



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

FOURTH SECTION

CASE OF JUPPALA v. FINLAND

(Application no. 18620/03)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

02/03/2009

This judgment may be subject to editorial revision.

In the case of Juppala v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 18620/03) 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 Eine Juppala (“the applicant”), on 16 June 2003.

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

3. The applicant alleged a violation of Article 10 of the Convention.

4. On 23 June 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1929 and lives in Ylöjärvi.

6. On 20 July 2000 she took her daughter's son to a doctor. The boy was three years old at the time.

7. According to the doctor's report, the applicant said that she had noticed a bruise on the boy's back which might have been caused by a blow, and that his behaviour had been abnormal since he had visited his father, T.

The applicant had strong suspicions that the injuries were consistent with physical violence. Furthermore, it was written in the report that the applicant had informed the doctor that the boy had said that the bruise had been caused by a punch. The applicant further stated that in January 2000 she had noticed signs of violence for the first time, but that T. had explained that the boy had fallen down the stairs. The doctor wrote in his report that the bruise noted on the boy's back was consistent with a punch, thereby supporting the boy's account, given also to the doctor, that he had been hit by his father.

8. Later the same day, the doctor reported the alleged violence to the child welfare authorities, although the applicant had objected to a report being made.

9. On 17 August 2000 T. requested the police to investigate whether the applicant had committed an offence by alleging that he had hit his son. He maintained that he had never struck the boy. On 22 August 2000 he further requested the police to investigate whether the applicant had committed an offence, such as deprivation of liberty, by taking the boy to a doctor.

10. On 26 April 2001 the public prosecutor preferred charges against the applicant for defamation without better knowledge (*ei vastoin parempaa tietoa tehty herjaus, smädelse dock icke emot bättre vetande*). According to the charge, the applicant had given information to the doctor implying that T. had struck his son. The doctor had been given to understand that T. had struck the boy on several occasions, most recently during the previous weekend. The applicant did not have reasonable grounds to support her allegation. On 21 May 2001 T. joined the proceedings and claimed compensation from the applicant for non-pecuniary damage amounting to 10,000 Finnish marks (FIM, about 1,682 euros (EUR)) and reimbursement of his legal expenses.

11. On 24 August 2001 the Tampere District Court (*käräjäoikeus, tingsrätten*) held an oral hearing. In its judgment the court held that it remained unclear whether the applicant had implied that the boy had been hit by his father or whether the doctor's report merely recorded his own impression based on his discussion with the applicant and the child. Applying the principle *in dubio pro reo*, the court rejected the charge. The presiding judge, however, dissented, finding the applicant guilty of defamation without better knowledge. She noted that, taking the facts as presented, there were no reasonable grounds to support the belief that T. had struck the boy. She further found that the boy's own statement could not as such be considered a reasonable ground, especially given the fact that it was not known whether the applicant had discussed the bruise with him before visiting the doctor.

12. T. appealed to the Turku Court of Appeal (*hovioikeus, hovrätten*). On 20 February 2002, after an oral hearing, the Court of Appeal overturned the District Court's judgment and convicted the applicant of defamation

committed without better knowledge. No fines or other penalties were imposed, but the applicant was ordered to pay compensation for non-pecuniary damage amounting to EUR 504.56 and legal costs of EUR 2,861.11. It reasoned:

“At the hearing [the applicant] and [the doctor] have essentially given the same account of the events as before the District Court. [The applicant] has, however, stated that having noticed the bruise on the child's back on the evening before the visit to the doctor's, she asked the boy where it had come from and he said that his father had hit him.

According to the doctor, the applicant had provided the preliminary data, which he had first written down on paper. Later they had been recorded in the medical report based on his dictation. He had dictated the information immediately after the applicant and the child had left the room. The report did not contain any conclusions reached by the doctor himself.

