding a violation of Article 10 of the Convention that the domestic court's judgment was not

to be annulled. The Supreme Court took note of the passing of time. It found that the consequences of the domestic judgment had disappeared as a result of the Court's judgment and that the applicant did no longer seem to suffer from the negative effects resulting from the domestic judgment. Thus, no such weighty reasons required by Chapter 31, Section 8 of the Code of Judicial Procedure for the reversal of a final judgment existed.

Decision of the Supreme Court (KKO:2009:84)

On 27 October 2009, the Supreme Court (by 3 votes to 2) ruled, with respect to the Court's judgment of 12 April 2007 in *Laaksonen v. Finland* (70216/01) finding a violation of Article 6 of the Convention, that as the applicant had not been given the opportunity to defend himself against his charges in the Court of Appeal, the judgement of the Court of Appeal was to be partly annulled. The Supreme Court found that such a procedural error referred to in Chapter 31, Section 1, subsection 1, sub-paragraph 4 of the Code of Judicial Procedure had occurred, which can be assumed to have essentially influenced the result of the case.

Decision of the Supreme Court (KKO:2011:100)

The Supreme Court decided to examine a request for annulment of a judgement of 25 April 2006 by the Court of Appeal of Vaasa although it had been made after the time limit of one year, prescribed in Chapter 31, Section 10 of the Code of Judicial Procedure. The European Court of Human Rights had in its judgment of 6 July 2010 in case *Mariapori v. Finland* (37751/07) found a violation of Article 10 of the Convention. The Supreme Court found that the literal application of the above provision may lead to a situation which does not guarantee legal safety for the party, nor meet the legal obligations set by the Convention. The Supreme Court applied the time-limit rule so that it in practice allows the examination of a request following a judgment of the Court as it was done without delay, *i.e.* three months after the Court's decision. The Supreme Court annulled the judgement given by the Court of Appeal with regard to the imposed punishment (but not as far as the applicant had been found guilty of defamation).

Decision of the Supreme Court (KKO:2012:52)

On 24 May 2012, the Supreme Court (Plenary) ruled that its own judgement of 13 June 2002 (KKO:2002:51) was to be annulled, following a request made by the Chancellor of Justice. The request was based on the Court's judgment of 12 January 2010 in *Suuripää v. Finland* (43151/02), in which it found a violation of Article 6 § 1 as, *i.e.*, in the circumstances of the present case the Supreme Court could not adequately resolve the applicant's case without holding an oral hearing. The applicant, who had been reserved the possibility to give a statement following the request of the Chancellor of Justice, had joined the request.

The Supreme Court referred, *inter alia*, to the Recommendation No. R (200)2 by the Council of Europe on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and found that

sufficient grounds for annulling its aforementioned judgment on the basis of Chapter 31, Section 1, subsection 1, sub-paragraph 4 did exist.

Decision of the Supreme Court (KKO:2014:94)

A had been convicted by a final judgment of the Court of Appeal on 23 December 2010 for aggravated tax fraud, as well as certain other crimes. On 20 May 2014, the European Court of Human Rights stated in its judgment in the case of *Glantz v. Finland* (37394/11) that the trial had violated the *ne bis in idem* prohibitions under Article 4 of Protocol No. 7 to the Convention, because criminal proceedings were continued even after the tax increase based on the same proceedings had become final.

The Supreme Court (Plenary) did not find (by 12 votes to 7) that a procedural error based on Chapter 31, Section 1, subsection 1 had occurred and did not justify annulment of the Supreme Court's final judgment on aggravated tax fraud.

Civil proceedings

Legal basis

Code of Judicial Procedure

(4/1734)

Chapter 31 - Extraordinary Channels of Appeal (109/1960)

Complaint

Section 1 *See above under Criminal proceedings*

Section 2 (109/1960) *See above under Criminal proceedings*

Reversal of a final judgment

Section 7 (109/1960)

(1) A final judgment in a civil case may be reversed:

(1) if a member or official of the court or a representative or counsel of a party has, in connection with the case, been guilty of criminal conduct that may be assumed to have influenced the result of the case;

(2) if a document that has been used as evidence was false or its contents did not accord with the truth and the person who gave the document was aware of this, or if a witness or expert witness has deliberately given a false statement and it may be assumed that the document or the statement has influenced the result; (732/2015)

(3) if reference is made to a circumstance or piece of evidence that has not been presented earlier, and its presentation would probably have led to a different result; or

(4) if the judgment is manifestly based on misapplication of the law.

