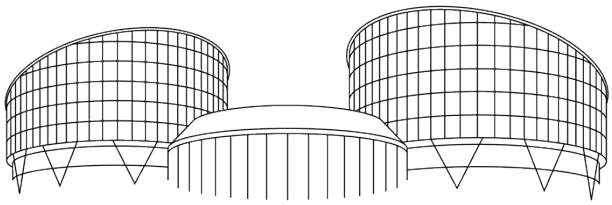

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF JOKITAIPALE AND OTHERS v. FINLAND

(Application no. 43349/05)

JUDGMENT

STRASBOURG

6 April 2010

FINAL

06/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jokitaipale and Others 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,
David Thór Björgvinsson,
Päivi Hirvelä,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 43349/05) 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 three Finnish nationals, Ms Eeva Helena Jokitaipale, Mr Timo Veikko Kiiski and Mr Mikko Juhani Sokero and a Finnish publishing company, Aller Julkaisut Oy ("the applicants"), on 2 December 2005.

2. The applicants were represented by Mr Heikki Salo, 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 applicants alleged, in particular, that their right to freedom of expression had been violated and that the Penal Code provision on the basis of which they had been convicted was not clear enough. Moreover, the total length of the proceedings in their case had been incompatible with the "reasonable time" requirement.

4. On 4 April 2008 the President of the Fourth Section decided to communicate the complaints concerning the length of proceedings, the legality principle and the freedom of expression to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1951, 1963 and 1969 respectively and live in Helsinki. The applicant company is based in Helsinki. The first applicant is the editor-in-chief and the second and third applicants are journalists in the nationwide *7 päivää* magazine which is published by the applicant company.

6. On 4 December 1996 A., the National Conciliator (*valtakunnansovittelija, riksförlikningsmannen*) at the time, and B., his female friend, entered late at night A.'s home where his wife was present. The situation escalated, the police were called and the incident, which subsequently involved also A.'s grown-up children, led to A.'s arrest. Criminal charges were brought against both A. and B. on 18 December 1996. On 16 January 1997 the Helsinki District Court (*käräjäoikeus, tingsrätten*) sentenced A. to a four-month conditional prison sentence for resisting arrest and for criminal damage (*vahingonteko, skadegörelse*), and B. to a fine for assault. On 17 January 1997 the Council of State (*valtioneuvosto, statsrådet*) dismissed A. from his post as National Conciliator. On 25 June 1998 the Appeal Court (*hovioikeus, hovrätten*) upheld the judgment with respect to B. As regards A., the case was discontinued as he had died on 14 May 1998. On 15 December 1998 the Supreme Court (*korkein oikeus, högsta domstolen*) refused B. leave to appeal.

7. On 23 January, 6 February and 13 March 1997 the *7 päivää* magazine published in total four articles about A. and B. Prior to these articles, the identity of B. had been revealed and her picture had been published in the media.

8. The first article published on 23 January 1997 was entitled "*B. broke up A.'s marriage*" and it concerned A.'s marriage and his relationship with B. The article, which covered a whole double page spread, mainly concerned A.'s marriage and it included an interview with his wife. It also mentioned B. by name as well as her age, the name of her workplace, her family relationships and her relationship with A. Moreover, the changes in her career and assignments after the incident of 4 December 1996 which led to the arrest of A., the incident itself as well as the subsequent criminal proceedings and convictions of A. and B. were mentioned in the article. The caption of the article stated that *"A.'s marital problems began eight years ago when B. entered his life".* The article also included pictures of A. and B. as well as of A.'s wife and children. Linked to this article there was, in the same issue, a news clip which was entitled *"B. danced samba without A."*. It contained only a few lines but B.'s name, together with her picture,

and the fact that she was convicted for having assaulted A.'s son were mentioned in the clip. Both items were written by the third applicant and approved by the first applicant. A. and B.'s pictures and statements concerning them were also published on the cover of the magazine.

9. In the next two articles published on 6 February 1997 B.'s name, career, family relationships and her relationship with A. were mentioned together with pictures of her. The articles were written by a journalist, who has lodged a separate application with the Court (see *Soila v. Finland*, no. 6806/06, 6 April 2010), and approved by the first applicant.

10. The fourth article, published on 13 March 1997, was entitled *"B. divorces her husband"*. It mentioned, together with pictures of A. and B., her name, age, assignments, family relationships and her relationship with A. The article described also the incident of 4 December 1996, the subsequent criminal proceedings against A. and B., and their convictions. The caption of the article stated that *"A.'s female friend B. lodged a divorce application with a court"*. The article was written by the second applicant and approved by the first applicant. A. and B.'s pictures and statements concerning them were also published on the cover of the magazine.

11. The first applicant also approved the publishing of all headings and photographs of B.

12. On 28 March 1997 A. and B. requested that criminal investigations be conducted against journalists who had written about the incident of 4 December 1996 and the circumstances surrounding it. On an unspecified date they made such a request with respect to the applicants, claiming that the articles published in *7 päivää* had invaded B.'s privacy.

