

HELSINKI DISTRICT COURT

COURT DECISION

12/1927

2 March 2012

Case Number
R 11/10004

District Court Judge XXX

Lay Members of the Court 1XXX, 2XXX and 3XXX

Prosecutor District Prosecutor YYY

Defendants A
B

Plaintiffs C
D

Case AGGRAVATED PHYSICAL ASSAULT

Initiated 2 December 2011

SUMMARY OF THE CASE

Prosecutor's Demands for Punishment

AGGRAVATED PHYSICAL ASSAULT

B and A have 7 November 2009 in Helsinki, in an apartment at (address), on the living room table together and of one accord inflicted physical violence upon 4-month-old D in that A has performed a circumcision on D at the request of B whilst B has held D by his feet during the procedure in order to restrain him. The circumcision has been performed against the child's other guardian's, C's, will.

As a result of B's and A's actions, D has suffered pain and permanent damage. He has been taken to the Helsinki Children's Hospital where he has been treated with pain killers.

This physical assault must be considered an aggravated offense, since a blade has been used. Furthermore, the act, as a whole, is an aggravated offense when considering that the victim is a defenceless child, upon whom a surgical, irreversible procedure has been performed, resulting in permanent damage, against the other guardian's will.

The Prosecutor's Other Demands

A and B must jointly be obligated to compensate the costs of the evidence produced in court to the state.

Plaintiffs' Demands

D concurs with the Prosecutor's charges and is claiming joint compensation from the defendants as follows: €200 for ache and pain, €5000 for permanent damages and €3000 for suffering, all with legal interest.

C, as the guardian of D, who is under 18, concurs with the charges.

Responses B has denied the charges as well the description thereof. In any event, the act cannot, as a whole, be considered aggravated.

It has not been B's intention to cause his child pain or any other harm. On the contrary, he has had his child's best interest in mind all along. He had booked a doctor whom he knew to be qualified to perform the medical procedure appropriately. The circumcision was important to him on the basis of religious and cultural reasons.

B was under the firm belief that circumcising a male child was not a criminal offense in Finland. The issue was legally unclear.

B had been given the child's mother's consent for the procedure. She had known the agreed time for the procedure and had not wanted to be at home at that time.

The child had not seemed to feel pain in the actual situation and been cheerful and calm after the procedure. The fact that B had held him by his feet to keep him still had not caused the child pain. The doctor had given care instructions and a follow-up appointment had been agreed on. The aftercare would have been performed as required if everything had gone as planned.

B has contested the grounds for the claims for compensation. He has no complaints about the sum being claimed for ache and pain. The claim for permanent damage remained unclear and also premature. The claim for emotional suffering was legally unfounded. At least, when considering the specific nature of the case, the act was not principal in causing the child emotional suffering.

B has not found D's and C's legal fees excessive but has, however, stated that he should not, at least, be obligated to compensate the state for C's legal fees, since C had no personal demands against him in this case.

A has denied the charge and has demanded that it be dismissed, and that the state be obligated to compensate to him his legal fees [...], with legal interest.

As a physician who has performed numerous circumcisions, A had the required skills and experience. He had understood the circumcision to be a significant part of B's religion and culture. A had asked B to also call and ask the mother to be present. B had called some number and had said that the mother was not answering. The child's father had assured A

that the circumcision had been agreed on with the mother. A had assumed that both parents shared the same religion and cultural group.

The circumcision had been performed hygienically and using pain killers and had gone completely normally. The father had been given care instructions and a follow-up appointment had been agreed on. A had, furthermore, asked that the father ask the mother to call him concerning the child's treatment. A had arrived for the agreed follow-up appointment, but no-one had let him in.

Under these circumstances, A had not intentionally, using violence, caused damage to the plaintiff's health.

In any event, this was a case of an error in the constituent elements of an offense, as provided for in the Criminal Code Section 4 Subsection 1, or an error that offers relief from liability, as provided for in Section 3. A made an error about the mother giving the procedure her consent.

A has contested the grounds for the claims for compensation. He has, per se, recognized the sum demanded for ache and pain. In regard to permanent damage, A has contested the demand in its entirety, including the amount. No permanent damage was caused. Nor was any emotional suffering, as provided for in the law, caused. The circumcision was integral to the child's religion and culture, at least through the father.

