



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

FOURTH SECTION

Application no. 69939/10
Kari Markus OJALA and ETUKENO OY
against Finland
lodged on 26 November 2010

STATEMENT OF FACTS

The first applicant, Mr Kari Markus Ojala, is a Finnish national, who was born in 1952 and lives in Helsinki. The applicant company, Etukeno Oy, is a Finnish limited liability company which has its seat in Helsinki. They are represented before the Court by Mr Zacharias Sundström, a lawyer practising in Helsinki.

A. The circumstances of the case

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

The applicants, a publisher and a publishing company, wrote and published together with the former girlfriend of the Prime Minister at the time an autobiographical book about their relationship. The book described a period of nine months of their lives from the point of view of the girlfriend, a single mother. The Prime Minister had earlier divorced from his wife. The book described the dating couple's life and their intimate interaction. It book was published on 19 February 2007.

On 5 October 2007 the public prosecutor brought charges under Chapter 24, section 8, of the Penal Code against the first applicant and the girlfriend for having disclosed information about the private life of the Prime Minister (*yksityiselämää loukkaavan tiedon levittäminen, spridande av information som kränker privatlivet*). He also requested that the proceeds of the crime be ordered forfeit to the State in accordance with Chapter 10, section 2, of the Penal Code. The Prime Minister concurred with the charges brought by the

public prosecutor against the first applicant. He also pursued a compensation claim against the first applicant which was joined to the criminal charges. The girlfriend has lodged a separate application with the Court (see *Ruusunen v. Finland*, no. 73579/10).

On 15 February 2008 the book was withdrawn from sale.

On 5 March 2008 the Helsinki District Court (*käräjäoikeus, tingsrätten*), after having voted, dismissed the charges against him. It found that the book disclosed a lot of information about the Prime Minister's private life but that he had already widely disclosed information about his family and habits as well as about his relationship with the girlfriend. Even though he himself had published an autobiography in 2005, had given several interviews, ran a blog and even permitted photographs to be taken at his home, he was known as a politician who strictly controlled his public image. The book also contained some information which had not been disclosed to the public before. In this respect the court found that these new details only completed the information the Prime Minister had disclosed earlier. It was never suggested that the facts disclosed were not true. The book covered a period of nine months of the girlfriend's and the Prime Minister's private life. The court found that the girlfriend had the right to tell about her private life. She also described the Prime Minister, his actions and family in a compassionate manner. The court found that, even though the information disclosed in the book had no direct relevance to the Prime Minister's political functions or his hierarchical position in the State, it had relevance as far as the Prime Minister's person was concerned. The Constitution required that ministers were "known to be honest and competent". Moreover, the book described a situation in which two different realities of present day Finnish society met: a wealthy party leader and Prime Minister on the one hand, and a single mother with everyday money problems on the other hand. The court found that the fact that the girlfriend was writing about her life and her relationship with one of the highest authorities in the country did not restrict but in fact widened her freedom of expression. When weighing the freedom of expression against the protection of private life, the court found that the need to resort to criminal liability decreased when the disclosed information became more and more known. Criminal liability was the last resort in guiding human behaviour and its use had to be proportionate. The court could therefore not hold that the publication of the applicants' book was a criminal act. Moreover, as the first applicant had obtained an opinion from a lawyer before publishing the book, he could not be regarded as having acted with intent and could not therefore be considered as a perpetrator.

On an unspecified date the public prosecutor and the Prime Minister appealed to the Helsinki Appeal Court (*hovioikeus, hovrätten*).

On 10 February 2009 the Helsinki Appeal Court convicted the first applicant of dissemination of information violating personal privacy and sentenced him to 60 day-fines, in total 840 euros. He was ordered to pay to the Prime Minister 1,000 euros plus interest for non-pecuniary damage and 9,344 euros plus interest for his costs and expenses. The proceeds of the crime, 4,260 euros, were ordered forfeit to the State. The court found that the passages in the book concerning the Prime Minister's intimate dating and his children's feelings and behaviour unnecessarily violated the core areas of his protected private life. He had not disclosed these details of his

private life earlier in the media. The fact that he had disclosed some parts of his private life, the protection of which was, due to his status, much narrower than a private person's, did not mean that he could not benefit at all from any protection of his private life. He had thus not waived his right to the protection of private life, nor implicitly consented to the disclosure of information concerning details about his private life. Even though the girlfriend had the right to write about her private life, disclosure of intimate details of another person's private life always required his or her consent. The aim of the applicants' book had been to discuss matters of private life and it had no relevance to the Prime Minister's political functions or his hierarchical position in the State. Nor had it any relevance to the assessment of his personal qualities, such as his lack of honesty and judgment, as the relationship fell within the core areas of his private life and had no relevance to his position as a Prime Minister. Moreover, the first applicant could be held as a perpetrator even though he had obtained a legal opinion about the book before its publishing. His acts had been intentional.