On the basis of the doctor's testimony and the case record, it has been proved that the applicant intentionally, albeit without better knowledge, said that [the father] was guilty of having struck his three-year-old son in such a way that she in fact gave the doctor to understand that the father had struck his son during the weekend preceding 20 July 2000. However, the Court of Appeal finds that it has not been shown that the applicant gave the doctor to understand that the father had struck his son at other times.

As described above, the applicant had discussed the bruise with the boy. The boy may also have heard the applicant make her preliminary statement at the doctor's before the doctor spoke to him. Having regard to this and the boy's age, the mere fact that he told the doctor that his father had hit him cannot be considered to be significant enough to constitute reasonable grounds for the allegation. Nor has the applicant presented any other such reasons for the allegation on the basis of which she could be considered to have had reasonable cause to believe her insinuation to be true.

On the above grounds, the Court of Appeal considers that the applicant is guilty of defamation without better knowledge.

According to the doctor, the applicant had been worried about the child's condition and he considered that the visit had been justified. Having regard to the circumstances, it was forgivable that the applicant, in whose care the child had been, had not thoroughly weighed what she had told the doctor. For these reasons the Court of Appeal does not impose a sentence, in accordance with Chapter 3, Article 5, subsection 3 (2) [of the Penal Code].”

13. The applicant sought leave to appeal from the Supreme Court (*korkein oikeus, högsta domstolen*). She argued that the right to freedom of expression was violated if a person could not rely on the account of a child who had visible signs of injury or discuss his or her own impressions of the facts with a doctor, who was bound by professional secrecy, without being afraid of later being found guilty of defamation.

14. On 17 December 2002 the Supreme Court refused leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Section 10 (as amended by Act no. 969/1995, which took effect on 1 August 1995 and remained in force until 1 March 2000) of the Constitution Act (*Suomen Hallitusmuoto, Regeringsform för Finland*; Act no. 94/1919), provided:

“Everyone has freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.”

The same provision appears in Article 12 of the current Constitution of 2000 (*Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999).

16. Section 8 of the Constitution Act (as amended by Act no. 969/1995) corresponded to Article 10 of the current Constitution, which provides that everyone's right to private life is guaranteed.

17. Chapter 27, article 2(1), of the Penal Code (*rikoslaki, strafflagen*; Act no. 908/1974, as in force until 1 October 2000), provided that a person alleging, albeit not contrary to his or her better knowledge, that someone had committed an offence was to be convicted of defamation and sentenced to a fine or imprisonment for a maximum term of six months, unless he or she could show reasonable grounds for the allegation.

For the conduct to be intentional, the offender had to be aware of the fact that the defamatory allegations might subject the person concerned to contempt, or harm his or her profession or career. In cases where the offender did not understand the defamatory nature of the conduct, it has not been considered intentional, but the fact that the offender has been mistaken about the truth of the defamatory allegation has not altered the intentional nature of his or her conduct. Only in cases where the offender has been able adequately to prove the truth of his or her allegations has it been possible to free him or her from liability.

In one of its precedents (*KKO 2006:10*), the Supreme Court held that a person had committed defamation when she had failed to verify the truthfulness of the information she had provided when requesting a criminal investigation by the police and reporting to the social welfare authorities under the Child Welfare Act her suspicion that another person had committed sexual and other offences.

18. Under the terms of Chapter 5, section 6, of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*; Act no. 412/1974), damages may be awarded for the distress arising from an offence against someone's liberty, honour or domestic peace or from another comparable offence.

19. Section 40 of the Child Welfare Act (*lastensuojelulaki; barnskyddslagen*, Act no. 683/1983), in force until 1 January 2008,

provided that if, in the course of his or her activities, an employee or elected official in health care, social welfare, education, the police or the church learned about a child in apparent need of family-oriented or individual child welfare measures, he or she had to notify the social welfare board without delay. The provision has been interpreted to mean that any confidentiality obligation is superseded by the duty to notify.

