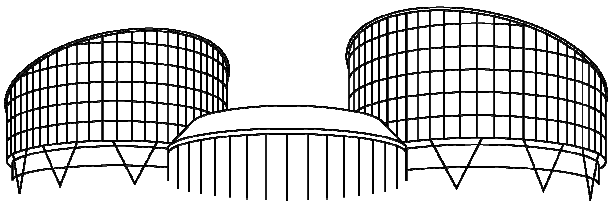

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MARIAPORI v. FINLAND

(Application no. 37751/07)

JUDGMENT

STRASBOURG

6 July 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mariapori v. Finland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Mihai Poalelungi, *judges,*
Anne E. Niemi, ad hoc *judge,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 15 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 37751/07) 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 a Finnish national, Ms Anna-Liisa Mariapori ("the applicant"), on 30 August 2007.

2. The applicant was represented by Mr Veli Lahti, 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 applicant alleged, in particular, that the length of her criminal proceedings had been excessive and that her freedom of expression had been violated.

4. On 20 October 2008 the President of the Fourth Section decided to communicate the complaints concerning the length of proceedings and freedom of expression to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 §3).

5. Ms P. Hirvelä, the judge elected in respect of Finland, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Ms Anne E. Niemi to sit as an *ad hoc* judge (Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1943 and lives in Muurola.

7. In December 1997 the applicant, a tax expert, was the defendant's witness in a case where the public prosecutor had brought charges for tax fraud. The evidence in the case was based, *inter alia*, on a tax inspection report drawn up by tax inspectors A. and B. The applicant provided her own calculation of the defendant's taxable income. The defendant was convicted of tax fraud and the judgment became final in June 1999.

8. The difference between the applicant's estimation of the defendant's taxable income and the estimation given by the tax inspectors was about 2.5 million Finnish Marks (FIM; about 494,000 euros). When asked by the defendant's counsel whether the difference could be explained by the tax inspectors' negligence or professional incompetence, the applicant answered, under oath:

> "No, to my mind they have done it intentionally."

When the defendant's counsel asked whether it was by incompetence or intentionally that the tax inspectors had found that the taxable income was FIM 1,435,000 instead of FIM 49,815, she replied:

> "Intentionally."

The public prosecutor asked:

> "Do you say under oath that the tax inspectors have intentionally made mistakes in this matter?"

The applicant replied:

> "Yes, the figures cannot be explained otherwise. The tax inspectors have not a single ground to arrive at these figures."

9. The court proceedings as well as the applicant's statements were reported in several newspapers but the tax inspectors' names were not mentioned in any of them. Moreover, the court proceedings were open to the public and the applicant's witness statements were recorded word for word in the minutes, to which anyone had access.

10. In 1998 the applicant published a book about taxation in which the above-mentioned court case was cited. It was mentioned that *"[i]n any event, the senior tax inspector [A.] committed perjury fully knowingly and intentionally. But why not as her husband is the public prosecutor [X.]. who works for [name of the office]"*. Five thousand copies of the book were printed, of which about a thousand copies had been given away by the end of August 1999.

11. On 18 November 1999 the applicant was questioned by the police for the first time. The applicant gave her closing statement in the pre-trial investigation on 27 January 2000.

12. On 8 December 2000 the public prosecutor brought charges against the applicant for aggravated defamation. Tax inspectors A. and B. joined the charges and extended them to cover other statements made by her during the above-mentioned tax fraud proceedings. The summons was served on the applicant on 11 February 2001.

13. On 15 March 2001 the applicant requested the Raahe District Court (*käräjäoikeus, tingsrätten*) to extend the time-limit for her reply until 30 September 2001. The applicant informed the District Court that she would request the National Bureau of Investigation (*keskusrikospoliisi, centralkriminalpolisen*) to conduct an investigation and that she would also request the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) to annul certain decisions of administrative courts underlying her case. The District Court extended the time-limit for the reply until 30 September 2001.

14. On 26 September 2001 the applicant requested the District Court to grant another prolongation of the time-limit for her reply as the above-mentioned criminal investigation and the annulment proceedings had not yet been concluded. The District Court extended the time-limit for the reply until 28 February 2002.