13. The first applicant was questioned as a suspect on 18 June 1997, the second applicant on 10 July 1997 and the third applicant on 15 August 1997. The applicants had already, before their questioning, drafted written submissions concerning the alleged offences dated as follows: the first applicant on 17 June 1997 and the second applicant on 24 June 1997. The written submission of the third applicant was not dated. The pre-trial investigation was concluded on 25 November 1998 and the matter was transferred for the consideration of the public prosecutor.

14. On 17 August 1999 the public prosecutor decided not to bring charges against the applicants as, according to her, there was no indication of any crime.

15. By letter dated 6 March 2000 B. complained to the Prosecutor-General (*valtakunnansyyttäjä, högsta åklagaren*) about the decisions not to prosecute and asked him to reconsider the cases. On 27 November 2001, after having considered the charges, the Deputy Prosecutor-General requested the public prosecutor to bring charges, *inter alia,* against the applicants. He reasoned his decision by stating, *inter alia*, that the facts revealed in the articles fell within the scope of private life and that no derogation could be made in this case as B. was not a public figure.

16. On 28 November 2001 the public prosecutor, by order of the Deputy Prosecutor-General, brought charges against the first, second and third applicants in Vantaa District Court. At the same time charges were brought also against another journalist (see *Soila v. Finland*, cited above). B. concurred with the charges brought by the public prosecutor. She pursued a compensation claim against all the applicants, together with the other journalist, which was joined to the criminal charges.

17. On 8 November 2002 the court, after having held an oral hearing, first decided to declare all parts of the case file secret for ten years, apart from the applicable legal provisions, the conclusions and the summary of the case. In addition, it ordered that the identity of B. was not to be revealed in the public parts of the case file. As to the merits of the case, the court sentenced the first applicant to pay forty day-fines for invasion of private life and the second and third applicants twenty day-fines, amounting to 4,080 euros (EUR), EUR 960 and EUR 840 respectively. Moreover, the first, the third and the fourth applicants were ordered to pay B. jointly and severally EUR 8,000 plus interest, the first and the fourth applicants, together with the other journalist were ordered to pay B. jointly and severally EUR 4,000 plus interest and the first, the second and the fourth applicants were ordered to pay B. jointly and severally EUR 4,000 plus interest, as non-pecuniary damage. The applicants, together with the other journalist, were jointly ordered to pay B.'s costs and expenses. The applicants paid in total EUR 39,494.95 in fines and compensation.

18. The District Court found that the facts mentioned in the articles were of a kind to which the protection of private life typically applied. The Supreme Court had already found in 2002 that the national television broadcast on 23 January 1997, in which B.'s name had been mentioned twice in the context of an interview with A., had invaded her private life. B.'s position in society was not such that the exception in Chapter 27, section 3(a), paragraph 2, of the Penal Code was applicable. The fact that she was a friend of such a person and that she had been involved in the incident that subsequently led to the dismissal of A. from his post as National Conciliator did not justify revealing her identity. Nor was B.'s conviction of a kind that justified revealing her identity. The Penal Code provision in question did not require that intent to harm be shown; it was sufficient that the dissemination of information about the private life of a person was capable of causing him or her damage or suffering. The applicants, therefore, had had no right to reveal facts relating to B.'s private life or to publish photographs of her.

19. By letter dated 16 December 2002 the applicants appealed to the Helsinki Appeal Court, claiming, *inter alia*, that they had not had a fair trial, that the provision of the Penal Code in question did not define with sufficient clarity which acts fell within its scope, and that the disclosure of a

convicted person's name could not be considered as falling within the scope of private life.

20. On 12 October 2004 the Appeal Court, without holding an oral hearing, upheld the District Court judgment. The court balanced the right to freedom of expression against the protection of private life in the light of the Court's case-law. It found that, according to the preparatory works and the national and the Court's case-law, the facts mentioned in the articles were of a kind to which the protection of private life typically applied. The Supreme Court had already found in 2002 that B. was not a public figure, and the fact that she was a friend of such a person and had been involved in the incident that subsequently led to A.'s dismissal from his post as National Conciliator did not justify revealing her identity. Nor was B.'s conviction of a kind that justified revealing her identity. The fact that B.'s identity as A.'s friend had previously been revealed in the media did not justify the subsequent invasion of her private life.

21. By letter dated 13 December 2004 the applicants applied for leave to appeal to the Supreme Court, reiterating their claims presented to the Appeal Court. Moreover they claimed that, in declaring that the case file should remain secret, the Appeal Court had not given any reasons which would constitute sufficient grounds for the measure, that the length of the proceedings had exceeded a reasonable time, and that the restrictions on freedom of expression were neither necessary nor justified in this case.

22. On 15 August 2005 the Supreme Court refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. Under Chapter 3, section 1 of the Criminal Procedure Act *(laki oikeudenkäynnistä rikosasioissa, lag om rättegång i brottmål*, Act no. 689/1997), a civil claim arising from the offence for which a charge has been brought may be heard in connection with the charge. If such a claim is lodged separately, the provisions on civil procedure apply.

