



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

FOURTH SECTION

CASE OF SOILA v. FINLAND

(Application no. 6806/06)

JUDGMENT

STRASBOURG

6 April 2010

FINAL

06/07/2010

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

In the case of Soila v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Päivi Hirvelä,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 6806/06) 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 Joni Jarno Mikael Soila (“the applicant”), on 15 February 2006.

2. The applicant was represented by Mr Antti Sorjonen, 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 right to freedom of expression had been violated, and that he had not had a fair hearing as the District Court and the Appeal Court had not reasoned their judgments sufficiently and he had not been given a possibility to submit additional comments when the Appeal Court had decided not to hold an oral hearing.

4. On 4 April 2008 the President of the Fourth Section decided to communicate the complaints concerning the lack of reasoning, the lack of an oral hearing and the freedom of expression, as well as *ex officio* the legality principle, to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Helsinki. He was a journalist on the nationwide magazine *7 päivää*.

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

7. On 6 February 1997 *7 päivää* magazine published two articles written by the applicant about A. and B. The first article was entitled "*A. collects his female friend every day from work, the relationship continues*" and it concerned A.'s and B.'s relationship. B.'s conviction as well as her workplace were mentioned as background information but the major part of the article concerned the journalist's eyewitness statements about how A. and B. spent their free time. The caption of the article stated that "*A.'s female friend B. visits his home daily*". Also, several pictures of B. were published. The second article was entitled "*The police laughed at the ex-national conciliator, A. arrested the journalists*". It was about A. and his behaviour in certain encounters with the media, and B.'s name was mentioned only in passing. The caption of the article stated that "*A. requested executive assistance from the police in order to take his female friend secretly to his home*". Prior to these articles, B.'s identity had been revealed and her picture had been published in the media.

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

9. On 28 November 2001 the public prosecutor brought charges under Chapter 27, section 3(a), paragraph 2, of the Penal Code against the applicant as well as the editor-in-chief (see *Jokitaipale and others v. Finland*, no. 43349/05, 6 April 2010), in Vantaa District Court. The charges brought against the applicant clearly indicated that the applicant was charged only for having written the articles in question. He was not charged for having been responsible for the headings, pictures or in which part of the magazine the articles were to be published.

10. B. concurred with the charges brought by the public prosecutor. She pursued a compensation claim jointly and severally against the applicant, the editor-in-chief and the publishing company, which was joined to the criminal charges. Charges brought against the other journalists of the magazine as well as the editor-in-chief were examined in the same proceedings.

11. On 8 November 2002 the court, after having held an oral hearing, first decided to declare all parts of the case file secret for ten years except for the applicable legal provisions, the conclusions and the summary of the case. Additionally, B.'s identity was not to be revealed in the public parts of the case file. As to the merits of the case, the court accepted the statement of facts indicated in the charges and noted that the applicant was not responsible for the headings, pictures or in which part of the magazine the articles were to be published. It sentenced the applicant to pay twenty day-fines, amounting to 840 euros (EUR), for invasion of B.'s private life. Moreover, the applicant was ordered to pay B., jointly with the other parties to the case, EUR 4,000 plus interest for non-pecuniary damage as well as her costs and expenses.

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

13. By letter dated 9 December 2002 the applicant appealed to the Helsinki Appeal Court, requesting, *inter alia*, that an oral hearing be held and if not, that he be given a possibility to submit additional comments.

Moreover, he claimed that the disclosure of a convicted person's name could not be considered as falling within the scope of private life, and that the District Court judge had had a fixed idea about the outcome of the case.

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

15. By letter dated 13 December 2004 the applicant applied for leave to appeal to the Supreme Court, reiterating the grounds already presented before the Appeal Court. Moreover, he claimed that the Appeal Court had not reasoned its judgment sufficiently, and that the judgment was written in a manner suggesting collective criminal liability. This conflicted with the presumption of innocence. Further, he claimed that the restrictions on freedom of expression were neither necessary nor justified in this case.

