



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

FOURTH SECTION

**CASE OF VALLE v. FINLAND**

*(Application no. 28808/95)*

JUDGMENT  
(strike out)

STRASBOURG

7 December 2000



**In the case of Valle v. Finland,**

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

Mr G. RESS, *President*,

Mr A. PASTOR RIDRUEJO,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs N. VAJIĆ,

Mr J. HEDIGAN,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 November 2000,

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

**PROCEDURE**

1. The case originated in an application (no. 28808/95) against the Republic of Finland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, Mr Tapio Valle (“the applicant”), on 25 December 1993.

2. The applicant was represented by Mr P. Reinikainen, a lawyer of the Association for Psychiatric Health (*Helmi r.y.*) based in Helsinki (Finland). The Finnish Government (“the Government”) were represented by their Agent, Mr Holger Rotkirch, Director-General for Legal Affairs, Ministry for Foreign Affairs.

3. The applicant complained, *inter alia*, under Articles 8 and 13 of the Convention that his right to respect for his private life and correspondence has been violated, and that he has not had an effective remedy against the allegedly unlawful measures to restrict the telephone calls to the applicant from his legal counsel.

4. Following communication of the application to the Government by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 16 March 2000, having obtained the parties’ observations, the Court declared the application admissible in so far as the applicant’s above-mentioned complaints under Articles 8 and 13 are concerned. The further complaints were declared inadmissible.

5. On 8 September 2000, after an exchange of correspondence, the Section registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1(b) of the

Convention and he proposed certain terms on which such a settlement might be envisaged. On 7 October, 9 October and 16 November 2000 the parties submitted formal declarations accepting a friendly settlement of the case.

## THE FACTS

6. The applicant was diagnosed as mentally ill for the first time in 1985. In 1986 the applicant was found guilty of rape but not convicted as he was found to have committed the crime in a state of diminished responsibility. In 1987 the National Board of Health (*lääkintöhallitus, medicinalstyrelsen*) found that he was in need of compulsory psychiatric care. Such care was consistently extended to him after regular reviews of its justification.

7. The applicant was initially detained at the Hesperia Hospital in Helsinki. On 30 October 1992, the applicant was transferred to the Old Vaasa Hospital in Vaasa, which is a State mental hospital (*valtion mielisairaala, statens sinnessjukhus*), practising a strict discipline.

8. On 11 January 1994, the Deputy Parliamentary Ombudsman (*eduskunnan apulaisoikeusasiamies, riksdagens biträdande justitieombudsman*) inspected the hospital and met the applicant. The Deputy Parliament Ombudsman found no reason to take any measures concerning the patients' rights to use the telephone which, he complained, were too restrictive.

9. The applicant's need for compulsory psychiatric care was reassessed regularly.

10. In May 1994 the applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) against the decision of 13 April 1994 of the National Board of Medicolegal Affairs (*terveydenhuollon oikeusturvakeskus, rättskyddscentralen för hälsovården*), which confirmed that the applicant should remain in compulsory psychiatric care. The applicant argued that he was no longer in need of compulsory psychiatric care. He also requested the court to examine the lawfulness of the measures taken by hospital staff, which had further restricted his liberty. He referred, *inter alia*, to restrictions relating both to visits to the Old Vaasa Hospital and to his telephone calls.

11. On 10 June and 30 August 1994 the applicant's legal counsel, Mr Reinikainen, tried to call the applicant at the hospital but his phone calls were not connected as the hospital had not been provided with a letter of authorisation for Mr Reinikainen by the applicant. It does not appear from the file whether the applicant was told about the phone calls or whether he was asked for an oral authorisation at the time.

12. In June 1994 the applicant complained to the Parliamentary Ombudsman about his detention and its alleged unlawfulness. On 31 October 1994 the Parliamentary Ombudsman rejected the applicant's complaint, stating that it was up to the Supreme Administrative Court to deal with the case.

13. In its decision of 22 March 1995 the Supreme Administrative Court dismissed without an examination of its merits the applicant's request for a reassessment of the justification of his compulsory care as from October 1992. The court considered that this matter could not be examined in connection with the applicant's appeal. It furthermore found that it lacked competence to examine whether the measures further restricting his liberty had been lawful. Finally, the court upheld the Board's decision.

14. The applicant complained to the Parliamentary Ombudsman about the Supreme Administrative Court's decision and about the lack of an effective remedy in respect of a decision restricting the applicant's right of self-determination while in compulsory psychiatric care.

