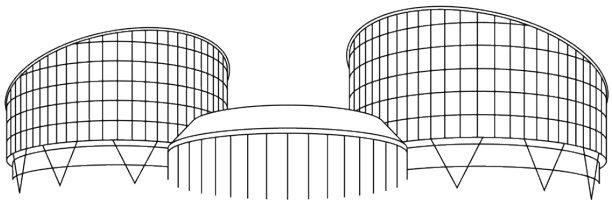

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

Application no. 16248/10
by Tommi Tapani ANTTILA
against Finland
lodged on 22 March 2010

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Tommi Tapani Anttila, is a Finnish national who was born in 1955 and lives in Kokemäki. He is represented before the Court by Mr Pekka Vainio, a lawyer practising in Turku.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant has been the editor-in-chief of *Veropörssi* magazine since 1994. The magazine is published by a limited liability company *Satakunnan Markkinapörssi Oy* in which the applicant is also a shareholder. The magazine publishes yearly information about natural persons' taxable income and assets. This information is public according to Finnish law. Several other publications and media companies also publish such information.

In 2002 the magazine appeared 17 times and each issue concentrated on a certain geographical area of the country. Data on 1.2 million persons' taxable income and assets were published, which constituted at the time a third of all taxable persons in Finland. The magazine also published tax-related articles and announcements.

The limited liability company *Satakunnan Markkinapörssi Oy* had worked in cooperation with another limited liability company *Satamedia Oy* and in 2003 they started, together with a telephone operator, an SMS-service. By sending a person's name to a service number, taxation information concerning that person could be obtained if that information

was available in the data base. The data base was created on the basis of data already published in the magazine.

On an unspecified date the Data Protection Ombudsman (*tietosuojavaltuutettu, dataombudsmannen*) contacted the two limited liability companies and advised them to stop publishing the taxation data in the manner and to the extent that had been the case in 2002. The companies declined because they felt that this request violated their freedom of expression.

By letter dated 10 April 2003 the Data Protection Ombudsman requested the Data Protection Board (*tietosuojalautakunta, datasekretessnämnden*) to order that the two limited liability companies be forbidden to process taxation data in the manner and to the extent that had been the case in 2002 and to pass such data to an SMS-service. He claimed that, under the Personal Data Act, the companies had no right to establish such personal data registers and that the derogation provided by the Act concerning journalism did not apply to the present case. The collecting of taxation information and the passing of such information to third parties was not journalism but processing of personal data which the two limited liability companies had had no right to do.

On 7 January 2004 the Data Protection Board dismissed the request of the Data Protection Ombudsman. It found that the derogation provided by the Personal Data Act concerning journalism applied to the present case. As concerned the SMS-service, the data used in the service had already been published in *Veropörssi* magazine and the Act did not therefore apply to it.

By letter dated 12 February 2004 the Data Protection Ombudsman appealed to the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), reiterating his request that the two limited liability companies be forbidden to process taxation information in the manner and to the extent that had been the case in 2002 and to pass such data to the SMS-service.

On 29 September 2005 the Administrative Court rejected the appeal. It found that the derogation provided by the Personal Data Act concerning journalism, which had its origins in Directive 95/46/EC, should not be interpreted too strictly as it would then favour protection of privacy over freedom of expression. The court considered that *Veropörssi* magazine had a journalistic purpose and that it was also in the public interest to publish such data. The court emphasised, in particular, that the published data were public. The derogation provided by the Personal Data Act concerning journalism applied thus to the present case. As concerned the SMS-service, the court agreed with the Data Protection Board that, as the information had already been published in the magazine, the Act did not apply to it.

By letter dated 26 October 2005 the Data Protection Ombudsman appealed further to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstole*n), reiterating the grounds of appeal already presented before the Administrative Court.

On 8 February 2007 the Supreme Administrative Court decided to request a preliminary ruling from the European Court of Justice on the interpretation of Directive 95/46/EC.

On 16 December 2008 the European Court of Justice, sitting in a Grand Chamber composition, gave its judgment. It found first of all that the

activities in question constituted "processing of personal data" to which the Directive applied. Moreover, activities involving the processing of personal data such as those relating to personal data files which contained solely, and in unaltered form, material that had already been published in the media, also fell within the scope of the Directive. In order to take account of the importance of the right to freedom of expression in every democratic society, it was necessary to interpret notions relating to that freedom, such as journalism, broadly. However, in order to achieve a balance between the two fundamental rights, the protection of the fundamental right to privacy required that the derogations and limitations in relation to the protection of data provided for in the Directive had to apply only in so far as was strictly necessary. In conclusion, activities such as those involved in the domestic proceedings, relating to data from documents which were in the public domain under national legislation, could be classified as "journalistic activities" if their object was to disclose to the public information, opinions or ideas, irrespective of the medium which was used to transmit them. They were not limited to media undertakings and could be undertaken for profit-making purposes.