15. The applicant did not give a written reply within the time-limit but requested the District Court not to hold an oral hearing before the Supreme Administrative Court had decided on the annulment of the above-mentioned taxation cases.

16. On 2 October 2003 the District Court received the decision of the Supreme Administrative Court concerning a request to annul previous taxation decisions. The District Court held an oral hearing in the defamation case in May 2004.

17. On 26 July 2004 the District Court convicted the applicant, as far as the statements made in the book were concerned, of aggravated defamation and sentenced her to four months' conditional imprisonment. Moreover, she was ordered to pay 5,000 euros to tax inspector A. in compensation. The court found that, even though the applicant might have been right about the dysfunctions in the company taxation system, she should not have criticised the civil servants in question in a defamatory manner. As far as the statements made during the tax fraud proceedings were concerned, the court found them to constitute defamation but not aggravated defamation. However, as the charges for defamation had been brought too late she could not be convicted on that count. Despite the prescription, the related compensation claims could be examined and the applicant was ordered to pay in total 4,000 euros in compensation to the tax inspectors A. and B. for mental suffering under both counts. The District Court declared all parts of

the case file secret for fifteen years except for the applicable legal provisions and the conclusions.

18. On 27 September 2004 the applicant appealed to the Vaasa Appeal Court (*hovioikeus, hovrätten*), claiming, *inter alia*, that her rights under Articles 6 and 10 of the Convention had been violated and that the act in question had not constituted aggravated defamation. She also requested the Appeal Court not to start preparing the case before the Council for Mass Media (*Julkisen sanan neuvosto, Opinionsnämnden för massmedier* – "the Council") had either given a statement on the matter or notified the court that no statement would be made.

19. On 14 December 2004 the Council notified the Appeal Court that it would not give a statement on the matter. The Appeal Court held an oral hearing in the case in January 2006.

20. On 25 April 2006 the Appeal Court upheld, by a majority, the District Court's judgment. It found that the interference with the applicant's right to freedom of expression had been necessary and proportionate. However, one of the justices found in his dissenting opinion that the applicant should be freed from the obligation to pay compensation to A. and B. under both counts as the applicant's criticism did not exceed the limits of what was acceptable for civil servants to endure in the exercise of their official duties. As to the length of the proceedings, the court did not find it so excessive as to justify mitigating or waiving the applicant's sentence. Finally, the Appeal Court quashed the District Court's decision to declare the case file secret.

21. On 26 June 2006 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds for appeal relied on before the Appeal Court.

22. On 2 March 2007 the Supreme Court refused leave to appeal.

II. RELEVANT DOMESTIC LAW

23. According to Chapter 3 (515/2003), section 2, of the Penal Code (*rikoslaki, strafflagen*), the law which was in force at the time an offence was committed applies to that offence. However, if a law other than the one in force at the time of the commission of the offence is in force at the time of conviction, the new law applies if its application leads to a more lenient result.

24. Chapter 27, section 1, of the Penal Code, which was in force at the time when the events took place, read as follows:

> "A person alleging, albeit not contrary to his or her better knowledge, that someone has committed an offence or other act which might make this person an object of contempt or might affect his or her trade or success, or who spreads a lie or a false insinuation about someone, is to be convicted of defamation and sentenced to

imprisonment for at least one month and at most one year or to a fine of at least one hundred marks.

If defamation is public or in a printed publication, in writing or through pictures, which the accused distributes or had distributed, the punishment is imprisonment of at least two months and at most two years or a fine of at least two hundred marks."

25. Chapter 24 (531/2000), section 9, of the Penal Code, which was in force at the time of conviction, read as follows:

"A person who (1) spreads false information or a false insinuation about another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt, or (2) makes a derogatory comment about another otherwise than in a manner referred to in subparagraph (1), shall be sentenced for defamation to a fine or to imprisonment for at most six months.

Criticism that is directed at a person's activities in politics, business, public office, public position, science, art or in a comparable public position and which does not obviously overstep the limits of propriety does not constitute defamation referred to in paragraphs (1) and (2)."

