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

FOURTH SECTION

CASE OF KARHUVAARA AND ILTALEHTI v. FINLAND

(Application no. 53678/00)

JUDGMENT

STRASBOURG

16 November 2004

FINAL

16/02/2005

In the case of Karhuvaara and Iltalehti v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 February, 1 June and 26 October 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 53678/00) 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 Pekka Karhuvaara, and by a Finnish publishing company, Kustannusosakeyhtiö Iltalehti ("Iltalehti"), a limited liability company based in Helsinki, on 20 November 1999.

2. The Finnish Government ("the Government") were represented by their Agent, Mr A. Kosonen, Director at the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that their conviction for infringement of privacy and the order to pay damages violated Article 10 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. A hearing on admissibility and the merits took place in public in the Human Rights Building, Strasbourg, on 10 February 2004 (Rule 59 § 3).

6. By a decision of 1 June 2004, the Chamber declared the application partly admissible (Rule 54 § 3).

There appeared before the Court:

(a) *for the Government*

Mr A. KOSONEN, Director, Ministry of Foreign Affairs *Agent*,
Mr I. HANNULA, Counsellor of Legislation,
Mrs L. LEIKAS, Legal Officer, *Advisers*;

(b) *for the applicant*
Mr M. WUORI, Advocate, *Counsel*,
Mr R. RYTI, Advocate, *Adviser*.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1954 and lives in Helsinki, Finland. The second applicant ("the applicant company") is a limited liability company based in Helsinki.

8. The applicant company publishes a newspaper called *Iltalehti* which has a circulation of approximately 120,000. On 31 October 1996 it published an article on a criminal trial concerning the drunken and disorderly behaviour, including an assault on a police officer, of Mr A., a lawyer practising in Seinäjoki. The article bore the title "His wife [is] the chairperson of the parliamentary Committee for Education and Culture – Lawyer from Seinäjoki hits policeman in restaurant" ("*Vaimo eduskunnan sivistysvaliokunnan puheenjohtaja – Seinäjokelainen asianajaja iski poliisia ravintolassa*").

Follow-up articles were published on 21 November and 10 December 1996 concerning the verdict whereby the defendant was convicted and sentenced to six months' suspended imprisonment. It was reported that the defendant was the husband of Mrs A., a member of the Finnish parliament and the chairperson of its Committee for Education and Culture. The headline on 21 November read "... Husband of member of parliament hits policeman in restaurant" ("*... Kansanedustajan aviomies löi poliisia ravintolassa*"). The heading on 10 December 1996 read "... Husband of member of parliament receives harsh sentence for violence in restaurant" ("*... Kansanedustajan miehelle kova tuomio ravintolassa riehumisesta*").

9. The trial of Mr A. had been widely publicised and discussed locally, and the role of Mrs A. – who was in no way involved in the criminal proceedings – had become the subject of, *inter alia*, political satire in a programme ("*Iltalypsy*") broadcast on the main national television channel.

10. In April 1997 Mrs A., who did not dispute the facts as presented by *Iltalehti*, instituted proceedings against the applicants and two of the journalists involved on the grounds that the reporting by *Iltalehti* had been libellous and had invaded her privacy. She requested that the respondents be punished for invasion of privacy and defamation, and claimed compensation

for non-pecuniary damage caused by the articles. Moreover, she relied on section 15 of the Parliament Act then in force (*valtiopäiväjärjestys, riksdagsordningen*) which stipulated that members of parliament as well as parliamentary officials were to enjoy special protection in the performance of their duties and for the duration of parliamentary sessions. Criminal offences, in the form of words or physical acts, that violated the rights of members of parliament or officials while Parliament was in session, or subsequent physical violence, were to be regarded as being committed in particularly aggravating circumstances. According to Mrs A., this provision was applicable both in relation to the criminal charges and in determining the amount of damages in her case. She argued that the articles had caused her particular suffering as she had been publicly associated with a criminal act that was in no way connected to her person or function as member of parliament.