16. On 15 August 2005 the Supreme Court refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

III. RELEVANT INTERNATIONAL MATERIALS

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained under Article 6 § 1 of the Convention that the District Court and the Appeal Court had not reasoned their judgments sufficiently as the judgments were written in a manner which suggested collective criminal liability. He claimed under Article 6 § 3 (b) of the Convention that he had not been given a possibility to submit additional comments when the Appeal Court had decided not to hold an oral hearing.

20. Article 6 § 1 reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

21. Article 6 § 3 (b) reads as follows:

“Everyone charged with a criminal offence has the following minimum rights:

....

(b) to have adequate time and facilities for the preparation of his defence;

.....”

22. The Government contested these arguments.

A. Admissibility

23. The Government submitted that the applicant had not exhausted the domestic remedies available to him as he had not invoked in his application for leave to appeal or in the appeal to the Supreme Court the fact that no possibility to submit additional comments was given to him when the Appeal Court had decided not to hold an oral hearing. Accordingly, this complaint should be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 and 4 of the Convention.

24. The applicant contested the Government's arguments. He claimed that he had expressly stated in his application to the Supreme Court that the Appeal Court had violated his right to a fair trial under Article 6 when it had convicted him without even mentioning his name in the judgment. It had not been advisable for the applicant to request leave to appeal on the basis of a lack of a possibility to submit additional comments in the Appeal Court.

25. The Court reiterates that although the rule requiring the exhaustion of domestic remedies must be applied with some flexibility, it does not require merely that applications should have been made to the appropriate domestic courts and that use should be made of remedies designed to

challenge decisions already given. It normally requires also that the complaints intended to be made subsequently to Strasbourg should have been made to those domestic courts, at least in substance and in compliance with the formal requirements of domestic law (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). By not drawing the Supreme Court's attention to the procedural fault allegedly committed by the Appeal Court the applicant cannot be said to have made, even in substance, to the highest national court the complaint which he is making now. The Court notes that reliance before the Supreme Court on the procedural fault now alleged, cannot be regarded as having been devoid of any real chance of success in view of the facts that the Convention is in force in Finland as domestic law and that a procedural error is one of the grounds on the basis of which leave to appeal can be granted.

26. It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies with respect to the complaint concerning a lack of a possibility to submit additional comments and that this part of his application must therefore be declared inadmissible under Articles 35 § 1 and 4 of the Convention.

27. The Court notes that the complaint concerning the lack of reasoning of the District Court's and the Appeal Court's judgments is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The applicant claimed that the national judgments had made no difference between him and the other defendants in the case. The national courts had reached criminal conclusions on a collective basis without openly stating, at least *expressis verbis*, what had been each defendant's part in the published articles. There had been no assessment of *pro et contra* in the judgments. As the applicant's individual role in the published articles had not been separated from the other persons' roles, it had been practically impossible for him and for everyone else to know what exactly had been the applicant's own part in the journalistic process which normally comprised many actors. It was very possible that B.'s privacy had mainly been infringed due to the pictures and the lay-out of the articles, issues in which the applicant had had no role. The Appeal Court had failed to reply to the applicant's arguments in his appeal and the judgment was based solely on very general reasoning.

29. The Government maintained that both the District Court and the Appeal Court had thoroughly reasoned in their judgments the fulfilment of the essential elements of the offence. The judicial assessment had concerned all the defendants, including the applicant, as their conduct had fulfilled the

same elements of an offence. The defendants had not been deemed to have collective criminal liability but their conduct described in the charges had been subject to the same legal rules. The reasoning in the District Court's and the Appeal Court's judgments had not lacked individualisation and had not been defective in respect of the applicant's own culpability.

30. The Court reiterates that, according to its established case-law reflecting the need for the effective administration of justice, courts and tribunals should adequately state the reasons on which they base their decisions. The extent to which this obligation applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I.). Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Nor is the European Court called upon to examine whether arguments are adequately met (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288).

