



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

FOURTH SECTION

CASE OF NISKASAARI AND OTHERS v. FINLAND

(Application no. 37520/07)

JUDGMENT

STRASBOURG

6 July 2010

FINAL

06/10/2010

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

In the case of Niskasaari and Others v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku, *judges*,

Anne E. Niemi, *ad hoc judge*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 15 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 37520/07) 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 two Finnish nationals, Mr Mikko Niskasaari and Mr Jouni Flinkkilä, and by a Finnish limited liability publishing company Yhtyneet Kuvalehdet Oy (“the applicants”), on 30 July 2007.

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

3. On 19 January 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. Ms P. Hirvelä, the judge elected in respect of Finland, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Ms Anne E. Niemi to sit as an *ad hoc* judge (Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first and second applicants were born in 1952 and 1948 respectively and live in Helsinki. The applicant company has its seat in Helsinki. The first applicant is a freelance journalist and the second applicant editor-in-chief of *Seura* magazine.

6. On 20 December 1996 an article written by the first applicant was published in issue no. 51-52/1996 of *Seura* magazine. It stated in the headline that the Child Ombudsman in the Mannerheim League for Child Welfare (*Mannerheimin lastensuojeluliitto, Mannerheims barnskyddsförbund*), which is a non-governmental organisation, had been removed from office (in Finnish: "*Lapsiasiamies hyllylle*") and in the text, *inter alia*, that the Ombudsman (henceforth "X.") had been transferred to do research work and that she would not be replaced as Ombudsman ("*... [hänet] siirretään tutkijaksi, eikä hänelle palkata sijaista lapsiasiamieheksi*"). The article also stated that the Ombudsman had no training or experience in research work. The general tone of the article was critical. During the subsequent court proceedings the first applicant argued that when writing it he had relied on information given in a tabloid article published on 11 December 1996. He considered that no reason had emerged to believe that the information contained therein was not true.

7. Issue no. 4/1997 of *Seura* magazine included a rectification by the press officer of the Mannerheim League for Child Welfare, stating that the information concerning removal from office was groundless. The rest of the rectification stated the following:

"[i]n 1995 X. was awarded a grant for three months which she used last autumn. X. will also have three months' research leave in 1997. X will take this leave at a later stage to be agreed upon.

"The research leave does not affect X.'s position as the Child Ombudsman in the Mannerheim League for Child Welfare in any way."

8. On 29 October 1997 X. requested the police to investigate the matter. On 28 April and 30 April 1998 the first and the second applicants were questioned by the police. In her concluding statement of 16 December 1998 X. pursued a compensation claim against all the applicants. The pre-trial investigation was completed on 1 November 1998.

9. On 3 April 2000 the public prosecutor preferred charges against the first and second applicants. The next day the case became pending before the Espoo District Court (*käräjäoikeus, tingsrätten*). X. concurred with the charges brought by the public prosecutor and supplemented the description of the defamation charges. On an unknown date X.'s compensation claim,

together with her claim for costs and expenses, was joined to the criminal charges.

10. On 5 May 2000 the District Court invited the parties' written submissions. According to the applicants they were served with the summonses only in November 2000.

11. On 26 May 2003 the District Court held a preparatory hearing. A second preliminary hearing was held on 19 September 2003.

12. The District Court heard the case over three days during the period from 1 to 9 December 2003. It heard thirteen witnesses and received a significant amount of documentary evidence.

13. On 19 January 2004 the District Court gave judgment, convicting the first and second applicants of defamation (*painotuotteen kautta tehty julkinen herjaus, offentlig smädelse skett genom tryckalster*), sentencing them to forty day-fines, amounting to EUR 240 and EUR 2,360 respectively, and ordering them, together with Yhtyneet Kuvalehdet Oy, the publishing company, to pay non-pecuniary damages to X. in the amount of 5,000 euros (EUR) plus interest and to reimburse two thirds of her costs and expenses, that is, EUR 17,172 plus interest. The reimbursement of costs was only partial, on the ground that X. was considered to have submitted some pieces of evidence which had not been relevant to the case.