26. Chapter 24, section 10, of the Penal Code provides that if, in the defamation referred to in section 9, the offence is committed through the use of the mass media or otherwise by making the information or insinuation available to a large number of people, the offender shall be sentenced for aggravated defamation to a fine or to imprisonment for at most two years.

III. RELEVANT INTERNATIONAL MATERIALS

27. On 4 October 2007 the Parliamentary Assembly of the Council of Europe adopted Resolution 1577 (2007), *Towards decriminalisation of defamation*, in which it urged those member States which still provide for prison sentences for defamation, even if they are not actually imposed, to abolish them without delay.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

28. The applicant complained that the total length of her criminal proceedings had been incompatible with the "reasonable time" requirement as provided in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

29. The Government contested that argument.

A. Admissibility

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The period to be taken into consideration began on 18 November 1999 when the applicant was first questioned by the police and ended on 2 March 2007 when the Supreme Court refused leave to appeal. It thus lasted over seven years and three months at three levels of jurisdiction.

32. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

33. The Government pointed out that, excluding the extensions of time-limits given to the applicant by the domestic courts and the requests by the applicant to postpone the case, the total length of the proceedings attributable to the authorities would have been only about four years and seven months. The applicant's own conduct had delayed the proceedings by about two years and six months in the District Court and by one month and nineteen days in the Appeal Court. The case had been extensive and complex owing to the amount of trial material and the subject-matter of the case. The Government considered that there had been no periods of inactivity or unnecessary delays.

34. The applicant claimed that she could not be held responsible for the delays as the reason for the extensions of the time-limit and for the postponements had been the fact that the issues had still been pending before the National Bureau of Investigation and the Supreme Administrative Court, a fact that had been beyond her control. The case had not been extensive.

35. The Court notes that the pre-trial investigation and the consideration of charges lasted for about one year, the proceedings before the District Court over three years and seven months and the proceedings before the Appeal Court almost one year and seven months. During the court proceedings the applicant twice requested an extension of time-limits and on two occasions also that the case be postponed to a later stage. The Court considers that, while it is true that the applicant had made such requests, these requests alone do not explain the excessive length of the proceedings.

Each extension granted by the District Court was several months long. The District Court also agreed to postpone the oral hearing for more than one and a half years pending the outcome of the proceedings in the Supreme Administrative Court. When these latter proceedings were concluded in September 2003, it took another eight months before an oral hearing was held in the District Court. Similarly, in the Appeal Court the applicant's request for postponement only explains a delay of three months while it took the Appeal Court over one year to organise an oral hearing.

36. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

37. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

38. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

39. The applicant further complained that her right to freedom of expression had been violated as she had been convicted of defamation for the statements made in her book and ordered to pay compensation for those statements as well as the statements made in court proceedings. She relied on Article 10 of the Convention which 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."

40. The Government contested that argument.

A. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

42. The applicant pointed out that everyone had the right to freedom of expression, including freedom to have opinions and to disclose information and ideas. As a witness in court proceedings, she had been bound by oath to speak the truth. She had not been told in advance that by telling the truth she would be charged with defamation. Her calculations had not been proved incorrect by any of the domestic courts and her accusations had therefore not been false. The applicant was a tax expert, not a journalist, who had expressed her opinion, which she believed to be true, in the matter. The freedom of expression was guaranteed in the Constitution and this basic right could not be the subject of derogation in application of the Penal Code provisions.

43. As to the book, the applicant claimed that she had only told the truth: tax inspector A. had committed a perjury and had not yet been charged. The book had only presented the facts as they had emerged during the tax proceedings.

(b) The Government

44. The Government agreed that the conviction of the applicant and the obligation to pay damages and costs had amounted to an interference with her right to freedom of expression.

45. As to the requirement that that interference be “prescribed by law”, the Government pointed out that the applicant had not questioned this. In any event, the impugned measures had had a basis in Finnish law, namely in the Constitution and, in particular, in Chapter 27, section 1, of the Penal Code, as in force at the relevant time. Moreover, the interference complained of had had a legitimate aim, namely the protection of the reputation or rights of others.

