



Mother's conviction of defamation for voicing concerns to a social worker about possible sexual abuse of her daughter violated her freedom of expression

In today's **Chamber** judgment¹ in the case of [M.P. v. Finland](#) (application no. 36487/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned Ms M.P.'s conviction for defamation for expressing concerns to a social worker that her daughter might have been sexually abused by her (the child's) father. This was the second time Ms M.P. had raised such concerns and came after a police investigation into the allegations had concluded that there was no evidence of any crime.

The Court found in particular that the Finnish authorities had not struck a fair balance between the need to protect Ms M.P.'s daughter against the risk of potentially serious harm and the need to protect the father against being wrongly suspected of child abuse. Indeed, it had been disproportionate to pursue criminal charges against Ms M.P. and convict her of defamation in the context of her case, namely a confidential telephone conversation between her and a social worker.

Principal facts

The applicant, Ms M.P., is a Finnish national who was born in 1971 and lives in Helsinki. The case concerns Ms M.P.'s conviction for defamation for having expressed concerns that her daughter might have been sexually abused by her (the child's) father.

Ms M.P. and her ex-partner began living together in 2003. Their daughter was born in November 2004. In May 2006, Ms M.P. and her daughter left the child's father, as Ms M.P. had begun to fear for her own and the child's safety, as the father was, in her view, violent.

In July 2006, the child's father initiated custody and contact rights proceedings. Following interim decisions in August 2006 and June 2007, the Kouvola District Court held an oral hearing and on 4 September 2007 awarded both parents joint custody of the child. She was to live with her mother and visit her father every other weekend from Friday to Sunday and during the holidays, unsupervised.

In the meantime, following the child's third unsupervised visit with her father in August 2007, Ms M.P. contacted a child psychiatrist with concerns that her daughter's behaviour had changed; that she was using vulgar language and was restless and anxious. On 16 August 2007, Ms M.P. contacted the child welfare authorities in Helsinki and reported her suspicions that her daughter was being sexually abused by her (the child's) father. The authorities reported the matter to the police and recommended that the meetings between the child and her father be suspended until the end of the investigation. The police requested that a forensic-psychological interview be conducted with the child, but were told by the Forensic Child and Adolescent Psychiatry Centre that she was too young for such an interview. The pre-trial investigation was concluded on 15 October 2007, after a physiological examination carried out on the child revealed no external signs of any abuse.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 19 October 2007, Ms M.P. had a telephone conversation with a social worker and insisted that another investigation be carried out, as she believed her daughter remained at risk during the unsupervised visits with her father. The social worker explained that the court order on custody rights remained in force, so Ms M.P. would have to appeal against this in court, rather than complaining to the child welfare authorities. Ms M.P. nevertheless submitted a second report to the child welfare authorities in January 2008, insisting on another investigation and maintaining her claim that her daughter was being abused. Later the same month Ms M.P. twice took her daughter to an emergency clinic for examination, as she had trouble sleeping and, was in her view, behaving oddly. No somatic signs or symptoms of sexual abuse were discovered. The Kouvola Police Department's pre-trial investigation into the matter was concluded on 4 May 2008, as there was no appearance of any crime.

On an unspecified date, the father of the child asked the police to investigate whether Ms M.P. had defamed him by giving what he claims was false information about him to the social worker on 19 October 2007. The Public Prosecutor subsequently charged Ms M.P. with defamation for having insisted on 19 October 2007 that her daughter was at risk of sexual abuse by her father, after the police had already investigated the matter and found no appearance of any crime. The Helsinki District Court convicted Ms M.P. of defamation on 11 September 2009, concluding that she had not had a sufficient factual basis for the allegations against her child's father. She was given a fine and ordered to pay 1,000 euros compensation to the child's father. This judgment was upheld on appeal on essentially the same grounds, the Court of Appeal also pointing out that it was irrelevant that her allegations had been made to a public official who was bound by confidentiality.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, Ms M.P. alleged that her freedom of expression had been violated by the defamation proceedings, as she had made her complaints in good faith and had merely been doing what she had seen as her duty to protect her daughter.

The application was lodged with the European Court of Human Rights on 13 June 2012.

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

Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"), *President*,
Ledi **Bianku** (Albania),
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),
Robert **Spano** (Iceland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),

and also Renata **Degener**, *Deputy Section Registrar*.

Decision of the Court

Article 10

The Court noted that a proper balance had to be struck between the need to protect children against the risk of potentially serious harm and the need to protect a parent against being wrongly suspected of having abused their child. It also reiterated the need to guard against the potential "chilling effect" of bringing criminal convictions against those who, in good faith, voice a suspicion of child abuse in the context of an appropriate reporting procedure.

The Court did not just look at the content of the interference with Ms M.P.'s freedom of expression, namely the bringing of charges against her and her conviction for defamation, but also at the context in which it had been made. The context had been a confidential telephone conversation between Ms M.P. and a social worker. Unlike the domestic Appeal Court, the Court found that the issue of professional secrecy was relevant to its assessment of whether it had been excessive to convict her of defamation for voicing her concerns about possible child abuse.

Indeed, bringing criminal charges against Ms M.P. and convicting her of defamation could not be considered proportionate with a view to the requirements of Article 10. Although she had only been punished by a fine, the Court was unable to accept that there had been any "pressing social need" to interfere with Ms M.P.'s freedom of expression by imposing a criminal sanction on her.

The Court further found that the reasons relied upon by the domestic courts, namely that she had not had a sufficient factual basis for the allegations against her child's father, did not suffice to show that the interference with Ms M.P.'s freedom of expression had been "necessary in a democratic society." The Finnish authorities had therefore not struck a fair balance between the interests at stake, in violation of Article 10 of the Convention.

[Article 41 \(just satisfaction\)](#)

The Court held that Finland was to pay the applicant 8,001.86 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 6,000 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.