31. The Court notes that the charges brought against the applicant clearly indicated that the applicant was charged only for having written the articles in question. The District Court accepted the statement of facts indicated in the charges and noted that the applicant was not responsible for the headings, pictures or in which part of the magazine the articles were to be published. It concluded that the applicant was found guilty of the offence indicated in the charges. The Appeal Court confirmed the District Court's finding by adding more detailed reasoning.

32. Having in mind the above, the Court considers that the criminal liability of the applicant had been clearly established and his part in the journalistic process could be separated from that of the others. The District Court's and the Appeal Court's judgments were thus sufficiently reasoned in this respect.

33. There has accordingly been no violation of Article 6 § 1 of the Convention.

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

34. The applicant complained under Article 10 of the Convention, *inter alia*, that there had been a lack of intent, which was a necessary requirement for any criminal conviction. Even though the applicant has not lodged any complaint specifically under Article 7 of the Convention, the Court considered that his above-mentioned complaint under Article 10 fell to be examined also under Article 7 and for that reason communicated the complaint from the standpoint of the legality principle.

35. The applicant also complained under Article 10 of the Convention that the restrictions on his right to freedom of expression had not been

necessary in a democratic society for the protection of the reputation or rights of others. The disclosure of B.'s pictures and the facts mentioned in the articles had not fallen within the protection of private life. She had not been an innocent bystander but had actively participated in the incident of 4 December 1996. A conviction was public information that could not fall within the scope of private life. The public had a right to know about issues of public interest. The applicant had only written the articles, and he had had no say in the manner in which they had been published. No intent had been shown. Moreover, the information in the articles had been in every respect correct. The courts had failed to strike a proper balance between the protection of private life and freedom of expression in the manner required by the Convention.

36. Article 7 reads as follows:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

37. Article 10 reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

38. The Government contested these arguments.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

40. The applicant maintained that the incident in question was of great public interest and therefore it was not a criminal act to publish B.'s name. The case was exceptional and had had dramatic effects in Finnish society and politics, and therefore the balancing of the two fundamental rights should have been done in accordance with the Court's case law and not following the Supreme Court's earlier precedent. The matter could not be solved without any reference to the freedom of media. When assessing the case in the light of the freedom of media, it was clear that the balancing of various rights should have been in favour of freedom of expression. Media played a great role in a democratic society and its independence was to be protected as much as possible. This aspect was completely swept aside in all national judgments in criminal proceedings in Finland. Therefore it was essential that the Court gave its opinion on whether the outcome of the present case had been compatible with the Convention and the Court's case law.

41. The applicant further argued that there had been a lack of intent, which was a necessary requirement for any criminal conviction. The facts in the articles had been fully correct and B.'s name had been mentioned only due to her own unlawful action for which she had already been punished in a public trial. B.'s identity had already been disclosed in the media before the publication of the articles in question. It was not possible in the hectic journalistic environment to start seeking legal advice prior to publication of an article. If such a duty did exist, it could be placed on the editor alone. B.'s conviction alone had never been the subject of any public interest but the situation as a whole, including the incident of 4 December 1996, was the subject of public interest.

(b) The Government

42. The Government agreed that the conviction of the applicant and the obligation to pay damages and costs had amounted to an interference with his right to freedom of expression.

43. As to the requirement that measures be “prescribed by law” and in compliance with Article 10, the Government pointed out that the impugned measures had had a basis in Finnish law, namely in the Constitutional Act and, in particular, in Chapter 27, section 3(a), of the Penal Code. B.'s name constituted information referred to in the latter provision, which had also separately mentioned a picture, and thus the provision had fulfilled the clarity requirement. At the relevant time the provision had been in force for more than 20 years and it had been interpreted by the Supreme Court, prior to the publication of the article in question, in precedent cases *KKO 1980 II 99* and *KKO 1980 II 123*. The rules on criminal liability could thus be regarded as having been gradually clarified through judicial interpretation in a manner which had been consistent with the essence of the offence. The liability therefore could reasonably have been foreseen. Accordingly, the intent required by the provision in question had been fulfilled within the meaning given to it through interpretation of the Penal Code.

