



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

FOURTH SECTION

CASE OF LAHTONEN v. FINLAND

(Application no. 29576/09)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of Lahtonen v. Finland,

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

Lech Garlicki, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 29576/09) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, Mr Mika Lahtonen (“the applicant”), on 29 May 2009.

2. The applicant was 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 applicant alleged, in particular, that his freedom of expression had been violated under Article 10 of the Convention.

4. On 12 January 2010 the complaint under Article 10 of the Convention was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Helsinki.

6. The applicant is a journalist and the editor-in-chief of a monthly magazine called *Alibi*, which specialises in crime reporting and has a circulation of approximately 32,000. The publisher of *Alibi* is *Yhtyneet Kuvalehdet Oy*.

7. On 29 July 2003 J., a police officer, stopped a person unknown to him on the road and used his police identity card to take possession of the person's car for emergency reasons, as he put it. He then drove off at high speed. After the car appeared to break down, J. tried to acquire another vehicle in the same manner. The persons in the second car turned out to be two police officers in civilian clothing, who were monitoring the traffic. After having threatened the police officers with violence, J. continued towards his destination. His speed alternated between 160 and 185 km/h in a zone where the limit was set at 80 and 100 km/h. At his destination, J. was apprehended by the police and charged with stealing the vehicle and various other offences.

8. Soon after his arrest, J. gave an exclusive interview, for a fee, to a weekly magazine called *7-Päivää*. His real name was not revealed in the interview but his picture (face in profile) was used and the article mentioned that he was, at the time, undergoing involuntary treatment in a mental hospital. J. had also offered an interview to *Alibi* (and the applicant) against payment but the offer was refused by the applicant.

9. On 3 February 2004, in the hearing before the District Court (*käräjäoikeus, tingsrätten*), J. pleaded guilty to most of the charges. The court ordered J., in accordance with his own request, to undergo psychiatric examination to establish whether he was, at the time, criminally responsible for his actions.

10. In the March 2004 edition of *Alibi* an article was published about J. and his case. The article was written by the applicant. The information in the article was based on the public court documents acquired by the applicant from the District Court after the hearing on 3 February 2004. The article included J.'s name, year of birth, some background information about him and his current place of work, details of the incident of 29 July 2003 and information that J. had wished to undergo a psychiatric evaluation before the court's decision was made and that he had been ordered to do so by the court.

11. On 26 May 2004 the Mustasaari District Court found J. guilty of all charges but, because he had been found not to have been criminally responsible for his actions, the court waived the sentence.

12. On 15 April 2004 J. lodged a complaint with the Finnish Council for Mass Media (*Julkisen sanan neuvosto, Opinionsnämnden för massmedier*) about the subject-matter of the case. On 18 August 2004 the Council found that the applicant had violated good journalistic practice by publishing J.'s name and information about his psychological examination. The Council gave the applicant a warning.

13. On 19 September 2004 J. requested the police to investigate whether the applicant had committed an offence of "dissemination of information violating private life" (*yksityiselämää loukkaavan tiedon levittäminen, spridande av information som kränker privatlivet*) on account of his article.

J. also requested the applicant to pay, in addition to his legal fees, 15,000 euros (EUR) in damages for mental suffering caused by the article in question.

14. On 31 December 2004 the public prosecutor decided not to prosecute as he did not find proof or probable cause to support the indictment. He found that a psychiatric assessment and the decision to order a person to undergo such an assessment were integral parts of crime reporting. No further comments about J.'s health had been made in the article. Moreover, when balancing the freedom of expression against the protection of privacy, he agreed that the latter required non-disclosure of J.'s name. However, the reasons for disclosing J.'s name, namely the fact that J. was a police officer, the gravity of the charges against him and the need to clear other local police officers, weighed heavier. No crime had thus taken place.

15. On 23 March 2005 J. lodged a complaint with the Prosecutor General (*valtakunnansyyttäjä, riksåklagaren*) who on 20 July 2006 ordered charges to be brought against the applicant.