11. As editor-in-chief of *Iltalehti* the first applicant, Mr Karhuvaara, admitted to being superficially aware of the type of material published but denied any detailed prior knowledge of the specific material in question. According to section 32 of the Freedom of the Press Act then in force (*painovapauslaki, tryckfrihetslag*; 1/1919, replaced by Act no. 460/2003 in 2004), an editor-in-chief was ultimately responsible for any original material published in his newspaper or periodical, regardless of whether he had in fact been aware of its contents. The defendants also argued that they had only mentioned in their articles that Mrs A. was married to Mr A., a fact which was not denied by Mrs A. She had not been otherwise mentioned in the articles. Moreover, the case had already been reported locally and their article contained no new information as such. They also argued that a member of parliament, as a public political figure, must tolerate more from the media than an "average citizen" and that it was particularly disturbing that a member of parliament was trying to limit the defendants' freedom of expression.

12. On 27 March 1998 the Vantaa District Court (*käräjäoikeus*, *tingsrätten*) convicted the first applicant and the two other journalists on one count of invasion of privacy under particularly aggravating circumstances within the meaning of section 15 of the Parliament Act. The first applicant was ordered to pay eighty day-fines, amounting to 47,360 Finnish markkas (FIM) (approximately 7,965 euros (EUR)). The two other journalists were both ordered to pay fines amounting to approximately EUR 840. In addition, all the defendants, including both applicants, were ordered to pay damages as requested by the plaintiff (jointly and severally with a co-defendant, FIM 75,000 with interest from 31 October 1996, and jointly and severally with another co-defendant, FIM 100,000 with interest on FIM 50,000 from 21 November 1996 and with interest on FIM 50,000 from 10 December 1996), namely,. a total of FIM 175,000 (approximately EUR 29,400). All the defendants were ordered to reimburse Mrs A. jointly

and severally in respect of her legal expenses of FIM 72,109 (EUR 12,128) with interest from 27 April 1998. The defamation charges were dropped.

13. The District Court found that, as a whole, the banner headlines, the front pages and the articles themselves were published with the purpose of drawing the readers' attention principally to Mr A.'s marital relationship with Mrs A. and not with the purpose of depicting the events as such. It further found that the highlighted publication of Mrs A.'s name, picture and professional status was in no way necessary in order to report on the criminal trial of Mr A. It acknowledged that the protection of the private life of Mrs A., as a member of parliament, was narrower than that of other persons, but only in so far as the matters in question were connected to her public functions and there was a public interest justifying their publication. The fact that the conviction of the spouse of a politician could affect people's voting intentions did not in itself render the matter of public interest such as to justify the publication.

The District Court held that the fact that the actions of the plaintiff's husband and the criminal proceedings against him had been well known in their home district and the fact that the local newspapers had been reporting the matter had no bearing on the defendants' liability. According to the judgment, it was the nationwide publicity accorded by *Iltalehti* and the resultant infringement of the plaintiff's protected private domain that had essentially constituted the criminal offence in question.

It further held that, although the reasons underlying section 15 of the Parliament Act could be regarded as outdated, it was a mandatory provision, leading to conviction for an offence categorised as aggravated.

As to the determination of the amount of compensation for suffering, the District Court noted that the plaintiff herself, especially as she was also a doctor and thus an expert, was best placed to assess her own situation and the damage she had sustained.

14. On 3 December 1998 the Helsinki Court of Appeal (*hovioikeus*, *hovrätten*) dismissed the joint appeal of the defendants and upheld the District Court's judgment without any observations on the merits of the case, save for a minor correction of the lower court's statement as to the alleged unlawful benefit accruing to the publishers. The Court of Appeal added that regardless of this correction the damages awarded to the plaintiff were not to be considered excessive.

15. On 25 May 1999 the Supreme Court (*korkein oikeus*, *högsta domstolen*) refused the defendants leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. Section 8(1) (969/1995) of the 1919 Constitution (*Suomen hallitusmuoto*, *regeringsformen för Finland*), as in force at the relevant time, stipulated that the private life, honour and home of every person was

to be protected. This provision corresponds to section 10 of the 2000 Constitution (*perustuslaki, grundlagen*; Act no. 731/1999), which came into force on 1 March 2000.

