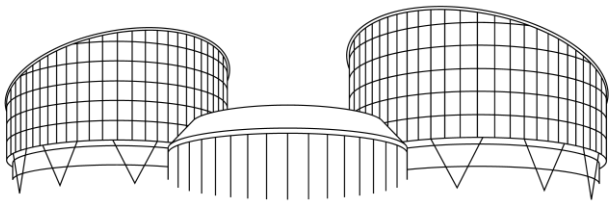

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TUOMELA AND OTHERS v. FINLAND

(Application no. 25711/04)

JUDGMENT

STRASBOURG

6 April 2010

FINAL

06/07/2010

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

In the case of Tuomela 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,
Päivi Hirvelä,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 25711/04) 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 Juha-Tapio Tuomela and Mr Esko Tapio Tulusto and a Finnish publishing company, Yhtyneet Kuvalehdet Oy ("the applicants"), on 19 July 2004.

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. The applicants alleged, in particular, that their right to freedom of expression had been violated and that the Penal Code provision on the basis of which they had been convicted was not clear enough.

4. On 4 April 2008 the President of the Fourth Section decided to communicate the complaints concerning the freedom of expression and the legality principle to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1968 and 1946 respectively and live in Helsinki. The applicant company is based in Helsinki. The first applicant is a journalist and the second applicant the editor-in-chief of the third applicant, a publishing company.

6. On 7 January 1997 they published in the nationwide magazine *Hymy* an article about A., the National Conciliator (*valtakunnansovittelija, riksförlikningsmannen*) at the time, and B., his female friend. The article, which was entitled *"A.'s long-lasting relationship with his female friend and booze"*, concerned an incident that had taken place at A.'s home on 4 December 1996. A. together with B. had entered late at night his home where his wife was present. The situation escalated, the police were called and the incident, which subsequently involved also A.'s grown-up children, led to A.'s arrest. The article also concerned A.'s drinking problem and B.'s background and identity: her name and age were mentioned in the article as well as the fact that she was the female friend who had been involved in the incident at A.'s home. Moreover, her workplace, the location of her home and her family relationships were mentioned in the article. The caption of the article stated that *"Hymy reveals now the identity of A.'s long standing female friend and tells her background..."*.

7. Due to the incident on 4 December 1996, criminal charges were brought against both A. and B. on 18 December 1996. On 16 January 1997 the Helsinki District Court (*käräjäoikeus, tingsrätten*) sentenced A. to a four-month conditional prison sentence for resisting arrest and for criminal damage (*vahingonteko, skadegörelse*), and B. to a fine for assault. On 17 January 1997 the Council of State (*valtioneuvosto, statsrådet*) dismissed A. from his post as National Conciliator. On 25 June 1998 the Appeal Court (*hovioikeus, hovrätten*) upheld the judgment with respect to B. As regards A., the case was discontinued as he had died on 14 May 1998. On 15 December 1998 the Supreme Court (*korkein oikeus, högsta domstolen*) refused B. leave to appeal.

8. In the spring of 1997 A. and B. requested that criminal investigations be conducted against journalists who had written about the incident on 4 December 1996 and the circumstances surrounding it. On 24 March 1997 they made such a request with respect to the applicants, claiming that the article published in *Hymy* had invaded B.'s privacy as her workplace and name had been revealed. In regard to all but one of these requests no charges were brought. On 8 September 1998 the public prosecutor decided not to bring charges against the applicants as, according to him, there was no indication of any crime.

9. On 25 October 1998 B. complained to the Prosecutor-General (*valtakunnansyyttäjä, högsta åklagaren*) about the decisions not to prosecute and asked him to reconsider the cases. On 5 October 1999, after having considered the charges, the Deputy Prosecutor-General requested the public prosecutor to bring charges, *inter alia,* against the first and second applicants. He reasoned his decision by, *inter alia,* stating that some of the facts revealed in the article fell within the scope of private life and that no derogation could be made in this case as B. was not a public figure.