The wording “apparent need of child welfare measures” referred to section 12, which set a clearly lower threshold for child welfare measures than the threshold set in section 16 for taking a child into public care. Even a less than serious risk to the child's health or development warrants notification to the social welfare board. The word “apparent” is used in order to encourage notifications also in cases where there exists no full evidence of or certainty about the existence of such a risk. When a child welfare official receives notification, he or she must verify the facts and assess whether support measures are needed. The wording has left room for interpretation of how certain the notifier must be of the child's need for child welfare measures. In particular, there has been uncertainty about whether the mere suspicion of such a need suffices for notifying the authorities.

20. According to the Government Bill (HE 252/2006 vp) for the enactment of the new Child Welfare Act (Act no. 417/2007, which entered into force on 1 January 2008), in order to guarantee children's safety the threshold for making a child welfare notification under Section 25 should not be excessively high. If a person considering making such a notification has difficulties in assessing whether his or her concern about the child is sufficient to justify notifying the authorities, he or she may, if necessary, consult the social welfare authorities, for instance, without communicating the child's name to them. The provision expressly provides that any confidentiality obligation is superseded by the duty to notify. Section 25(6) provides that the child welfare authorities must report to the police any case where there is good reason to suspect that a sex offence, homicide or bodily injury has been committed on a child in the environment in which he or she was growing up and the suspected offence carries a maximum penalty of at least two years' imprisonment.

21. As a rule, the child concerned is entitled to be informed of the notifier's identity. In practice, however, cases exist where disclosure of the identity of a private person making such a notification would be particularly harmful to the child's best interests or the notifier's safety, for example. Authorities need not provide a party with information on identity if the conditions mentioned in section 11 of the Openness of Government Activities Act (*laki viranomaisten toiminnan julkisuudesta; lagen om offentlighet i myndigheternas verksamhet*; Act no. 621/1999) are fulfilled: a party shall not have the right of access to a document if such access would be contrary to a very important public interest, the interest of a minor or some other very important private interest. According to the Government

Bill (HE 30/1998 vp), the best interests of a child may justify protecting the notifier's identity on the basis of an overall consideration of the circumstances of each individual case. As an example, the Government Bill mentions the situation where the notifier is a person close to the child, for instance a grandparent, and to disclose his or her identity would break the child's relationship with an adult important to his or her welfare. Disclosure of the notifier's identity may, in individual cases, also be in conflict with the public interest if providing the information might defeat the purpose of child welfare measures.

22. In September 2005 the Ombudsman for Children (*lapsivaltuutettu, barnombudsmannen*) took up her duties. The Ombudsman is entrusted with the task of promoting the best interests and rights of the child in general administration, social policy and legislation. The Ombudsman may issue recommendations, guidelines and advice but she cannot receive individual complaints. The Ombudsman is an independent authority who works in liaison with the Ministry of Social Affairs and Health (*sosiaali- ja terveysministeriö, social- och hälsovårdsministeriet*). The Parliamentary Ombudsman (*eduskunnan oikeusasiamies, riksdagens justitieombudsman*) retains her mandate regarding children and continues to act on individual complaints addressed to her.

III. INTERNATIONAL MATERIALS

23. According to Article 19 of the United Nations Convention on the Rights of the Child (1989; *yleissopimus lapsen oikeuksista, konventionen om barnens rättigheter*; SopS 60/1991) – ratified by all members of the Council of Europe – provides:

“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

24. In its concluding observations (CRC/C/15/Add. 272) of 20 October 2005 on the third periodic report of Finland (CRC/C/129/Add.5) the United Nations Committee on the Rights of the Child shared the concern of the Parliamentary Ombudsman of Finland that violence against children and sexual abuse within families were among the most serious obstacles to the full implementation of children's rights in Finland. In the light of Article

19 of the Convention, the Committee recommended that Finland, *inter alia*, strengthen awareness-raising and education campaigns with the involvement of children in order to prevent and combat all forms of child abuse and also strengthen measures to encourage reporting of instances of child abuse, including for children in alternative care, and to prosecute the perpetrators of these acts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant complained that she had been found guilty of defamation even though she had merely honestly voiced her impression of the causes of her grandchild's bruises to the doctor, who was bound by professional secrecy. She argued that the Court of Appeal's judgment had a negative impact on the rights of those in need of the services of a doctor in sensitive cases, such as victims of domestic violence, since they might refrain from seeking medical help for fear of being prosecuted.