17. Section 10(1) (969/1995) of the 1919 Constitution, as in force at the relevant time, afforded everyone the right to freedom of expression. Freedom of expression entailed the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. This provision corresponds to Article 12 of the 2000 Constitution.

18. Section 15(1) of the Parliament Act (*valtiopäiväjärjestys*, *riksdagsordningen*), as in force at the relevant time, read as follows:

> "If a person, either in the course of a parliamentary session or while a member of parliament is travelling to or from Parliament, abuses the said member of parliament by any word or deed, knowing that the person so abused is a member of parliament, or if a person assaults a member of parliament after a parliamentary session because of the manner in which he or she has carried out his or her duties, the fact that the victim of the offence was a member of parliament shall be deemed to be a seriously aggravating circumstance."

This provision was later repealed by the 2000 Constitution (section 131).

19. Chapter 27 (908/1974), section 3a, of the Penal Code (*rikoslaki*, *strafflagen*), as in force at the relevant time, read as follows:

> "A person who unlawfully, through the use of the mass media or in another similar manner, publicly spreads information, an insinuation or an image depicting the private life of another person, such as to cause him or her damage or suffering, shall be convicted of invasion of privacy and sentenced to a maximum term of imprisonment of two years or to a fine. A publication that deals with a person's behaviour in a public office or function, in professional life, in a political activity or in another comparable activity, shall not be considered an invasion of privacy if the reporting was necessary for the purpose of dealing with a matter of importance to society."

20. According to the Government, persons in respect of whom the protection of private life is narrower in scope include public officials, politicians and persons with important positions in the business world (government bill, HE 239/1997*,* p. 32).

21. Chapter 27, section 3a, of the Penal Code was repealed in 2000 by section 8 of Chapter 24 (531/2000), which 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 damaging 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 damage to personal reputation, if it may 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."

22. According to a report by the parliament's Law Committee (*lakivaliokunta*, *lagutskottet*), functions in respect of which the protection of private life is, under paragraph 2, narrower in scope, include political functions, business functions, and public functions or duties. Information on the private life of persons having such functions may be disclosed where the information may affect the assessment of the performance of their duties. Furthermore, the person's consent to the disclosure of the information is relevant to 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 their private life (see the report of the Law Committee, pp. 4-6).

23. According to section 39 (909/1974) of the 1919 Freedom of the Press Act (as in force at the relevant time), the Tort Liability Act was to be applied to the payment of compensation for damage resulting from the content of printed works.

24. Under the terms of Chapter 5, section 6, of the Tort Liability Act (*vahingonkorvauslaki*, *skadeståndslagen*; 412/1974), damages may also be awarded for the distress arising from an offence against someone's liberty, honour or domestic peace or from another comparable offence.

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.

25. Chapter 17, section 6 (571/1948), of the Code of Judicial Procedure (*oikeudenkäymiskaari*, *rättegångsbalken*) provides that if the issue relates to the quantum of damages and no evidence is available, or if evidence can only be presented with difficulty, the court shall have the power to assess the quantum having regard to what is reasonable.

26. On 11 June 1997 the Supreme Court delivered two judgments relating to articles which had given information on cases of arson. The first judgment (KKO 1997:80) concerned a newspaper article (summary from the Supreme Court's Yearbook):

> "A newspaper published an article concerning cases of arson, in which it was said that the suspect was the wife of the head of a local fire department. As it was not even alleged that the head of the fire department had any role in the events, there was no justifiable reason for publishing the information on the marriage between him and the suspect. The publisher, the editor-in-chief and the journalist who wrote the article were ordered to pay compensation for the suffering caused by the violation of the right to respect for private life."

27. The other judgment (KKO 1997:81) concerned an article published in a periodical, which was based on the aforementioned newspaper article (see paragraph 26 above) and on the records of the pre-trial investigation and the court proceedings, but did not indicate that the newspaper article had been used as a source (summary from the Yearbook):

> "Compensation was ordered to be paid for the reason that the article violated the right to respect for private life. Another issue at stake in the precedent was the relevance to liability for damages and the amount of compensation of the fact that the information had been reported in another publication at an earlier stage."