24. The relevant domestic legislation and practice concerning the legality principle and the freedom of expression are outlined in the Court's judgment in *Flinkkilä and others v. Finland* (no. 25576/04, §§ 19-44, 6 April 2010).

III. RELEVANT INTERNATIONAL MATERIALS

25. The relevant international materials are outlined in the Court's judgment in *Flinkkilä and others v. Finland* (cited above, §§ 45-47).

THE LAW

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

26. The applicants complained that the total length of the proceedings in their case had been incompatible with the "reasonable time" requirement as provided in Article 6 § 1 of the Convention, which for its relevant parts reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

27. The Government contested that argument.

A. Admissibility

28. 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

29. The period to be taken into consideration with respect to the first applicant began on 17 June 1997 and with respect to the second applicant on 24 June 1997 when they submitted their written submissions concerning the alleged offences (see *Corigliano v. Italy*, 10 December 1982, § 34, Series A no. 57). The period to be taken into consideration with respect to the third applicant began on 15 August 1997 when he was questioned for the first time. As regards the compensation claims brought against the fourth applicant, the Court notes that neither of the parties has specified on which date these claims were brought and nor can this information be found in the case file. The Court considers therefore that the compensation claims must have been brought at the earliest on 28 November 2001 when the case became pending before the District Court. The proceedings ended on 15 August 2005 when the Supreme Court refused leave to appeal. The proceedings thus lasted with respect to the first and the second applicants about eight years and two months, with respect to the third applicant eight years, and with respect to the fourth applicant over three years and eight months, all for three levels of jurisdiction.

30. 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 (see, among many other

authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

31. The applicants claimed that the length of the proceedings had been excessive, in particular as the duration of the proceedings in such a simple matter had exceeded eight years. It had taken eighteen months for the Office of the Prosecutor-General to decide on charges and that decision had finally been made three years after the pre-trial investigation had been completed. It had taken almost one year and ten months for the Appeal Court to examine the case although no oral hearing had even been held.

32. The Government pointed out that the pre-trial investigation had been conducted rapidly, as it had been completed already on 25 November 1998, but that the consideration of charges had been influenced by the fact that similar cases had been pending before both the Appeal Court and the Supreme Court. As the lower instances had rejected similar charges, the Office of the Prosecutor-General had waited as long as was reasonable for the Supreme Court's decision in the matter but had decided finally to bring charges on 27 November 2001. The case had been somewhat complex owing to the fact that it had been connected to a larger set of cases. There had been reasonable grounds to consider that it had been appropriate to forward all investigation records related to the same set of issues for consideration of charges at the same time. There had been no unnecessary delays in the proceedings imputable to the authorities.

33. 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 *Pélissier and Sassi*, cited above).

34. Having examined all the material submitted to it, the Court considers, as far as the first, second and third applicants are concerned, 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 criminal proceedings was excessive and failed to meet the "reasonable time" requirement. As concerns the fourth applicant, the Court considers that length of the compensation proceedings was not excessive and that the "reasonable time" requirement was thus met.

35. There has accordingly been a violation of Article 6 § 1 in respect of the first, second and third applicants and no violation in respect of the fourth applicant.

II. ALLEGED VIOLATION OF ARTICLES 7 AND 10 OF THE CONVENTION

36. The applicants complained under Article 7 of the Convention that it had not been clear from the Penal Code provision applied that their conduct would have been punishable as the provision had not defined the scope of

private life. Moreover, the conviction of B. could not have fallen within the scope of private life as a conviction for assault could never be a private issue, especially as B.'s case file had not been declared secret. Furthermore, no intent had been shown.

37. The applicants complained under Article 10 of the Convention that the restrictions on their right to freedom of expression had not been prescribed by law and had not been necessary in a democratic society for the protection of the reputation or rights of others. The disclosure of B.'s pictures and the facts mentioned in the articles had not fallen within the protection of private life. She had not been an innocent bystander but had participated actively in the incident of 4 December 1996. The public had a right to know about issues of public interest and the information in the articles had in every respect been correct. The restrictions imposed on the applicants had been grossly disproportionate, especially in view of their obligation to pay very considerable damages.

38. Article 7 reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

39. Article 10 reads as follows:

> "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."

40. The Government contested these arguments.

A. Admissibility

41. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

42. The applicants maintained that the conviction of the applicants and the heavy sanctions inflicted on them had amounted to an interference with their right to freedom of expression which had not been prescribed by law, had had no legitimate aim and had not been necessary in a democratic society.