16. On 15 June 2007 the District Court convicted the applicant of dissemination of information violating private life and sentenced him to pay 30 day-fines, a total of EUR 1,170, adjusted to his taxable income. In addition, the applicant was ordered to pay J.'s legal fees in the amount of EUR 5,896.21 plus interest. J.'s claim for non-pecuniary damages was dismissed without examining the merits as he had not directed his compensation claim against the publisher of *Alibi, Yhtyneet Kuvalehdet Oy*, who bore the primary responsibility according to the law. The court noted that J. was an experienced police officer whose duties involved the exercise of public power but that he was not of high rank. The crimes had not been committed in office but had taken place during J.'s free time. The judgments convicting J. as well as the information about his lack of criminal liability and wish to undergo psychiatric evaluation were public. However, all public information was not necessarily publishable. The crimes committed by J. had been ordinary and not very serious. On the other hand, the local interest in the case had been so exceptional that it had been reasonable to write about acts committed by J. and about his state of mind. The applicant had been aware of the fact that J. had been mentally ill at the time of the publication. The publication of J.'s name did not strengthen the applicant's journalistic message nor was it well-founded in any other way. J.'s name had not been disclosed in any other publication. The fact that J. had given an interview to the press did not change the outcome of the applicant's case as J. had not been able to evaluate the repercussions of his actions due to his mental illness.

17. Following the applicant's conviction, various media published a story about it, mentioning his name and profession. Some of them also included the applicant's picture. He did not consent to the media reports.

18. By letter dated 12 July 2007 the applicant appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*), claiming, *inter alia*, that the publication of public information could not fall within the scope of Chapter 24, section 8, of the Penal Code and that, in any event, the intention was lacking.

19. On 10 July 2008 the Court of Appeal upheld the lower court's decision. The legal fees to be paid by the applicant were lowered to EUR 4,000 plus interest. The request for non-pecuniary damages was rejected as premature because the compensation claim had not been directed against *Yhtyneet Kuvalehdet Oy*. The court found, in addition to the District Court's reasoning, that a crime was not the perpetrator's private matter. However, J.'s trial had still been pending when the impugned article was published. Due to his mental illness, he had not been able to understand that his acts or trial would attract more publicity than usual. The applicant's act was intentional as he must have known that it was probable that the publication of the information would be conducive to suffering or damage to J.

20. By letter dated 8 September 2008 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds of appeal already presented before the Court of Appeal.

21. On 4 December 2008 the Supreme Court refused the applicant leave to appeal. J. was granted leave to appeal with regard to the question of non-pecuniary damages.

22. On 6 May 2009 the Supreme Court referred the issue of non-pecuniary damages back to the Helsinki District Court for examination as *Yhtyneet Kuvalehdet Oy* had not been summoned as a defendant in the case or been reserved an opportunity to be heard in the matter.

23. On 23 March 2010 the Helsinki District Court found the applicant liable for damages. It ordered the applicant to pay J., jointly with *Yhtyneet Kuvalehdet Oy*, EUR 10,000 plus interest as well as EUR 3,200 for costs and expenses. Moreover, the applicant alone was ordered to pay J. costs and expenses in the amount of EUR 5,728.86. The court found that the publication of J.'s name had caused him and his family mental suffering, especially as his delusions had been mentioned in the article. The article had affected J.'s reputation permanently and it had made it difficult for J. to continue to live a normal life. J. had given an interview to another magazine in which his identity had not been disclosed. Therefore, the fact that he had given the interview did not make his suffering any less. At the time of the interview J. had been mentally ill and was not able to assess the consequences of the interview. J.'s name had been published by the applicant seven months after J. had committed the crimes and during the District Court proceedings.

24. By letter dated 21 April 2010 the applicant and *Yhtyneet Kuvalehdet Oy* appealed against the District Court decision to the Helsinki Court of

Appeal, requesting that the claim for damages be rejected or at least reduced. They contended that the non-pecuniary damage suffered by J. was not due to the applicant's article but the result of the crimes he had committed.

