



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF LAPPALAINEN v. FINLAND

(Application no. 22175/06)

JUDGMENT

This version was rectified on 23 February 2010

under Rule 81 of the Rules of the Court.

STRASBOURG

3 November 2009

FINAL

03/02/2010

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 Lappalainen v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 22175/06) 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 Janne Petteri Lappalainen (“the applicant”), on 22 May 2006.

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

3. By a decision of 20 January 2009 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. It also decided to rule on the admissibility and merits of that complaint at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1973 and lives in Outokumpu.

5. On 16 November 1999 the applicant instituted proceedings against K., a journalist, and Yhtyneet Kuvalehdet Oy, a publishing company, claiming non-pecuniary damages for suffering and distress due to an article published in 1998.

6. On 27 January 2000 the District Court (*käräjäoikeus, tingsrätten*) held an oral hearing. On 4 February 2000 it rejected the action, holding that publishing the name of a convicted person did not amount to an offence and that, therefore, no right to compensation existed under Chapter 5, section 6, of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*; Act no. 412/1974).

7. The applicant appealed. On 22 March 2001 he changed counsel.

8. On 12 December 2002 the Helsinki Court of Appeal (*hovioikeus, hovrätten*) held an oral hearing. On 31 March 2003 the court partly upheld the applicant's claim and ordered the journalist and the publishing company jointly to pay the applicant EUR 2,000 for suffering and distress. The court found that there had been no justification for publishing the name of a private person such as the applicant.

9. All the parties requested leave to appeal, which was granted on 3 September 2003.

10. In its judgment of 19 December 2005 (precedent no. *KKO 2005:136*) the Supreme Court (*korkein oikeus, högsta domstolen*) overturned the appellate court's judgment and rejected the action.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

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

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

12. The Government contested that argument.

A. Admissibility

13. 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

14. The period to be taken into consideration began on 16 November 1999 and ended on 19 December 2005. It thus lasted 6 years, 1 month and 5 days for three levels of jurisdiction.

15. 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

16. The Government argued that, although the proceedings before the Court of Appeal lasted some three years and one month in total, the applicant's wish to change counsel contributed to a delay of at least one year and seven months before the Court of Appeal, which could not be entirely attributed to the Government. The length attributable to the Government was thus four years and six months for three levels of jurisdiction, which could not be held excessive.

17. The applicant maintained that his request had not in any way prolonged the proceedings.

18. The Court observes that the proceedings before the District Court lasted a little over two months in total. The proceedings before the Court of Appeal took three years and one month with no clear explanation for the delay. The fact that the applicant changed counsel cannot explain the delay as the applicant did not request any extension of time limits. The Supreme Court granted leave to appeal within four months of the appeal and the judgment was given some two years and seven months after the Court of Appeal had ruled on the matter.

19. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government found the amount excessive as to *quantum*. Should the Court find a violation of Article 6 § 1 of the Convention, the Government conceded that the applicant should be awarded compensation which should not exceed EUR 1,500.

25. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,500 under that head.

B. Costs and expenses

26. The applicant also claimed EUR 3,172 for the costs and expenses incurred before the Court.

27. The Government left the matter to the Court's discretion.

28. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 (inclusive of value added tax)¹ covering costs and expenses for the proceedings before the Court.

C. Default interest

29. 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.

¹ Rectified on 23 February 2010: “inclusive of value added tax” has been added.

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 1,500 (one thousand five hundred euros), in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
 - (iii) plus any tax that may be chargeable on the abovementioned 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 3 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President