(2) A judgment shall not be reversed on the grounds referred to in subsection 1(3), unless the party can establish a probability that he or she could not have referred to the fact or piece of evidence in the court that passed the judgment or on appeal, or that he or she has had another justified reason not to do so.

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Section 10 (109/1960) *See above under Criminal proceedings*

Examples relevant of case-law

Decision of the Supreme Court (KKO, 12 December 1996, no. 4823)

On 12 December 1996, the Supreme Court ruled that a breach of the Convention regarding the notification of some documents is not a ground upon which a final judgment in a civil case may be reversed pursuant to Chapter 31, Section 7 of the Code of Judicial Procedure. In case *Kerojärvi v. Finland* (17506/90) of 19 July 1995, the European Court of Human Rights had found a violation of Article 6, paragraph 1,

for non-communication of certain documents. The following request under Chapter 31, Section 1, of the Code of Judicial Procedure, which provides for reopening of a civil case if the judgment in question was based on a "manifestly incorrect application of the law", was rejected on the ground that the time-limit for lodging such an application had expired.

Decision of the Supreme Court (KKO:2011:100)

In this case cited already above under criminal proceedings, the Supreme Court found that there existed no grounds for reversing the domestic judgment in terms of the damages. According to the Supreme Court the amounts of the damages ordered to be paid by the applicant that were not covered by the judgment of the European Court of Human Rights, could not be considered very high. It further found that the domestic decision was not clearly in contradiction with the case-law of the Court at the time of the decision and the decision could thus not be deemed to have been manifestly based on misapplication of law, as is required by the Code of Judicial Proceedings for the reversal of a judgment in a civil matter. The Supreme Court found also that the damage ordered to be paid could not be considered a very serious negative result.

Decision of the Supreme Court (KKO:2014:35)

A, who was born before the Paternity Act (700/1975) came into force, had filed action in order to confirm that B was his father. The Supreme Court had on 17 November 2003 (KKO:2003:107) rejected the request. The European Court of Human Rights had stated in its judgment of 6 July 2010 in *Grönmark v. Finland* (17038/04) that the applicant's right to respect of her private life had been violated. The applicant requested the annulment of the Supreme Court's decision. The Supreme Court (Plenary) found (by 9 votes 8) that the objective of the pending legislative project for the reform of the Paternity Act (11/2015, in force as of 1 January 2016) is to also allow retroactive effect to solve these problems. It therefore left the application for reversal to rest until the legislative project was finished.

Administrative proceedings

Legal basis

Administrative Judicial Procedure Act (586/1996)

Chapter 1 - Scope and precedence

Section 1 - Scope

- (1) This Act shall apply to judicial procedure in general administrative courts.
 (2) This Act shall also apply where an administrative decision is challenged by way of appeal or extraordinary appeal in an administrative authority, an appellate board or another comparable special authority.

Chapter 11 - Extraordinary appeal

Section 58 - Means of extraordinary appeal

An administrative decision that has become final may be subject to extraordinary appeal by means of procedural complaint, restoration of expired time or annulment.

Section 63 - Annulment

- (1) A decision may be annulled:
- (1) if a procedural error which may have had a relevant effect on the decision has been committed;
 - (2) if the decision is based on manifestly erroneous application of the law or on an error which may have had an essential effect on the decision; or
 - (3) if new evidence which could have had a relevant effect on the decision appears and it is not the fault of the applicant that the evidence was not presented in time.
- (2) The decision shall not be annulled, unless it violates the right of an individual or unless it is deemed that it is in the public interest that the decision be annulled.
- (3) No annulment shall be applied for if a material tax appeal or a procedural complaint can be lodged against the decision on the same basis.