10. On 15 November 1999 the public prosecutor, by order of the Deputy Prosecutor-General, brought charges under Chapter 27, section 3 (a), paragraph 2, of the Penal Code against the first and second applicants. At the same time charges were brought also against other journalists and editors-in-chief of other magazines to be examined in the same proceedings. These journalists and editors-in-chief have lodged a separate appeal with the Court (see *Flinkkilä and others v. Finland*, no. 25576/04, 6 April 2010).

11. B. concurred with the charges brought by the public prosecutor. On 4 January and 10 November 2000 she pursued a compensation claim against all the applicants, which was joined to the criminal charges.

12. Following an oral hearing on 8 December 2000, the Espoo District Court rejected all the charges on 15 December 2000, finding that the information concerning B.'s private life in the article in question could not as such be conducive to causing her particular suffering, except for the information concerning her relationship with A. However, since the incident of 4 December 1996 B. must have understood that she could no longer seek protection on this ground. Thus, the first and second applicants had not been under a duty to assess whether revealing B.'s identity could have caused her suffering. Furthermore, it had not been proved that the applicants had intended to invade B.'s privacy. Accordingly, all the compensation claims against the applicants were also rejected.

13. By letters dated 10 and 14 January 2001, the public prosecutor and B. appealed to the Helsinki Appeal Court, reiterating the charges and the compensation claims. Moreover, on 17 September 2002 B. requested that the case file be declared secret for at least ten years from the date of the judgment.

14. In its judgment of 15 May 2003, the Appeal Court first decided to declare all parts of the case file secret for ten years except for the applicable legal provisions and the conclusions contained in the judgment. Additionally, B.'s identity was not to be revealed in the public parts of the judgment. The court found that the matter was very sensitive, that it fell within the scope of private life, and that the secrecy accorded did not violate Articles 6 or 10 of the Convention. As to the merits of the case the court, without holding an oral hearing, quashed the District Court's judgment and sentenced the first and second applicants to pay twenty day-fines, amounting to 1,000 euros (EUR) and EUR 360 respectively, for invasion of

private life. Moreover, they were jointly and severally with the applicant company ordered to pay B. EUR 5,000 plus interest for non-pecuniary damage as well as her costs and expenses. The applicants paid in total EUR 12,403.64 in fines and compensation.

15. The Appeal Court found that the facts mentioned in the article were of a kind to which the protection of private life typically applied. The Supreme Court had already found in 2002 that the national television broadcast on 23 January 1997, in which B.'s name had been mentioned twice in the context of an interview with A., had invaded her private life. B. did not hold such a position in society that the exception in Chapter 27, section 3(a), paragraph 2, of the Penal Code was applicable. The fact that she was a friend of such a person and that she had been involved in the incident that subsequently led to the dismissal of A. from his post as National Conciliator did not justify revealing her identity. The fact that B.'s identity as A.'s friend had previously been revealed in the media did not justify the subsequent invasion of her private life. The Penal Code provision in question did not require that intent be shown but it was sufficient that the dissemination of information about the private life of a person was capable of causing him or her damage or suffering. The applicants, therefore, had had no right to reveal facts relating to B.'s private life.

16. By letter dated 9 July 2003 the applicants applied for leave to appeal to the Supreme Court, claiming, *inter alia*, that the provision of the Penal Code in question did not define with sufficient clarity which acts fell within its scope. No intent had been shown, nor was the Appeal Court judgment adequately reasoned in this respect. Moreover, they claimed that, in declaring that the case file should remain secret, the Appeal Court had not given reasons which would constitute sufficient grounds for the measure. Finally, the Appeal Court had not even tried to indicate on what grounds freedom of expression could be restricted in this case.

17. On 20 January 2004 the Supreme Court refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic legislation and practice are outlined in the Court's judgment in *Flinkkilä and others v. Finland* (cited above, §§ 19-44).

III. RELEVANT INTERNATIONAL MATERIALS

19. The relevant international materials are outlined in the Court's judgment in *Flinkkilä and others v. Finland* (cited above, §§ 45-47).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 7 AND 10 OF THE CONVENTION

20. The applicants complained under Article 7 of the Convention that it had not been clear from the Penal Code provision applied that their conduct would be punishable as the provision had not defined the scope of private life. Moreover, the convictions of A. and B. had been public information that could not have fallen within the scope of private life. Even though a conviction for invasion of private life allegedly required that intent be shown, the Appeal Court had failed to state how this requirement had been fulfilled.