25. On 5 November 2010 the Helsinki Court of Appeal partly accepted the applicant's appeal and ordered him to pay J., jointly with *Yhtyneet Kuvalehdet Oy*, EUR 5,000 plus interest as well as EUR 2,140 for costs and expenses. Moreover, the applicant alone was ordered to pay J. costs and expenses in the amount of EUR 4,200. The court found that information about a person's mental health was sensitive information the publication of which, together with J.'s name, was conducive to causing J. suffering. The applicant's conviction and order to pay non-pecuniary damages to J. did not represent an unreasonable sanction, even bearing in mind that the case concerned an exception to the freedom of expression. The fact that J. had given an interview to a magazine prior to the publication of the impugned article had caused him suffering already. The applicant could be held responsible only for the additional suffering caused to J. thereafter by the impugned article.

26. On an unspecified date all parties to the proceedings appealed to the Supreme Court.

27. On 21 June 2011 the Supreme Court refused leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Constitutional provisions

28. Article 8 of the Constitution of Finland (*Suomen perustuslaki, Finlands grundlag*, Act no. 731/1999) provides that no one shall be found guilty of a criminal offence or be sentenced to a punishment on the basis of a deed, which has not been determined punishable by an Act at the time of its commission. The penalty imposed for an offence shall not be more severe than that provided by an Act at the time of commission of the offence.

29. Article 10 of the Constitution guarantees everyone's right to private life. According to it,

“Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act.

The secrecy of correspondence, telephony and other confidential communications is inviolable.

Measures encroaching on the sanctity of the home, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, may be laid down by an Act. In addition, provisions concerning limitations of the secrecy of communications which are necessary in the investigation of crimes that

jeopardise the security of the individual or society or the sanctity of the home, at trials and security checks, as well as during the deprivation of liberty may be laid down by an Act.”

30. Article 12 of the Constitution concerns the freedom of expression and provides the following:

“Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.”

Penal Code

31. Chapter 24, section 8, of the Penal Code (*rikoslaki, strafflagen*; Act no. 531/2000) reads as follows:

“*Dissemination of information violating private life*: A person who unlawfully (1) through the use of the mass media, or (2) in another manner publicly spreads information, an insinuation or an image of the private life of another person, such that the act is likely to cause that person damage or suffering, or subject that person to contempt, shall be convicted of injuring personal reputation and sentenced to a fine or a maximum term of two years’ imprisonment.

The spreading of information, an insinuation or an image of the private life of a person in politics, business, public office or a public position, or in a comparable position, shall not constitute injury to personal reputation, if it could affect the evaluation of that person’s activities in the position in question and if it is necessary for the purposes of dealing with a matter of importance to society.”

32. According to the *travaux préparatoires* (see government bill HE 184/1999), the content of this provision corresponds to the former Chapter 27, section 3(a), of the Penal Code. The amendments and clarifications made to the existing provision were mainly technical. The provision thus still restricts the protection of the private life of persons exercising important political or economic powers. Functions in respect of which the protection of private life is narrower in scope under paragraph 2 include political functions, business functions and public functions or duties. The matter must have social significance. This restriction, however, applies only to the persons referred to, not to their close friends and family. According to the Parliamentary Law Committee’s Report (*lakivaliokunnan mietintö, lagutskottets betänkande* LaVM 6/2000), the purpose of that provision is to permit the dissemination of information on the private life of such persons if the information may be relevant in assessing the performance of their functions.

33. The government bill HE 184/1999 further provides that in the assessment of interferences with private life, the lawfulness of the interference and the concept of private life are taken into account. The publicity of a document does not automatically give the right to present in the mass media information concerning one's private life included in the document. A person's consent to the provision of information has relevance in the assessment of the lawfulness of the interference. Without explicit consent, there is usually no reason to believe that the person in question would have consented to the publication of information relating to private life (see Parliamentary Law Committee's Report LaVM 6/2000). Moreover, private life is, in particular, protected against dissemination of information which may be correct as such. In order for the act to be punishable, it is necessary that the information concerns the private life of the person in question (see government bill HE 184/1999). With regard to the concept of private life, a reference is made to the explanatory works concerning the Constitutional provisions on fundamental rights and to the government bill HE 84/1974.