The article published in the periodical had also mentioned the name and profession of the head of the fire department, although the offence was not related to the performance of his duties. Thus, it had not been necessary to refer to his position as head of the fire department or to his marriage to the suspect in order to give an account of the offence.

The Supreme Court considered that the fact that the information had previously been published in print did not relieve the defendants of their responsibility to ensure, before publishing the information again, that the article did not contain information insulting the persons mentioned in it. The mere fact that the interview with the head of the fire department had been published in the newspaper did not justify the conclusion that he had also consented to its publication in the periodical.

The Supreme Court further found that repeating a violation did not necessarily cause the same amount of damage and suffering as the initial violation. The readers of the newspaper and the periodical were partly different, and the circulation of the newspaper apparently did not entirely coincide with that of the periodical. Therefore, and considering the differences in the content and tone of the articles, the Supreme Court found it established that the article published in the periodical was conducive to causing the head of the fire department additional mental suffering.

The publisher and its partners were ordered jointly to pay FIM 100,000 (EUR 16,819) plus interest for the mental suffering caused to the head of the fire department.

According to the Supreme Court, the events reported in the article did not concern the plaintiff's conduct in the performance of his duties as head of the fire department and it had not been necessary to mention the complainant's name and profession for the purpose of discussing a matter involving significant public interest. It had not been necessary to refer to the complainant's profession in order to report on the offences. By associating the complainant's name and profession with the offences in question, the article had unlawfully spread information and insinuations concerning his private life likely to cause him damage and suffering. The disclosure of the complainant's name and the emphasis on his occupation had amounted to an insult. By again reporting on the matter two months after the events had

occurred, the periodical was found to have caused the complainant additional suffering for which separate compensation was to be paid.

28. In another judgment (KKO 1980 II 123), the Supreme Court held as follows (summary from the Yearbook):

> "The accused had picked up a photograph of the plaintiff from the archives of a newspaper and published it in the context of an electoral campaign without the plaintiff's consent. He was convicted of a violation of private life and ordered, jointly with the political organisations which had acted as publishers, to pay damages for mental suffering."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

29. The applicants alleged a violation of Article 10 of the Convention following their conviction for invasion of privacy and the order requiring them to pay damages. The relevant parts of Article 10 of the Convention read 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. ...
>
> 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."

A. The parties' submissions

1. The applicants

30. The applicants did not dispute that the restrictions applied in the present case were "prescribed by law". They maintained, however, that the measures taken against them were not "necessary in a democratic society". They claimed that the criminal proceedings against them bore an element of backlash and were symptomatic of a distorted approach in freedom of expression cases allegedly prevalent in the Finnish courts over the past few years. They maintained that the events which they had reported had occurred in Mrs A.'s constituency, where they had already become well

known as a result of reports by local media and a national television channel. As a member of parliament, Mrs A. could not be characterised as a private person in the context at hand. The reporting belonged to the sphere of public debate regarding an issue of general public interest. The applicants had not disseminated any explicitly private information. Further, the courts' reliance on section 15 of the Parliament Act was arbitrary inasmuch as it had been enacted for the purpose of protecting members of parliament in the exercise of their public office during sessions. The applicants maintained that the special protection afforded to members of parliament was out of touch with the European system.

31. The applicants further contended that the award of compensation for Mrs A.'s mental suffering had been exorbitant. By way of comparison, the courts had assessed such suffering experienced by victims of rape or armed robbery at FIM 50,000 at the most (approximately EUR 8,400), whereas the damages awarded to Mrs A. totalled FIM 175,000 (approximately EUR 29,400). In sum, the interference with their freedom of expression had been disproportionate to the legitimate aim pleaded by the Government.