21. The applicants complained under Article 10 of the Convention that the restrictions on their right to freedom of expression had not been prescribed by law and had not been necessary in a democratic society for the protection of the reputation or rights of others. The disclosure of B.'s name had not fallen within the protection of private life as the national courts had not declared any part of her criminal case file secret. She had been an active participant in the incident on 4 December 1996 and had subsequently been sentenced to a fine. The public had a right to know about issues of public interest and the information in the article had in every respect been correct. The Appeal Court had not even tried to indicate on what grounds freedom of expression could have been restricted in the present case. In any event, the restrictions imposed on the applicants had been grossly disproportionate, especially in view of their obligation to pay very considerable damages

22. Article 7 reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

23. Article 10 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."

24. The Government contested these arguments.

A. Admissibility

25. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

26. The applicants maintained that the conviction of the applicants and the heavy sanctions inflicted on them had amounted to an interference with their right to freedom of expression which had not been prescribed by law, had had no legitimate aim and had not been necessary in a democratic society.

27. The applicants argued that neither the provision in question, Chapter 27, section 3(a), of the Penal Code, nor the preparatory works had mentioned that the provision would apply to the publication of an accused or convicted person's name. On the contrary, the operative part of a judgment, the legal provisions applied and the name of the convicted person had always been public information according to Finnish law. Citing a convicted person's name in a newspaper had not traditionally been an offence in Finland until 2001 and 2002, when the Supreme Court had come to a different conclusion. However, it did not follow from either the provisions or the preparatory works that publication of a convicted person's name was criminal and it had even been mentioned in the government bill (HE 184/1999) that the general nature of Chapter 27, section 3(a), of the Penal Code might be problematic from the point of view of the legality principle. In Finnish criminal law the use of a legal analogy to the detriment of an accused was prohibited. As the article in question had been published in January 1997 the applicants could not have been able to foresee what the Appeal Court would decide more than six years later. Nor could they have

anticipated that the Supreme Court would start assessing these cases differently in 2002.

28. The applicants pointed out that as B.'s name had appeared in all of the judgments in her criminal case, this public information could not have become retrospectively private. Once somebody's name had become public information, its publication could not be unlawful and could not violate that person's private life. Moreover, B. had not been a passive object of publicity but had participated actively in an incident of public interest. The amount of sanctions inflicted on the applicants, including the fines, the compensation and the legal costs, had been such that this alone constituted a violation of Article 10.

(b) The Government

29. The Government agreed that the conviction of the applicants and the obligation to pay damages and costs had amounted to an interference with their right to freedom expression.

30. As to the requirement that measures be "prescribed by law" and in compliance with Article 10, the Government pointed out that the impugned measures had had a basis in Finnish law, namely in the Constitutional Act and, in particular, in Chapter 27, section 3(a), of the Penal Code. B.'s name constituted information referred to in the latter provision and thus the provision had fulfilled the clarity requirement. At the relevant time the provision had been in force for more than 20 years and it had been interpreted by the Supreme Court, prior to the publication of the impugned article, in precedent cases *KKO 1980 II 99* and *KKO 1980 II 123*. The rules on criminal liability could thus be regarded as having been gradually clarified through judicial interpretation in a manner which had been consistent with the essence of the offence. The liability therefore could reasonably have been foreseen.

31. Moreover, the Guidelines for Journalists and the practice of the Council for Mass Media had restricted the disclosure of a person's name in crime news coverage. Offences were not automatically issues of private life, a fact that had been confirmed by the Supreme Court's precedent in the case *KKO 2005:136*. As B. in the present case had been sentenced to a fine, this sentence had not as such reduced the protection of her privacy. This interpretation was also in line with the Court's case-law (see, for example, *Z v. Finland*, 25 February 1997, § 99, *Reports of Judgments and Decisions* 1997-I, and *P4 Radio Hele Norge ASA v. Norway* (dec.), no. 76682/01, ECHR 2003-VI). The Government thus argued that the applicants must have been aware of the regulations concerning the freedom of expression. In any event, they could have sought legal advice before publishing the article. Accordingly, there was no violation of Article 7 and the interference was "prescribed by law" as required by Article 10 § 2 of the Convention.