14. The District Court's conclusions from the evidence presented were the following:

“The defendants being guilty of defamation

1. Allegation concerning the transfer of [X.] to research work

Excluding the headline and the caption, the article referred to in the indictment was drafted by [the first applicant]. It was written in the article, in a manner described in the indictment, that [X.] is transferred to do research work. This passage of the article was the basis of the headline, "Child Ombudsman removed from office".

It appears from the testimonies of witnesses [I.], [K.-T.], [W.] and [K.] that [X.] had not been transferred to a researcher post but that she had instead undertaken research work and had therefore been on 80% research leave from 1 October to 31 December 1996.

On 11 December 1996 *Ilta-Sanomat* published an article reporting on [X.'s] transfer to research work. The defendants have invoked this article, arguing that it and the article referred to in the indictment had no essential difference and that [X.] has not claimed rectification or filed a criminal complaint on account of the article in *Ilta-Sanomat*.

The District Court holds that there is a relevant difference between reporting that a person will transfer or has transferred to other tasks and reporting that the person has been transferred to other tasks. The latter wording, which [the first applicant] has used in his article, is negative *vis-à-vis* a person, such is also the headline of the article, which is based on this wording and alleges [X.'s] removal from office. Such a wording suggests that the person in question has committed some misconduct in his or

her work or performed it inappropriately and is therefore removed from office and transferred to other tasks due to his or her own fault. In [X.'s] case such a transfer did not take place, and the information given in the article was incorrect. This incorrect information disclosed in the article included a hint that [X.], when performing her work, had been guilty of an act which warranted her transfer to other tasks. This incorrect information was conducive to causing damage to her performance in office and to her success. Furthermore, [X.'s] tasks were not changed at the turn of the years 1996-1997.

...

3. Experience of and training for research work

It is stated in the indictment that the article has aimed to strengthen the impression given by it that the transfer of [X.] to research work was due to her poor performance in office, by writing that [X.] has no experience of or training for research work.

It has appeared in the matter, also from [X.'s] testimony, that the information about the lack of research experience and training is not false as such. In a manner described in the indictment, this reference is connected to the allegation made in the article that [X.] had been transferred to research work. However, as the allegation of transfer has been found incorrect, the information about [X.'s] lack of research experience and training, truthful as such, has, in the manner described in the indictment, strengthened the erroneous impression given by the article that [X.] had been transferred to other tasks due to her own fault, and even to tasks for which she was unqualified in terms of training and experience. In the context in question, the information violated [X.'s] honour and strengthened the significance of the incorrect information disclosed in the article.

4. Summary

The article provided incorrect information about the removal of [X.] from office and her transfer to research work and emphasised the significance of the alleged transfer by stating that [X.] lacks the necessary training and experience. To this extent the article gave the reader the picture that the alleged transfer was due to [X.'s] poor performance of the tasks of Child Ombudsman. The article contained incorrect information which was conducive to causing damage to [X.'s] performance in office and her success. [The first applicant], responsible for the text of the article, and [the second applicant], responsible for the text and the headline of the article, have not verified the information given in the article although it was easily verifiable from the Mannerheim League for Child Welfare, for example from Secretary General [I.]. The information about the transfer of [X.] to research work has been the erroneous conclusion of [the first applicant], and the headline of the article, an aggravated expression highlighting the erroneous allegation, which has been created by the editorial staff on the basis of the said conclusion.”

15. On 23 February 2004 the District Court, on the request of the first and second applicants and X., extended the time-limit for appealing against the judgment until 18 March 2004. The time-limit for filing a counter-appeal was fixed at 1 April 2004.

16. The applicants appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*). In a counter-appeal dated 1 April 2004 X. argued, *inter alia*, that the appellate court should increase the compensation payable to her.

17. The case was heard over two days, on 13 and 15 June 2006, in the Court of Appeal. On 31 August 2006 it upheld the lower court's judgment.