EVIDENCE [list of written evidence and people to be heard]

Testimonies **Plaintiff C** has told the Court that B had addressed the issue of circumcision already before their son D was born. C had immediately said that she objects to it, but B had tried to pressure her into it with all possible means. As a compromise, C had agreed to have their children baptized Catholic. At no stage had she, however, approved the circumcision. B had also threatened with divorce but had then stopped talking about the circumcision, and C assumed that he had accepted the fact.

C had not known about the procedure beforehand. She could have imagined that a doctor would agree to perform it without both parents' consent.

At the time of the incident, C had been at her sister's housewarming party where B was also originally supposed to go, but he had suddenly cancelled saying that his friend was coming to see the baby just then. B had then called in the afternoon saying that he had a surprise for C.

When C went home, B had not let her near the boy to begin with, and had then informed her that now the problem had been solved. This had been a shock to C. When B had forbidden her to call the police, C had taken the boy and gone to a nearby petrol station, from where she had called Emergency Services. The enquiry report described her state of mind at the time.

Due to the procedure, the child's nappy had had to be changed often. The lack of the foreskin had made the child's penis sensitive in that he still complained about it every now and then. C feared that it would come to affect D's sex life and would make him different as compared to other men in Finland.

The entry in A's medical records of what C would have said about her parents was not true and was offensive.

B and C had been together for eight years and have only divorced in December 2011. They had an ongoing dispute over, e.g., the children's place of residence. C had not dared file for divorce earlier, e.g., due to her fear of child abduction. B was a product of his culture, and only knew about being circumcised. It was unfortunately common in Nigeria. B could not have, under any circumstances, been under the impression that C's objecting view had changed. On the contrary, it had grown stronger all the time.

According to B, the circumcision had been important to him because of his religion and other background. However, C had also felt that B had wanted to use this in order to exert power over her and their child.

Simply based on the colour of his skin, D was clearly mixed-race, and the doctor could not have made a mistake about this. The apartment was a student apartment in C's name. There were Finnish books and magazines on display and family photographs.

The telephone number that was mentioned in A's patient records was not C's number.

D was a Finnish citizen. At present, he was not taking part in Nigerian culture in any way and would also continue to live in Finland in future.

Defendant B has told the Court that the circumcision issue was addressed as soon as they found out that the baby that they were expecting was a boy. C had not immediately understood why it should be done. B had explained to her that it was a normal part of a Catholic boy's life. He had, himself, been circumcised when he was eight days old, and it had not caused him any disadvantage.

The issue had been talked about on several occasions, and finally C had accepted it. This had happened approx. two weeks before the circumcision. In September, 2009 they had returned from Berlin where, e.g., B's friend's German wife had explained the issue to C. According to B's understanding, C had not wanted to approve the circumcision to begin with because C's friends would not have approved of it.

C had known that the boy would be circumcised at home on that particular day. She had gone to her sister's party saying that she did not want to be present and to see her child experiencing pain. B had not even known C's sister that well and did not normally even go to such parties.

Once she was back, C had had immediate access to the boy. She had, however, lost her temper and had said that the boy had to be taken to hospital to be checked. B had said that it was not necessary.

B had acted purely in good faith. He loved his children and would never do anything that went against their best interests.

B had got A's telephone number from a friend of his. He had called A, who had explained the procedure and that it required both parents' consent. B had said that this was fine.

The procedure itself had gone professionally and well. The child had cried only a little. The crying was normal and was consistent with the child's age.

The police had arrested B for approx. four days. He had identified A from photographs during interrogations. B had felt that the attitude of the police was an affront to the doctor.

B had taken care of the children a lot at home whilst C was studying. He had spent time with his Nigerian friends in Finland and had introduced Nigerian culture to his children. The family had also spent a month in Nigeria.

Even the Finnish Catholic Mass handbook describes Jesus' circumcision. B felt that it was a procedure that was in the boy's best interest, which he would benefit from when, e.g., boys would compare themselves with each other later on. B had not intended to break Finnish law. He had believed that circumcision was not illegal here, either.

B had participated in the procedure only by bringing a floor lamp for lighting and by holding the boy by his feet on the living room/dining area table.

C had not been in shock after the surgery; she had only lost her temper about whether everything was well in that the child was definitely well. Taking the boy to hospital was a mistake on C's behalf.