32. The Government maintained that the legitimate aim had been to protect B.'s private life, that is, the reputation and rights of others, and that the interference had also been "necessary in a democratic society". Even though B. had been sentenced for an offence and the proceedings had been mainly public, it did not mean that the disclosure of B.'s name as such had been lawful. Under Finnish law the fact that information was public did not automatically mean that it could be published. Only persons convicted for aggravated offences and sentenced to imprisonment did not enjoy any protection of identity or private life.

33. The Government pointed out that at the time of publishing the article in question B. had not yet been convicted. Moreover, being A.'s female friend had not as such made her a person in a socially significant position whose right to private life could be narrowed. B.'s conduct had not in any way contributed to any discussion of general interest but had been intended to satisfy public curiosity. Notwithstanding the incident of 4 December 1996 and B.'s subsequent sentence, the information published by the applicants had been of such a nature that it had been covered by the protection of B.'s private life. The reporting of the events could have been done without mentioning B. by name. Bearing in mind the margin of appreciation, the Government argued that the interference in the present case had been "necessary in a democratic society".

2. The Court's assessment under Article 10 of the Convention

1. Whether there was an interference

34. The Court agrees with the parties that the applicants' conviction, the fines imposed on them and the award of damages 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

35. As to whether the interference was "prescribed by law", the applicants argued that, at the time of the publication of the article in question, the citing of a convicted person's name in a newspaper was not an offence in Finland and that they had not therefore been able to foresee that criminal sanctions could be imposed on them for having published B.'s name. The Government argued that the scope of criminal liability had gradually been clarified through judicial interpretation in a manner which had been consistent with the essence of the offence and with good journalistic practice and that, therefore, liability could reasonably have been foreseen.

36. The Court notes that the parties agree that the interference complained of had a basis in Finnish law, namely Chapter 27, section 3(a),

of the Penal Code. The parties' views, however, diverge as far as the foreseeability of the said provision is concerned. The Court must thus examine whether the provision in question fulfils the foreseeability requirement.

37. The Court has already noted that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may entail excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30 and mutatis mutandis *Kokkinakis v. Greece*, 25 May 1993, § 40, Series A no. 260-A).

38. As concerns the provision in question, Chapter 27, section 3(a), of the Penal Code, the Court has already found in the *Eerikäinen* case (see *Eerikäinen and Others v. Finland*, no. 3514/02, § 58, 10 February 2009) that it did not discern any ambiguity as to its contents: the spreading of information, an insinuation or an image depicting the private life of another person which was conducive to causing suffering qualified as invasion of privacy. Furthermore, the Court notes that the exception in the second sentence of the provision concerning persons in a public office or function, in professional life, in a political activity or in another comparable activity is equally clearly worded.

39. While it is true that at the time when the article in question was published, in January 1997, there were only two Supreme Court decisions concerning the interpretation of the provision in question, both of which concerned public dissemination of photographs, the Court finds that the possibility that a sanction would be imposed for invasion of private life was not unforeseeable. Even though there was no precise definition of private life in the preparatory works (see government bill HE 84/1974), they mentioned that the necessity of mentioning a person's name or other description enabling identification was always to be the subject of careful consideration. Had the applicants had doubts about the exact scope of the provision in question they should have either sought advice about its contents or refrained from disclosing B.'s identity. Moreover, the applicants, who were professional journalists, could not claim to be ignorant about the content of the said provision since the Guidelines for Journalists and the practice of the Council for Mass Media, although not binding, provided even more strict rules than the Penal Code provision in question.

40. 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 and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X, *Eerikäinen and Others v. Finland*, cited above, § 58). Moreover, 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

41. 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).

42. 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).

43. 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).

44. 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)*, cited above, § 62; *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).

45. 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 Gijsels 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.).