43. The applicants argued that neither the provision in question, Chapter 27, section 3(a), of the Penal Code, nor the preparatory works had mentioned that the provision would apply to the publication of an accused or convicted person's name. On the contrary, the operative part of a judgment, the legal provisions applied and the name of the convicted person had always been public information according to Finnish law. Citing a convicted person's name in a newspaper had not traditionally been an offence in Finland until 2001 and 2002, when the Supreme Court had come to a different conclusion. However, it did not follow from either the provisions or the preparatory works that publication of a convicted person's name was a criminal offence and it had even been mentioned in the government bill (HE 184/1999) that the general nature of Chapter 27, section 3(a), of the Penal Code might be problematic from the point of view of the legality principle. In Finnish criminal law the use of a legal analogy to the detriment of an accused was prohibited. As the articles in question had been published in January and March 1997 the applicants could not have been able to foresee what the Appeal Court would decide more than six years later. Nor could they have anticipated that the Supreme Court would start assessing these cases differently in 2002.

44. The applicants pointed out that, as B.'s name had appeared in all of the judgments in her criminal case, this public information could not have become retrospectively private. Once somebody's name had become public information, its publication could not be unlawful and could not violate that person's private life. Moreover, B. had not been a passive object of publicity but had participated actively in an incident of public interest. The amount of sanctions imposed on the applicants, including the fines, the compensation

and the legal costs, had been such that this alone constituted a violation of Article 10.

(b) The Government

45. The Government agreed that the conviction of the applicants and the obligation to pay damages and costs had amounted to an interference with their right to freedom of expression.

46. As to the requirement that measures be "prescribed by law" and in compliance with Article 7, the Government pointed out that the impugned measures had had a basis in Finnish law, namely in the Constitutional Act and, in particular, in Chapter 27, section 3(a), of the Penal Code. B.'s name constituted information referred to in the latter provision, which had also separately mentioned a picture, and thus the provision had fulfilled the clarity requirement. At the relevant time the provision had been in force for more than 20 years and it had been interpreted by the Supreme Court, prior to the publication of the impugned article, in precedent cases *KKO 1980 II 99* and *KKO 1980 II 123*. The rules on criminal liability could thus be regarded as having been gradually clarified through judicial interpretation in a manner which had been consistent with the essence of the offence. The liability therefore could have reasonably been foreseen.

47. Moreover, the Guidelines for Journalists and the practice of the Council for Mass Media had restricted the disclosure of a person's name in crime news coverage. Offences were not automatically issues of private life, a fact that had been confirmed by the Supreme Court's precedent in the case *KKO 2005:136*. As B. in the present case had been sentenced to a fine, this sentence had not as such reduced the protection of her privacy. This interpretation was also in line with the Court's case-law (see, for example, *Z v. Finland*, 25 February 1997, § 99, *Reports of Judgments and Decisions* 1997-I, and *P4 Radio Hele Norge ASA v. Norway* (dec.), no. 76682/01, ECHR 2003-VI). The Government thus argued that the applicants must have been aware of the regulations concerning the freedom of expression. In any event, they could have sought legal advice before publishing the article. Accordingly, there was no violation of Article 7 and the interference was "prescribed by law" as required by Article 10 § 2 of the Convention.

48. The Government maintained that the legitimate aim had been to protect B.'s private life, that is, the reputation and rights of others, and that the interference had also been "necessary in a democratic society". Even though B. had been sentenced for an offence and the proceedings had been mainly public, it did not mean that the disclosure of B.'s name as such was lawful. Under Finnish law the fact that information was public did not automatically mean that it could be published. Only persons convicted for aggravated offences and sentenced to imprisonment did not enjoy any protection of identity or private life.

49. The Government pointed out that being A.'s female friend had not as such made her a person in a socially significant position whose right to private life could be narrowed. B.'s conduct had not in any way contributed to any discussion of general interest but had been intended to satisfy public curiosity. Notwithstanding the incident of 4 December 1996 and B.'s subsequent sentence, the information published by the applicants had been of such a nature that it had been covered by the protection of B.'s private life. The events could have been reported without mentioning B. by name. Bearing in mind the margin of appreciation, the Government argued that the interference in the present case had been "necessary in a democratic society".

2. The Court's assessment under Article 10 of the Convention

1. Whether there was an interference

50. The Court agrees with the parties that the applicants' conviction, the fines imposed on them and the award of damages constituted an interference with their right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

2. Whether it was prescribed by law and pursued a legitimate aim

51. As to whether the interference was "prescribed by law", the applicants argued that, at the time of the publication of the articles in question, the citing of a convicted person's name in a newspaper had not been an offence in Finland and that they had not therefore been able to foresee that criminal sanctions could be imposed on them for having published B.'s name. The Government argued that the scope of criminal liability had gradually been clarified through judicial interpretation in a manner which had been consistent with the essence of the offence and with good journalistic practice and that, therefore, the liability could reasonably have been foreseen.

52. The Court notes that the parties agree that the interference complained of had a basis in Finnish law, namely Chapter 27, section 3(a), of the Penal Code. The parties' views, however, are diverging as far as the foreseeability of the said provision is concerned. The Court must thus examine whether the provision in question fulfils the foreseeability requirement.

53. The Court has already noted that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be

unattainable. Again, whilst certainty is highly desirable, it may entail excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30 and mutatis mutandis *Kokkinakis v. Greece*, 25 May 1993, § 40, Series A no. 260-A).