18. The Court of Appeal's assessment of the evidence was the following:

“The Court of Appeal holds that no reason exists to assess the evidence presented in the case differently from the assessment made by the District Court regarding the incorrectness of the article published in *Seura* magazine. Thus, the article in issue was not truthful to the extent that it alleged that [X.] had been transferred to do research work. Likewise, the headline of the article and the caption under [X.'s] photograph, which were based on the said allegation, were untruthful. The Court of Appeal holds, in line with the District Court, that the article published in *Ilta-Sanomat* on 11 December 1996, which, according to [the first applicant] was the basis for his article, has not corresponded to the article published in *Seura* in respect of the parts in issue. According to the headline of the article in *Ilta-Sanomat*, [X.] has undertaken research work, and according to the text of the article itself, [X.] was transferring to research work. The article also stated that [X.] had agreed on the change to research work more than one year earlier, that [X.] had already started a special study in addition to her daily work as the Child Ombudsman and that the main emphasis of her work would be shifted onto research and that according to [the Secretary General], no replacement was needed for the Child Ombudsman. Although witness [V.] had reported that when writing the article *Ilta-Sanomat* had thought that there were conflicts behind [X.'s] changeover to research work, the article in the newspaper cannot lead to the conclusion that [X.] was transferred to research work for such reasons. Therefore, [the first applicant] could not have based his allegation about the transfer of [X.] on the article in *Ilta-Sanomat*. The fact that witness [V.] remembers having read about [X.'s] changeover in some little article in another news publication or in some press release already, is without significance in assessing the liability of [the first applicant]. Further, it has not been substantiated solely on the basis of the testimony of witness [V.] that such a piece of news or press release even existed. Neither has it been clarified that the leaders of the Mannerheim League for Child Welfare were otherwise revising the job description of [X.] as the Child Ombudsman in 1996. Therefore, it is to be considered that [the first applicant], by failing to verify the truthfulness of the allegation of transfer of [X.] to research work, intentionally, against his better knowledge, made a false allegation, which may have subjected [X.] to contempt or caused damage to her livelihood or success.

[The first applicant] has submitted that he did not write the headline and the caption of the article in *Seura*. [The second applicant], too, has submitted that the headline and the caption were written by editorial staff, probably by a subeditor. However, [the second applicant] has admitted that he, as the editor-in-chief, was also responsible for the headline of the article, which the groundless allegation by [the first applicant] made possible.

[The second applicant] has submitted in the Court of Appeal that he did not read the article by [the first applicant] in advance or discuss it with him. However, when questioned in the pre-trial investigation, he remembered the incidents better. [The second] applicant has reported in the police investigation on 30 April 1998 that he discussed the article and its truthfulness with [the first applicant] before it was published. No reason exists to doubt the reliability of the testimony given by [the

second applicant] in the pre-trial investigation. It has thus been substantiated that [the second applicant] approved the publishing of the article. Therefore, the second applicant has intentionally published the false allegation described above.

On the aforementioned grounds and otherwise on the grounds stated by the District Court, it has been substantiated that [the first and second applicants], are guilty of public defamation, against their better knowledge, committed through printed material under Chapter 27, section 1, of the Penal Code in force at the time of the offence, as imputed to them by the District Court. The act also fulfils the essential elements of defamation under the current Chapter 24, section 9, subsection 1, of the Penal Code. Since the offence was committed through mass media, and considering the circumstances mentioned by the District Court in the reasoning for its judgment and the fact that the article gives the picture that [X.] had committed misconduct in work or performed it inappropriately and was therefore transferred to other tasks against her own will, the defamation is also to be considered aggravated when assessed as a whole. Since applying the new law will thus not lead to a more lenient result than the law in force at the time of the offence, the earlier Chapter 27, section 1, of the Penal Code is to be applied.

...”

19. On 30 October 2006 X. and the applicants applied for leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*), referring, *inter alia*, to Articles 6 and 10 of the Convention. Leave was refused on 1 February 2007.

Other events

20. Meanwhile, on 11 December 2003 the Mannerheim League for Child Welfare decided to wind up the functions of the Child Ombudsman with effect from 1 February 2004. In a final judgment of 27 October 2006 the Helsinki District Court held that X.'s duties had been unlawfully terminated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Legislation

21. Chapter 27, section 1, of the Penal Code (*rikoslaki, strafflagen*, Act no. 908/1974, as in force at the relevant time) provided as follows:

“A person falsely alleging, contrary to his or her better knowledge, that someone has committed a named offence or a named type of an offence, or other act, which might make this person an object of contempt or might affect his or her trade or success, or who spreads a lie or a false rumour about someone, is to be convicted of defamation and sentenced to imprisonment for at least one month and at most one year or to a fine of at least [one hundred marks].