26. Article 10 reads:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

27. The Government contested that argument.

A. Admissibility

28. The Court notes that the application 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

1. *The parties' submissions*

29. The applicant argued that freedom of expression was at its widest in a doctor-patient relationship. Referring to the principles laid down in the case of *Nikula v. Finland* (no. 31611/96, § 44, ECHR 2002-II) the applicant submitted that, just like defence counsel's freedom of expression, freedom of expression in a doctor-patient relationship required particular protection. When a parent or relative finds that a small child has bruises, should he or she be afraid to repeat to the doctor what the child has told him or her? If there exists doubt as to the origin of a bruise, should it be punishable to engage in a discussion with the doctor about the various possibilities? A doctor must be able to rely on the truthfulness of a patient's statement and it was equally clear that false statements regarding, *inter alia*, sexual abuse, were punished. A medical doctor was, however, an expert in matters relating to physical abuse. If the patient raised a concern regarding his or her son's or grandson's injuries, the doctor could directly judge whether or not the concerns were substantiated.

30. The applicant had seen a bruise on the boy after he had visited his father. The boy had told her how the bruise had come about. The applicant had never accused T. of hitting his son, but expressed concern to the doctor as regards the boy's injuries. The doctor had found the bruise to be consistent with possible violence by T. against his son. It was clear that one could not report such violence to the police unless there was evidence supporting the allegation. The required level of certainty could not, however, be the same for reporting an incident to the police as for consulting a doctor to ask his opinion.

31. The applicant argued that, as regards the requirement of "prescribed by law", the relevant repealed provision of the Penal Code was problematic. It was possible for a person to be sentenced for defamation even if the act was unintentional, if he was not able to satisfy the shifted burden of proof, that is, to prove himself innocent. Furthermore, could a reasonable person be expected to understand that this provision would be applied when expressing concern to the family doctor about the origin of bruises on her grandson? In order for an offence to be punishable, the law had to be particularly precise. The Supreme Court had delivered 35 published

judgments on defamation or slander. There was no established doctrine, correcting the imprecision in law, on the basis of which the applicant could or should have foreseen that she might be prosecuted.

32. The Government conceded that the liability to pay damages and the conviction, although the sentence had been waived, amounted to an interference with the applicant's right to freedom of expression. It had a basis in section 10(1) of the then Constitution Act, Chapter 27, Articles 1 and 2, of the Penal Code and Chapter 5, section 6, of the Tort Liability Act. Their interpretation in the present case had in no way been arbitrary. The interference aimed to protect the rights of the boy's father. Taking into account the margin of appreciation left to the Contracting States, the national authorities were, in the circumstances of the case, entitled to interfere with the exercise of the applicant's right to freedom of expression (compare *Tammer v. Estonia*, no. 41205/98, § 69, ECHR 2001-I), and this interference was necessary in a democratic society. The impugned measures, the waived sentence and the modest non-pecuniary damages and costs were "proportionate to the legitimate aim pursued" and the reasons adduced by the courts to justify them were "relevant and sufficient" within the meaning of Article 10 § 2.

33. The Government submitted that the Court of Appeal had found it proved that the applicant had alleged that T. had struck his son, by giving the doctor to understand that the boy had been struck. The applicant had not produced such grounds for the suspicion as to justify her allegations or prove that the insinuations were true. The fact that the boy had told her that his father had punched him could not be accorded significance as reasonable grounds for the suspicion, considering his young age and the fact that she had discussed the matter with him the previous evening, and also that he might have heard the preliminary information provided by her prior to the discussion between him and the doctor.