2. The Government

32. The Government conceded that the first applicant's conviction and the order against him and the applicant company for the payment of damages and costs amounted to an interference with their right to freedom of expression under Article 10. The interference was nonetheless "prescribed by law", having a basis in Chapter 27, section 3a, of the Penal Code and section 15, subsection (1), of the Parliament Act, both as in force at the relevant time. The grounds relied on by the Finnish courts were consistent with the legitimate aim of protecting Mrs A.'s private life.

33. The Government rejected the allegation of the "distorted approach" prevalent in the Finnish courts as baseless.

34. As noted by the District Court, the protection of Mrs A.'s private life was restricted only in respect of issues which related to her public position and the publication of which would be in the public interest. The articles in question in no way referred to her political activities and had been produced and marketed in such a manner as to increase the sales of the tabloid. The mere fact that a prison sentence imposed on a politician's spouse could affect the behaviour of citizens in elections did not lend the matter significant public interest or justify the mention of Mrs A.'s name and her marriage to the perpetrator. The Government relied on the Court's inadmissibility decisions in *Société Prisma Presse v. France* (nos. 66910/01 and 71612/01, 1 July 2003) maintaining that the private life of a politician was protected where the only purpose of a publication was to satisfy public curiosity and create lucrative merchandise for the media. Even if the persons were known to the public, the reports on private aspects of their life had to contribute to a debate on a matter of general interest to society (see *Von*

Hannover v. Germany, no. 59320/00, § 65, ECHR 2004-VI). In the present case, Mrs A.'s marital relationship with Mr A. was not connected to any public debate.

35. The Government pointed out that in Finland the family members of politicians did not usually participate in political functions and that Mrs A. had always kept her private life strictly separate from her public functions.

36. They submitted that information on private life could be highly sensitive even if it was correct as such, and its publication could thus cause suffering. Additional suffering was no doubt caused where the information was published in a national tabloid. As noted by the District Court, the amount of compensation for non-pecuniary damage was to be based on an equitable assessment once Mrs A. had provided sufficient evidence of her suffering. The present case was to be seen as part of the Supreme Court's emerging case-law. The amounts awarded did not significantly depart from the prevailing domestic practice, nor were they disproportionate for the purposes of Article 10 § 2 of the Convention.

B. The Court's assessment

1. General principles

37. 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*, judgment of 8 July 1986, Series A no. 103, p. 26, § 41, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

38. 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).

39. 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 The Sunday Times *v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 38, § 62; *Lingens*, cited above, pp. 25-26, § 40; *Barfod v. Denmark*, judgment of 22 February 1989, Series A no. 149, p. 12, § 28; *Janowski*, cited above, § 30; and *News Verlags GmbH & CoKG 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*, judgment of 23 September 1994, Series A no. 298, pp. 23-24, § 31).

40. 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, pp. 23-24, § 31; *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233-34, § 37; and Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III). 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*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38, and Bladet Tromsø *and Stensaas*, loc. cit.). The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments (see, for example, *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, pp. 23-24, § 46, and *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, pp. 1567-68, § 54).

41. In sum, 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).

42. The protection of private life has to be balanced against the freedom of expression guaranteed by Article 10 of the Convention. As regards Article 8, the Court reiterates that its object is essentially that of protecting the individual against arbitrary interference by public authorities. It does not merely compel the State to abstain from such interference: in addition to this

primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life (see *Von Hannover*, cited above, § 57, and *Stjerna v. Finland*, judgment of 25 November 1994, Series A no. 299-B, p. 61, § 38). The boundary between the State's positive and negative obligations under this provision does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see, among many other authorities, *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49, and *Botta v. Italy*, judgment of 24 February 1998, *Reports* 1998-I, p. 427, § 33).

2. Application to the present case

43. The Court notes that the parties are in agreement that the applicants' conviction and the order requiring them to pay damages and costs amounted to an interference with their right to freedom of expression, that the interference was "prescribed by law" and, furthermore, that it pursued a legitimate aim, namely the protection of the reputation and rights of others, within the meaning of Article 10 § 2 of the Convention. The Court endorses this assessment. The dispute in the present case thus relates to the question whether the interference was "necessary in a democratic society".