54. As concerns the provision in question, Chapter 27, section 3(a), of the Penal Code, the Court has already found in the *Eerikäinen* case (see *Eerikäinen and Others v. Finland*, no. 3514/02, § 58, 10 February 2009) that it did not discern any ambiguity as to its contents: the spreading of information, an insinuation or an image depicting the private life of another person which was conducive to causing suffering qualified as invasion of privacy. Furthermore, the Court notes that the exception in the second sentence of the provision concerning persons in a public office or function, in professional life, in a political activity or in another comparable activity is equally clearly worded.

55. While it is true that at the time when the articles in question were published, in January and March 1997, there were only two Supreme Court decisions concerning the interpretation of the provision in question, both of which concerned public dissemination of photographs, the Court finds that the possibility that a sanction would be imposed for invasion of private life was not unforeseeable. Even though there was no precise definition of private life in the preparatory works (see government bill HE 84/1974), they mentioned that the necessity of mentioning a person's name or other description enabling identification was always subject to careful consideration. Had the applicants had doubts about the exact scope of the provision in question they should have either sought advice about its contents or refrained from disclosing B.'s identity. Moreover, the applicants, who were professional journalists, could not claim to be ignorant of the content of the said provision since the Guidelines for Journalists and the practice of the Council for Mass Media, although not binding, provided even more strict rules than the Penal Code provision in question.

56. The Court concludes therefore that the interference was “prescribed by law” (see *Nikula v. Finland*, no. 31611/96, § 34, ECHR 2002-II; *Selistö v. Finland*, no. 56767/00, § 34, 16 November 2004 and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X, *Eerikäinen and Others v. Finland*, cited above, § 58). Moreover, it has not been disputed that the interference pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2.

3. Whether the interference was necessary in a democratic society

57. According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic

society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10 of the Convention, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". This freedom is subject to the exceptions set out in Article 10 § 2, which must, however, be strictly construed. The need for any restrictions must be established convincingly (see, for example, *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

58. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I).

59. The Court's task in exercising its supervision is not to take the place of national authorities but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I).

60. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks made by the applicants and the context in which they made them. In particular, it must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient" (see Sunday Times *v. the United Kingdom (no. 1)*, cited above, § 62; *Lingens*, cited above, § 40; *Barfod v. Denmark*, 22 February 1989, § 28, Series A no. 149; *Janowski*, cited above, § 30; and *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I). 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 *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

61. The Court further emphasises the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is

nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Jersild*, cited above, § 31; *De Haes and Gijsels v. Belgium*, 24 February 1997, § 37, *Reports of Judgments and Decisions* 1997-I; and Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III). Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them (see, Sunday Times *v. the United Kingdom (no. 1)*, cited above, § 65). In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313, and Bladet Tromsø *and Stensaas*, loc. cit.).

62. The limits of permissible criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lay themselves open to close scrutiny of their words and deeds by journalists and the public at large, and they must consequently display a greater degree of tolerance (see, for example, *Lingens v. Austria*, cited above, § 42; *Incal v. Turkey*, 9 June 1998, § 54, *Reports of Judgments and Decisions* 1998-IV; and *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236).

63. However, the freedom of expression has to be balanced against the protection of private life guaranteed by Article 8 of the Convention. The concept of private life covers personal information which individuals can legitimately expect should not be published without their consent and includes elements relating to a person's right to their image. The publication of a photograph thus falls within the scope of private life (see *Von Hannover v. Germany*, no. 59320/00, §§ 50-53 and 59, ECHR 2004-VI).

64. In the cases in which the Court has had to balance the protection of private life against freedom of expression, it has stressed the contribution made by photos or articles in the press to a debate of general interest (see *Tammer v. Estonia*, no. 41205/98, §§ 59 et seq., ECHR 2001-I; *News Verlags GmbH & Co. KG v. Austria*, cited above, §§ 52 et seq.; and *Krone Verlag GmbH & Co. KG v. Austria*, no. 34315/96, §§ 33 et seq., 26 February 2002). The Court thus found, in one case, that the use of certain terms in relation to an individual's private life was not "justified by considerations of public concern" and that those terms did not "[bear] on a matter of general importance" (see *Tammer*, cited above, § 68) and went on to hold that there had not been a violation of Article 10. In another case, however, the Court attached particular importance to the fact that the subject in question was a news item of "major public concern" and that the published photographs "did not disclose any details of [the] private life" of the person in question (see *Krone Verlag GmbH & Co. KG*, cited above, § 37) and held that there had been a violation of Article 10.