B had originally said to C that he wants a divorce if the boy is not circumcised, and this had scared C.

B had told A C's name. He had, however, accidentally given A the wrong telephone number. It had been his friend's Martin's number.

B had not said to C, as written on page 8 of the investigation summary, that "he did what he had to do". This may have been an error in translation.

B had told A that C had agreed to the circumcision. He had not told him about the earlier arguments regarding the circumcision.

A had still asked about this prior to the actual procedure, and B had said that C had not wanted to stay and see her child crying. A had asked B to contact the child's mother and to ask her to come back, nevertheless. B had tried to call C twice but had not managed to get hold of her. When considering what to do, they had concluded that since the mother had approved, they would proceed with the procedure right away.

After the procedure, the child was well in every manner and had no longer cried. The doctor had left Panadol to be given to the child as a pain killer if the child began to cry again. It was agreed that the dressing would be taken off in two days' time. B had given the child the pain killer once after the doctor had left.

A had asked B to ask C to still call him concerning the child's treatment instructions, but she had, however, panicked in the situation. The child had been in good shape and had not cried when C had left the apartment with him.

C had cried for two days after the incident. The issue had, however, been sorted out. They had gone to therapy and they had stayed together for another two years.

The boy's penis was not sore afterwards in that he had not complained about it, nor had the procedure caused him any other permanent damage.

Defendant A has told the court that he graduated and became a doctor from the University of Helsinki in 1975. He had specialised in OB/GYN in 1985, he had done his PhD, and had tenure as a College Lecturer. A had worked as Chief Physician at the Family Federation of Finland since 1997. In addition to this, he had also had his own private practice. In more than 30 years, A had performed approx. 10-40 circumcisions on boys per year, using the same local anaesthetic approx. 5000 times. Earlier, he had also performed circumcisions at his own surgery, but at the moment, he was only performing them at the children's homes.

B had contacted A by telephone. A had come to know that B was Nigerian. A had earlier circumcised very many male children of Nigerian background. In Nigeria, 90% of Christian men, too, were circumcised. In other words, it was an integral part of the culture of the country.

A had already over the telephone asked that both parents be present when the procedure was to be performed. However, only B was present. B had assured A that the mother had given her consent to the procedure. A had no reason to doubt this but he had, nevertheless, asked B to call and ask the mother to be present. B had, in A's presence, made a couple of calls but had said that he could not reach the child's mother. Sometimes, the other parent did not want to be present. They had considered the issue but had decided, then, to continue with the procedure.

Normally, both parents were required to be present in order for the father to hold the child's feet whilst the mother calmed the child down by the child's head. In this case, B seemed so experienced with the child that it could be assumed that the procedure could be done with

only him present. And it had gone as it was supposed to. As usual, the only necessary arrangements were to organise a little additional lighting, after which the procedure could be performed on the child's changing mat, which did not have to be sterile. A had with him the appropriate, sterile instruments, gloves, washing agents, dressing and other needed equipment.

A always used a dentist's anaesthetic equipment, which included a long enough and thin enough needle. The same local anaesthetic was commonly used in gynaecological procedures. With his method, the penis became circularly anaesthetized. It had required eight stitches. They melted away by themselves within 10-12 days. There had been no bleeding problems. The sutures, in general, provided good bleeding control.

A had remained at the apartment for another 20 minutes to make sure that everything was well. After this, they had agreed on a follow-up appointment for two days later in order to take off the plaster and to check the wound. A had given treatment instructions and had given Panadol-suppositories for any possible pain. He had wanted to talk to both parents about the aftercare. The mother had not, however, called A.

A had arrived for the agreed follow-up appointment, but had not been able to get into the apartment. He had later had one telephone conversation with C, which he had quoted in the medical records.

A was aware that both parents' consent was needed for a circumcision. On the other hand, a good patient/doctor relationship required mutual trust in that the doctor can rely on the patient's father's word and the father, for his part, can be confident with what the doctor is doing. A had not known the mother's cultural background but he had not had any reason to doubt B when B said that the procedure had the mother's approval. Similarly, he had had to trust that B truly was the child's father.

There were no official guidelines saying that the consent should be in writing. The Finnish Ministry of Social Affairs and Health work group had consulted A as an expert in 2003 when it had been considering the need for legislation on circumcisions that were performed for non-medical reasons.

