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

FOURTH SECTION

CASE OF ILTALEHTI AND KARHUVAARA v. FINLAND

(Application no. 6372/06)

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 Iltalehti and Karhuvaara 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. 6372/06) 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 publishing company, Kustannusosakeyhtiö Iltalehti and a Finnish national, Mr Pekka Edwin Johannes Karhuvaara (“the applicants”), on 9 February 2006.

2. The applicants were represented by Mr Risto Ryti, a lawyer practising in Helsinki. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicants alleged, in particular, that their right to freedom of expression had been violated and that the total length of the proceedings in their case had been incompatible with the “reasonable time” requirement.

4. On 4 April 2008 the President of the Fourth Section decided to communicate the complaints concerning the length of proceedings and the freedom of expression (only in respect of the applicant company) 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 company is based in Helsinki. The second applicant was born in 1954 and lives in Helsinki. The applicant company publishes a

nationwide newspaper called *Iltalehti* and the second applicant is the editor-in-chief of that newspaper.

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 this 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 17 January 1997, one day after the Helsinki District Court judgment, the *Iltalehti* newspaper published an article about A. and B. with a title "*A. defends fiercely his post*". The article focused mainly on A.'s conviction but in the caption to B.'s picture, her name, conviction and the fact that she was A.'s female friend were mentioned. Prior to this article, the identity of B. had been revealed at least in a Finnish magazine on 7 January 1997 (see *Tuomela and others v. Finland*, no. 25711/04, 6 April 2010).

8. In the spring of 1997 A. and B. requested that criminal investigations be conducted against journalists who had written about the incident on 4 December 1996 and the circumstances surrounding it. On an unspecified date they made such a request with respect to the second applicant, claiming that the article published in *Iltalehti* had invaded B.'s privacy. Investigations started in respect of the second applicant on 20 April 1997.

9. On 14 March 2000 the public prosecutor brought charges under chapter 27, section 3(a) of the Penal Code against the second applicant in Vantaa District Court. B. concurred with the charges brought by the public prosecutor and pursued a compensation claim against both applicants, which was joined to the criminal charges. The applicant company was summoned on 10 April 2000.

10. On 8 November 2002 the court, after having held an oral hearing on 4 November 2002, 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, the identity of B. was not to be revealed in the public parts of the case file. As to the merits of the case, the court sentenced the second applicant to pay twenty day-fines, amounting to

2,040 euros (EUR), for invasion of B.'s private life. Moreover, the applicants were jointly ordered to pay B. EUR 10,000 plus interest for non-pecuniary damage as well as her costs and expenses.

11. 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 A.'s dismissal 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 applicants, therefore, had had no right to reveal B.'s name or to publish her picture. As to the intent, the District Court found that invasion of private life was punishable only if intent could be shown. As the second applicant had not prevented the invasion of B.'s private life, this omission fulfilled the intent criteria.

12. By letter dated 9 December 2002 the applicants appealed to the Helsinki Appeal Court, claiming, *inter alia*, that the provision of the Penal Code in question did not define with sufficient clarity which acts fell within its scope, and that a disclosure of a convicted person's name could not be considered as falling within the scope of private life. Moreover, the lack of evidence was used to the detriment of the second applicant.

13. On 12 October 2004 the Appeal Court, without holding an oral hearing, partly upheld the District Court judgment. The court balanced the right to freedom of expression against the protection of private life in the light of the Court's case-law. It found that, according to the preparatory works and the national and the Court's case-law, the facts mentioned in the articles were of a kind to which the protection of private life typically applied. The Supreme Court had already found in 2002 that B. was not a public figure, and the fact that she was a friend of such a person and 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. However, since the convictions of A. and B. were closely linked in this case, B.'s name and conviction could lawfully have been mentioned. Nevertheless, the publishing of a big picture of B. was not necessary and therefore invaded her privacy. As to the intent, the omissions of the second applicant could not be regarded as proving his intent to invade B.'s privacy and, consequently, the charges against him were dismissed. He was also exonerated from paying B. non-pecuniary damages as well as her costs and expenses. The non-pecuniary damages payable by the applicant company

were lowered to EUR 5,000. In total the applicant company paid EUR 14,374.47 as compensation.