65. Moreover, one factor of relevance is whether freedom of expression was used in the context of court proceedings. While reporting and commenting on court proceedings, provided that they do not overstep the bounds set out above, contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public, it is to be noted that the public nature of court proceedings does not function as a *carte blanche* relieving the media of their duty to show due care in communicating information received in the course of those proceedings (see Council of Europe Recommendation No. Rec(2003)13 on the provision of information through the media in relation to criminal proceedings; outlined in *Flinkkilä and others v. Finland*, cited above, §§ 45-46). In this connection, the Court notes that the Finnish Guidelines for Journalists, as in force at the relevant time, stated that the publication of a name and other identifying information in this context was justified only if a significant public interest was involved (see *Flinkkilä and others v. Finland*, cited above, § 41).

66. The Court has balanced in its recent case-law the protection of private life against the interest of the press to inform the public on a matter of public concern in the context of court proceedings (see for example *Eerikäinen and Others v. Finland*, cited above; and compare *Egeland and Hanseid v. Norway*, no. 34438/04, 16 April 2009).

67. Turning to the facts of the present case, the Court notes that the applicants were convicted on the basis of the remarks made in two articles in their capacity as journalists or editor-in-chief.

68. The Court observes at the outset that the first article published on 23 January 1997, which was titled "*B. broke up A.'s marriage*", concerned A.'s marriage and his relationship with B. The article, which covered a whole double page spread, mainly concerned A.'s marriage, including also an interview with his wife. Various details about B.'s private life were also mentioned (see paragraph 8 above) as well as the incident of 4 December 1996 and the subsequent criminal proceedings and convictions of A. and B. The article also included pictures of A. and B. as well as of A.'s wife and children. Linked to this article there was a news clip which was entitled *"B. danced samba without A."*. It contained only a few lines but B.'s name, together with her picture, and the fact that she had been convicted for having assaulted A.'s son were mentioned in the clip. Moreover, A. and B.'s pictures and statements concerning them were also published on the cover of the magazine. The fourth article, published on 13 March 1997, which was entitled *"B. divorces her husband"*, mentioned, alongside pictures of A. and B., her name, age, assignments, family relationships and her relationship with A. The article also described the incident of 4 December 1996, the subsequent criminal proceedings against A. and B., and their convictions. In addition, A. and B.'s pictures and statements concerning them were also published on the cover of the magazine.

69. The Court notes that no allegation has been made of factual misrepresentation or bad faith on the part of the applicants. Nor is there any suggestion that details about B. were obtained by subterfuge or other illicit means (compare *Von Hannover v. Germany*, cited above, § 68). The facts set out in the articles in issue were not in dispute even before the domestic courts.

70. It is clear that B. was not a public figure or a politician but an ordinary person who was subject to criminal proceedings (see *Schwabe v. Austria*, 28 August 1992, § 32, Series A no. 242-B). Her status as an ordinary person enlarges the zone of interaction which may fall within the scope of private life. The fact that she was the subject of criminal proceedings cannot deprive her of the protection of Article 8 (see *Sciacca v. Italy*, no. 50774/99, § 28-29, ECHR 2005-I; *Eerikäinen and Others v. Finland*, cited above; and *Egeland and Hanseid v. Norway*, cited above).

71. However, the Court notes that B. was involved in a public disturbance outside the family home of A., a senior public figure who was married and with whom she had developed a relationship. Criminal charges were preferred against both of them. They were later convicted as charged. The Court cannot but note that B., notwithstanding her status as a private person, can reasonably be taken to have entered the public domain. For the Court, the conviction of the applicants was backlit by these considerations and they cannot be discounted when assessing the proportionality of the interference with their Article 10 rights.

72. The Court further observes that the information in the two articles mainly focused on A.'s behaviour and his and his wife's family life. Even though several details of B.'s private life were mentioned, many of which were presented in a gossip-like manner, the information concerning B. was essentially limited to her conviction and to facts which were inherently related to A.'s story. In this respect the case differs from the case of *Von Hannover v. Germany* (cited above, § 72).

73. Moreover, it is to be noted that the disclosure of B.'s identity in the reporting in question had a direct bearing on matters of public interest, namely A.'s conduct and his ability to continue in his post as a high-level public servant. As B. had taken an active and willing part in the events of 4 December 1996, leading to A.'s conviction and dismissal, it is difficult to see how her involvement in the events was not a matter of public interest. Even though the articles in question focused also on other issues than the incident, the Court considers that there was a continuing element of public interest involved also in respect of B. In this connection, the Court also notes that the national authorities reached different conclusions as to whether B. could be considered as having waived her right to privacy when choosing to become involved with a public figure and in being a party to the incident, leading also to her conviction. In the Court's opinion this indicates

that, at least to some degree, the national authorities also considered that the public interest was engaged in the reporting.

74. The Court further notes that the emphasis in the articles was on both A. and B. The events were presented in a colourful manner to boost the sales of the magazine, a fact that becomes apparent from the caption of the articles *("A.'s marital problems began eight years ago when B. entered his life"; "A.'s female friend B. lodged a divorce application with a court"*).

75. The Court, however, observes that, on the other hand, prior to the publication of the articles, the incident of 4 December 1996 and its immediate consequences had been widely publicised and discussed in the media. Thus, the articles in question did not disclose B.'s identity in this context for the first time (see *Eerikäinen and Others v. Finland*, cited above; and *Egeland and Hanseid v. Norway*, cited above).