46. As to the “necessity” requirement, the Government pointed out that the applicant had appeared as an expert witness in district court proceedings and in that capacity she had been expected to present an alternative

estimation to the calculations made by the tax inspectors A. and B. In this capacity, as a tax expert, the applicant had accused A. and B. of serious misconduct in office and of actual persecution of taxpayers. These comments, due to the public attention focused on the case, had been reported by the mass media and had later, in 1998, been published in her book about taxation.

47. Both the District Court and the Appeal Court had found that the applicant had not been able to justify her allegations, which had been the basis for her conviction. In the Government's view, the applicant's allegations exceeded the limits of acceptable criticism and they could not be considered as attempts to provoke public discussion about the conduct of the tax authorities. This was even more so taking into account that the defendant in the proceedings in which the applicant had given a witness statement, had been convicted of aggravated tax fraud and the calculations of the tax inspectors had been confirmed by all levels of jurisdiction.

48. The applicant's allegations could be considered as constituting personal insults which had been conducive to subjecting the tax inspectors to contempt and to causing damage both to their professional ability and their private lives. In particular the allegations made in the applicant's book constituted criticism of A. personally. The applicant must have understood that her allegations would gain wide publicity.

49. Moreover, the domestic courts had attached importance to all the facts of the case that had been relevant in assessing whether the interference with the applicant's freedom of expression had been “necessary”. Referring to the margin of appreciation, the Government concluded that the impugned measures corresponded to a “pressing social need” and were “proportionate to the legitimate aim pursued”, and that the reasons given by the national authorities to justify them were “relevant and sufficient”.

2. The Court's assessment

1. Whether there was an interference

50. The Court agrees with the parties that the applicant's conviction, the conditional prison sentence imposed on her and the award of damages and costs constituted an interference with her 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

51. The Court notes that, according to the Government the impugned measures had a basis in Finnish law, namely in the Constitution and, in particular, in Chapter 27, section 1, of the Penal Code. Moreover, the interference complained of had a legitimate aim, namely the protection of the reputation or rights of others. The applicant claimed that freedom of

expression could not be derogated from in application of the Penal Code provisions.

52. The Court notes that freedom of expression is subject to the exceptions, set out in Article 10 § 2 of the Convention. The Court accepts that the interference was based on Chapter 27, section 1, of the Penal Code, as in force at the relevant time. It was thus "prescribed by law" (see *Nikula v. Finland*, no. 31611/96, § 34, ECHR 2002-II; *Selistö v. Finland*, no. 56767/00, § 34, 16 November 2004, *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X, and *Eerikäinen and Others v. Finland*, no. 3514/02, § 58, 10 February 2009) and it 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

53. 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).

54. 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).

55. 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 applicant and the context in which she 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)*, 26 April 1979, § 62, Series A no. 30; *Lingens v. Austria*, cited above, § 40; *Barfod v.*

Denmark, 22 February 1989, § 28, Series A no. 149; *Janowski v. Poland*, 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).

56. The Court reiterates that civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism. Admittedly those limits may in some circumstances be wider with regard to civil servants exercising their powers than in relation to private individuals. However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the same extent as politicians and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions (see *Nikula v. Finland*, cited above, § 48).

57. In sum, the Court's task in exercising its supervision is not to take the place of the 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).

58. Turning to the facts of the present case, the Court will first examine the statements made by the applicant during the court proceedings in which she was the defendant's witness.

59. The Court notes that, during the tax fraud proceedings, the applicant was questioned by the prosecutor and the defendant's counsel. It appears from the court transcripts that the applicant replied to these questions in a concise manner and did not expand on her answers any further than was necessary. Moreover, she was speaking under oath.

60. The Court further notes that the court proceedings as well as the applicant's statements were reported in several newspapers but the tax inspectors' names were not mentioned in any of the reports. The court proceedings were open to the public and the applicant's witness statements were recorded word for word in the minutes, to which anybody had access. Moreover, the District Court found that the applicant had not actively drawn the media's attention to herself or to her statements, nor could she have prevented her statements from being reported in the media.