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

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

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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

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

THE LAW

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

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

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

19. The Government contested that argument.

A. Admissibility

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

B. Merits

21. The period to be taken into consideration with respect to the applicant company began on 10 April 2000 when it was summoned and ended on 15 August 2005 when the Supreme Court refused leave to appeal. The proceedings thus lasted five years and four months for three levels of jurisdiction.

22. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

23. The applicant company argued that there had been no justifiable grounds for the proceedings to last such an unreasonably long time. The case had not been complex and the facts had been undisputed. The only practical problem had been the judicial assessment which did not require a long handling period. The District Court had been able to decide the case within four days after the oral hearing. The District Court had adjourned the case pending the outcome of another case before the Supreme Court. There had been no grounds to wait for the Supreme Court's judgment.

24. The Government maintained that there had been nothing exceptional in the applicant company's or other parties' conduct during the proceedings. At the beginning of the proceedings the District Court had waited for the precedent case of *KKO 2002:55* to be delivered by the Supreme Court, which had been justified as the precedent largely concerned the same matter as the present proceedings. The case had been somewhat complex owing to the fact that it was connected to a larger set of issues. The Government argued that, taking into account the above-mentioned facts, there had been no unnecessary delays in the proceedings.

25. The Court notes that even though the applicant company was summoned on 10 April 2000, the District Court held an oral hearing only on 4 November 2002 and delivered its judgment four days later. The proceedings before the District Court lasted thus almost two years and seven months. Apart from the delay caused by waiting for the Supreme Court's precedent, the Court sees no other reason to criticise the handling of the case by the District Court. The Appeal Court and the Supreme Court proceedings

were expeditious, lasting one year and ten months and some eight months respectively. The Court finds that, overall, the proceedings were conducted speedily and that there were no unexplained delays in the proceedings.

26. Having regard to all the circumstances of the case, the Court concludes that the total length of the proceedings was not unreasonable.

27. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

28. The applicant company complained under Article 10 of the Convention that the restrictions on its right to freedom of expression in its case had not been prescribed by law as the Penal Code provision applied had not defined adequately the scope of private life. Nor had the restrictions been necessary in a democratic society for the protection of the reputation or rights of others. B. had not been an innocent bystander but had participated actively in the incident of 4 December 1996. The public had a right to know about issues of public interest, especially since the case had been very newsworthy. Moreover, the information in the articles had in every respect been correct.

29. 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."

30. The Government contested these arguments.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant company

32. As to the requirement that measures be "prescribed by law", the applicant company maintained that it could not reasonably have been expected to anticipate at the time of publication of the article that the publishing of B.'s name and picture would be punishable under Finnish law. The decisions of *KKO 1980 II 99* and *KKO 1980 II 123* did not concern measures taken by the press and had thus no connection to the present case. Prior to the publishing of the article in question, the Supreme Court had not given one single decision in which truthful publication of an offender's name would have been considered as a crime. The later decisions by the Supreme Court had had no significance in this case as these decisions had not existed at the time of the publishing of the article. The statements made by the Council for Mass Media or the Guidelines for Journalist had had no significance in the assessment of penal responsibility.

33. As to whether the interference was "necessary in a democratic society", the applicant company pointed out that the state's margin of appreciation was subject to the Court's final ruling in the matter. The Government had not commented at all on why it was considered necessary to restrict freedom of speech in this case. It was undisputed that B. had been actively involved in an important news event which had eventually resulted in the resignation of the National Conciliator, that B. had been found guilty of a crime due to her active participation, that the applicant company had published B.'s picture and had stated in the caption that B. had been sentenced for assault, and that the applicant company had been sentenced to pay damages for the publication of the picture and the caption only. In publishing B.'s picture and the caption, the applicant company had conducted its task of imparting information in an utterly sincere manner.

(b) The Government

34. The Government agreed that the obligation of the applicant company to pay damages and costs had amounted to an interference with its right to freedom of expression.

35. As to the requirement that measures be "prescribed by law", 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. Liability therefore could reasonably have been foreseen.