76. Moreover, the Court notes that the articles were published right after the convictions of A. and B., leading to the dismissal of A. The articles were thus closely linked in time to these events.

77. Finally, the Court has taken into account the severity of the sanctions imposed on the applicants. It notes that the applicants were convicted under criminal law and observes that the first applicant was ordered to pay forty day-fines and the second and third applicants twenty day-fines, amounting to EUR 4,080, EUR 960 and EUR 840 respectively. In addition, the first, the third and the fourth applicants were ordered to pay B. jointly and severally EUR 8,000 plus interest, the first and the fourth applicants, together with the other journalist were ordered to pay B. jointly and severally EUR 4,000 plus interest and the first, the second and the fourth applicants were ordered to pay B. jointly and severally EUR 4,000 plus interest, as non-pecuniary damage. The severity of the sentence and the amounts of compensation must be regarded as substantial, given that the maximum compensation afforded to victims of serious violence was approximately FIM 100,000 (EUR 17,000) at the time (see *Flinkkilä and others v. Finland*, cited above, § 23).

78. It should also be borne in mind that the Supreme Court had already acknowledged that repeating a violation did not necessarily cause the same amount of damage and suffering as the initial violation (see *Flinkkilä and others v. Finland*, cited above, §§ 33-34). The Court notes that B. had already been paid damages of EUR 8,000 for the disclosure of her identity in the television programme (see *Flinkkilä and others v. Finland*, cited above, § 36). Similar damages had been ordered to be paid to her also in respect of other articles published in other magazines which all arose from the same facts (see cases *Tuomela and others v. Finland*, no. 25711/04, 6 April 2010; *Flinkkilä and others v. Finland*, cited above; *Soila v. Finland*, cited above; and *Iltalehti and Karhuvaara*, no. 6372/06, 6 April 2010).

79. The Court considers that such severe consequences, viewed against the background of the circumstances resulting in the interference with B.'s

right to respect for her private life, were disproportionate having regard to the competing interest of freedom of expression.

80. In conclusion, in the Court's opinion, the reasons relied on by the domestic courts, although relevant, were not sufficient to show that the interference complained of was "necessary in a democratic society". Moreover, the totality of the sanctions imposed were disproportionate. Having regard to all the foregoing factors, and the margin of appreciation afforded to the State in this area, the Court considers that the domestic courts failed to strike a fair balance between the competing interests at stake.

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

3. The Court's assessment under Article 7 of the Convention

82. In view of the finding under Article 10 that the interference was in accordance with the law, the Court finds that there has been no violation of Article 7 of the Convention in the present case.

III. REMAINDER OF THE APPLICATION

83. The applicants also complained under Article 6 § 1 of the Convention that the District Court and the Appeal Court had not reasoned their judgments sufficiently, especially as far as the decision declaring the case file secret was concerned. They claimed that the name and photograph of a convicted person were not facts that fell within the scope of private life and that a case could not be declared secret on that basis alone. Moreover, the applicants complained that the Appeal Court had violated the principle of equality of arms as the applicants, in contrast to the public prosecutor and B, had had no access to, nor any possibility to comment on, the Supreme Court's case file in an earlier, related case which had been declared secret and which was quoted in the Appeal Court judgment.

84. As to the earlier Supreme Court's judgment, the Court notes that it had been mentioned in the District Court's judgment and that the applicants had been able to comment on it in their appeal to the Appeal Court. The judgment had been published in an extensive version on the Internet as an official publication. Since the judgment was thus publicly available and it seemed to contain all the relevant information for the applicants to prepare their defence, there is no indication of any violation in this respect. It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

85. As to the reasoning, the Court notes that Article 6 § 1 obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). In general, the reasoning in the District Court's and the Appeal Court's judgments in the present case is

quite extensive. As far as the reasoning concerns the restrictions on freedom of expression, the courts stated in very detailed manner that the facts mentioned in the article were those to which the protection of private life typically applied, that B.'s position in society was not such that the exception for public figures applied to her, and that neither the incident nor the fact that her identity had been revealed earlier led to any other conclusion. Moreover, the Penal Code provision in question did not require any intent to harm to be shown. Therefore the Court finds that the reasoning is acceptable from the standpoint of the fairness requirements of Article 6.

86. As to the reasons for declaring the case file secret, the Court notes that neither the District Court nor the Appeal Court reasoned in any way in their judgments why they considered it necessary to declare the case file secret. However, the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I.). The Court notes that the applicants had full access to the case file together with a reasoned judgment and were not impaired in the exercise of their appeal rights in the absence of any repercussions on fairness requirements. The Court considers that declaring the case file secret, and thereby also the lack of reasoning, had impact neither on the applicants' position as parties to the case nor on the actual fairness of the proceedings. The Court therefore finds that there is no indication of any violation in this respect.

