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

FOURTH SECTION

CASE OF IVANOFF v. FINLAND

(Application no. 48999/99)

JUDGMENT
(Friendly Settlement)

STRASBOURG

5 July 2005

This judgment is final but it may be subject to editorial revision.

In the case of Ivanoff v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 22 June 2004 and on 14 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 48999/99) 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 Leevi Ivanoff ("the applicant"), on 29 April 1999.

2. The applicant was represented by Mr Jukka Sankamo, a lawyer practising in Kotka. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

3. The applicant complained, *inter alia*, under Article 6 §§ 1 and 3(d) of the Convention, about a breach of the rights of the defence in respect of witnesses.

4. On 22 June 2004, after obtaining the parties' observations, the Court declared the application admissible in so far as this complaint was concerned. Further complaints of the applicant were declared inadmissible on the same date.

5. On 4 May 2005, after an exchange of correspondence, the 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. On 23 May 2005 and on 26 May 2005 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1942 and lives in Helsinki.

7. The applicant ran a snack bar together with his wife until 20 December 1993 when it was damaged by a fire. On 13 October 1997 the Kotka District Court (*käräjäoikeus, tingsrätten*) convicted him of aggravated vandalism and aggravated fraud as he was found to have set the snack bar on fire and to have claimed and received compensation from an insurance company. He was sentenced to one year's suspended imprisonment.

8. Both the applicant and the public prosecutor appealed to the Kouvola Court of Appeal (*hovioikeus, hovrätten*). The applicant requested an oral hearing. He also sought an order for an expert opinion on the reasons why the snack bar had caught fire.

9. On 9 March 1998 the applicant was summoned to an oral hearing to be held before the Court of Appeal on 20 May 1998. According to the summons, the oral hearing was limited only to the fire which had started from the storage room of the snack bar ("fire 2"); another fire ("fire 1") had started from the part of the stand where the snacks were prepared. The Court of Appeal stated that it would call three of the prosecution witnesses, who had been heard before the District Court (police officer H., investigator L. and fireman T.).

10. In her letter of 18 May 1998 to the Court of Appeal, the applicant's counsel requested that S., who had installed the electricity for the snack bar, be called to give evidence at the oral hearing about the reasons why the above-mentioned "fire 1" had started. S. had also been heard before the District Court.

11. On 20 May 1998 before the hearing started, the applicant's counsel asked the judicial secretary of the Court of Appeal whether the applicant could call witnesses who would give evidence about "fire 1" and about the reasons why the snack bar had caught fire and how the fire had then spread to the whole building. The judicial secretary did not find it possible, or desirable, that such witnesses should be heard as the hearing was limited only to "fire 2".

12. At the beginning of the hearing, a timetable of the proceedings was distributed to the parties according to which the hearing was limited only to "fire 2". The above-mentioned prosecution witnesses were heard. The defence witness, S., was not. According to the applicant the statements made by the prosecution witnesses concerning "fire 1" as well as the reasons why the snack bar had caught fire were accepted by the court. According to the Government no such evidence was given before the Court of Appeal.

13. On 13 August 1998 the Court of Appeal upheld the District Court's judgment, refusing the applicant's request for an expert opinion. In its reasoning the court found, *inter alia*, as follows:

> "What is said above shows that the fire which occurred in the storage room ["fire 2"] was started deliberately. This strongly supports the allegation that the fire which occurred in the room where the snacks were prepared ["fire 1"] was also deliberate, in particular, as it is unlikely that the fire would have started from the electrical devices or the electricity wires which were situated on the roof of the preparation room ["fire 1]."

14. On 11 November 1998 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicant leave to appeal.

THE LAW

15. On 26 May 2005 the Court received the following declaration from the Government:

> "I ... declare that the Government of Finland offer to pay *ex gratia* 4,000 euros to Mr Leevi Ivanoff with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, and it will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.
>
> The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention."

16. On 23 May 2005 the Court received the following declaration signed by the applicant:

> "I ... note that the Government of Finland are prepared to pay me *ex gratia* the sum of 4,000 euros with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses and will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. 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.

> I accept the proposal and waive any further claims against Finland in respect of the facts of this application. I declare that this constitutes a final resolution of the case.
>
> This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.
>
> I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment."

17. 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).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 5 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President