



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

FOURTH SECTION

CASE OF BACKLUND v. FINLAND

(Application no. 36498/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

12 July 2011

FINAL

12/10/2011

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

In the case of Backlund v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 21 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 36498/05) 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 national, Mr Sven Backlund (“the applicant”), on 11 October 2005.

2. The applicant was represented by Mr Kenneth Peth, a lawyer practising in Närpes. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. In a judgment delivered on 6 July 2010 (“the principal judgment”), the Court held that, even having regard to the margin of appreciation left to the State, the application of a rigid time-limit for the introduction of paternity proceedings, regardless of the circumstances of an individual case and, in particular, the obligation to take action within that time-limit, impaired the very essence of the right to respect for one’s private life under Article 8 of the Convention. In view of the above, and in particular having regard to the absolute nature of the limitation period and the Supreme Court’s refusal to allow any exceptions thereto, the Court found that a fair balance had not been struck between the different interests involved and, therefore, that there had been a failure to secure the applicant’s right to respect for his private life. Accordingly, the Court found that there had been a violation of Article 8 of the Convention (*Backlund v. Finland*, no. 36498/05, 6 July 2010).

4. Under Article 41 of the Convention the applicant sought just satisfaction of, *inter alia*, 140,500.20 euros (EUR) plus interest in respect of pecuniary damage, comprising the lost share of his putative father’s estate.

5. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage, the Court reserved it and invited the Government and the applicant to submit, within six months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 66, and point 4 of the operative provisions).

6. The principal judgment became final on 6 October 2010.

7. The applicant and the Government each filed observations.

THE LAW

8. In the operative part of the principal judgment the Court made an award to the applicant in respect of non-pecuniary damage, and costs and expenses. However, it decided to reserve the application of Article 41 of the Convention, in respect of pecuniary damage.

9. 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. Pecuniary damage

1. The parties' submissions

10. The Government noted that, in the principal judgment of 6 July 2010, the Court had found that the national courts had not made any attempt to balance the competing interests, namely the interests of the putative father and his family, on the one hand, and those of the child, on the other hand, but had only concluded that the applicant's claim had been time-barred. However, the Court had not taken any stand on the question of what the outcome of such a balancing act in the applicant's case might have been, nor whether paternity would have been established.

11. In the Government's view there existed no causal link between the violation of Article 8 of the Convention and any pecuniary damage claimed in the present case. The question of the applicant's right to inherit could only be decided if the judgment of the Appeal Court were overturned and the paternity question considered on the merits. Until such decision was taken by a domestic court, the claim for damages remained purely speculative. As the applicant's right to inherit was not yet time-barred, he needed to take measures in that respect and to exhaust first the domestic

remedies. The fact that the estate had already been divided did not prevent its redivision if a new heir were to appear within 10 years of the death of the person leaving the estate.

12. The applicant argued that there was a clear causal link between the damage claimed and the violation found by the Court. The paternity of N.S. was a fact which was verified by the DNA tests, and the paternity claim would have been successful had there been no time-limit for introducing such claim. N.S. had died without any direct heirs and intestate during the paternity proceedings. The net value of the estate was EUR 140,500.20 and, as an only child, the applicant would have inherited the entire estate. The situation could no longer be rectified as the estate had been divided. Finnish law did not allow any reparation to be made in the present case.

2. The Court's assessment

13. The Court reiterates that, in principle, a judgment in which it finds a violation of the Convention imposes on the respondent State a legal obligation to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Court must determine at its discretion the level of just satisfaction, having regard to what is equitable (see *Sunday Times v. the United Kingdom (no. 1)* (Article 50), 6 November 1980, § 15, Series A no. 38). For an award to be made in respect of pecuniary damage the applicant must demonstrate that there is a causal link between the violation and any financial loss alleged (see, for example, *Družstevní záložna Priea and Others v. the Czech Republic* (just satisfaction), no. 72034/01, § 9, 21 January 2010).

14. In the principal judgment the Court held that there had been a failure to secure the applicant's right to respect for his private life due to the application of a rigid time-limit for the bringing of paternity proceedings, regardless of the circumstances of an individual case and, in particular, the obligation to take action within that time-limit with the result that the applicant's case was never examined on the merits. The Court notes that it has only examined the issue of the time-limit and its compatibility with the Convention, not the merits of the present case. The paternity issue has not yet been legally confirmed, this task being in the sole competence of the domestic courts.

15. As the Court has taken no stand on the paternity issue itself, let alone confirmed the paternity in the applicant's case, the Court finds that there is no causal connection between the violation found in the principal judgment and the pecuniary damage claimed. Consequently, no award for pecuniary damage can be made in the present case and the applicant's claim in respect of pecuniary damage must be dismissed.

B. Costs and expenses

16. The applicant claimed EUR 2,826.29 plus interest for the costs and expenses incurred before the Court after the delivery of the principal judgment.

17. The Government noted that, in the principal judgment of 6 July 2010, the applicant had already been awarded EUR 6,000 in respect of costs and expenses and in the Government's view this compensation was sufficient. Were the Court to have another opinion, the total amount of compensation for costs and expenses should not exceed EUR 250 (inclusive of value-added tax).

18. 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 information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 (inclusive of value-added tax) under this head.

C. Default interest

19. 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. Holds

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred euros), plus any tax that may be chargeable, 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;

2. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President