15. On 16 June 1998 the Deputy Parliamentary Ombudsman found that the applicant had been treated in the Hesperia Hospital (from 2 July 1987 until 30 October 1992) and in the Old Vaasa Hospital since 30 October 1992. According to the comments received by the Deputy Parliamentary Ombudsman from the Old Vaasa Hospital and the National Board of Medicolegal Affairs, that treatment had been carried out by affording the applicant as much freedom as possible, taking into account his serious psychiatric illness. Contacts with the applicant's relatives had been encouraged. However, it had been found that the applicant needed to be guarded all the time. Due to his unawareness of his illness, the applicant had felt unable to accept any treatment. According to a comment given by Doctor S.P. on 20 March 1997, the hospital staff had been ordered not to connect Mr Reinikainen's phone calls to the applicant. These phone calls were, according to the order, to be transmitted to the chief physician, Doctor L.S. The reasoning for the order could not be found from the above comment. Accordingly, Mr Reinikainen's phone calls to the applicant on 10 June and 30 August 1994 had been connected to the chief physician instead of the applicant.

16. The Deputy Parliamentary Ombudsman found in her decision that, as regards the continuation of the applicant's compulsory psychiatric treatment, the Supreme Administrative Court had decided the matter within its margin of discretion and in accordance with the law. Concerning the restrictions on the applicant's right to receive phone calls, the Deputy Parliamentary Ombudsman found as follows:

“According to the documents, the chief physician of the Old Vaasa Hospital, Doctor L.S., restricted the applicant’s telephone contacts on 10 June and 30 August 1994.

Restrictions on the right of self-determination are regulated by Section 28 of the Mental Health Act. The provision applies to psychiatric hospital care and is, therefore, applicable to the treatment given at a state mental hospital.

According to Section 28, subsection 1, of the Mental Health Act, the right of self-determination of a person admitted for observation or ordered to undergo treatment may be limited, and coercive measures may be taken, but only to the extent necessary for the treatment of his illness or to ensure his safety or that of others.

...

According to Article 8 of the [European] Convention [on the Human Rights], communication by telephone is included in the correspondence within the meaning of that provision. Accordingly, the relevant provision of the Mental Health Act should, in my opinion, be interpreted widely so as to cover also telephone communications by persons in the above-mentioned special circumstances, when they have been admitted for observation or ordered to undergo treatment. Therefore, such communication may not be restricted.

I, therefore, state as my opinion that [L.S.], the chief physician of the Old Vaasa Hospital at the time in question, acted wrongly by restricting the applicant’s lawyer’s contacts to the applicant by telephone on 10 June and 30 August 1994. L.S. has stated in her comments that the restriction decisions were based on considerations relating to the applicant’s treatment. However, L.S. has not registered these considerations in the applicant’s patient records, which, in my opinion, would have been necessary.

According to the documents, I have not found any other errors or unlawful acts in the applicant’s treatment at the Old Vaasa hospital.”

## THE LAW

17. On 8 September 2000 the Section Registrar suggested to the parties that they should attempt to reach a friendly settlement of the case, according to which the Government of Finland would pay the applicant the sum of FIM 20,000 as non-pecuniary damage, and the sum of FIM 7,930 for the legal fees and expenses less the amount already paid by the Council of Europe by way of legal aid.

18. On 7 October 2000 the Court received from the applicant’s representative the following declaration signed by the applicant’s representative:

“... I notice that the proposal of friendly settlement is reasonable and my client accepts this proposal.”

19. On 9 October 2000 the Court received from the Government the following declaration signed by the Agent for the Government:

“... I have the honour, on behalf of the Government of Finland, to inform you that the Government accepts the Court’s proposal for a friendly settlement in the present case.

The Government understands that the Court’s proposal for a friendly settlement - outside the monetary issues - covers the normal clause referred to in the Government’s letter of 15 May 2000. According to this clause, the applicant declares, as a part of the friendly settlement, that subject to the fulfilment by the Government of what is stated in the friendly settlement, he has no further claims against the Finnish State based on the facts of the application.

On the above basis a friendly settlement on *ex gratia* basis can be achieved and the case struck out of the Court’s list of cases under Rule 44 § 2 of the Rules of Court.”

20. On 16 November 2000 the Court received from the applicant’s representative the following declaration signed by the applicant’s representative:

“... with reference to the ... correspondence, I confirm that my client accepts the friendly settlement and that he has no further claims against the Finnish State based on the facts of the application. ...”

21. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

22. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

*Decides* to strike the case out of the list.

Done in English, and notified in writing on 7 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Georg RESS  
President