CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 10615/03
by Helena MOLANDER
against Finland

The European Court of Human Rights (Fourth Section), sitting on 13 December 2005 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 regard to the above application lodged on 28 March 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Helena Molander, is an Finnish national who was born in 1951 and lives in Helsinki.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 4 June 1993 an article entitled "Experts have doubts on 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.

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, referring to the amendments of the Freedom of the Press Act (*painovapauslaki, tryckfrihetslag*), according to which the proceedings should have been initiated before the District Court (*käräjäoikeus, tingsrätten*) of Espoo. Apparently the applicant's counsel failed to lodge new charges in time.

On 11 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 article.

By its judgment of 6 November 1998 the District Court rejected her claims and ordered her to reimburse the defendants' legal costs. She appealed to the Court of Appeal (*hovioikeus, hovrätten*) of Helsinki. On 2 November 2001, having held oral hearings on 4, 6 and 8 June 2001, the appellate court 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 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.

On 30 September 2002 the Supreme Court refused leave to appeal.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the length of the civil proceedings was excessive as it lasted over five years and ten months.

The applicant also complains that the order that she should bear her legal expenses was inequitable; that the assessment of evidence was unfair (the courts based their decisions partly on the witnesses' hearsay evidence; the evidence adduced on her behalf was not assessed properly; she was not allowed to hear the opposing party's witnesses as to their alleged prejudiced attitudes); that the judgments included false information and false accusations against her; that the domestic courts did not understand the real nature of the wide-ranging backlash-campaign against her; and finally that the amount of non-pecuniary damages awarded to her was too low.

THE LAW

1. The applicant complains under Article 6 of the Convention about the length of the civil proceedings, which started on 11 November 1996 and ended on 30 September 2002. Article 6, insofar as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time ..."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant further complains that the civil proceedings were unfair for a number of reasons. First, she was ordered to bear her own legal expenses. The domestic courts had also in her view assessed evidence improperly and included false information in their judgments. She further complained that the domestic courts underestimated her situation and finally, reached an unfair decision.

The Court recalls that in accordance with Article 19 of the Convention, its task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not its function to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any rights and freedoms set out in the Convention. The Court refers on this point to its established case-law (see,

e.g., *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 25, § 45). It further notes that interpretation and application of domestic law is primarily a matter for the assessment of the national courts.

The examination of the case-file in the present case does not disclose any appearance of a violation of the requirements of a fair trial in these respects or as regards the witness hearings, assessment of evidence, reasoning, or outcome of the judgments. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the civil proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President