If defamation is made in public or through a printed publication, in writing or through pictorial presentation, which the offender distributes or has distributed, the punishment is imprisonment of at least two months and at most two years or a fine of at least [two hundred marks].”

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

23. According to the government bill to amend the Tort Liability Act (HE 116/1998), the maximum amount of compensation for pain and suffering from, *inter alia*, bodily injuries had in the recent past been approximately FIM 100,000 (EUR 16,819). In the subsequent government bill to amend the Tort Liability Act (HE 167/2003, p. 60), it is stated that no changes to the prevailing level of compensation for suffering are proposed.

Self-regulation of journalists

24. The Union of Journalists in Finland (*Suomen Journalistiliitto, Finlands Journalistförbund ry*) publishes Guidelines for Journalists (*Journalistin ohjeet, Journalistreglerna*) for the purposes of self-regulation. The 1992 Guidelines were in force at the material time and provided, *inter alia*, the following:

“Section 8: In his/her work, a journalist must aim for truthful, relevant and diverse communication.

Section 9: Information sources must be approached critically. This is particularly important in controversial issues, since the source of the information may have an intention of personal gain or to damage others.

Section 10: Any information obtained must be checked as thoroughly as possible, including cases where the information has been published previously.

Section 11: The public must be able to distinguish facts from opinions and fictitious material. This principle does not limit the choice of journalistic style and format.

Section 12: Headlines, leads, cover and picture captions, sales-promotion posters and other presentation material must be justified by the body of the story.”

25. New Guidelines, which came into force in 2005, include similar provisions.

III. RELEVANT INTERNATIONAL MATERIALS

26. On 4 October 2007 the Parliamentary Assembly of the Council of Europe adopted Resolution 1577 (2007), *Towards decriminalisation of defamation*, in which it urged those member States which still provide for prison sentences for defamation, even if they are not actually imposed, to abolish them without delay.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE FIRST AND SECOND APPLICANTS

27. The first and second applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which 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...”

28. By a letter dated 31 August 2009 the Government informed the Court of their unilateral declaration, signed on the same date, with a view to resolving the issue raised by this complaint in respect of the first and second applicants.

29. The declaration provided as follows:

“1. Whereas the efforts with a view to securing a friendly settlement of the case have been unsuccessful, the Government wishes to express – by way of its unilateral declaration – its acknowledgement that with respect to the first and second applicant, in the special circumstances of the present case, the length of the criminal proceedings have failed to fulfil the requirement of “reasonable” within the meaning of Article 6 § 1 of the Convention.

2. Consequently and taking into account that the first and second applicants have claimed for a total sum of EUR 10,000 (EUR 5,000 each) for the compensation of non-pecuniary damage, the Government is prepared to pay the first and second applicants in compensation a total sum of EUR 11,000 (eleven thousand euros). This sum includes EUR 10,000 for non-pecuniary damage and EUR 1,000 for costs and expenses (inclusive of VAT). In the Government's view, the aforementioned total sum would constitute adequate redress and sufficient compensation for the impugned length of the said criminal proceedings, and thus constitute an acceptable sum as to *quantum* in the present case.

3. The total sum will be payable within three months from the date of notification of the decision pursuant to Article 37 § 1 (c) of the Convention. In the event of a failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from the expiry of that period until settlement, at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

4. In the light of above, the Government would suggest that the circumstances of the present case allow the Court to reach the conclusion that there exists 'any other reason', as referred to in Article 37 § 1 (c) of the Convention, justifying the Court to discontinue the examination of the application in terms of the alleged violation of Article 6 § 1 of the Convention with respect to the first and second applicants, and that, moreover, there are no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the further examination of the case by virtue of that provision. Accordingly, the Government invites the Court to strike the application in terms of the alleged violation of Article 6 § 1 of the Convention with respect to first and second applicants out of its list of cases."

30. In a letter of 7 October 2009 the applicants considered that the unilateral declaration constituted a forced settlement but they did not object to the Government's willingness to pay the amount of compensation in question. However, in their view, this complaint required further examination by the Court.