General anaesthesia required hospital conditions. However, public health care did not perform circumcisions for non-medical reasons. Private hospitals had also tightened their principles in regard to them. Even international guidelines found local anaesthesia sufficient in these procedures.

The amount of pain that the procedure itself caused was no more than that of a pinprick. When parents were able to distract the child, the child would not necessarily even notice it. The younger the child, the easier the situation; also in regard to the healing. After the local anaesthetic wore off, the child might experience a little pain. The level of pain could be compared to that of a vaccination, albeit there a thicker needle would be used.

There was no medical reason for the child to be admitted into hospital.

Just less than 2000 men in Finland were circumcised for medical reasons annually. In literature, there was conflicting information on the impact of circumcision on a person's sex life and other areas of life. There had also been studies of various quality published. A more extensive study in Denmark showed that circumcision had not caused any changes to the majority of the patients. A did not find that the procedure would cause any particular permanent damage. As for cosmetic damages, that was a matter of opinion.

There would have been no reason for A to harm the child, nor would he have proceeded with the procedure had he known that both parents had not given their consent.

A had assumed that the mother was of the same cultural background. This could not be deduced from the child's skin colour.

A was aware of the 2008 Supreme Court decision, and that in that specific case the child had been a Muslim. He had talked about circumcision with several Nigerians who live in Finland, and did not find it problematic that the child was Christian in this case.

B had not told A the mother's name before the procedure. A normally asked the parents just to write down the child's name and date of birth and their telephone number. He did not ask for ID, but had to trust the information given by the parents, as is the case in health care in general. Nor was he in the habit of interrogating the parents about their religion or other similar issues.

Nothing similar to this had ever happened before. Due to what happened, A had started to require written consent from the parents.

A had charged €200 for the circumcision, of which he had received €160.

According to international research, there were some benefits in the circumcision of boys; the only disadvantage being the possible, very minor, surgery-related risks. The WHO was campaigning on behalf of circumcision as prevention against HIV. It was also considered to have an effect against other STD and the risk of women's cancer.

Witness E has told the Court that he is a Doctor of Medicine and Surgery in Paediatrics. E had worked as a doctor for 30 years, the last 12 of which as Chief Physician at the Turku University Hospital in Finland.

E had given the statement, which is included as Appendix 12 in the preliminary investigation, 28 January 2010.

In practice, the parents' written consent was not asked for in children's surgery. It was, however, required that the surgery had both parents' approval.

E was not aware of how the procedure in question here had been performed in more detail. However, based on the paperwork, it had surely been performed quite well. According to his statement, the shortcomings that E had observed only mainly concerned the environment of the procedure and the required staff and equipment. Preparing for all eventualities was insufficient in those conditions. Surgery should not be performed at home due to the required sterility, alone. There should have been qualified staff to monitor the patient's breathing, blood pressure, pulse, oxygen levels etc. There is always the possibility that the patient might need resuscitation. The local anaesthetization might cause problems, since this was a child that was already capable of moving.

If a circumcision was performed for medical reasons, the only disadvantage in the long run would mainly be of a cosmetic nature.

Performing a surgical procedure required knowledge of the child's medical history as a preliminary measure. It did not require a separate blood test, but it was good to know the child's coagulation status.

Normally, circumcision was outpatient surgery, which included a 2-6 hours follow-up in the ward, but this would be a case of a 5 to 10-year-old child. Circumcision was not performed on a child under the age of 1, unless for a very important reason. For example, penis surgery was performed on a 5-month-old baby at hospital under general anaesthetic, since the child was already so big that otherwise the child would have had to be held down.

E had not performed circumcisions on children under the age of 5 at all at least in the 2000s. Earlier, even smaller children, too, had been circumcised in hospitals.

Bundle-nerve anaesthesia was, as such, a good pain-relief method. E had not, himself, performed circumcisions using local anaesthesia and could not comment on the Citanest anaesthetic that had been used now. General anaesthesia always required hospital conditions. Public health care did not perform circumcisions for non-medical reasons, but according to E's understanding, some private hospitals did perform them.

If the father knew the child's medical history, that was sufficient preliminary information.

Paracetamol was sufficient post-procedure pain relief.