34. In the *travaux préparatoires* concerning the former Chapter 27, section 3(a), of the Penal Code (see government bill HE 84/1974), there was no precise definition of private life but matters such as, *inter alia*, family life, spare time activities, health and relationships and such conduct in socially significant positions that had no significance to the relevant exercise of power, were considered as a part of private life. It was further required that the act might have caused damage or suffering. Such damage might have also been "immaterial damage, which might have manifested itself in problems with social interaction or respect". An ordinary person enjoyed the strongest protection of private life. His or her involvement in an incident of importance to society might have warranted an exception to the protection. In any case, if an offence was of such a kind that it could not be regarded as having social significance, it was a matter to be protected as belonging to the sphere of private life, otherwise the protection of private life did not restrict publishing. Moreover, the publishing could not be to a greater extent than was necessary. Thus, the necessity of mentioning a person's name or other description of a person enabling identification was always subject to careful consideration.

Provisions concerning publicity

35. The Act on the Openness of Government Activities (*laki viranomaisten toiminnan julkisuudesta, lagen om offentlighet i myndigheternas verksamhet*; Act no. 621/1999) contains provisions on the right of access to official documents in the public domain, officials' duty of non-disclosure, document secrecy and any other restrictions of access that are necessary for the protection of public or private interests, as well as on

the duties of the authorities to achieve the objectives of the Act. However, there are specific provisions that apply to court hearings.

36. According to section 22 of the Act on the Publicity of Court Proceedings in General Courts (*laki oikeudenkäynnin julkisuudesta yleisissä tuomioistuimissa, lagen om offentlighet vid rättegång i allmänna domstolar*; Act no. 370/2007), the court decisions are public unless the court orders that they be kept secret. The parties and the public have the right to be present when the decisions are pronounced.

37. According to the preparatory works of the Act (see government bill HE 13/2006),

“... the case files are to a large extent public and the publicity does not limit itself to publicity of oral hearings. On the other hand, in Finland the publicity of the case files does not automatically mean that all public documentation could as such, for example, without invading privacy, be published in the media. This right of the media to publish is limited not only by its self-regulation but also for example by the provisions of the Penal Code concerning the protection of privacy. It can, thus, be said that publicity is wider and the control of the protection of privacy is done mostly retrospectively. It is for the media themselves to consider which of the public documentation they shall publish.”

Provisions concerning liability

38. Section 39 of the Freedom of the Press Act (*painovapauslaki, tryckfrihetslagen*; Act no. 1/1919), as in force at the relevant time, provided that the provisions of the Tort Liability Act applied to the payment of compensation for damage caused by the content of printed material.

39. Chapter 5, section 6, of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*, Act no. 412/1974, as amended by Act no. 509/2004), stipulates that damages may also be awarded for distress arising, *inter alia*, from an offence against liberty, honour, home or private life. Under Chapter 5, section 1, of the said Act, damages shall constitute compensation for personal injury and damage to property. Section 2 provides that a person who has suffered personal injury shall be entitled to damages to cover medical costs and other costs arising from the injury, as well as loss of income and maintenance and pain and suffering.

40. According to the government bill to amend the Tort Liability Act (HE 116/1998), the maximum amount of compensation for pain and suffering from, *inter alia*, bodily injuries had in the recent past been approximately FIM 100,000 (EUR 16,819). In the subsequent government bill to amend the Tort Liability Act (HE 167/2003, p. 60), it is stated that no changes to the prevailing level of compensation for suffering are proposed. In the recommendation of the Personal Injury Advisory Board (*Henkilövahinkoasiain neuvottelukunta, Delegationen för personskade-ärenden*) in 2008, compensation awards for distress in defamation cases can go up to EUR 10,000 and in cases concerning dissemination of information

violating personal privacy up to EUR 5,000. On the other hand, the maximum award for, for example, attempted manslaughter, murder or killing varies between EUR 3,000 and EUR 5,000.