44. The Court first observes that there is no evidence, or indeed any allegation, of factual misrepresentation or bad faith on the part of the applicants. The facts set out in the articles in issue were not in dispute even before the domestic courts. There is thus no question of having exceeded the bounds of journalistic freedom in these respects.

The Court further observes that the articles in question did not contain any allegations of Mrs A.'s involvement in the events leading to Mr A.'s conviction, or any other kinds of allegations against Mrs A. In this latter regard, the present application can be distinguished from *Tammer v. Estonia* (no. 41205/98, ECHR 2001-I). Nor were any details of Mrs A.'s private life mentioned, save for the fact that she was married to Mr A., a circumstance which was already public knowledge before the publication of the articles in issue. In these circumstances, especially as Mrs A. as a politician had to tolerate more from the press than "the average citizen" (see paragraph 40 above), the interference with her private life, assuming there was an interference within the meaning of Article 8, must in any event be regarded as limited.

45. On the other hand, it is to be noted that the subject matter of the impugned reporting did not have any express bearing on political issues or any direct links with the person of Mrs A. as a politician. Consequently, the articles in question did not pertain to any matter of great public interest as far as Mrs A.'s involvement was concerned. However, the public has the

right to be informed, which is an essential right in a democratic society that, in certain special circumstances, may even extend to aspects of the private life of public figures, particularly where politicians are concerned (see *Von Hannover*, cited above, § 64). In this connection, the Court notes the District Court's opinion that the conviction of the spouse of a politician could affect people's voting intentions. In the Court's opinion this indicates that, at least to some degree, a matter of public interest was involved in the reporting.

46. The Court further notes that the domestic courts placed considerable weight on the finding that the articles had been published with the purpose of drawing the readers' attention principally to Mr A.'s marital relationship with Mrs A. The Court accepts this conclusion as a matter of factual observation. The emphasis in the impugned articles was clearly on the defendant's marital connection to Mrs A., a member of parliament, an approach which understandably served to lend colour to the events, and, at the same time, to boost the sales of the newspaper. This finding is not, however, in itself sufficient to justify the applicants' conviction, as there are also other aspects to be weighed.

47. The Court next observes that the trial of Mr A. had been widely publicised and discussed locally, and that the role of Mrs A. had become the subject of, *inter alia*, a popular political satire in a programme broadcast nationwide on prime-time television. Thus, the impugned articles did not disclose Mrs A.'s identity in the context of criminal proceedings for the first time. The Court may nevertheless accept the domestic courts' finding that the nationwide publication in *Iltalehti* was capable of infringing Mrs A.'s privacy to a greater degree than the previous publication of the same facts in a local newspaper with a more limited circulation. While this interpretation appears to be in line with the domestic case-law (see paragraphs 26-28 above) and cannot therefore be regarded as arbitrary, it is likewise not sufficient to justify the applicants' conviction.

48. Another factor to be taken into account is section 15 of the Parliament Act which, at the time, provided special protection to members of parliament in the performance of their duties by, *inter alia*, stipulating that various criminal offences perpetrated against them while Parliament was in session were to be regarded as committed in particularly aggravating circumstances.

49. The Court must assess the importance of the said provision in the light of the particular circumstances of the case (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 64, ECHR 1999-I). It observes in this connection that its task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention (see, *mutatis mutandis*, *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 24). In particular, it is not the Court's task to

take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among other authorities, *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 43). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention.

50. The Court notes that it is a long-standing practice for States generally to confer varying degrees of immunity on parliamentarians, with the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with parliamentary functions (see *Cordova v. Italy (no. 1)*, no. 40877/98, § 55, ECHR 2003-I). The Court has further found that an immunity attaching to statements made in the course of parliamentary debates in the legislative chambers and designed to protect the interests of Parliament as a whole, as opposed to those of individual parliamentarians, is compatible with the Convention (see *A. v. the United Kingdom*, no. 35373/97, §§ 84-85, ECHR 2002-X).