31. The Court notes that both parties filed submissions with the Registry in the context of friendly settlement negotiations (Article 38 § 1 (b) of the Convention and Rule 62 of the Rules of Court). No settlement was reached.

32. Article 37 of the Convention provides that the Court may, at any stage of the proceedings, decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

33. Article 37 § 1 *in fine* includes the following proviso:

"However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

34. The Court points out that, under certain circumstances, it may be appropriate to strike out an application, or part thereof, under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration filed by the respondent Government even if the applicant wishes the examination of the case to be continued. In deciding whether or not it should strike the length of proceedings complaint out of its list, the Court will examine the terms of the declaration made by the Government in the light of the principles emerging from its case-law, in particular its judgments in cases such as *Tahsin Acar v. Turkey* [GC] (no. 26307/95, §§ 75-77, ECHR 2003-VI); *Meriakri v. Moldova* ((striking out), no. 53487/99, 1 March 2005); *Swedish Transport Workers Union v. Sweden* ((striking out), no. 53507/99, 18 July 2006); *Van Houten v. the Netherlands* ((striking out), no. 25149/03, ECHR 2005-IX), *Kalanyos and Others v.*

Romania ((no. 57884/00, § 25, 26 April 2007)), and *K.K. v. Finland* ((striking out), no. 7779/04, 27 November 2007).

35. The Court observes that the criminal proceedings lasted eight years and nine months at three levels of jurisdiction. It notes that the Government's declaration contains a clear acknowledgment that the "reasonable time" requirement has not been respected within the meaning of Article 6 § 1 of the Convention. The Court is satisfied that the total amount offered to the first and second applicants by the Government in compensation for non-pecuniary damage and costs and expenses, that is 11,000 euros, constitutes adequate redress for the excessive length of the proceedings having regard to all the circumstances of the case, and that this amount is consistent with the amounts awarded in other similar cases.

36. The Court has established in a number of cases its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-). Furthermore, it has already had occasion to address complaints related to alleged breach of one's right to a hearing within a reasonable time in cases against Finland (see, for example, *Riihikallio and Others v. Finland*, no. 25072/02, §§ 22-27, 31 May 2007; *Ekholm v. Finland*, no. 68050/01, §§ 62-66, 24 July 2007; and *Rafael Ahlskog v. Finland*, no. 23667/06, §§ 18-24, 13 November 2008).

37. Against this background, the Court considers that it is no longer justified, within the meaning of Article 37 § 1 (c) of the Convention, to continue the examination of this part of the application, and finds no reasons which would require the further examination of this part of the case (Article 37 § 1 *in fine*).

38. Accordingly, it should be struck out of the list.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE APPLICANT COMPANY

39. The applicant company also complained under Article 6 § 1 of the Convention about the length of the criminal proceedings.

40. The Government contested that argument.

A. Admissibility

41. 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

42. As to the period to be taken into consideration, the parties disagree on the date when the proceedings began in respect of the applicant company. The Government maintained that the period to be taken into account had begun when the applicant company became aware of the claims presented against it, that was, during the oral hearing in the District Court which had begun on 1 December 2003. The applicant company maintained that the period to be taken into account had begun at the latest on 16 December 1998 when X. had submitted her compensation claims for the first time.

43. The Court notes that the period to be taken into account began to run when the applicant company became aware of the claims presented against it. The compensation claims submitted by X. were apparently served on the applicant company only in November 2000. Thus, the proceedings started to run from the date of that event and they ended on 1 February 2007 when the Supreme Court refused leave to appeal. They thus lasted some six years and three months at three levels of jurisdiction.

44. 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 applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

45. The Government maintained that the proceedings had not violated the “reasonable time” requirement in the present case.

46. The applicant claimed that, as the proceedings had lasted in this simple matter approximately nine years, the “reasonable time” requirement had been violated.

47. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

48. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings in respect of the applicant company was excessive and failed to meet the “reasonable time” requirement.

49. There has accordingly been a breach of Article 6 § 1 in respect of the applicant company.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

50. The applicants also complained under Article 10 of the Convention about a violation of their right to freedom of expression. They had only, albeit in a critical tone, reported on an issue which had dealt with a matter of general interest.