Self-regulation of journalists

41. The Union of Journalists in Finland (*Suomen Journalistiliitto, Finlands Journalistförbund ry*) publishes Guidelines for Journalists (*Journalistin ohjeet, Journalistreglerna*) for the purposes of self-regulation. The 1992 Guidelines were in force at the material time and provided, *inter alia*, that matters falling in the sphere of private life, being detrimental to the relevant party or his or her near relative, should not be published unless the matters were of general significance (Article 24). The principles concerning the protection of an individual also apply to the use of information contained in public documents or other public sources. Information being public does not always mean that it is freely publishable (Article 29).

42. New Guidelines came into force in 2005, which noted that when publishing public material regard must be had to the protection of private life. Highly delicate information relating to one's personal life may only be published with the consent of the person in question, or if such matters are of considerable public interest (Article 27).

43. Also the Council for Mass Media (*Julkisen sanan neuvosto, Opinionsnämnden för massmedier*), which is a self-regulating body established in 1968 by publishers and journalists in the field of mass communication and whose task it is to interpret good professional practice and defend the freedom of speech and publication, has issued a number of resolutions and statements, *inter alia*, in 1980 and 1981. The former concerned the content of private life and the latter disclosure of names in crime news coverage.

44. In its statement of 1980, the Council for Mass Media stated, *inter alia*, that the protection of private life applies, in principle, to all citizens. The greater and more profound social implications a matter has, the more important it is to be able to publish information thereon. The Council divided persons into three groups as to the level of protection of identity: (1) persons exercising political, economic or administrative power; (2) other public persons, for example in the sectors of entertainment, sports, arts or science; and (3) ordinary citizens. The Council noted that the protection of identity is narrowest for group 1 and most extensive for group 3. However, this scale was not to be used formally but the extent of protection should be interpreted on a case by case basis. A person's position had a great significance in determining the protection of private life but that alone could not be considered as a decisive factor. The significance of a matter also had an important impact. The conduct of a well-known person appearing in public in connection with his or her professional tasks or public role does

not as such belong to such person's protected sphere of private life. On the contrary, information concerning lifestyle does normally belong to such person's sphere of private life even though his or her sphere of protection is narrower than that of an ordinary citizen. In some cases information concerning a person's lifestyle can be closely connected to his or her professional tasks in a way that its publication is justified. It is required, however, that the matter in question does have considerable general significance. Also, the publishing should not extend further than is necessary for the consideration of the matter. Finally, it is in accordance with good journalistic practice to see to it that the publishing does not cause undue suffering for the person in question or for his or her relatives.

III. RELEVANT INTERNATIONAL MATERIALS

45. On 10 July 2003 the Committee of Ministers of the Council of Europe adopted Recommendation No. Rec(2003)13 on the provision of information through the media in relation to criminal proceedings. In points 1, 2 and 8 of the principles appended to the recommendation, it stated as follows:

“The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.

Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

46. The applicant complained under Article 10 of the Convention that there had been no pressing social need to interfere with his right to freedom of expression and that his conviction and sentence had not been proportionate to the accepted aims of limiting the freedom of expression.

47. Article 10 of the Convention 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.”

48. The Government contested that argument.

A. Admissibility

49. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

50. The Government agreed that there had been an interference with the applicant's freedom of expression but maintained that this interference was prescribed by law, namely by Chapter 24, section 8, of the Penal Code, and pursued the legitimate aim of protecting the reputation or rights of others, namely J.'s privacy.

51. As to the necessity, the Government pointed out that the applicant was only convicted for having published J.'s name and his psychological condition, all this information being public. However, the fact that

information was public did not mean that it could be published. The domestic courts found that J. was a senior police officer whose duties involved the exercise of public power. However, the crimes had taken place during his free time. On the other hand, the local interest in the case had been so exceptional that it had been reasonable to write about the acts committed by J. and about his state of mind. The applicant had been aware of the fact that J. had been mentally ill at the time of the publication. The domestic courts found that the publication of J.'s name did not strengthen the applicant's journalistic message nor was it well-founded in any other way. His name was mentioned about 50 times and was thus not a mistake. J.'s name had not been disclosed in any other publication. The fact that J. had given interviews to the press did not change the outcome of the present case as he had not been able to evaluate the repercussions of his actions due to his mental illness.