34. The case mainly involved assessment of evidence. The Court of Appeal had first assessed whether the applicant had intentionally expressed a suspicion that T. had struck the boy, finding in the affirmative. Secondly, it had assessed whether the applicant had had sufficient grounds to express her suspicion that T. had struck the boy. The court had answered this question in the negative, finding that the applicant had not produced the reasonable grounds required by the Penal Code in support of her suspicion. It had accordingly convicted her of defamation.

35. In the light of the evidence provided, the Court of Appeal had not and could not have taken a stand on whether the applicant's report to the doctor concerning suspected violence had been her own idea or whether it was what the boy had told her. The court had assessed the case as a whole, taken account of the applicant's particular status as the boy's grandmother, and considered her action excusable, waiving punishment and only ordering her to compensate for the distress caused to T.

36. Assessing the type of the boy's injury and determining the need for medical care or protecting the doctor-patient relationship did not require the name of the person who might have caused the bruise to be mentioned. Medical confidentiality was without significance, because merely voicing an unfounded suspicion could fulfil the essential elements of an offence.

37. As regards the reference to the case of *Nikula v. Finland* (cited above) the Government submitted that it was not comparable to the case under consideration because it concerned defence counsel's freedom of expression, which required particular protection, whereas the present case concerned a private individual's freedom of expression when consulting a doctor.

38. As for the applicant's view that the old defamation provision was not sufficiently precise to permit her to foresee how it would be applied in her case, the Government noted that it laid down expressly that reasonable grounds must be produced in support of the allegation and its application was therefore foreseeable. Its application had become established case-law over a long period of time, on the basis of which it was clear that expressing unfounded suspicions that someone had committed a crime would be considered as defamation.

2. The Court's assessment

39. In exercising its supervisory function, the Court must look at the impugned interference in the light of the case as a whole including, in this case, the content of the remark held against the applicant and the context in which it was made.

40. It was common ground between the parties that the applicant's conviction constituted an interference with her right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. Furthermore, the parties agreed that the interference pursued a legitimate aim, namely the protection of the reputation or rights of others, within the meaning of Article 10 § 2. The Court endorses this assessment. The applicant and the Government differed on whether the interference was "prescribed by law" and "necessary in a democratic society." As to the former issue, the Court accepts that the applicant's criminal conviction was based on a reasonable interpretation of the Penal Code as in force at the relevant time, and that the order requiring her to pay damages was based on the relevant provision of the Tort Liability Act. The interference was thus "prescribed by law" (see *Nikula v. Finland*, cited above, § 34; *Selistö v. Finland*, no. 56767/00, § 34, 16 November 2004 and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X). It remains to be determined whether the interference in question was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles

embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see *Nikula v. Finland*, § 44).

41. This case calls into consideration two countervailing interests, each of high social importance: the need to safeguard children from abuse by their own parents, and the need to protect parents from unnecessary interference with their right to respect for their private and family life or the risk of unjustified arrest and prosecution. The first of these interests involves protection of children as the victims of crime. The Court has emphasised that children and other vulnerable individuals in particular are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see, *mutatis mutandis*, *X and Y v. the Netherlands*, 26 March 1985, §§ 21–27, Series A no. 91; *Stubbings and Others v. the United Kingdom*, 22 October 1996, §§ 62–64, *Reports* 1996-IV; and also the United Nations Convention on the Rights of the Child, Articles 19 and 37). The Court would refer, in particular, to the case of *A. v. the United Kingdom* (23 September 1998, § 22, *Reports* 1998-VI) where a stepfather had subjected a child to treatment contrary to Article 3 and was acquitted having argued that the treatment amounted to “reasonable chastisement”. The Court held in that case that the obligation under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, required States to take measures designed to ensure that individuals within their jurisdiction were not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.