36. 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 company must have been aware of the regulations concerning the freedom of expression. In any event, it could have sought legal advice before publishing the article, especially as the date of the oral hearing in A.'s and B.'s case was known well in advance. Accordingly, the interference had been "prescribed by law" as required by Article 10 § 2 of the Convention.

37. The Government maintained that the legitimate aim had been to protect the private life of B., 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.

38. The Government pointed out that being the female friend of A. 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 company had been of such a nature that it had been covered by the protection of B.'s private life. The events could have been reported without mentioning B. by name or including her picture. 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

1. Whether there was an interference

39. The Court agrees with the parties that the obligation of the applicant company to pay damages and costs constituted an interference with its 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

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

41. 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 far as the foreseeability of the said provision is concerned. The Court must thus examine whether the provision in question fulfils the foreseeability requirement.

42. The Court has already noted that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may entail excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms

which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30 and mutatis mutandis *Kokkinakis v. Greece*, 25 May 1993, § 40, Series A no. 260-A).

43. 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.

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

45. The Court concludes therefore that the interference was "prescribed by law" (see *Nikula v. Finland*, no. 31611/96, § 34, ECHR 2002-II; *Selistö v. Finland*, no. 56767/00, § 34, 16 November 2004 and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X, *Eerikäinen and Others v. Finland*, cited above, § 58). Moreover, it had 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

46. 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).

47. 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).

48. 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).

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

50. The Court further emphasises the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Jersild*, cited above, § 31; *De Haes and Gijsels v. Belgium*,

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

51. 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).

52. 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).

53. 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.

54. 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).

55. 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).

56. Turning to the facts of the present case, the Court notes that the applicant company was ordered to pay damages, in its capacity as a publishing company, on the basis of the remarks made in an article and for having published B.'s picture.

57. The Court observes at the outset that the article, which was titled "*A. defends fiercely his post*", focused mainly on A.'s conviction but in the caption to B.'s picture her name, conviction and the fact that she was A.'s female friend were mentioned. The applicant company was rendered liable only for having published B.'s picture and the caption. The article was published one day after A. and B.'s convictions.

58. The Court notes that no allegation has been made of factual misrepresentation or bad faith on the part of the applicant company. 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 article in issue were not in dispute even before the domestic courts.

59. It is clear that B. was not a public figure or a politician but an ordinary person who was 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 was 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).

60. 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 company was backlit by these considerations and they cannot be discounted when assessing the proportionality of the interference with its Article 10 rights.

61. The Court further observes that the information in the article mainly focused on A.'s conviction and its repercussions, namely whether or not he would be dismissed from his post as National Conciliator. The only details revealed of B.'s private life were her picture, her conviction and the fact that she was A.'s female friend, all circumstances which were already public knowledge before the publication of the article in issue. Moreover, these facts were presented in an objective manner. Thus, 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).

62. Moreover, it is to be noted that the disclosure of B.'s identity in the 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. Therefore, the Court considers that there was 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 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*, cited above; *Flinkkilä and others v. Finland*, cited above; and *Jokitaipale and others v. Finland*, no. 43349/05, 6 April 2010). 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.

63. The Court notes that the emphasis in the article in question was clearly on A. and on the repercussions of his conviction on his career. It is possible that the events were presented, especially B.'s picture, in a somewhat excessive manner to boost the sales of the newspaper, but this is not in itself sufficient to justify the applicant company's obligation to pay damages.

64. The Court observes that, on the other hand, prior to the publication of the article in question, the incident of 4 December 1996 and its immediate consequences had been widely publicised and discussed in the media. Thus, the article 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).

65. Moreover, the Court notes that the article was published immediately after the convictions of A. and B., leading to the dismissal of A. The article was thus closely linked in time to these events.

66. Finally, the Court has taken into account the severity of the sanctions imposed on the applicant company. It notes that the applicant company was ordered to pay B. EUR 5,000 plus interest as non-pecuniary damage and her costs and expenses. The severity of the amount of compensation must be regarded as substantial, given that the maximum compensation afforded to victims of serious violence was approximately FIM 100,000 (EUR 17,000) at the time (see *Flinkkilä and others v. Finland*, cited above, § 23).