52. In the Government's view the circumstances of the present case were not a matter of public interest. The domestic courts and the Council for the Mass Media reached the same conclusion. The applicant had thus not shown any adequate ground for publication of the information. The published information consisted of facts only, but the information given was very detailed. This information fell thus within the scope of protection of J.'s private life. Moreover, the publication of this private information took place before J. was convicted. The published article reached about 100 readers in J.'s home town and about 25,000 readers in the whole country. The potential damage to J.'s reputation was thus not limited. As to the sanctions imposed on the applicant, the issue of civil liability of the applicant was still pending before the Court of Appeal and the issue of proportionality of this sanction could thus not yet be assessed. In the Government's view the proportionality should only be assessed in respect of the applicant's conviction. The interference with the applicant's right to freedom of expression was thus proportionate to the legitimate aim pursued.

53. The applicant maintained that there had been an interference with his freedom of expression and that the conditions in Article 10 § 2 of the Convention had not been fulfilled. The article could not violate Chapter 24, section 8, of the Penal Code as it only included public information obtained from the District Court's registry and from J.'s legal representative who had disclosed J.'s degree of responsibility and request to undergo psychiatric examination. There was very little case-law on the publication of a defendant's name. The Supreme Court had found in one of its precedent cases that the publication of a convicted criminal's name in a magazine did not violate his or her privacy but this matter needed to be assessed on a case by case basis. The applicant claimed that normally such information did not enjoy any protection but was considered to be public. There were no exceptions concerning police officers. It only became known in spring 2010 that J. had in fact resigned from his post in 2004.

54. As to the necessity, the applicant pointed out that there had probably never been any other comparable criminal case in which a police officer had been the defendant. The Council for the Mass Media never stated in its decision that there was no public interest involved. In any event, according to the Council's own statement in 2002, the self-regulation proceedings before it could not be used as a basis for charges or conviction. If that were the intention, the Council would refrain from giving a decision. In the present case, J.'s counsel had assured the Council that J. did not envisage initiating any criminal proceedings against the applicant, which in the end was not the case. The applicant agreed with the Government that the proportionality of the sanction imposed on him should not yet be assessed because the issue of his civil liability was still pending before the Court of Appeal.

2. The Court's assessment

1. Whether there was an interference

55. The Court agrees with the parties that the applicant's conviction, the fines imposed on him and the award of damages constituted an interference with his 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

56. As to whether the interference was "prescribed by law", the Court notes that the parties seem to agree that the interference complained of had a basis in Finnish law, namely Chapter 24, section 8, of the Penal Code. The parties' views, however, diverge 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.

57. The Court has already noted that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the individual 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 a question 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).

58. As concerns the provision in question, Chapter 24, section 8, 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), in which the earlier provision of the Penal Code was at stake, and in the *Reinboth* case (see *Reinboth and Others v. Finland*, no. 30865/08, § 71, 25 January 2011), 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 an invasion of privacy. Furthermore, the Court notes that the exception in the second sentence of the provision concerning persons holding a public office or function, or involved in professional life, a political activity or in another comparable activity is equally clearly worded (see *Flinkkilä and Others v. Finland*, no. 25576/04, § 66, 6 April 2010, in respect of the earlier provision; and *Reinboth and Others v. Finland*, cited above, § 71).

59. While at the time when the article in question was published, in March 2004, there were several Supreme Court decisions concerning the interpretation of the provision in question, all of which concerned different aspects of private life, 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 bills HE 84/1974 and HE 184/1999), these works mentioned that the necessity of mentioning a person's name or other description of a person enabling identification was always subject to careful consideration. Had the applicant had doubts about the exact scope of the provision in question, he should have either sought advice about its content or refrained from disclosing J.'s identity. Moreover, the applicant, who was a professional journalist, 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 stricter rules than the Penal Code provision in question.

