



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

FOURTH SECTION

CASE OF NIVA v. FINLAND

(Application no. 37730/02)

JUDGMENT
(Friendly settlement)

STRASBOURG

9 January 2007

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

In the case of Niva 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 S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 28 March 2006 and on 5 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 37730/02) 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 Risto Niva (“the applicant”), on 15 October 2002.

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

3. The applicant complained under Article 6 § 1 of the Convention about the length of civil proceedings.

4. On 28 March 2006, after obtaining the parties’ observations, the Court declared this complaint admissible. The applicant’s other complaints had been declared inadmissible on 16 March 2004.

THE FACTS

5. The applicant was born in 1957 and lives in Alapitkä.

6. On 5 October 1994 the applicant sustained injuries during an operation on his back. On 14 March 1997 he issued a summons claiming pecuniary and non-pecuniary damage and compensation for costs from the Patient Insurance Association (*potilasvakuutusyhdistys*, *patientförsäkrings-*

förening; later renamed as the Patient Insurance Board (*potilasvakuutuskeskus, patientförsäkringscentral*)).

7. On 18 June 1998 the Helsinki District Court (*käräjäoikeus, tingsrätten*) found the medical treatment inadequate and ordered the defendant to pay the applicant non-pecuniary damage for pain and suffering and to reimburse his medical expenses and legal costs.

8. Both parties appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*).

9. On 10 March 1999 the Court of Appeal invited the National Authority for Medicolegal Affairs (*terveydenhuollon oikeusturvakeskus, rättskyddscentralen för hälsovården*; “the Authority”) to submit its report on the matter.

10. The Authority requested medical opinions from Drs N. and M., which were delivered on 28 May 1999 and 25 October 1999, respectively. Considering that the two opinions were partly contradictory, the Authority asked on 24 November 1999 for a third opinion from Professor A. On 10 May 2000, 2 August 2000 and 18 September 2000 the Authority inquired of him whether the opinion would soon be ready. Professor A.’s opinion was finally submitted on 28 December 2000, and on 17 January 2001 the Authority submitted its report to the Court of Appeal.

11. In his observations to the appellate court the applicant complained, *inter alia*, about the delay of the Authority in submitting its report to the Court of Appeal, and invoked Article 6 § 1 of the Convention.

12. On 17 October 2001, having held an oral hearing, the Court of Appeal quashed the District Court’s judgment, rejecting the applicant’s claims.

13. The Supreme Court refused leave to appeal on 6 June 2002.

14. Meanwhile, on 31 October 2000 the applicant sent a petition to the Parliamentary Ombudsman (*oikeusasiamies, ombudsman*) complaining about the length of the proceedings before the Authority. On 2 January 2002 the Deputy Ombudsman criticised the Authority for unreasonable delay in issuing the requested report. She maintained, however, that the case did not disclose any unlawfulness in violation of section 21 of the Constitution of Finland. The Deputy Ombudsman did not examine the Court of Appeal’s proceedings as the case was at the time still pending before the Supreme Court.

THE LAW

15. On 17 October 2006 the Court received the following declaration from the Government:

“I ... declare that the Government of Finland offer to pay ex gratia EUR 4,244 (four thousand two hundred and forty-four euros) to Risto Niva 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, costs and expenses and any value-added tax that may be applicable. 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. The Court received the following declaration signed by the applicant’s representative:

“I ... note that the Government of Finland are prepared to pay me ex gratia the sum of EUR 4,244 (four thousand two hundred and forty-four euros) 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, costs and expenses and any value added tax that may be applicable. 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. 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 9 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President