



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

FOURTH SECTION

CASE OF MOLANDER v. FINLAND

(Application no. 10615/03)

JUDGMENT

STRASBOURG

7 November 2006

FINAL

26/03/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Molander v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 17 October 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 10615/03) 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, Ms Helena Molander (“the applicant”), on 28 March 2003.

2. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. On 13 December 2005 the Court decided to communicate the applicant’s complaints about the length of proceedings, declaring the remainder of the application inadmissible. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the length complaint at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1951 and lives in Helsinki.

5. On 4 June 1993 an article entitled “Experts have doubts about the impartiality of the child ombudsman. Children are weapons in bitter disputes.” was published in a magazine S. The article, written by a free-lance journalist N., concerned the applicant and her work.

6. On 21 October 1993 the applicant instituted criminal proceedings against N., the editor-in-chief of the magazine, F., and the publishing company Yhtyneet Kuvalehdet Oy before the then City Court (*raastuvanoikeus, rådstuvurätt*) of Helsinki, for public defamation, alleging that the article insulted and defamed her professional experience. On 3 March 1994 the court dismissed the action. It referred to the amendments to the Freedom of the Press Act (*painovapauslaki, tryckfrihetslag*), according to which the proceedings should have been initiated before the District Court (*kärjäoikeus, tingsrätten*) of Espoo. Apparently the applicant's counsel failed to lodge new charges in time.

7. On 19 November 1996 the applicant instituted criminal-based civil proceedings against N., F. and the publishing company before the District Court of Espoo, requesting compensation for non-pecuniary damage of 150,000 Finnish Marks (FIM, amounting to 25,231 euros (EUR)) for mental distress and suffering due to the allegedly incriminating and insulting nature of the article.

8. The defendants lodged a counterclaim, which was served on the applicant on 3 March 1997. She lodged an additional claim on 13 August 1997.

9. The defendants served their written submissions on 20 October 1997. On 22 January 1998 the applicant submitted further written submissions.

10. On 1 September 1998 the District Court held a preparatory hearing.

11. On 29 September 1998 the District Court held the principal trial, which terminated on 5 October 1998 after a hearing, which last three days.

12. By its judgment of 6 November 1998 the District Court rejected the applicant's claims and ordered her to reimburse the defendants' legal costs. She appealed to the Court of Appeal (*hovioikeus, hovrätten*) of Helsinki.

13. On 6 November 1998 the applicant's counsel requested an extension of the time-limit for the appeal. This was extended to 8 January 1999. On 12 January 1999 the applicant lodged her appeal documents.

14. On 15 March 1999 the applicant requested the Court of Appeal to suspend the enforcement of the District Court's judgment.

15. On 7 April 1999 the Court of Appeal dismissed her request.

16. On 9 April 1999 the Court of Appeal invited the parties to submit written observations. These were received on 30 April and 3 May 1999.

17. On 25 October 2000 the applicant submitted further written evidence.

18. On 29 December 2000 the Court of Appeal requested the defendants to submit their observations on the further evidence and the applicant to submit her comments on the new witnesses proposed by the defendants. It informed the parties that there would be an oral hearing and proposed dates in March 2001.

19. According to the Government, the dates fixed had to be vacated due to the unavailability of the parties. The hearing took place instead on

4, 7 and 8 June 2001. The parties were told that the judgment would be delivered on 5 October 2001. This however was postponed due to the illness of one of the judges.

20. On 2 November 2001 the Court of Appeal revoked the judgment of the District Court, finding a part of the article to be defamatory. It ordered the defendants to pay the applicant 20,000 FIM (EUR 3,364) plus interest for non-pecuniary damage caused by the defamation. It further ordered that both parties should bear their own legal costs incurred before the domestic courts.

21. On 2 January 2002 the applicant sought leave to appeal from the Supreme Court and lodged further submissions on 24 September 2002. On 30 September 2002 the Supreme Court refused leave to appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING LENGTH OF PROCEEDINGS

22. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ... by [a] ... tribunal...”