60. 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; *Karhuvaara and Itälehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X; *Eerikäinen and Others v. Finland*, cited above, § 58; *Flinkkilä and Others v. Finland*, cited above, § 68; and *Reinboth and Others v. Finland*, cited above, § 73). In addition, 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

61. 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).

62. 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).

63. 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).

64. 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, Series A no. 30; *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).

65. 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 Gijssels 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). This duty extends to the reporting and commenting on court proceedings which, provided that they do not overstep the bounds set out above, contribute to their publicity and are thus consonant with the requirement under Article 6 § 1 of the Convention that hearings be public (see *Egeland and Hanseid v. Norway*, no. 34438/04, § 49, 16 April 2009). 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.).

66. The limits of permissible criticism are wider as regards a politician 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).

67. The Court reiterates that civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than is the case for private individuals. However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the same extent as politicians and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions (see *Nikula v. Finland*, cited above, § 48).

68. The freedom of expression has to be balanced against the protection of private life guaranteed by Article 8 of the Convention (see *Mosley v. the United Kingdom*, no. 48009/08, § 115, 10 May 2011; and *Kasabova v. Bulgaria*, no. 22385/03, § 60, 19 April 2011). 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).

69. 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 photographs or articles in the press to a debate of general interest (see *Tammer v. Estonia*, no. 41205/98, §§ 59 et seq., ECHR 2001-I;

New 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. In a group of Finnish cases the Court found that a private person could, by her behaviour, be taken to have entered the public domain and that the disclosure of her identity in a newspaper report had a direct bearing on matters of public interest (see *Flinkkilä and Others v. Finland*, cited above, §§ 83 and 85; *Tuomela and Others v. Finland*, no. 25711/04, §§ 56 and 58, 6 April 2010; *Jokitaipale and Others v. Finland*, no. 43349/05, §§ 71 and 73, 6 April 2010; *Soila v. Finland*, no. 6806/06, §§ 68 and 70, 6 April 2010; and *Iltalehti and Karhuvaara v. Finland*, no. 6372/06, §§ 60 and 62, 6 April 2010). The Court found a violation also in these cases.

70. Also of relevance for the balancing of competing interests which the Court must carry out is the fact that under Article 6 § 2 of the Convention a person has a right to be presumed innocent of any criminal offence until proved guilty (see *Bladet Tromsø and Stensaas v. Norway* [GC], cited above, § 65).

71. Turning to the facts of the present case, the Court notes that the applicant was convicted on the basis of disclosure of private details made in the impugned article in his capacity as an editor-in-chief and that he, together with the publishing company, was ordered to pay damages and costs.

72. The Court observes at the outset that the impugned article described the details of the incident of 29 July 2003 and it included J.'s name, year of birth, some background information about him and his current place of work. The information in the article was based on the public court documents acquired by the applicant from the District Court after the hearing on 3 February 2004. It also stated that J. had wished to undergo a psychiatric assessment before the court's decision was made and that he had been ordered to do so by the court.

73. The Court notes that these facts were presented in an objective manner. There is no evidence, or indeed any allegation, of factual misrepresentation or bad faith on the part of the applicant. Nor is there any suggestion that details about J. 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.

74. It is clear that J. was an experienced police officer whose duties involved the exercise of public power. The offences were not committed in office but in J.'s free time. However, he had used the authority of his public function to commit the offences. Criminal charges were preferred against him and he was later convicted as charged but the sentence was waived due to his mental illness. The Court notes that even though the offences committed as such might appear ordinary, it was very rare for such offences to be committed by a police officer.

75. The Court further observes that the impugned article focused on explaining the course of the events as they had been recounted by J. during the pre-trial investigation. This information was public. No details of J.'s private life were mentioned, except his name and the fact that he had wished to undergo a psychiatric assessment before the court's decision was made and that he had been ordered to do so by the court. Practically the same information was given by J. in the course of an interview given to another magazine.

76. Moreover, it is to be noted that the disclosure of J.'s identity in the reporting had a direct bearing on matters of public interest, namely his conduct and his ability to continue in his post as a police officer. As J. was a police officer, it is difficult to see how his acts, even if committed during his free time, were not a matter of public interest. Therefore, the Court considers that there was a continuing element of public interest involved in the reporting.