Section 64 - Application for annulment

- (1) The annulment of a decision shall be applied for from the Supreme Administrative Court. In connection of the resolution of a matter pending before the Supreme Administrative Court the pertinent decision may be annulled without an application or a proposal.
- (2) Annulment shall be applied for within five years of the date when the decision became final. Annulment without application or proposal shall take place within the

same time limit. For very significant reasons the decision may be annulled also after that time.

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Section 65 - Appeal document

- (1) An extraordinary appeal shall be lodged in writing.
- (2) The appeal document, which shall be addressed to the authority making a resolution on the appeal, shall state the demand and the grounds for it. The relevant decision shall be appended to the document in the original or as a copy, as shall the other documents on which the appeal is based.
- (3) The appeal document shall be delivered to the authority making a resolution on the appeal or to the authority that made the original decision.

Section 66 - Order on execution

An authority considering an extraordinary appeal may issue an order on execution applying, correspondingly, the provisions in Section 32 on orders on execution by appellate authorities.

Section 67 - Decision on extraordinary appeal

- (1) A decision restoring expired time shall at the same time indicate how the applicant is to observe the restored time limit.
- (2) The decision may be annulled or, as a result of a procedural complaint, set aside as a whole or to the extent deemed necessary. If the case needs to be reconsidered, it shall be returned to the deciding authority. If that authority does not have jurisdiction, the case may be transferred to the correct authority.
- (3) As a result of a procedural complaint or when annulling a decision, the authority may make an immediate amendment of the decision, if the matter is found to be clear.

Section 68 - Application of the provisions on appeal to extraordinary appeal

Otherwise the provisions on appeal in this Act shall apply, to the extent appropriate, to procedure in extraordinary appeal.

Examples of relevant case-law

Decision of the Supreme Administrative Court (*KHO 2008:45*)

On 12 June 2008, upon A's request, the Supreme Administrative Court annulled a decision made by the Insurance Court, due to a procedural error in the Insurance Court's proceedings. The Insurance Court had not provided an oral hearing as demanded by A, nor given A the opportunity to give a rejoinder to two statements of the Social Insurance Institution of Finland. The Supreme Administrative Court did not find the need for a hearing manifestly unnecessary, as required under Section 34 of the Administrative Judicial Procedure Act for the matter to be resolved without a hearing of the party. Hence, the Supreme Administrative Court annulled the decision

by the Insurance Court and remitted the case to the Insurance Court for reconsideration.

Decision of the Supreme Administrative Court (*KHO 27.2.2015*)

On 27 February 2015, the Supreme Administrative Court did not find any such very significant reasons that would have allowed annulment pursuant to Sections 63 and 64 of the Administrative Judicial Procedure Act, although on 3 July 2012 the European Court of Human Rights had in case *X v. Finland* (34806/04) found a violation of the Convention, and the Court's ruling resulted in a need for renewal of national legislation. The European Court of Human Rights found that the Supreme Administrative Court had wrongfully accepted coercive treatment and medication of the applicant. Due to these defects, the Court argued that the decisions must be annulled, despite the general rule that annulment shall be applied for within five years of the date when the decision became final, pursuant to Section 64 of the Administrative Judicial Procedure Act.

Decision of the Supreme Administrative Court (*KHO 2015:29*)

The Finnish Immigration Service requested the annulment of two of its decisions from 2004 and 2005 on the grounds that citizenship had been applied for and was granted based on personal data belonging to the applicants' relatives. The Supreme Administrative Court held (by 4 votes to 4) that Section 5, Subsection 2 of the Constitution of Finland (731/1999), according to which no one can be divested of or released from his or her Finnish citizenship except on grounds determined by an act, did not limit the possibility to seek reversal to the final citizenship decision. The citizenship decisions had become non-appealable more than five years before the Immigration Service submitted a request for reversal to the Supreme Administrative Court. The decisions were thus only annulable for very significant reasons, according to Section 64 of the Administrative Judicial Procedure Act. The Immigration Service did not in its request bring up any facts with respect to backgrounds or persons of the applicants' erroneously obtained citizenships that would not otherwise meet the requirements for obtaining citizenship. The Supreme Administrative Court rejected the request for annulment.