Sometimes, only one of the parents brought the child to the hospital for the procedure. In such cases, the assumption was that both parents had approved the procedure. It was discussed, but the issue was not looked into any further. The patient records indicated the personal details of the guardians. The patient's own information was indicated on their own personal-data from.

Circumcision was a procedure that had to be performed by a doctor. The cosmetic damage was "in the eye of the beholder".

Witness F has told the Court that he is a College Lecturer of Anaesthesiology and Intensive Care. He has worked as a children's anaesthesiologist at the Oulu University Hospital in Finland since 1998.

F had given the statement, which is included as Appendix 13 in the preliminary investigation, 16 March 2010.

The Citanest local anaesthetic was the only possibility in home conditions, and when administered correctly, it was sufficient during the procedure. There must always be the readiness for resuscitation, albeit that according to the manufacturer, any dangerous reaction to it was unlikely. According to textbooks, a substance that contains Prilocaine was not used to anaesthetize extremities, such as a penis. In theory, it could cause, e.g., skin necrosis, which would, however, heal with time. F had not, however, ever seen such an occurrence in a penis; he had in fingers, though. Local anaesthetic could be used in home conditions when administered appropriately. It was possible to monitor a patient's breathing etc. at the same time.

Most patients experienced pain after the procedure, but generally normal anti-inflammatory pain relief was enough.

Circumcision was not known to cause any medical damage afterwards. From a cosmetic viewpoint, the loss of the foreskin was a matter of opinion. According to F's understanding, there was no loss of the sense of touch.

Depending on the viewpoint, the use of a vasoconstrictor anaesthetic could even be a good thing. F had not, himself, ever come across methemoglobinemia, which he had mentioned as a possible risk in his statement.

F had afterwards found out that the recommended dosage of Prilocaine for children was a maximum of 8mg/kg, when in this case the dosage had been under 6mg/kg.

Circumcisions were not performed in public hospitals for non-medical reasons. Private hospitals probably did perform them, albeit that F did not know this for sure.

Regular anti-inflammatory pain relief for a couple days was sufficient for post-procedure pain relief. Paracetamol was a better drug for temperatures.

Witness G has told the court that she has known C as a friend for 10 years.

Even before C's baby was born there had been discussion that if the child was a boy, circumcision was a part of B's culture. C had always had an opposing view to this, since it went against human rights in her view. C was an emotionally strong person and had at no stage changed her opinion about the circumcision.

G had found out about the circumcision in that C had tried to call her and had sent her text messages on the evening that it happened. Since G had already been asleep, she had not heard about it from C until the next day. As soon as G had seen the text messages, she had known that it was about B secretly having their son circumcised. C had been in shock because of it.

The last time G had talked with C about the circumcision must have been in August 2009. She had come to know that it was part of B's religion and culture and that B had threatened C with divorce if the boy was not circumcised.

REASONING OF THE COURT DECISION

Found Guilty of Charges / Dismissal of Charges

PHYSICAL ASSAULT

B has 7 November 2009 in Helsinki, in an apartment at (address), inflicted physical violence upon 4-month-old D in that B has, using A as an intermediary, performed a circumcision on D, which has caused D pain. The circumcision has been performed against D's other guardian's, C's, wish.

The charges against A have been dismissed.

Grounds for Being Found Guilty /Dismissal of Charges

Undisputed Initial Facts

B has hired A to perform a circumcision on his 4-month-old son D. There has been no medical reason for the procedure. It has been performed 7 November 2009 at the B's and C's home. D's mother, C, has informed Emergency Services on the same evening that her son has been circumcised against her will.

Applicable Rule of Law and Legal Practice

Finland does not have legislation concerning circumcision. The Finnish Ministry of Social Affairs and Health set up a work group in 2003 to assess the need for legislation concerning the circumcision of boys for non-medical reasons. Its memo 2003:39 has concluded that these said procedures must be permitted with certain conditions provided for in the law. The work group has drafted a bill that, however, has not gone further.

As per the Criminal Code of Finland, Chapter 21, Section 5, "A person who employs physical violence on another or, without such violence, injures the health of another, causes pain to another or renders another unconscious or into a comparable condition, shall be sentenced for assault". According to Section 6 of the same Chapter, the assault must be considered

aggravated when, e.g., “an edged weapon or other comparable lethal instrument is used and the offence is aggravated also when assessed as a whole”.