67. It should also be borne in mind that the Supreme Court had already acknowledged that repeating a violation did not necessarily cause the same amount of damage and suffering as the initial violation (see *Flinkkilä and others v. Finland*, cited above, §§ 33-34). The Court notes that B. had already been paid damages 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; *Soila v. Finland*, no. 6806/06, 6 April 2010; and *Jokitaipale and others v. Finland*, cited above).

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

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

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

III. REMAINDER OF THE APPLICATION

A. The second applicant

71. The second applicant also complained about the length of proceedings, the lack of reasoning and the interference with his right to freedom of expression. The Court notes, however, that the second applicant did not apply for leave to appeal to the Supreme Court and therefore the final judgment in his regard is the Appeal Court's judgment of 12 October 2004. As the second applicant lodged his application with the Court only on 9 February 2006, his application was not lodged within the six months' time-limit. It follows that his complaints must be rejected as being out of time within the meaning of Article 35 §§ 1 and 4 of the Convention.

B. The applicant company

72. The applicant company also complained under Article 6 § 1 of the Convention that the District Court and the Appeal Court had not reasoned their judgments sufficiently, especially as far as the decision declaring the case file secret was concerned. It claimed that the name of a convicted person was not a fact that fell within the scope of private life and that a case could not be declared secret on that basis alone.

73. The Court notes that Article 6 § 1 obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). In general, the reasoning in the District Court's and the Appeal Court's judgments in the present case is quite extensive. As far as the reasoning concerns the restrictions on freedom of expression, the courts stated in very detailed manner that the facts mentioned in the article were those to which the protection of private life typically applied, and took into account the incident and B.'s conviction as well as the fact that her position in society was not such that the exception for public figures normally applied to her. Therefore the Court finds that the reasoning is acceptable from the standpoint of the fairness requirements of Article 6.

74. As to the reasons for declaring the case file secret, the Court notes that neither the District Court nor the Appeal Court reasoned in any way in their judgments why they considered it necessary to declare the case file secret. However, the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I.). The Court notes that the applicant company had full access to the case file together with a reasoned judgment and it was not impaired in the

exercise of its appeal rights in the absence of any repercussions on fairness requirements. The Court considers that declaring the case file secret, and thereby also the lack of reasoning, had no impact either on the applicant company's position as a party to the case or on the actual fairness of the proceedings. The Court therefore finds that there is no indication of any violation in this respect.

75. It follows that these complaints 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

76. 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

77. The applicant company claimed EUR 14,374.47 in respect of pecuniary damage.

78. The Government contested the existence of a causal link between the pecuniary damage suffered and the alleged violation of Article 6 § 1 of the Convention. In the event of a violation being found under Article 10 of the Convention, the Government conceded that the applicant company was entitled to compensation. However, no calculation of the interest paid had been provided. The Government left it to the Court's discretion whether the applicant company had submitted sufficient documentation to support its claims.

79. The Court finds that there is a causal link between the violation found under Article 10 and the alleged pecuniary damage. Consequently, there is justification for making an award to the applicant company under that head. Having regard to all the circumstances, the Court awards the applicant company EUR 12,000 in compensation for pecuniary damage.

B. Costs and expenses

80. The applicant company also claimed EUR 11,348.05 for the costs and expenses incurred before the domestic courts and EUR 7,589.40 for those incurred before the Court.

81. The Government maintained that only fees and expenses relating to admissible complaints could be awarded. No specification relating to the hours used for each measure performed, as required by Rule 60 of the Rules

of Court, had been submitted and no award should therefore be made in this respect. In any event, no postage or photocopying expenses should be compensated as they were included in the counsel's fee. The total amount of compensation for costs and expenses for the applicant company should not exceed EUR 2,500 (inclusive of value-added tax). If a violation was found in respect of only one Article, the reimbursement of costs and expenses should be accordingly reduced.

82. 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 company the global sum of EUR 4,000 (including any value-added tax) under this head.

C. Default interest

83. 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 length of the proceedings) and 10 of the Convention in respect of the applicant company 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*

   (a) that the respondent State is to pay the applicant company, 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 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

      (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to it, 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;

5. *Dismisses* the remainder of the applicant company'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