61. The Court observes that the applicant's criticism was directed against the tax inspectors, who were civil servants. Furthermore, she impugned their conduct in the defendant's case and accused them of having committed an offence in office.

62. The Court recalls that Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed. The parties' freedom of expression in the courtroom is not

unlimited and certain interests, such as the authority of the judiciary, are important enough to justify restrictions on this right. Nonetheless, the Court refers to its case-law to the effect that it is only in exceptional circumstances that restriction – even by way of a lenient criminal penalty – of for example defence counsel's freedom of expression can be accepted as necessary in a democratic society (see *Nikula*, cited above, §§ 54-55; and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 174, ECHR 2005-XIII). For the Court, similar considerations should apply in respect of statements made by witnesses testifying before a court.

63. Moreover, the Court is mindful of the fact that an interference with freedom of expression in the course of a trial could also raise an issue under Article 6 of the Convention with regard to the right of an accused to a fair trial. Although the parties' freedom of expression should not be unlimited, "equality of arms" and other considerations of fairness can militate in favour of a free exchange of argument between the parties (see *Nikula v. Finland*, cited above, § 49).

64. It is the duty of the courts and the presiding judge to direct proceedings in such a manner as to ensure the proper conduct of the parties and above all the fairness of the trial – rather than to examine in a subsequent trial the appropriateness of a party's statements in the courtroom (see *Nikula v. Finland*, cited above, § 53). In the present case the trial judge did not intervene or ask the applicant to retract her statement. Nor was the applicant warned of the consequences of the gravity of her statement. It was at no stage alleged that she was guilty of contempt of court. Furthermore, the adversarial nature of the proceedings enabled the tax inspectors to discredit the applicant's accusations. The Court would stress that the applicant appeared in the tax proceedings as a witness for the defence, and that she only replied to the questions put to her.

65. As to the severity of the penalty, the Court notes that the applicant could not be convicted due to prescription but she was ordered to pay in total 4,000 euros in compensation to A. and B. for mental suffering.

66. In view of the above considerations, as concerns the statements made by the applicant during the court proceedings, the Court finds that, in the context of those proceedings, the tax inspectors could have been reasonably expected to tolerate the statements made by the applicant under oath in her capacity as the defendant's witness (see *Nikula v. Finland*, cited above, § 51), especially as the applicant was obliged to answer the questions put to her and she could not but give her view of the facts. Viewed against this background and in the absence of exceptional circumstances supporting a different conclusion (see paragraph 62 above), the Court is not persuaded that the national courts, acting within their margin of appreciation, struck a reasonable balance between the interests involved in respect of this part of the case.

67. As to the statements made in the applicant's book, the Court notes that the book could be characterised as a polemical document or pamphlet attempting to contribute to a public debate. The book mainly described the applicant's views about the actions of the tax authorities, including that of tax inspector A. For her statements made in the book the applicant was sentenced to four months' conditional imprisonment and ordered to pay 5,000 euros to tax inspector A. in compensation. Although sentencing is in principle a matter for the national courts, the Court considers that the imposition of a prison sentence for a defamation offence will be compatible with an applicant's right to freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI; and *mutatis mutandis*, *Feridun Yazar v. Turkey*, no. 42713/98, § 27, 23 September 2004; and *Sürek and Özdemir v. Turkey* [GC], nos. 23927/94 and 24277/94, § 63, 8 July 1999).

68. The circumstances of the instant case – a classic case of defamation of an individual in the context of a debate on an important matter of legitimate public interest, namely the actions of the tax authorities – present no justification whatsoever for the imposition of a prison sentence. Such a sanction, by its very nature, will inevitably have a chilling effect on public debate. The fact that the applicant's prison sentence was conditional and that she did not in fact serve it does not alter that conclusion. Although the national authorities' interference with the applicant's right to freedom of expression may have been justified by the concern to strike the balance between the various competing interests at stake, the criminal sanction and the accompanying obligation to pay compensation imposed on her by the national courts were manifestly disproportionate in their nature and severity, having regard to the legitimate aim pursued by the applicant's conviction for defamation.