51. The present case does not raise the issue of parliamentary immunity directly as there was no question of Mrs A.'s immunity from civil or criminal action. Parliamentary immunity was, however, of indirect relevance as it was Mrs A.'s status as a member of parliament that led to more severe convictions and sentences under section 15 of the Parliament Act. This indirect protection afforded to parliamentarians by way of punitive and deterrent criminal sanctions, directed towards third parties, is relevant both to the justification and the proportionality of the convictions.

52. The Court notes that the offences in question did not have any connection with the performance of Mrs A.'s official duties as a member of parliament. No criticism of Mrs A. was suggested, and it has not even been claimed that the publication of Mrs A.'s name and picture in connection with the account of the criminal proceedings against Mr A. in any way affected Mrs A.'s freedom of speech or was capable of limiting free parliamentary debate. In the absence of any link with the aims underlying parliamentary immunity, the use of Mrs A.'s parliamentary status as an aggravating factor of the offences in question is problematic.

It is observed that the domestic courts gave the impression that section 15 of the Parliament Act was outdated. However, apart from noting that the provision left them no discretion, they abstained from giving any guidance as to how the provision was to be applied when it conflicted with other important competing interests.

In the Court's opinion, given its established case-law to the effect that the limits of permissible criticism are broader as regards politicians, the automatic and unqualified application of section 15 by the domestic courts effectively nullified the competing interests guaranteed by Article 10 of the Convention.

53. Finally, the Court has taken into account the severity of the fines imposed on the applicants. It observes that the first applicant was ordered to pay eighty day-fines, amounting to FIM 47,360 (approximately EUR 7,965). In addition, all the defendants, including the first applicant and the applicant company, were ordered to pay damages jointly and severally to the full amount of FIM 175,000 (approximately EUR 29,400). It is not clear whether these amounts have been paid or, if so, how they were apportioned between the applicants. Be that as it may, the severity of the sentence and the amounts of compensation must be regarded as very substantial when it is considered that the maximum compensation afforded to victims of serious violence has been approximately FIM 100,000 (EUR 16,819) (see paragraph 24 above).

The Court considers that such severe penalties, viewed against the background of a limited interference with the private life of Mrs A. (see paragraph 44 above), disclose a striking disproportion between the competing interests of protection of private life and freedom of expression.

54. 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 fines imposed were 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicants sought compensation for pecuniary damage incurred in the domestic proceedings with an annual interest of 11%, totalling 58,645.37 euros (EUR), made up as follows: the fine imposed with interest paid on 8 November 1999, totalling EUR 7,965.38; 175,000 Finnish markkas (FIM) in compensation for non-pecuniary damage and interest of FIM 48,220.55, totalling FIM 223,220.55 (EUR 37,543); and the legal costs of Mrs A. in the District Court (FIM 72,109) and in the Court of Appeal (FIM 6,000), making a total of FIM 78,109 (EUR 13,136.99).

They also claimed the sum of EUR 35,000 in compensation for the non-pecuniary damage consisting in the violation of their rights.

58. As far as pecuniary damage was concerned, the Government accepted that, in the event of a violation being found, the applicants were entitled to compensation. They calculated that the applicants had been ordered to pay in total EUR 36,435 (in fact, 36,345), interest excluded. The first applicant was ordered to pay in total EUR 22,155 (EUR 7,965 as a fine; EUR 9,811 as one-third of the total compensation paid to Mrs A.; EUR 4,043 as one-third of the legal fees of Mrs A. before the District Court; and EUR 336 as one-third of the legal fees of Mrs A. before the Court of Appeal). The second applicant was ordered to pay in total EUR 14,190 (EUR 9,811 as one-third of the total compensation paid to Mrs A.; EUR 4,043 as one-third of the legal fees of Mrs A. before the District Court; and EUR 336 as one-third of the legal fees of Mrs A. before the Court of Appeal). As to the claims for interest, they submitted that the Court should apply its usual criteria of assessment in Finnish cases.

The Government considered that the finding of a violation should constitute in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. In any event, the applicants' claims for non-pecuniary damage were in their opinion far too high.