23. The Government contested that argument.

24. The period to be taken into consideration began on 19 November 1996 when the applicant lodged her claims with the District Court and ended on 30 March 2002 when the Supreme Court refused leave to appeal. It thus lasted over five years and four months for three levels of jurisdiction.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities. What was at stake for the applicant also has to be taken into account (see, among many other authorities, *Philis v. Greece* (no. 2), judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

27. The Court notes that the proceedings were not of any particular complexity, albeit that the Government pointed out that the applicant's original claim was joined to a counterclaim filed by the defendants and an additional claim filed by the applicant. Although the Government stated that there was considerable documentary evidence for a case of this kind, there is nothing to suggest that the case was marked by any particular difficulty. The applicant argued that her work and economic situation had been seriously damaged by the length of the procedure. However, the litigation concerned her claims that an article in the press had been insulting and there was no substantiated direct link with either her employment situation or salary claims which would have required that the case be dealt with expeditiously (see, *mutatis mutandis*, *Nibbio v. Italy*, judgment of 26 February 1992, Series A no. 228-A, § 18).

28. The Court observes that the parties at first instance, by filing counterclaims and additional claims, prolonged the preparatory stage of the proceedings. In the circumstances the time taken before the District Court – almost two years – if not particularly expeditious was not unreasonable. However, the Court finds no convincing explanation for the time taken – over two years and eleven months – before the Court of Appeal. It is true the applicant applied for an extension of the time for appealing. This, however, only accounted for a delay of some two months. There was also a short delay of four months when the parties were unable to agree a date for the hearing. The fact that the applicant submitted further written evidence in October 2000 also contributed to the delay as the defendants had to be given an opportunity to comment. It is to be noted that there was a period between 3 May 1999 and the submission of that evidence in October 2000 – a gap of over seventeen months during which no steps were taken by the court to process the appeal. The Government have accepted that this was a period of inactivity and have stated that this was because the court official responsible for the preparation of the case was engaged in an important criminal case and had also been assigned other criminal cases which were older and had more priority than the applicant's case. This however is not a sufficient excuse for the delay as domestic courts are under an obligation to organise themselves in such a way as to meet the requirements of Article 6 (*Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II). It is not

apparent that the problem resulted from an exceptional situation such as might relieve the authorities of responsibility for temporary delays: the Government cannot therefore rely on the Court's case-law to that effect (see e.g. *Sussman v. Germany*, judgment of 16 September 1999, *Reports* 1996-IV, §§55-60 where the Constitutional Court was entitled, on reunification, to give priority to pensions and employment cases of particular significance or *Janković v. Croatia* (dec.) (no. 43440/98, ECHR 2000-X) where the courts had a large-scale pension problem to deal with).

29. On the other hand, the time taken by the Supreme Court to refuse leave to appeal was reasonable.

30. Having regard to its case-law on the subject and the delay before the Court of Appeal, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

31. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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. Damage

33. The applicant claimed interest on a loan which she allegedly had to take out to cover the court costs of the defendant, a sum of at least 7,000 euros (EUR), and EUR 25,000 for her own costs incurred during the domestic proceedings. She also claimed non-pecuniary damage without specifying any particular amount.

34. The Government considered that there was no link between the pecuniary damage claimed and the alleged breach of Article 6. They also pointed to the lack of documentation concerning the claims. Any award made should not exceed EUR 2,500.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As the applicant must have sustained some non-pecuniary damage as a result of the above breach, it awards EUR 2,500 on an equitable basis.

B. Costs and expenses

36. The applicant, who was represented by a lawyer before the national courts but not before the Court, sought reimbursement of her lawyer's fees in respect of the national proceedings and her own costs and expenses before the Court. She made no specific or itemised claim in this regard.

37. In their memorial the Government argued that the applicant's costs and expenses in the national proceedings had not been incurred in order to prevent the alleged violation of Article 6 § 1 of the Convention. As to costs and expenses before the Strasbourg organs, they invited the Court to adjust the possible compensation.

38. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). The Court does not consider that the costs in the domestic proceedings were incurred in order to prevent or obtain redress for the matter found to constitute a violation of Article 6 § 1 of the Convention. The claim made in this respect must therefore be rejected. Having regard to the nature of the case and to the fact that it has declared most of the applicant's complaints inadmissible, the Court considers it reasonable to award the applicant EUR 100 for her costs and expenses in connection with the proceedings before the Court.

C. Default interest

39. 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. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, the following amounts:

- (i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage;
- (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
- (iii) any tax that may be chargeable on the above amounts;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President