42. If the source of the abuse is the parent, the child is at risk from his primary and natural protector within the privacy of his home. Child abuse is indeed a hard form of criminal conduct to combat, because its existence is difficult to uncover. Babies and young children are unable to tell, older children are often too frightened. The question raised by this application is how to strike a proper balance when a parent is wrongly suspected of having abused his or her child, while protecting children at risk of significant harm. In considering these questions, the starting point is to note that the applicant acted properly in considering whether the bruise on the boy's back had been deliberately inflicted. Having become suspicious, she consulted a medical doctor who rightly decided to communicate to the child welfare authorities the suspicion which he personally formed having examined and interviewed the boy. That is the essential next step in child protection. The seriousness of child abuse as a social problem requires that persons who act in good faith (see, *mutatis mutandis*, *Guja v. Moldova* [GC], no. 14277/04, § 77, ECHR 2008-...), in what they believe are the best interests of the child, should not be influenced by fear of being prosecuted or sued when deciding whether and when their doubts should be communicated to health care professionals or social services. There is a delicate and difficult line to tread

between taking action too soon and not taking it soon enough. The duty to the child in making these decisions should not be clouded by a risk of exposure to claims by a distressed parent if the suspicion of abuse proves unfounded.

43. It is true that the applicant was convicted merely of defamation committed “without better knowledge”, to be distinguished from defamation “despite better knowledge”, that is to say, intentionally imputing an offence to T. whilst knowing that he had not committed it (rather than voicing a mere suspicion that he had). Nonetheless, the threat of an *ex post facto* review in criminal proceedings of a concerned grandmother's statement made in good faith to the child's doctor accords ill with every adult's moral duty to defend a child's interests. The Court finds it alarming that the Court of Appeal took the view that the applicant, when there was no doubt that she had seen the boy's bruised back, was not entitled to repeat what the boy had told her, that is, that he had been hit by his father, an assertion he had repeated when interviewed by the doctor. The possibility to voice a suspicion of child abuse, formed in good faith, in the context of an appropriate reporting procedure should be available to any individual without the potential “chilling effect” of a criminal conviction or an obligation to pay compensation for harm suffered or costs incurred.

44. The Court is aware that the spectre of vexatious litigation is often used as a reason for requiring that extra care be shown when making a report on alleged child abuse to the authorities. It was not argued before the domestic courts or before this Court that the applicant acted recklessly, that is without caring whether the boy's allegation of abuse was well-founded or not. On the contrary, even a health care professional, the medical doctor, made his own assessment that the case should be reported to the child welfare authorities.

45. It is therefore only in exceptional cases that restriction of the right to freedom of expression in this sphere can be accepted as necessary in a democratic society. In the Court's view, sufficient reasons for the interference have not been shown to exist and the restriction on the applicant's right to freedom of expression therefore failed to answer any “pressing social need”.

46. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. Under the head of non-pecuniary damage the applicant claimed 8,000 euros (EUR) for mental suffering and distress. Under the head of pecuniary damage she claimed EUR 3,616.41 for the sums she was ordered to pay to the boy's father.

49. The Government considered the claim for non-pecuniary damage excessive as to *quantum*. The award should not exceed EUR 2,500. The Government considered that the applicant might be entitled to compensation for pecuniary damage as far as the legal costs and expenses paid to T. were concerned.

50. The Court finds that there is a causal link between the violation found and the alleged pecuniary damage. Consequently, there is justification for making an award. The Court awards the applicant EUR 3,616.41 under this head. The Court accepts that the applicant has also suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

B. Costs and expenses

51. The applicant also claimed EUR 72.62 for the costs and expenses incurred before the domestic courts and EUR 2,623.21 (inclusive of value-added tax) for those incurred before the Court.

52. The Government considered that the costs could be awarded in full.

53. The Court considers it reasonable to award the sum of EUR 72.62 for the domestic proceedings and the sum of EUR 2,623.21 (inclusive of value-added tax) for the proceedings before the Court.

C. Default interest

54. 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 application admissible;
2. *Holds* that there has been a violation of Article 10 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:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 3,616.41 (three thousand six hundred and sixteen euros and forty-one cents) in respect of pecuniary damage, plus any tax that may be chargeable;
 - (iii) EUR 2,695.83 (two thousand six hundred and ninety-five euros and eighty-three cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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 2 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President