46. The limits of permissible criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lay themselves open to close scrutiny of their words and deeds by journalists and the public at large, and they must consequently display a greater degree of tolerance (see, for example, *Lingens v. Austria*, cited above, § 42; *Incal v. Turkey*, 9 June 1998, § 54, *Reports of Judgments and Decisions* 1998-IV; and *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236).

47. However, the freedom of expression has to be balanced against the protection of private life guaranteed by Article 8 of the Convention. The concept of private life covers personal information which individuals can legitimately expect should not be published without their consent and includes elements relating to a person's right to their image. The publication of a photograph thus falls within the scope of private life (see *Von Hannover v. Germany*, no. 59320/00, §§ 50-53 and 59, ECHR 2004-VI).

48. In the cases in which the Court has had to balance the protection of private life against freedom of expression, it has stressed the contribution made by photos or articles in the press to a debate of general interest (see *Tammer v. Estonia*, no. 41205/98, §§ 59 et seq., ECHR 2001-I; *News Verlags GmbH & Co. KG v. Austria*, cited above, §§ 52 et seq.; and *Krone Verlag GmbH & Co. KG v. Austria*, no. 34315/96, §§ 33 et seq.,

26 February 2002). The Court thus found, in one case, that the use of certain terms in relation to an individual's private life was not "justified by considerations of public concern" and that those terms did not "[bear] on a matter of general importance" (see *Tammer*, cited above, § 68) and went on to hold that there had not been a violation of Article 10. In another case, however, the Court attached particular importance to the fact that the subject in question was a news item of "major public concern" and that the published photographs "did not disclose any details of [the] private life" of the person in question (see *Krone Verlag GmbH & Co. KG*, cited above, § 37) and held that there had been a violation of Article 10.

49. One factor of relevance is whether freedom of expression was used in the context of court proceedings. While reporting and commenting on court proceedings, provided that they do not overstep the bounds set out above, contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public, it is to be noted that the public nature of court proceedings does not function as a *carte blanche* relieving the media of their duty to show due care in communicating information received in the course of those proceedings (see Council of Europe Recommendation No. Rec(2003)13 on the provision of information through the media in relation to criminal proceedings; outlined in *Flinkkilä and others v. Finland*, cited above, §§ 45-46). In this connection, the Court notes that the Finnish Guidelines for Journalists, as in force at the relevant time, stated that the publication of a name and other identifying information in this context was justified only if a significant public interest was involved (see *Flinkkilä and others v. Finland*, cited above, § 41).

50. The Court has balanced in its recent case-law the protection of private life against the interest of the press to inform the public on a matter of public concern in the context of court proceedings (see for example *Eerikäinen and Others v. Finland*, cited above; and compare *Egeland and Hanseid v. Norway*, no. 34438/04, 16 April 2009).

51. Also of relevance for the balancing of competing interests which the Court must carry out is the fact that under Article 6 § 2 of the Convention a person has a right to be presumed innocent of any criminal offence until proved guilty (see Bladet Tromsø *and Stensaas v. Norway* [GC], cited above, § 65).

52. Turning to the facts of the present case, the Court notes that the applicants were convicted on the basis of the remarks made in an article in their capacity as a journalist or an editor-in-chief.

53. The Court observes at the outset that the article, which was entitled *"A.'s long-lasting relationship with his female friend and booze"*, concerned an incident that had taken place at A.'s home on 4 December 1996 as a result of which A. had been taken into police custody. It also concerned A.'s drinking problem and the background and identity of his female friend B:

her name and age were mentioned in the article as well as the fact that she was the female friend who had been involved in the incident at A.'s home. Moreover, her workplace, the location of her home and her family relationships were mentioned in the article. At the time of the publication of the article criminal charges had already been brought against both A. and B. as a consequence of the incident.

54. The Court notes that no allegation has been made of factual misrepresentation or bad faith on the part of the applicants. Nor is there any suggestion that details about B. were obtained by subterfuge or other illicit means (compare *Von Hannover v. Germany*, cited above, § 68). The facts set out in the article in issue were not in dispute even before the domestic courts.