The Supreme Court has taken a stand on the circumcision of boys in its decision KKO:2008:93. According to this, the procedure in question had been performed appropriately, it had caused only minor pain and it had not left permanent damage. Since the procedure had been performed for reasons that were acceptable in regard to the child and for reasons related to the child’s and the child’s guardian’s religion, and it had been performed in a medically appropriate manner without causing the child unnecessary pain, the child’s guardian’s actions when organising the circumcision for the child could not be considered to go against the law and, therefore, were not liable to punishment. Since this was a case of a single parent with sole custody, there had been no need to take a stand on what the effect would be on the Court’s deliberation in the event that the parents had differing views on performing the procedure.

Reason for the Procedure

It has been undisputed that there has been no medical reason for D’s circumcision.

B, who is from Nigeria, has explained that the reason for the procedure was that in Nigeria circumcision is a normal part of a Catholic boy’s life.

A, who has performed circumcisions for a long period of time, has pointed out that he has circumcised several other male children who are of Nigerian descent and that in Nigeria, more than 90% of Christian men are also circumcised.

C has also said that the circumcision was important to B because of his religion and other background.

Witness G has confirmed that during conversations with C, she has found out already before the child was born that D’s circumcision was a part of B’s culture.

Based on this, it has been demonstrated that the reasons for D’s circumcision have been his father’s, B’s, religious and cultural reasons, i.e. acceptable reasons, per se, as defined by the aforementioned Supreme Court decision.

The Appropriateness of the Procedure

A, Doctor of Medicine and Surgery, has told the Court that he has performed circumcisions for more than 30 years and has used the same local anaesthetic in them thousands of times. Public health care did not perform circumcisions for non-medical reasons and only very few private hospitals did. Presently, A had performed them regularly at the person’s home. This procedure had gone well, and as per the patient record that A had prepared. Normal, sterile equipment had been used. A had monitored the child for a little while after the procedure, he had given the father the aftercare instructions, the pain killer that might be needed and he had agreed on a follow-up check-up. The pain that the procedure caused was the equivalent of a pinprick, and it did not leave any permanent damage.

B has confirmed that the procedure was performed professionally and that it went well. The child had cried only a little. A had given B some pain killer, which he had, indeed, given to the child once after the doctor had left. It was agreed that the dressing would be removed in two days. Contrary to what C had said, the boy was not in pain afterwards.

In the preliminary investigation, C has said that the boy was content and lying in bed when she came home.

According to the investigation report, the child was awake and was not crying when the ambulance arrived at the petrol station. He had been taken to the Children's Hospital in Helsinki. According to the patient files, the child had been smiling and peaceful. According to the on-call doctor, the dressing on the penis had seemed tight. However, the baby's nappy had been heavy; therefore, the dressing had not prevented urinating. The operated area had looked quite neat. The child had been discharged 9 November 2009 after being monitored, and he had not had any complications afterwards, either.

Paediatric Surgeon, Witness E, has given a written statement in this case and has, at the main court hearing, seen shortcomings in the procedure only in the surroundings of the procedure and in regard to the required staff and the equipment. The procedure itself has, also according to him, most probably gone well. The local anaesthetic that was used was, as such, a good form of pain relief and the drugs that were given were sufficient for any post-operative pain.

Also Witness F, Doctor of Anaesthesiology, has given a written statement. At the main court hearing, he has stated that the local anaesthetic that was used was the only one possible in home conditions and sufficient during the procedure when administered correctly. The patient's breathing and other vital functions could be monitored simultaneously. The reaction caused by the local anaesthetic that was mentioned in the statement was unlikely. Normal anti-inflammatory pain relief was sufficient for aftercare.

According to the statement issued by the Finnish National Supervisory Authority for Welfare and Health, Valvira, A cannot be considered to have acted inappropriately in his duties as a doctor on the basis of performing a circumcision on D for non-medical reasons. Based on E's and F's written statements, Valvira has found that there were minor shortcomings in how the local anaesthetization was performed and the post-operative supervision and pain relief. However, nothing inappropriate was noted in the procedure result itself.

The District Court finds that when E and F were heard at the main hearing, they have further slightly moderated the views that they gave in their written statements on whether there has been any medical inappropriateness in the said circumcision, which they even originally have based mainly on the fact that the procedure was performed in home conditions. In the aforementioned Supreme Court Decision KKO:2008:93, the procedure in question was also performed at the mother's apartment under local anaesthesia.