51. Article 10 of the Convention reads as follows:

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

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

52. The Government contested that argument.

A. Admissibility

53. 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 applicants

54. The applicants maintained that they had not claimed in their article that X. had committed an offence and, as stated by the District Court, the information about lacking experience and training had not been incorrect. The article had not discussed X.'s private life but rather criticised her work as Child Ombudsman. The magazine had published a rectification which had stated unequivocally that the information about X. being sidelined had been incorrect. The applicants had acted in good faith and their incorrect statement should not be considered so significant that a restriction on freedom of expression would be necessary. The Guidelines for Journalists were not intended to be used as a basis for criminal assessment. On the

other hand, Articles 7 and 10 of the Convention as well as Section 8 of the Constitution of Finland required that the punishability of a deed had to have a basis in law.

55. The applicants claimed that before writing the article in question, the first applicant had tried to interview T. by telephone at the Mannerheim League for Child Welfare but she had not wished to comment on the matter in detail. Based on the information in the article of 11 December 1996, it had been clear that X. would not continue in her post as before but would transfer to research work and that she would not be replaced. The applicants had had reason to believe that these issues were somehow related.

56. The applicants pointed out that the Government had not put forward any arguments showing that restrictions on freedom of expression had been necessary in the present case for a pressing social need or for any other reason. Neither had the District Court nor the Court of Appeal taken into account Article 10 of the Convention or considered the necessity requirement under that Article in their judgments. While it was true that X. had been publicly criticised in the media over the years, this could not be attributed to the applicants. Bearing in mind that the applicants had been obliged to pay not only the fines but also close to EUR 26,000 in compensation and costs, they maintained that Article 10 of the Convention had been violated.

(b) The Government

57. The Government conceded that the convictions of the first and second applicants, as well as ordering all the applicants to pay damages and costs, had amounted to an interference with the exercise of their right to freedom of expression under Article 10 of the Convention.

58. The impugned measures had had a basis in Finnish law, especially in Chapter 27, section 1, of the Penal Code and in Chapter 5, section 6, of the Tort Liability Act, both provisions fulfilling the requirements of precision and clarity. The interference had thus been “prescribed by law” as required by Article 10 § 2 of the Convention.

59. As to the legitimate aim, the interference had aimed to protect the reputation and rights of others, namely those of X.

60. As to whether the interference was “necessary in a democratic society”, the Government pointed out that, according to national law and the Supreme Court's case-law, anyone publishing a defamatory allegation had to provide evidence showing that sufficient grounds existed to support the allegation. Therefore anyone publishing particularly serious allegations had a special duty to verify their truthfulness from available sources. As the District Court and the Court of Appeal had found in their judgments, the applicants had not verified the information given in the article although it had been easily verifiable. The article in question had not completely corresponded to the article of 11 December 1996 published in the tabloid

newspaper which had been based on truthful information. There had been no evidence that X. had not continued her work as the Child Ombudsman as before, as these functions had been wound up only in 2003.

61. The Government pointed out that it did not appear from the documents whether the rectification had been published in its entirety. In any event, it appeared that X. had not been given a possibility to comment on the article prior to its publication and that the article had caused her suffering. Moreover, the factual basis on which the applicants had relied had not been sufficiently accurate and reliable. Contrary to what the applicants alleged, the domestic courts had attached importance to all the relevant facts of the case and had balanced thoroughly the public interest involved and the interests of the parties in the light of the Court's case-law.

62. As to the fines imposed, the Government maintained that they had been moderate. Also the damages and costs and expenses, which the applicants had been ordered to pay, had been reasonable. The domestic courts had attached significance to all the relevant circumstances of the case and the grounds relied on by them had not only been relevant but also sufficient to justify the interference with the applicants' right to freedom of expression. Taking into account the margin of appreciation, the Government maintained that a fair balance had been struck between the public interest involved and the interests of X.