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

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

46. The Government pointed out that being A.'s female friend had not as such made her a person in a socially significant position whose right to

private life could be narrowed. B.'s conduct had not in any way contributed to any discussion of general interest. Notwithstanding the incident of 4 December 1996 and B.'s subsequent sentence, the information published by the applicant had been of such a nature that it had been covered by the protection of B.'s private life. The reporting of the events could have been done without mentioning B. by name. The press could not overstep certain boundaries, particularly as regards the reputation and the rights of others. Bearing in mind the margin of appreciation, the Government argued that the interference in the present case had been “necessary in a democratic society”.

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

1. Whether there was an interference

47. The Court agrees with the parties that the applicant's conviction, the fine 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

48. As to whether the interference was “prescribed by law”, the applicant argued that there had been a lack of intent, which was a necessary requirement for any criminal conviction. The Government argued that the intent required by the provision in question had been fulfilled within the meaning given to it through interpretation of the Penal Code.

49. The Court notes that the parties agree that the interference complained of had a basis in Finnish law, namely Chapter 27, section 3(a), of the Penal Code. The parties' views, however, diverge as to whether the intent requirement was fulfilled.

50. 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).

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

52. In addition, the Court reiterates that it is for the national courts to interpret the national law. In the present case, the national courts found in their judgments that the Penal Code provision in question did not require that intent to harm be shown but that it was sufficient that the dissemination of information about the private life of a person was capable of causing him or her damage or suffering. As this undoubtedly was the case, the Court has no reason to question the national courts finding in this respect.

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

3. Whether the interference was necessary in a democratic society

54. 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).

55. 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).

56. 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).

57. 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 applicant and the context in which they were made. In particular, it must determine whether the interference in issue was “proportionate to the legitimate aims pursued” and whether the reasons adduced by the national authorities to justify it were “relevant and sufficient” (see *Sunday Times v. the United Kingdom (no. 1)*, cited above, § 62; *Lingens*, cited above, § 40; *Barfod v. Denmark*, 22 February 1989, § 28, Series A no. 149; *Janowski*, cited above, § 30; and *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I). In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

58. 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). 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.).

59. The limits of permissible criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lay themselves open to close scrutiny of their words and deeds by journalists and the public at large, and they must

consequently display a greater degree of tolerance (see, for example, *Lingens v. Austria*, cited above, § 42; *Incal v. Turkey*, 9 June 1998, § 54, *Reports of Judgments and Decisions* 1998-IV; and *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236).

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

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

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

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

64. Turning to the facts of the present case, the Court notes that the applicant was convicted on the basis of the remarks made in two articles in his capacity as a journalist.

65. The Court observes at the outset that the first article, which was entitled “*A. collects his female friend every day from work, the relationship continues*”, concerned A. and B.'s relationship. B.'s conviction as well as her workplace were mentioned as background information but the article focused on the journalist's eyewitness statements about how A. and B. had spent their free time. Also, several pictures of B. were published. The second article was entitled “*The police laughed at the ex-national conciliator, A. arrested the journalists*”. It was about A. and his behaviour in certain encounters with the media, and B.'s name was mentioned only in passing.

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

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

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

69. The Court further observes that the information in the two articles mainly focused on A. and B.'s relationship and on A.'s encounters with the media. Even though several details of B.'s private life were mentioned,

many of which were presented in a gossip-like manner, the information concerning B. was essentially limited to her conviction and to facts which were inherently related to A.'s story. In this respect the case differs from the case of *Von Hannover v. Germany* (cited above, § 72).