By letter dated 14 April 2009 the applicants appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), requesting that the court establish a precedent in the case as the court had not yet in its case-law assessed freedom of expression in the context of an autobiography.

On 11 June 2009 the Supreme Court granted the applicants leave to appeal.

On 16 June 2010 the Supreme Court, after having held an oral hearing, upheld the Appeal Court's conviction but quashed the forfeiture and lowered the costs and expenses to be paid to the Prime Minister to 6,000 euros plus interest. The first applicant was ordered to pay to the Prime Minister 4,500 euros plus interest for his costs and expenses before that court. In particular, by referring extensively to the Court's case-law, it gave a more narrow scope to the Prime Minister's private life than the Appeal Court. The court found that information about the Prime Minister's sex life and intimate events and his children's feelings and behaviour had not been disclosed to the public before. Nor did the fact that some details of his private life had been disclosed before mean that they could not fall within the scope of criminal liability under Chapter 24, section 8, of the Penal Code. The Prime Minister had not waived his right to protection of private life in these respects. Nor had he given his consent to their publication by consenting to the use of his photograph on the cover of the book. The court considered, contrary to the Appeal Court, that the information about how and when the Prime Minister had met the girlfriend and how quickly their relationship had developed had had relevance to general public discussion as these issues had raised the question of whether in this respect he had been dishonest and lacked judgment. Also the information concerning the great differences in the standard of living between the girlfriend and the Prime Minister, his way of living, the data protection concerns and the protection of the highest political authorities in general had had relevance to general public discussion. The court found also that disclosure of information about the Prime Minister's children was not conducive to causing him damage, suffering and contempt as the girlfriend had only given her own interpretation of the children's attitudes. However, the only references which according to the court had illegally disclosed information about the

Prime Minister's private life were the information and hints about the sex life and intimate events between the girlfriend and the Prime Minister. The applicants had been aware of the fact that the Prime Minister's position vis-à-vis the publication of such information was negative and the requirement of intent was thus thereby fulfilled.

B. Relevant domestic law

Constitution

According to Article 12 of the Finnish Constitution (*Suomen perustuslaki, Finlands grundlag*, Act no. 731/1999), 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.

Penal Code

According to Chapter 24, section 8, of the Penal Code (*rikoslaki, strafflagen*, Act no. 531/2000),

“A person who unlawfully

(1) through the use of the mass media, or

(2) otherwise by making available to many persons

disseminates information, an insinuation or an image of the private life of another person, so that the act is conducive to causing that person damage or suffering, or subjecting that person to contempt, shall be sentenced for *dissemination of information violating personal privacy* to a fine or to imprisonment for at most two years.

The spreading of information, an insinuation or an image of the private life of a person in politics, business, public office or public position, or in a comparable position, does not constitute dissemination of information violating personal privacy, if it may affect the evaluation of that person's activities in the position in question and if it is necessary for purposes of dealing with a matter with importance to society.”

Chapter 10, section 2, of the same Code (Act no. 875/2001) provides that:

“The proceeds of crime shall be ordered forfeit to the State. The forfeiture shall be ordered on the perpetrator, a participant or a person on whose behalf or for whose benefit the offence has been committed, where these have benefited from the offence.

If no evidence can be presented as to the amount of the proceeds of crime, or if such evidence can be presented only with difficulty, the proceeds shall be estimated, taking into consideration the nature of the offence, the extent of the criminal activity and the other circumstances.

Forfeiture of the proceeds of crime shall not be ordered in so far as they have been returned to the injured party, or in so far as they have been or will be ordered to be reimbursed to the injured party by way of compensation or restitution. If a claim for compensation or restitution has not been filed or if the claim has still not been decided when the request for forfeiture is being decided, the forfeiture shall be ordered.”

COMPLAINTS

The applicants complain under Article 10 of the Convention that their right to freedom of expression was violated.

They complain under Article 6 of the Convention that they were not allowed to question a witness during the Appeal Court proceedings as that court did not hold an oral hearing. Moreover, the charges were unspecified as any passages of the book had not been identified.

QUESTION TO THE PARTIES

Has there been an interference with the applicants' freedom of expression, in particular their right to impart information and ideas, 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?