2. The Court's assessment

1. Whether there was an interference

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

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

64. As to whether the interference was "prescribed by law", the Court notes that the parties agree that the interference complained of had a basis in Finnish law, namely Chapter 27, section 1, of the Penal Code and Chapter 5, section 6, of the Tort Liability Act. Moreover, they agree that both provisions fulfilled the requirements of precision and clarity. The Court concludes therefore that the interference was "prescribed by law" (see *Nikula v. Finland*, no. 31611/96, § 34, ECHR 2002-II; *Selistö v. Finland*, no. 56767/00, § 34, 16 November 2004; *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X; and *Eerikäinen and Others v. Finland*, no. 3514/02, § 58, 10 February 2009). In addition, it has not been

disputed that the interference pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2.

3. Whether the interference was necessary in a democratic society

65. 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).

66. 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).

67. 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).

68. 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)*, 26 April 1979, § 62, Series A no. 30; *Lingens*, cited above, § 40; *Barfod v. Denmark*, 22 February 1989, § 28, Series A no. 149; *Janowski*, cited above, § 30; and *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I). In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an

acceptable assessment of the relevant facts (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

69. 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.).

70. Turning to the facts of the present case, the Court notes that the first and second applicants were convicted on the basis of the remarks made in an article in their capacity as a journalist or as editors-in-chief, and were, together with the applicant company, ordered to pay damages.

71. The Court observes at the outset that the article of 20 December 1996 in *Seura* magazine stated in the headline that X. who was the Child Ombudsman in the Mannerheim League for Child Welfare had been removed from office and in the text, *inter alia*, that X. had been transferred to do research work and that she would not be replaced as Ombudsman. The article also stated that X. had no training or experience in research work and included her photograph.

72. The Court considers that the impugned article did not concern X.'s private life but rather her work as Child Ombudsman in the Mannerheim League for Child Welfare, which is a non-governmental organisation. X. was neither a civil servant nor a politician and therefore not as such subject to the wider limits of acceptable criticism. However, she could not be considered to be a completely private person as, due to her position, she had been publicly promoting the goals and objectives of the non-governmental organisation and had therefore been visible in the media over the years.

73. The Court notes that it was established by the domestic courts that the impugned article contained both correct and incorrect information, and that the emphasis had been on the latter. Moreover, the domestic courts found that the first and second applicants had not verified the information given in the article although it would have been easily verifiable from certain sources. The incorrect information had been rectified in one of the later issues of the magazine.

74. The Court observes that responsible journalism requires checking of sources from the standpoint of their accuracy in order to prevent factual errors (see, *mutatis mutandis*, *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 65, 14 February 2008). This obligation is highlighted in section 10 of the Guidelines for Journalists, which have been drafted by media professionals for the purposes of instilling within the profession a commitment to basic deontological rules including the pursuit of accuracy in reporting. While it is true that the applicants may have failed to verify sufficiently all of the information in the impugned article, the Court considers, however, that in the present case the applicants can mainly be blamed for misreporting. Moreover, the Court would observe that the domestic courts failed to weigh in the balance the competing interests involved, namely the interests of X. and the rights of the applicants, with the result that the applicants' right to publish the incriminated article was never addressed.

75. Furthermore, it appears that no consideration was given by the domestic courts to the rectification published in one of the later issues of the magazine. The Court considers that the correction of incorrect information by means of a timely rectification can be considered an appropriate form of redress for hurt caused. Nor did the domestic authorities consider whether other less drastic measures would have been sufficient to protect the interests involved.

76. The Court can only note in this latter connection the severity of the penal sanctions imposed on the applicants. It notes that the first and second applicants were ordered to pay forty day-fines, amounting to EUR 240 and EUR 2,360 respectively. In addition all the applicants, together with the applicant company, were ordered to pay damages jointly and severally in a total amount of approximately EUR 8,800 (including interest). The severity of the sentence and 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 paragraph 23 above).

77. The Court would observe in this connection that in view of the margin of appreciation left to Contracting States a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 59, ECHR 2007-..., *Radio France and Others v. France*, no. 53984/00, § 40, ECHR 2004-II and *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 68, 14 February 2008). Nevertheless, when a statement, whether qualified as defamatory or insulting by the domestic authorities, is made in the context of a public debate, the bringing of criminal proceedings against the maker of the statement entails the risk that a prison sentence might be imposed. In this connection, the Court recalls that the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by

Article 10 only in exceptional circumstances, notably where other fundamental rights have been impaired, as for example, in the case of hate speech or incitement to violence (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI; and *Długolecki v. Poland*, no. 23806/03, § 47, 24 February 2009). For the Court, similar considerations should apply to insults expressed in connection with a public debate. The Court would further observe that the Parliamentary Assembly of the Council of Europe in its Resolution 1577 (2007) urged those member States which still provide for prison sentences for defamation, even if they are not actually imposed, to abolish them without delay (Resolution *Towards decriminalisation of defamation* adopted on 4 October 2007).