70. Moreover, it is to be noted that the disclosing of B.'s identity in the impugned reporting had a direct bearing on matters of public interest, namely A.'s conduct and his ability to continue in his post as a high-level public servant. As B. had taken an active and willing part in the events of 4 December 1996, leading to A.'s conviction and dismissal, it is difficult to see how her involvement in the events was not a matter of public interest. Even though the articles in question focused on issues other than the incident, the Court considers that these issues stemmed from it and that there was therefore a continuing element of public interest involved also in respect of B. In this connection, the Court notes that, when assessing the cases stemming from the incident of 4 December 1996, the national authorities and the national courts also reached different conclusions as to whether B. could be considered as having waived her right to privacy when choosing to become involved with a public figure and in being a party to the incident, leading also to her conviction (see *Tuomela and others v. Finland*, 25711/04, 6 April 2010; *Flinkkilä and others v. Finland*, cited above; and *Jokitaipale and others v. Finland*, cited above). In the Court's opinion this indicates that, at least to some degree, the national authorities also considered that the public interest was engaged in the reporting.

71. The Court further notes that the emphasis in the articles in question was on both A. and B. The events were presented in a colourful manner to boost the sales of the magazine, a fact that becomes apparent from the captions of the articles ("*A.'s female friend B. visits his home daily*"; *A. requested executive assistance from the police in order to take his female friend secretly to his home*").

72. The Court, however, observes that, on the other hand, prior to the publication of the articles, the incident of 4 December 1996 and its immediate consequences had been widely publicised and discussed in the media, including in a programme broadcast nationwide on prime-time television (see *Flinkkilä and others v. Finland*, cited above, §§ 8 and 36). Thus, the articles in question did not disclose B.'s identity in this context for the first time (see *Eerikäinen and Others v. Finland*, cited above; and *Egeland and Hanseid v. Norway*, cited above).

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

74. Finally, the Court has taken into account the severity of the sanctions imposed on the applicant. It notes that the applicant was convicted under criminal law and observes that he was ordered to pay twenty day-fines, amounting to EUR 840. In addition, he was ordered to pay B., jointly with

the other defendants in the case, EUR 4,000 plus interest for non-pecuniary damage as well as her costs and expenses. The severity of the sentence and the amount of compensation cannot as such be regarded as disproportionate, given that the maximum compensation afforded to victims of serious violence which was approximately FIM 100,000 (EUR 17,000) at the time (see *Flinkkilä and others v. Finland*, cited above, § 23).

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

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

77. 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 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.

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

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

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

III. REMAINDER OF THE APPLICATION

80. The applicant also complained under Article 6 § 2 of the Convention that the presumption of innocence had been violated in his case as the District Court judge had already formed a view at the beginning of the proceedings as to how he would decide the case.

81. The Court notes that the applicant raised this issue before the Appeal Court, which examined it, even though it did not refer to it in its judgment. Considering that the applicant has not further substantiated his claim, the Court finds no indication of any violation in this respect. It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

84. The Government considered the applicant's claim for non-pecuniary damage excessive as to *quantum*. Were the Court to find a violation of Articles 6, 7 and 10 of the Convention, the award should not exceed EUR 4,000 in total.

85. 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

86. The applicant also claimed EUR 5,052.06 for the costs and expenses incurred before the domestic courts as well as before the Court.

87. The Government contested these claims. The claims included postage, telephone and copying costs which were already included in counsel's fee. In any event, the total amount of compensation for costs and expenses for the applicant should not exceed EUR 3,000 (inclusive of value-added tax).

88. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to *quantum*. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the global sum of EUR 3,000 (including any value-added tax) under this head.

C. Default interest

89. 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. *Declares* the complaints under Articles 6 § 1 (concerning the lack of reasons), 7 and 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* that there has been no violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been no violation of Article 7 of the Convention.
5. *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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to him, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Lawrence Early
Registrar

Nicolas Bratza
President