55. It is clear that B. was not a public figure or a politician but an ordinary person who was subject to criminal proceedings (see *Schwabe v. Austria*, 28 August 1992, § 32, Series A no. 242-B). Her status as an ordinary person enlarges the zone of interaction which may fall within the scope of private life. The fact that she was subject to criminal proceedings cannot deprive her of the protection of Article 8 (see *Sciacca v. Italy*, no. 50774/99, § 28-29, ECHR 2005-I; *Eerikäinen and Others v. Finland*, cited above; and *Egeland and Hanseid v. Norway*, cited above).

56. However, the Court notes that B. was involved in a public disturbance outside the family home of A., a senior public figure who was married and with whom she had developed a relationship. Criminal charges were preferred against both of them. They were later convicted as charged. The Court cannot but note that B., notwithstanding her status as a private person, can reasonably be taken to have entered the public domain. For the Court, the conviction of the applicants was backlit by these considerations and they cannot be discounted when assessing the proportionality of the interference with their Article 10 rights.

57. The Court further observes that the information in the article focused on four issues: the incident of 4 December 1996, the identity and background of B., the consequences of the incident and on A.'s drinking problem. Even though several details of B.'s private life were mentioned, many of which were apparently revealed for the first time, the information concerning B. was essentially limited to her conviction and to facts which were inherently related to A.'s story. In this respect the case differs from the case of *Von Hannover v. Germany* (cited above, § 72).

58. Moreover, it is to be noted that the disclosing of B.'s identity in the impugned reporting had a direct bearing on matters of public interest, namely A.'s conduct and his ability to continue in his post as a high-level public servant. As B. had taken an active and willing part in the events of 4 December 1996, leading to A.'s conviction and dismissal, it is difficult to see how her involvement in the events was not a matter of public interest. Therefore the Court considers that there was a continuing element of public

interest involved also in respect of B. In this connection, the Court notes that the national authorities and the national courts also reached different conclusions as to whether B. could be considered as having waived her right to privacy when choosing to become involved with a public figure and in being a party to the incident, leading also to her conviction. In the Court's opinion this indicates that, at least to some degree, the national authorities also considered that the public interest was engaged in the reporting.

59. The Court further notes that the emphasis in the article in question was on both A. and B. The events were presented in a colourful manner to boost the sales of the magazine, a fact that becomes apparent from the caption to the article *("Hymy reveals now the identity of A.'s long standing female friend and tells her background...")*.

60. However, even though the article was written and published before the convictions of A. and B., the reporting and commenting on their court proceedings was objective and irreproachable from the point of view of Article 6 § 2 of the Convention.

61. Moreover, the Court notes that the article was published right after the incident and that it was thus closely linked in time to this event.

62. Finally, the Court has taken into account the severity of the sanctions and other consequences imposed on the applicants. It notes that the applicants were convicted under criminal law and observes that both the first and the second applicants were ordered to pay twenty day-fines, amounting to EUR 1,000 and EUR 360 respectively. In addition, all defendants were ordered to pay damages jointly and severally in a total amount of EUR 5,000. The severity of the sentence and the amounts 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 *Flinkkilä and others v. Finland*, cited above, § 23).

63. Moreover, it should be borne in mind that the Supreme Court had already acknowledged that repeating a violation did not necessarily cause the same amount of damage and suffering as the initial violation (see *Flinkkilä and others v. Finland*, cited above, §§ 33-34). The Court notes that B. had already been paid damages in the amount of EUR 8,000 for the disclosure of her identity in the television programme (see *Flinkkilä and others v. Finland*, cited above, § 36). Similar damages had been ordered to be paid to her also in respect of other articles published in other magazines which all stemmed from the same facts (see cases *Flinkkilä and others v. Finland*, cited above; *Jokitaipale and others v. Finland*, no. 43349/05, 6 April 2010; *Soila v. Finland*, no. 6806/06, 6 April 2010; and *Iltalehti and Karhuvaara*, no. 6372/06, 6 April 2010).

64. The Court considers that such consequences, viewed against the background of the circumstances resulting in the interference with B.'s right

to respect for her private life, were disproportionate having regard to the competing interest of freedom of expression.