Based on this, the District Court finds that it has been demonstrated that D's circumcision has been performed in an appropriate medical manner and that appropriate pain relief has been used.

The Other Parent's Consent

As stated in the aforementioned Finnish Ministry of Social Affairs and Health work-group memo 2003:39 and in the Supreme Court Decision KKO:2008:93, when deciding on organising a child's treatment, the provisions of the Act on Child Custody and Right of Access must be applied between the child and the guardian. Section 5 of the said Act provides for collaboration between the parents. According to Subsection 1, "[t]he persons who have custody of a child are jointly responsible for the duties inherent in custody and make the decisions concerning the child together, unless otherwise provided or ordered".

The [Ministry] work-group memo has found that the requirement of the guardians' collaboration in a boy's circumcision becomes emphasised when there is no medical reason for the procedure. The memo further finds that when there is more than one guardian, the circumcision must not be performed if any one of them objects to it.

Valvira has also found in its statement (p. 7/9) that a boy's circumcision for non-medical reasons requires permission from both/all guardians.

The District Court finds that it has, as such, been undisputed between the parties concerned that, as pointed out earlier, D's circumcision has required also C's consent.

B has claimed that after his lengthy persuasion and even threats of divorce, C had finally given her permission for the boy's circumcision.

C has categorically denied this and has said that the secretly-performed circumcision was a total surprise to her and a cause of shock.

Witness G, who has known C for a long time, has told the Court that C has always been against circumcision and that she was an emotionally strong person and she had not, at any stage, changed her view on the issue. G has also confirmed that C was in shock after the incident. C's text messages, which have been submitted as written evidence, to G at the time of the incident have supported this.

According to the investigation report, C has been very upset, tearful and hysterical when met at the petrol station, explaining that her baby boy has been circumcised against her will.

According to the doctor's statement, C has at a post-natal appointment 5 August 2009 quite clearly expressed that she is against ritual circumcision and has also expressed her concern on whether she dares to leave her child in her husband's care, in the event that the procedure was kept secret from her.

C's account is further supported by the patient record prepared by A, in which it is stated that C was very shocked about the circumcision over the telephone.

The fact that the procedure was performed without C's consent has been further supported by the fact that B has scheduled the procedure to a time when he has known that C will not be at home and has then informed A that he cannot reach C by telephone.

Based on this, the District Court finds that it has been proved that the circumcision has been performed without the required consent from the other guardian, C.

B's Intent and Status as Perpetrator

B has explained that, regardless, he has not understood that he has been violating Finnish law when having his son circumcised.

As explained above, it has been proved that C had made it clear to B that she objects to their son being circumcised. A has told the court that he had explained to B from the very beginning that both parents should be present during the circumcision and that, in all events, both parents' consent is needed.

B's claim that even after all of this, he would not have understood the illegal nature of his action is not plausible, also in light of the fact that he has systematically chosen a time for the procedure when he knew that C would not be there and has, quite clearly by simulating telephone calls, misled A in regard to the mother's consent.

In reference to Government Bill HE 44/2002 (p.106), the District Court finds that criminal responsibility requires no more than the awareness that the act is in conflict with legal-order regulations and that it violates legal norms; i.e., it does not require awareness of the liability to punishment, i.e. actual violation of the Criminal Code.

Based on this, the District Court finds that it has been demonstrated that B's actions have not been a "mistake [...] deemed manifestly excusable", as provided for in the Criminal Code, Chapter 4, Section 2.

The Supreme Court has not, in its decision KKO:2008:93, taken a stand as to what the guardian's, who has had the child circumcised, status as perpetrator is in relation to the person who has performed the procedure. The Helsinki Court of Appeal has in its decision of 10 May 2005, number 1417, sentenced the person who commissioned the circumcision for incitement to a crime. In that case, however, the identity of the person who performed the procedure remained unknown. Therefore, there has been no deliberation there on the aspect of deception, which has been brought forward in this case.