77. The Court further notes that the emphasis in the article in question was clearly on J.'s account of the course of events. There was hardly any comment made by the applicant in the article. Even though the article was written and published before J.'s conviction, the reporting and commenting on his court proceedings were objective and irreproachable from the point of view of Article 6 § 2 of the Convention.

78. Finally, the Court has taken into account the severity of the sanctions imposed on the applicant, including the issue of civil liability which has meanwhile become final (see paragraph 27 above). The applicant was convicted under criminal law and was ordered to pay thirty day-fines, amounting to EUR 1,170. In addition, he was, together with the publishing company, ordered to pay damages to J. in a total amount of EUR 5,000 plus interest and his legal fees amounting to EUR 2,140. Moreover, the applicant alone was ordered to pay J. costs and expenses in the amount of EUR 4,000 and EUR 4,200. 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 paragraph 40 above).

79. The Court would observe in this connection that recourse to criminal sanctions in order to punish media professionals who publish newspaper reports which are found to invade an individual's privacy is not, as such, incompatible with Article 10 of the Convention. However, it is only in exceptional circumstances that such sanctions can be justified (see *Saaristo and Others v. Finland*, no. 184/06, § 69, 12 October 2010; and *Yleisradio Oy and Others v. Finland* (dec.), no. 30881/09, 8 February 2011; as regards defamation and insult, see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 59, ECHR 2007-IV; and *Długolecki v. Poland*, no. 23806/03, § 47, 24 February 2009). No such exceptional circumstances exist in the present case.

80. The Court considers that such severe consequences, viewed against the background of the circumstances resulting in the interference with J.'s right to respect for his private life, were disproportionate having regard to the competing interest of freedom of expression.

81. 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 was disproportionate. Having regard to all the foregoing factors, and notwithstanding 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.

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

II. REMAINDER OF THE APPLICATION

83. The applicant also complained under Article 7 of the Convention that he had been convicted although a defendant's name was public information by law and publishing public information was not criminalised according to the Penal Code.

84. Having regard to the case file, the Court finds that the matter complained of does not disclose any appearance of a violation of the applicant's rights under the Convention. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed EUR 5,650 in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

87. The Government noted that the applicant had failed to submit any documents supporting the actual payment by him of the amounts claimed in respect of pecuniary damage. The Government left it to the Court’s discretion to decide whether the applicant should be reimbursed the pecuniary damages claimed even in part. As to non-pecuniary damage, the Government noted that the applicant’s claim included also Article 7 complaints in respect of which the case had not been communicated. The Government found the claim for non-pecuniary damage too high as to quantum and considered that the compensation awarded should not exceed EUR 1,500.

88. 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 applicant under that head. Having regard to all the circumstances and to the documents in its possession, the Court awards the applicant EUR 5,650 in compensation for pecuniary damage. Moreover, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

89. The applicant also claimed EUR 8,135.20 for the costs and expenses incurred before the domestic courts and EUR 4,412.50 for those incurred before the Court.

90. The Government noted that expenses such as photocopying and postage should not be reimbursed at all as they were already included in counsel’s fee. Moreover, the applicant had failed to specify in the invoices the measures performed, the hours taken for each measure and the cost of each measure. Some of the costs were paid jointly with the publishing company which was not party to the present case. The applicant had failed to submit any supporting information as to how the legal costs between him and the publishing company had been divided and who had actually paid them. In the Government’s view this head should be rejected, or at any rate, the total amount for costs and expenses should not exceed EUR 4,000 inclusive of value-added tax.

91. 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 are reasonable as to quantum. In the present case, regard being had to the above criteria, the Court rejects the claims under all heads as it is unable to verify, on the basis of the documents in its possession, whether the applicant has actually paid these costs and expenses or not.

C. Default interest

92. The Court considers it appropriate that the default interest rate 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 UNANIMOUSLY

1. *Declares* the complaint concerning Article 10 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,650 (five thousand six hundred and fifty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President