65. In conclusion, in the Court's opinion, the reasons relied on by the Appeal Court, although relevant, were not sufficient to show that the interference complained of was "necessary in a democratic society". Moreover, the totality of the sanctions imposed were disproportionate. Having regard to all the foregoing factors, and 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.

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

3. The Court's assessment under Article 7 of the Convention

67. In view of the finding under Article 10 of the Convention that the interference was in accordance with the law, the Court finds that there has been no violation of Article 7 of the Convention in the present case.

II. REMAINDER OF THE APPLICATION

68. Lastly, the applicants complained under Article 6 § 1 of the Convention that the Appeal Court had not reasoned its judgment sufficiently and that it had violated the principle of equality of arms as the applicants, contrary to the public prosecutor and B., had not had access to the Supreme Court's case file in an earlier, related case. Moreover, they claimed that the Appeal Court's decision that their case file remain secret had not been sufficiently reasoned and therefore violated Article 6 § 1 of the Convention.

69. As to the earlier Supreme Court judgment, the Court notes that the judgment had been relied on by B. and that the applicants had been able to comment on it. It had been published in an extensive version on the Internet as an official publication. Since the judgment was thus publicly available and it seemed to contain all the relevant information for the applicants to prepare their defence, there is no indication of any violation in this respect. It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

70. As to the reasoning, the Court notes that Article 6 § 1 obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). In general, the reasoning in the Appeal Court's judgment in the present case is quite extensive. As far as the reasoning concerns the restrictions on freedom of expression, the court basically stated that the facts mentioned in the article were those to which the protection of private life typically applied, that B.'s position in society was not such that the exception for public figures applied to her, and that neither the incident nor the fact that her identity had been revealed earlier

led to any other conclusion. Moreover, the Penal Code provision in question did not require any intent to harm to be shown. Therefore the Court finds that the reasoning is acceptable from the standpoint of the fairness requirements of Article 6.

71. As to the reasons for declaring the case file secret, the Court notes that the Appeal Court referred to Articles 6 § 1 and 10 of the Convention and concluded that the case contained sensitive private information and that secrecy was not in contradiction with these Articles. The Court considers that declaring the case file secret had no impact either on the applicants' position as parties to the case or on the actual fairness of the proceedings. Also in this respect, the Court finds the Appeal Court's reasoning acceptable.

72. It follows that also these complaints must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicants claimed EUR 12,403.64 in respect of pecuniary damage, and the first and second applicant EUR 5,000 each in respect of non-pecuniary damage.

75. The Government noted that the pecuniary damages accrued, with exception of the fines imposed on the applicants, had been paid by the publishing company. As the publishing company had not asked the applicants to pay their parts, no actual pecuniary damage had accrued to them. As to the non-pecuniary damage, the Government considered that the first and second applicants' claims were excessive as to *quantum* and that the award should not exceed EUR 2,000 per applicant and EUR 4,000 in total.

76. The Court finds that there is a causal link between the violation found and the alleged pecuniary damage. 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 EUR 12,000 in compensation for pecuniary damage. Moreover, the Court considers that the first and second applicant must have sustained non-pecuniary damage.

Ruling on an equitable basis, it awards the first and second applicants EUR 2,000 each in respect of non-pecuniary damage.

B. Costs and expenses

77. The applicants also claimed EUR 8,986.15 for the costs and expenses incurred before the domestic courts and EUR 3,000 for those incurred before the Court.

78. The Government contested these claims. The Government maintained that no specification related to the costs and expenses, as required by Rule 60 of the Rules of Court, had been submitted as the hours used or the total cost for each measure performed were not specified. In any event, the total amount of compensation for costs and expenses for all applicants should not exceed EUR 3,500 (inclusive of value-added tax).

79. 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 information in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the global sum of EUR 4,000 (including any value-added tax) under this head.

C. Default interest

80. 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. *Declares* the complaints under Articles 7 and 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that there has been no violation of Article 7 of the Convention;

4. *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 12,000 (twelve thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 2,000 (two thousand euros) to each of the first and second applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 4,000 (four thousand 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;

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

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

Lawrence Early
Registrar

Nicolas Bratza
President