69. The Court would further observe that the Parliamentary Assembly of the Council of Europe in its Resolution 1577 (2007) urged those member States which still provide for prison sentences for defamation, even if they are not actually imposed, to abolish them without delay (see paragraph 27 above).

70. The Court finds that the severity of the sanctions imposed of itself went beyond a “necessary” restriction on the applicant's freedom of expression. For that reason, there is no need to examine more closely the nature of the statements made in her book. Having regard to this part of the case and notwithstanding the margin of appreciation afforded to the State in this area, the domestic courts failed to strike a fair balance between the competing interests at stake.

71. There has therefore been a violation of Article 10 of the Convention in respect of the statements made by the applicant during the court proceedings as well as in respect of the statements made in her book.

III. REMAINDER OF THE APPLICATION

72. The applicant also complained under Article 6 § 1 of the Convention that the Appeal Court had not re-assessed the evidence in her case and under Article 6 § 3 (d) that her witnesses had not been given the possibility to testify and that, if they had, their testimonies had not been reflected in the Appeal Court's judgment. Moreover, she complained under Article 6 § 2 of the Convention that the presumption of innocence had been violated as the public prosecutor could not prove her calculations wrong or her to be guilty. Finally, the applicant complained under Article 13 of the Convention that she had not had an effective remedy as the other parties to the proceedings had been civil servants.

73. The Court finds, having regard to the case file, that the matters complained of do not disclose any appearance of a violation of the applicant's rights under the Convention. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 176,155 euros (EUR) in respect of pecuniary and EUR 270,000 in respect of non-pecuniary damage.

76. The Government noted that there had been no causal link between the pecuniary damage accrued and the alleged violation of Article 6 of the Convention. No compensation for pecuniary damage should be awarded under this heading. In the event of a violation being found under Article 10, the Government pointed out that the applicant had not provided any proof of the pecuniary damage claimed nor any receipt or other clarification of the payment of the amounts claimed. Should the Court find that an award is to be granted under this heading, it should not exceed EUR 33,390.84, that is, the total amount of legal expenses ordered by the domestic courts to be paid

by the applicant as legal expenses of the opposing party. As to non-pecuniary damage, the Government considered that a part of the applicant's claims should be rejected as unfounded as they related to non-communicated complaints. In any event, the applicant's claims were excessive as to *quantum* and any award should not exceed EUR 5,000.

77. The Court finds that there is a causal link between the violation found under Article 10 and the alleged pecuniary damage. Consequently, there is justification for making an award to the applicant under this head. Having regard to all the circumstances, the Court awards the applicant EUR 33,390.84 in compensation for pecuniary damage. Moreover, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant also claimed EUR 43,812 for the costs and expenses incurred before the domestic courts and any other further costs and expenses incurred during the proceedings.

79. The Government contested these claims. The Government maintained that no specification relating to the costs and expenses, as required by Rule 60 of the Rules of Court, had been submitted. Moreover, it appeared that the applicant had received legal aid. In any event, the Government found the applicant's claims for costs and expenses, to the extent the amounts had been specified, too high as to *quantum* and that the total amount of compensation should not exceed EUR 7,500 (inclusive of value-added tax) in respect of the proceedings before the domestic courts and EUR 2,000 in respect of the proceedings before the Court.

80. 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 sum of EUR 10,000 (inclusive of value-added tax) covering costs under all heads.

C. Default interest

81. 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 concerning the length of the proceedings and the freedom of expression admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of proceedings;

3. *Holds* that there has been a violation of Article 10 of the Convention in respect of the statements made by the applicant during the court proceedings as well as in respect of the statements made in her book;

4. *Holds*

(a) that the respondent State is to pay the applicant, 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 33,390.84 (thirty-three thousand three hundred and ninety euros and eighty-four cents), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, 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 applicant's claim for just satisfaction.

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

Lawrence Early Registrar	Nicolas Bratza President