It has been demonstrated that B has held the child by his feet during the circumcision. Considering the child's age, this has been natural in this situation and it has not, as such, caused the child any pain. In light of this, B's participation in the performance of the procedure should not be considered to be more than incitement to the actual act. Since A, who performed the procedure, cannot be sentenced for the act due to lack of intentionality, as described hereinafter, the District Court finds that B's actions have been, as described in the Criminal Code Chapter 5, Section 4, an offense through an agent, where he has used another person as an agent and has committed the intentional offense as described in the charge.

Title of the Offense

B has commissioned a circumcision that violates the bodily integrity of a child against the other guardian's will. He is, therefore, in the aforementioned manner, indirectly guilty, as a perpetrator, of the physical assault of the child that was subjected to the procedure.

An instrument that is, as such, comparable to an edged weapon, i.e. a surgical knife, has been used in the procedure. However, when considering the motive and the fact that, as per the said Supreme Court Decision as well as according to the testimony given by the doctors in this trial, no actual permanent damage has been caused; therefore, the act should not be considered an aggravated offense, as a whole.

A's Lack of Intentionality

Physical assault is punishable only when it is intentional.

As described above, the procedure has been performed in an appropriate medical manner, and sufficient pain relief has been used. The illegality of the act has only been based on the fact that it has been done without the other guardian's consent.

A has plausibly explained how B managed to mislead him to believe that the mother had also given the procedure her consent. A has told the Court that he had informed B already during the telephone conversations prior to the procedure that a circumcision requires the presence and the consent of both parents, after which B had assured him that also the child's mother had agreed to it. When A had gone to the couple's apartment at the agreed time, C has not been there, after all. Even then, A has asked B to call C to ask her to be present. B has then pretended to call his wife several times. B has already originally given A the wrong telephone number for his wife. A has arrived for the agreed follow-up appointment, but has no longer been able to get in.

B has not denied any of what A has said in this regard.

Based on this, the District Court finds that A has made an error when he has not conclusively made sure that the procedure has had the mother's consent, but that under the confirmed circumstances, intentional physical assault cannot be concluded from this. This constitutes an error, as provided for in the Criminal Code, Chapter 4, Section 1.

Punishment

The primary intention of the circumcision, the physical assault for which the defendant has been found guilty, has not been to cause the plaintiff pain or to damage his health. It has, however, been performed systematically and with the awareness that the procedure requires the other parent's consent and that she objected to it. In light of this, there are no grounds, as provided for in the Criminal Code, Chapter 6, Section 12, not to sentence B to punishment.

Based on this, B is sentenced to the fines that are described in the judgement, in which the fines have been calculated to correspond to the level of fines that the Helsinki Court of Appeal endorsed in its decision of 10 May 2011, number 1417, in a similar case.

[...]

Damages

D's demands for damages for ache and pain has been based on the intentional criminal offense that B has been guilty of. B has not found the amount of this claim excessive.

The Supreme Court preliminary ruling KKO:2008:93 states that a circumcision that is performed appropriately and professionally does not cause the party concerned health-related or other permanent damage. The witnesses, doctors E and F, as has defendant A, have pointed out here in court that a circumcision does not cause medical problems and that the cosmetic damage, too, is a matter of opinion. Therefore, the claim for damages for permanent damage on D's behalf is dismissed as a claim without grounds.

B has been found guilty of basic physical assault. When also considering the specific nature of the case, the District Court finds that D's bodily integrity or human dignity have not been violated in such a serious manner that would warrant compensation for suffering, as provided for in the Criminal Code, Chapter 5, Section 6. Therefore, this claim is dismissed as a claim without grounds.

[...]

[...]

DEFENDANT

B

JUDGEMENT

CRIMES FOUND GUILTY OF

- 1) Physical Assault 7 November 2009

PUNISHMENT

FINES

Found guilty of 1 crime.

40 day fines, €6 per one day fine, total €240€.

Deduction 12 day fines, as per the Criminal Code Chapter 6, Section 13.

In custody 8-11 November 2009.

Remaining day fines to be paid: 28 day fines, €6 per one day fine, total €168.

SECTIONS OF LAW

- 1) Finnish Criminal Code Chapter 21, Section 5, Paragraph 1
Finnish Criminal Code Chapter 5, Section 4

OBLIGATION TO PAY COMPENSATION

B is obligated to compensate the expenses incurred by the provision of evidence, €94,87.

[...]

[...]

DEFENDANT

A

JUDGEMENT

DISMISSED CHARGES

1) Physical Assault 7 November 2009

[...]