

Summer School with Moot Court 2014 in Hạ Long

K.U. v. Finland

Case of K.U. v. Finland (no. [2872/02](#)), judgment of 2 December 2008

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K.U. v. Finland

Proceedings

Applicants: Minor (name not disclosed)
represented by his lawyer Mr. Huttunen

Government: Finland

Application: Finish court decisions have
infringed Art. 8 ECHR by failing to protect
the minor's right to respect for his private
life

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Proceedings

Individual application, Art. 34 ECHR

ARTICLE 34

Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

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Proceedings

Rules of Court

- rules of procedures
- allocation of section of the court,
Rule 52 § 1
- observations on the merits filed by the
parties, Rule 59 § 1

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K.U. v. Finland**The Facts**

An unidentified person placed an advertisement for an intimate relationship on an internet dating site in the name of the applicant revealing personal data (physical characteristics, picture, telephone number, e-mail address). This constitutes the offence of malicious misrepresentation.

The applicant became aware of the advertisement when he received an e-mail from a suitor.

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Development of the case in Finland

The applicant's father requested to identify the person guilty of malicious representation:

- The service provider refused for he was legally bound by confidentiality of telecommunications
- The courts refused, since there was no explicit legal provision to disclose telecommunications identification data in breach of professional secrecy in case of malicious representation

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Legal situation in Finland

Relationship to the State (public law)

Art. 10 Finish Constitution (formerly section 8 Finnisch Constitution Act)

Everyone's right to private life is guaranteed.

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Legal situation in Finland

Relationship to the State (public law)

Chapter 27, Art. 3 Finnish Penal Code

“A person who in a manner other than that stated above commits an act of malicious misrepresentation against another by a derogatory statement, threat or other degrading act shall be sentenced for malicious misrepresentation to a fine or to imprisonment for a maximum period of three months.”

If the malicious misrepresentation is committed in public or in print, writing or a graphic representation disseminated by the guilty party or which the guilty party causes, the person responsible shall be sentenced to a fine or to imprisonment for a maximum period of four months.”

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Legal situation in Finland

Relationship to the State (public law)

Chapter 5a, section 3 Finnish Coercive Measures Act

“Preconditions of telecommunications monitoring

Where there is reason to suspect a person of

- (1) an offence punishable by not less than four months’ imprisonment;
- (2) an offence against a computer system using a terminal device, a narcotics offence; or
- (3) a punishable attempt to commit an offence referred to above in this section;

the authority carrying out the criminal investigation may be authorised to monitor a telecommunications connection in the suspect’s possession or otherwise presumed to be in his use, or temporarily to disable such a connection, if the information obtained by the monitoring or the disabling of the connection can be assumed to be very important for the investigation of the offence ...”

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Legal situation in Finland

Relationship to the State (public law)

Section 18, subsection 1 (1) Protection of Privacy and Data Security in Telecommunication Act

“Notwithstanding the obligation of secrecy provided for in section 7, the police have the right to obtain:

(1) identification data on transmissions to a particular transcriber connection, with the consent of the injured party and the owner of the subscriber connection, necessary for the purpose of investigating an offence referred to in Chapter 16, Article 9 (a), Chapter 17, Article 13 § 2 or Chapter 24, Article 3 (a) of the Penal Code (Act no. 39/1889) ...”

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K.U. v. Finland**Legal situation in Finland***Section 17 Exercise of Freedom of Expression in Mass Media Act (2004) – not in effect at the time of the case**“Release of identifying information for a network message*

At the request of an official with the power of arrest, a public prosecutor or an injured party, a court may order the keeper of a transmitter, server or other similar device to release information required for the identification of the sender of a network message to the requester, provided that there are reasonable grounds to believe that the contents of the message are such that providing it to the public is a criminal offence. However, the release of the identifying information to the injured party may be ordered only in the event that he or she has the right to bring a private prosecution for the offence. The request shall be filed with the District Court of the domicile of the keeper of the device, or with the Helsinki District Court, within three months of the publication of the message in question. The court may reinforce the order by imposing a threat of a fine.”

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Legal situation in Finland

Section 48 Personal Data Act

(Relationship to State – public law)

A service provider is under criminal liability to verify the identity of the sender before publishing a defamatory advertisement on its website.

Section 47 Personal Data Act

(Relationship among individuals – private law)

The service provider **will be liable in damages**, if he is in breach of Section 48

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Legal situation in Finland

Relationship among individuals (private law)

Section 42 Personal Files Act

Anyone who processes and publishes sensitive information concerning sexual behaviour on an Internet server without the subject's consent **is liable in damages.**

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The relevant provisions

European Convention on Human Rights

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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The relevant provisions

European Convention on Human Rights



ARTICLE 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.