59. 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 EUR 36,345 in compensation for pecuniary damage (EUR 22,155 to the first applicant and EUR 14,190 to the applicant company).

60. The Court does not exclude the possibility that the first applicant, the editor-in-chief of *Iltalehti*, may have sustained non-pecuniary damage as a result of the violation of Article 10. It considers, however, that in the circumstances of the case the finding of a violation constitutes in itself sufficient just satisfaction.

As to the second applicant, the Court reiterates that in certain circumstances commercial companies may also be awarded compensation for non-pecuniary damage. In assessing whether such a right exists, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV, and *Société Colas Est and Others v. France*, no. 37971/97, § 41, ECHR 2002-III). However, the circumstances of the present case do not disclose any factors justifying the award of compensation for non-pecuniary damage. The Court consequently considers that the finding of a

violation constitutes in itself sufficient satisfaction for any non-pecuniary damage sustained.

B. Costs and expenses

61. The applicants requested reimbursement of the legal expenses incurred by them in the District Court (FIM 64,061.20), in the Court of Appeal (FIM 22,410) and in the Supreme Court (FIM 36,600), totalling FIM 123,071.20 (EUR 20,699.09).

They also claimed reimbursement of their legal costs and expenses incurred in the proceedings before the Court, amounting to EUR 17,327.32 (including value-added tax – VAT).

62. The Government considered that the applicants' claims were unclear. They further stated that there was no documentation regarding the costs incurred before the national courts except the mention of the amount in the decision of the Court of Appeal, and that it was unknown whether that amount included VAT or not. The Government also argued that the reimbursement of costs and expenses should be reduced due to the fact that on 1 June 2004 the Court declared inadmissible the applicants' complaint under Article 6 § 2 of the Convention (see *Mats Jacobsson v. Sweden*, judgment of 28 June 1990, Series A no. 180-A, p. 16, § 46). They also maintained that there were two cases before the Court at the oral hearing on 10 February 2004, and this should be taken into consideration when deciding the amount of costs to be awarded.

63. The Government left it to the Court's discretion to decide whether the applicants had substantiated their claims for costs and expenses adequately. However, in their view the total amount of compensation for costs and expenses awarded to the applicants should not exceed EUR 15,500 (including VAT) in the present case.

64. As regards the domestic proceedings, the Court observes that the total amount incurred in legal costs amounted to EUR 14,543 (FIM 86,471.20) in respect of the District Court proceedings and the Court of Appeal proceedings. In the Court of Appeal's judgment of 3 December 1998, it was mentioned that the applicants had requested reimbursement of their legal expenses before the District Court amounting to FIM 64,061.20 (EUR 10,774) and before the Court of Appeal amounting to FIM 22,410 (EUR 3,769), a total of FIM 86,471.20 (EUR 14,543). In the applicants' application for leave to appeal to the Supreme Court, they requested the additional reimbursement of their legal costs incurred before the Supreme Court in the sum of FIM 36,600 (EUR 6,156). There is no other indication concerning the applicants' legal expenses incurred before the domestic courts. Having regard to all the circumstances, the Court awards the applicants EUR 14,000 under this head.

65. As to the proceedings before the Court, the applicants' bill of costs and expenses of 1 August 2004 was for EUR 17,327.32 (including VAT), comprising ninety-three hours' work. It notes that the applicants' just satisfaction claims consisted of several separate and partially conflicting calculations, as maintained by the Government in their observations. The Court is nevertheless satisfied with the specificity of the applicants' bill. Having regard to all the circumstances, the Court awards them EUR 15,000 in compensation under this head.

C. Default interest

66. 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 UNANIMOUSLY

1. *Holds* that there has been a violation of Article 10 of the Convention;

2. *Holds* that the present judgment constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained;

3. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 22,155 (twenty-two thousand one hundred and fifty-five euros) in respect of pecuniary damage;
   (b) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 14,190 (fourteen thousand one hundred and ninety euros) in respect of pecuniary damage;
   (c) that the respondent State is to pay to the applicants jointly EUR 29,000 (twenty-nine thousand euros) in respect of costs and expenses;
   (d) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President