

Press release issued by the Registrar

JUDGMENT IN THE CASE OF TAMMER v. ESTONIA

In a judgment<sup>1</sup> notified in writing today in the case of Tammerv. Estonia, the European Court of Human Rights held unanimously that there had been **no violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

**1. Principal facts**

The applicant, Enno Tammerv, an Estonian national, was born in 1960 and lives in Tallinn (Estonia).

On 3 April 1996, when the applicant was working as a journalist and editor of the Estonian daily newspaper *Postimees*, the newspaper published his interview with another journalist, Üla Russak, concerning the publication by Mr Russak of the memoirs of Vilja Laanaru without her consent.

Ms Laanaru worked for Edgar Savisaar (to whom she is now married) before and after he became Prime Minister of Estonia in 1990, while he was married to his first wife. She worked in the Ministry of the Interior when Mr Savisaar was Minister and she was politically active in the Centre Party led by him. In or around 1989 she had his child, who was entrusted into the care of her parents.

Following Mr Savisaar's resignation as Minister of the Interior on 10 October 1995, Ms Laanaru left her post and began writing her memoirs, recounting her experiences in politics and government, with the help of Mr Russak. She also reflected on her relationship with Mr Savisaar, on whether she had broken up his family and on whether she had been a good mother.

A disagreement arose between Ms Laanaru and Mr Russak as to the publication and authorship of the memoirs and Ms Laanaru brought a civil action before Tallinn City Court for the protection of her rights as the author of the manuscript. On 29 March 1996 the City Court issued an order prohibiting Mr Russak from publishing the manuscript pending the resolution of the issue of its authorship. Following the court order, Mr Russak decided to publish the material collected in a different form, i.e. in the form of the information Ms Laanaru had recounted to him during their collaboration.

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Mr Russak's account of Ms Laanaru's story began appearing in the daily newspaper *Eesti Päevaleht* on 1 April 1996. In the interview on 3 April in *Postimees*, the applicant asked Mr Russak:

"Don't you feel that you have made a hero out of the wrong person? A person breaking up another's marriage ("*abielulõhkuja*"), an unfit and careless mother deserting her child ("*rongaema*"). It does not seem to be the best example for young girls."

Ms Laanaru instituted private prosecution proceedings against Mr Tammer for allegedly having insulted her by referring to her as "*abielulõhkuja*" and "*rongaema*". By judgment of 3 April 1997 Tallinn City Court convicted him of the offence of insult under Article 130 of the Criminal Code and fined him 220 Estonian kroons (EEK). The judgment was upheld by Tallinn Court of Appeal and subsequently by the Supreme Court.

## 2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 19 February 1998. The case was transmitted to the European Court of Human Rights on 1 November 1998 and declared admissible on 19 October 1999.

Judgment was given by a Chamber of seven judges, composed as follows:

Elisabeth **Palm** (Swedish), *President*,  
Luigi **Ferrari Bravo**<sup>1</sup> (Italian),  
Wilhelmina **Thomassen** (Dutch),  
Gaukur **Jörundsson** (Icelandic),  
Corneliu **Bîrsan** (Romanian),  
Josep **Casadevall** (Andorran), *judges*,  
Uno **Lõhmus** (Estonian), *ad hoc judge*,

and also Michael **O'Boyle**, *Section Registrar*.

## 3. Summary of the judgment<sup>2</sup>

### Complaint

The applicant complained of a violation of his right to freedom of expression guaranteed under Article 10.

### Decision of the Court

#### Article 10

The Court noted that it was undisputed that the applicant's conviction of insult constituted an interference with the exercise of his freedom of expression. At issue was whether the interference was "prescribed by law", pursued a legitimate aim under Article 10 § 2 and was "necessary in a democratic society".

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<sup>1</sup> Judge elected in respect of San Marino.

2. This summary by the Registry does not bind the Court.

While noting that Article 130 of the Criminal Code was worded in rather general terms, the Court was satisfied that the interference was “prescribed by law” and that it pursued the legitimate aim of the protection of the reputation and the rights of others. As regards the question whether it was “necessary in a democratic society” the Court noted the assessment of the domestic courts concerning the nature and use of the words in the circumstances of the case and considered that the applicant could have formulated his criticism of Ms Laanaru’s actions without resorting to insulting language. It did not find it established that the use of the impugned terms in relation to Ms Laanaru’s private life was justified in terms of public concern or that they bore on a matter of general importance.

The Court considered that the domestic courts properly balanced the various interests involved in the case and, taking into account the margin of appreciation left to the national authorities, were in the circumstances entitled to interfere with the exercise of the applicant’s right. It also noted the limited amount of the fine of EEK 220 imposed on the applicant as a penalty.

The Court concluded that the applicant’s conviction and sentence were not disproportionate to the legitimate aim pursued and that the reasons advanced by the domestic courts were sufficient and relevant to justify such interference. Therefore, there had not been a violation of Article 10.

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The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*