87. It follows that these complaints also must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. In respect of pecuniary damage, the first, second and third applicants claimed reimbursement of the fines they had to pay, that is, EUR 4,080, EUR 960 and EUR 840 respectively. All applicants also claimed reimbursement of the compensation they had to paid to B. as non-pecuniary damage (the first, third and fourth applicants jointly and severally

EUR 8,000 plus interest; the first and the fourth applicants, together with the other journalist, jointly and severally EUR 4,000 plus interest; and the first, second and fourth applicants jointly and severally EUR 4,000 plus interest) as well as her legal costs EUR 5,961 plus interest. They claimed a total amount of EUR 42,098.69 in respect of pecuniary damage. The first, second and third applicants also claimed EUR 5,000 each in respect of non-pecuniary damage, that is, EUR 15,000 in total.

90. The Government pointed out that, as concerned assessment of the pecuniary damage to be awarded, the compensation of EUR 4,000 plus interest paid by the first and the fourth applicants as well as the legal costs, EUR 5,761 instead of EUR 5,961, had been ordered to be paid jointly and severally with the other journalist. The Government left it to the Court's discretion whether the applicants have submitted the necessary documents to support their claims in this respect. As to the non-pecuniary damage, the Government considered that the first, second and third applicants' claims were excessive as to *quantum* and that the award should not exceed EUR 2,000 per applicant and EUR 6,000 in total.

91. 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 to the applicants under that head. Having regard to all the circumstances, the Court awards the applicants jointly EUR 39,000 in compensation for pecuniary damage. Moreover, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the first, second and third applicants EUR 5,000 each in respect of non-pecuniary damage.

B. Costs and expenses

92. The applicants also claimed EUR 5,000 for the costs and expenses incurred before the domestic courts and EUR 3,000 for those incurred before the Court.

93. The Government contested these claims. The Government maintained that no specification related to the costs and expenses as required by Rule 60 of the Rules of Court had been submitted and that no award should therefore be made in this respect. In any event, the total amount of compensation for costs and expenses for all applicants should not exceed EUR 3,500 (inclusive of value-added tax).

94. 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. The Court notes that no documentation, as required by Rule 60 of the Rules of Court, has been submitted within the time allowed. The Court rejects therefore the claims for costs and expenses incurred in the domestic proceedings as well as for those incurred before the Court.

C. Default interest

95. 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

1. *Declares* unanimously the complaints under Articles 6 § 1 (concerning the length of the proceedings), 7 and 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention with respect to the first, second and third applicants and no violation with respect to the fourth applicant;

3. *Holds* by six votes to one that there has been a violation of Article 10 of the Convention;

4. *Holds* unanimously that there has been no violation of Article 7 of the Convention;

5. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, 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 39,000 (thirty nine thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros) to the first, second and third applicants each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

6. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Garlicki is annexed to this judgment.

N.B.
T.L.E.

DISSENTING OPINION OF JUDGE GARLICKI

I am not convinced that there has been a violation of Article 10 in this case. Unlike in the remaining Finnish cases decided today, in which press publications focused primarily upon Mr A. and information about Ms B. was presented as a background to A.'s story, in the Jokitaipale and Others case at least two articles ("B. danced samba without A." and "B. divorces her husband") dealt primarily with the private life of Ms B.

It is clear that Mr A. was a politician (a public figure) and that the public may have had a legitimate interest in being informed about facts concerning his integrity and lifestyle. Imparting such information belongs to the function the press fulfils in a democratic society.

However, Ms B. was a private person and her entry into the realm of public matters was due only to her relationship with A., which led to the unfortunate incident of 4 December 1996. Since our "public figure" doctrine entitles the press to invade the private life of politicians, the press was allowed to provide complete information about those facts and had no alternative but to involve B. as well. So long as information concerning B. constituted an integral element of A.'s story, she could not invoke Article 8 to protect her privacy. She knew that A. was a public figure and she must have been aware that their relationship might – sooner or later – arouse the interest of the press.

But all this did not transform Ms B. into a separate (autonomous) public figure. The application of the "public figure" doctrine to her private life was therefore limited to the facts and events concerning her relationship with A. The very fact that she had an affair with A. could not result in total forfeiture of her privacy. B.'s arrest and conviction, while deserving press coverage, were at the same time not sufficient to deprive her of her status as a private person (see Sciacca v. Italy, no. 50774/99, § 29, ECHR 2005 I).

I agree with the judgment (see paragraph 72) that as long as the information about B. was only limited to facts which were inherently related to A.'s story, she could not rely on protection of privacy. But the concept of "inherently related" information cannot give carte blanche to the press. Publication of articles (clips) whose titles mentioned B. exclusively and which focused on facts concerning her divorce or her samba dancing (without A. being present) cannot, in my opinion, be regarded as "inherently related" to Mr A. In consequence, they cannot be regarded as sufficiently covered either by the "public figure" doctrine or by the concept of "inherently related" information.

Therefore, I am of the opinion that the Finnish courts were right in deciding that those publications were of a kind to which the protection of private life was applicable in the first place.