On 23 September 2009 the Supreme Administrative Court quashed the previous decisions and requested the Data Protection Board to forbid the processing of taxation data in the manner and to the extent carried out in 2002. It noted first that the term "journalism" was not defined in Directive 95/46/EC but that, according to the European Court of Justice, it was to be interpreted broadly and derogations were to be kept only to what was strictly necessary. When balancing the right to freedom of expression against the right to privacy, the European Court of Human Rights had found that the decisive factor was to assess whether a publication contributed to a public debate or was solely intended to satisfy the curiosity of readers. The court found that the publication of the whole data base collected for journalistic purposes could not be regarded as journalistic activity. The public interest did not require such publication of personal data to the extent that had been seen in the present case, in particular as the derogation in the Personal Data Act was to be interpreted strictly. The same applied also to the SMS-service.

The SMS-service was shut down after the decision of the Supreme Administrative Court was served on the applicant. The magazine has continued publishing taxation data but its content is currently only one fifth of the previous content.

On an unspecified date the Data Protection Board forbade the two limited liability companies to process taxation data in the manner and to the extent that had been the case in 2002. The companies have appealed against this decision. Their case is apparently still pending before the Turku Administrative Court.

B. Relevant domestic law

1. Constitutional provisions

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

> "Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act.
>
> The secrecy of correspondence, telephony and other confidential communications is inviolable.
>
> Measures encroaching on the sanctity of the home, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, may be laid down by an Act. In addition, provisions concerning limitations of the secrecy of communications which are necessary in the investigation of crimes that jeopardise the security of the individual or society or the sanctity of the home, at trials and security checks, as well as during the deprivation of liberty may be laid down by an Act."

Article 12 of the Constitution of Finland (*Suomen perustuslaki, Finlands grundlag*, Act no. 731/1999) concerns the freedom of expression and provides the following:

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

2. Provisions relating to freedom of expression

According to section 1 of the Act on the Exercise of Freedom of Expression in Mass Media (*laki sananvapauden käyttämisestä joukkoviestinnässä, lagen om yttrandefrihet i masskommunikation*, Act no. 460/2003), the Act contains more detailed provisions on the exercise, in the media, of the freedom of expression enshrined in the Constitution. In the application of the Act, interference with the activities of the media shall be legitimate only in so far as it is unavoidable, taking due note of the importance of the freedom of expression in a democracy subject to the rule of law.

3. Provisions relating to the protection of private life

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

> "*Dissemination of information violating private life:*
>
> A person who unlawfully (1) through the use of the mass media, or (2) in another manner publicly spreads information, an insinuation or an image of the private life of another person, such that the act is likely to cause that person damage or suffering, or subject that person to contempt, shall be convicted of injuring personal reputation and sentenced to a fine or a maximum term of two years' imprisonment.
>
> The spreading of information, an insinuation or an image of the private life of a person in politics, business, public office or a public position, or in a comparable position, shall not constitute injury to personal reputation, if it may affect the evaluation of that person's activities in the position in question and if it is necessary for the purposes of dealing with a matter of importance to society."

4. Personal Data Act

According to sections 1 and 2, of the Personal Data Act (*henkilötietolaki, personuppgiftslagen*, Act no. 523/1999, as in force at the relevant time), the objectives of this Act are to implement, in the processing of personal data,

the protection of private life and the other basic rights which safeguard the right to privacy, as well as to promote the development of and compliance with good processing practice.

The Act applies to the automatic processing of personal data. It applies also to other processing of personal data where the data constitutes or is intended to constitute a personal data file or a part thereof.

The Act does not apply to the processing of personal data by a private individual for purely personal purposes or for comparable ordinary and private purposes. It does not apply either to personal data files containing, solely and in unaltered form, data that has been published by the media. Several exceptions also apply to the processing of personal data for purposes of journalism or artistic or literary expression.

5. Public disclosure of tax information

According to section 5 of the Act on the Public Disclosure and Confidentiality of Tax Information (*laki verotustietojen julkisuudesta ja salassapidosta, lagen om offentlighet och sekretess i fråga om beskattningsuppgifter*, Act no. 1346/1999), in annual taxation, the information on a taxpayer's name, year of birth and municipality of domicile is public. In addition, the following information is public:

> "(1) earned income taxable in State taxation;
>
> (2) capital income and property taxable in State taxation;
>
> (3) income taxable in municipal taxation;
>
> (4) income and net wealth tax, municipal tax and the total amount of taxes and charges imposed;
>
> (5) the total amount of withholding tax;
>
> (6) the amount to be debited / the amount to be refunded in the final assessment for the tax year."

C. Relevant European Union law

Article 9 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data provides the following:

> "Processing of personal data and freedom of expression
>
> Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression."

D. Council of Europe texts

The Council of Europe Convention of 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data ("the Data Protection Convention"), which entered into force in respect of Finland on 1 April 1992, defines "personal data" as any information relating

to an identified or identifiable individual. The Convention provides *inter alia*:

> "Article 5 – Quality of data
>
> Personal data undergoing automatic processing shall be:
>
> a. obtained and processed fairly and lawfully;
>
> b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
>
> c. adequate, relevant and not excessive in relation to the purposes for which they are stored;
>
> ..."

COMPLAINT

The applicant complains under Article 10 of the Convention that his right to freedom of expression has been violated in a manner which was not "necessary in a democratic society". The collection of taxation information is not illegal as such and this information is public. The decision of the Supreme Administrative Court means in fact that the applicant is put under prior censorship while other instances have been able to continue publishing such information.

QUESTION TO THE PARTIES

Has there been an interference with the applicant's right to freedom of expression, in particular his right to impart information, within the meaning of Article 10 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?