78. The Court can accept that an action, at least in civil law, may lie against a journalist who has published incorrect information about a plaintiff who has suffered pecuniary or non-pecuniary damage as a result. Even accepting that X. had suffered damage, the Court considers that such severe penal sanctions as imposed in the present case together with an obligation to pay damages, viewed against the circumstances, were disproportionate having regard to the competing interest of freedom of expression.

79. 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 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.

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

IV. REMAINDER OF THE APPLICATION

81. Lastly, the applicants referred in their application to Article 7 of the Convention.

82. The Court finds, having regard to the case file, that the matter complained of does not disclose any appearance of a violation of the applicants' rights under the Convention (see *Selistö v. Finland*, cited above, §§ 31 and 34). Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. All applicants claimed EUR 28,688.86 in respect of pecuniary damage, and the first and second applicants claimed EUR 5,000 each in respect of non-pecuniary damage.

85. The Government pointed out that, in respect of the first and second applicants, the unilateral declaration should be taken into account. As to pecuniary damage and the alleged violation concerning the excessive length of the proceedings, there was no causal link between the damage suffered and the alleged violation. The Government contended that, if the Court were to find a violation of Article 10, the applicants were entitled to compensation for pecuniary damage. However, it was to be noted that all of the amounts claimed under this heading had in fact been paid by the applicant company. As to non-pecuniary damage, the Government referred to its unilateral declaration and considered that, were the Court to find a violation of Article 10, no further compensation should be awarded as the applicants had already been compensated up to the total amount of their claim.

86. As to pecuniary damage, the Court does not discern any causal link between the violation of Article 6 of the Convention and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, in respect of the violation of Article 10, it finds that such causal link exists and, consequently, there is justification for making an award to the applicants under that head. Having regard to all the circumstances, the Court awards the applicants jointly the sum claimed in full. As to non-pecuniary damage, the Court notes that the first and second applicants have already been awarded, in the Government's unilateral declaration concerning Article 6 of the Convention, the full sum claimed.

B. Costs and expenses

87. The applicants also claimed EUR 51,785.55 for the costs and expenses incurred before the domestic courts and EUR 5,402.65 for those incurred before the Court.

88. The Government left it to the Court's discretion to decide whether the applicants had submitted adequate documents to support their claims. In any event, the hourly rates appeared to be very high and certain expenses, such as those for postage, telephone and copying, should not be compensated as they had already been included in counsel's fee. The

unilateral declaration should also be taken into account as reduction. In any event, the Government considered that the applicants' claims were too high as to *quantum* and that the compensation for the costs and expenses incurred before the domestic courts should not exceed EUR 5,200 (inclusive of value-added tax) and those incurred before the Court EUR 3,000 (inclusive of value-added tax).

89. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 8,500 (including any value-added tax) under this head.

C. Default interest

90. 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. *Takes note* of the terms of the respondent Government's declaration in respect of the first and second applicants' length of proceedings complaint under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;
2. *Decides* to strike the application out of its list of cases in so far as it relates to the above complaint introduced by the first and second applicants, in accordance with Article 37 § 1 (c) of the Convention;
3. *Declares* the remaining complaints under Article 6 § 1 of the Convention, as regards the applicant company, and Article 10 of the Convention, as regards all three applicants, admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant company;
5. *Holds* that there has been a violation of Article 10 of the Convention as regards all three applicants;

6. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 28,688.86 (twenty-eight thousand six hundred and eighty-eight euros and eighty-six cents) to the applicants jointly, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 8,500 (eight thousand five hundred euros) to the applicants jointly, plus any tax that may be chargeable to them, 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;

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

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

Lawrence Early
Registrar

Nicolas Bratza
President