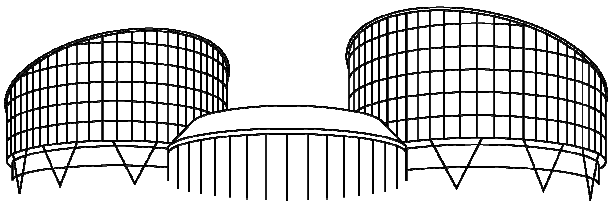

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

# CASE OF SAARISTO AND OTHERS v. FINLAND

*(Application no. 184/06)*

JUDGMENT

STRASBOURG

12 October 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 Saaristo and Others 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,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 21 September 2010,

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

# PROCEDURE

1. The case originated in an application (no. 184/06) 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, Ms Satu Sirkku Saaristo and Mr Hannu Tapani Savola, and a Finnish newspaper company, Ilta-Sanomat Oy ("the applicants"), on 28 December 2005. The second applicant Mr Savola died on 13 February 2007. However, his children Mr Hans Mikael Savola and Ms Saana Johanna Savola expressed their wish to pursue the application. For practical reasons Mr Hannu Tapani Savola will continue to be called "the second applicant" in this judgment.

2. The applicants were represented by Mr Petteri Sotamaa, 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 under Article 10 of the Convention had been violated.

4. On 23 June 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1946 and lives in Kerava. The second applicant was born in 1949 and was resident in Helsinki at the time of his death. The applicant company is based in Helsinki. The first applicant is a journalist and the second applicant was the editor-in-chief of the newspaper called *Ilta-Sanomat* which was published at the time of the events by the publishing company Sanoma Osakeyhtiö. On 1 January 2005 Sanoma Osakeyhtiö transferred all its business relating to the publishing of *Ilta-Sanomat*, including court cases, to the applicant company. The newspaper has a circulation of approximately 200,000.

6. On 3 February 2000, during the presidential election campaign, the applicant company published a short article, written by the first applicant and approved by the second applicant, entitled "*The ex-husband of [R.U.] and the person in charge of communications for the Aho campaign have found each other*".

7. The article stated that P.N., who had separated from his wife, had found a new partner, O.T. P.N.'s wife was known as a political reporter in the election-related TV debates and previously as a news reader. It was mentioned in the article that O.T. was in charge of communications for the Aho campaign and that, in her civilian life, O.T. was the communications manager in a specified pension insurance company and a mother.

8. The article went on to state that, before joining the campaign, O.T. had been active in the same political party as P.N. and that she had been involved in some "insider committees". The article continued to note that P.N. worked as a director for *Finnpro*, the company promoting Finnish exports, and that in the 1990s he had been posted in New York, where his wife had followed him, taking leave from her own job. The article stated that P.N. and his wife had two children and that they had separated in the autumn of 1999. Pictures of O.T. and P.N.'s wife were included in the article.

9. On 13 March 2000 O.T. asked the police to investigate the matter. She requested compensation for suffering and distress and for financial losses.

10. On 4 July 2001 the public prosecutor brought charges against the applicants under Chapter 27, section 3(a), of the Penal Code. O.T. concurred with the charges and pursued a compensation claim against all the applicants, which was joined to the criminal charges.

11. On 1 February 2002 the Forssa District Court (*käräjäoikeus, tingsrätten*) convicted the applicants for having violated O.T.'s private life. The first applicant was sentenced to a fine of 270 euros (EUR) and the

second applicant to a fine of EUR 650. The applicants were jointly ordered to pay damages to O.T. for suffering amounting to EUR 5,045.64 and her legal fees and witness costs amounting to EUR 6,500, both sums with interest.

12. The court found that O.T., despite her position in the presidential campaign, was not a public figure and that her relationship with P.N. was not such that the applicants would have been allowed to write about it without her consent. The information published, however accurate, was not necessary for examining any matter of interest to society.

13. The applicants appealed to the Turku Court of Appeal (*hovioikeus, hovrätten*) claiming that, due to her position in the presidential campaign and as a local politician, O.T. was a so-called public figure, that the facts in the article were true and that the issue was important for public discussion since one of the main focuses of the presidential campaign was family values. O.T. worked for a candidate who was a married father of four children, in contrast to the other candidate, who was a single mother cohabiting without being married. Hence, O.T.'s extramarital affair was of importance to the public. The affair had been public, thus information about it could not be private. The information was connected to O.T.'s public function and was necessary in order to discuss an important matter for society.

14. Following an oral hearing on 12 November 2002, the Court of Appeal upheld the District Court's judgment on 12 December 2002. It found that the information published had had no importance for society but only served the general curiosity of the public.

15. On 3 February 2003 the applicants appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds of appeal already presented before the Court of Appeal.

16. On 7 October 2003 the Supreme Court granted the applicants leave to appeal.

17. On 4 July 2005 the Supreme Court upheld the Court of Appeal's judgment as far as the applicants were concerned and ordered them jointly to pay O.T.'s legal fees amounting to EUR 2.415,60 plus interest. It found, *inter alia*, the following:

> "... The Supreme Court states that information concerning emotional relationships, dating and family life undoubtedly fall within the scope of private life and even its core areas.
>
> ...
>
> *Evaluation of the content of the article*
>
> The Supreme Court states that the contents of the article do not support the defendants' allegation that the purpose of the article was to describe the political co-operation between O.T. and P.N. The expressions used in the article, according to

which O.T. and P.N. “found each other” and “P.N. has found a new partner”, together with the disclosure in the same connection of P.N.'s divorce and that O.T. was a mother, are not conducive to creating a conception of political co-operation, but it is obvious that the intention was to refer to a personal love affair. Even though the article does mention O.T.'s and P.N.'s political affiliations and O.T.'s function in the presidential election campaign, there is nothing else political in the article. Nor when viewed as a whole, the article does not give an impression that it aimed to tell about a relationship that was politically important. Its crucial aim had clearly been to spread information about an intimate relationship of public persons.

*Significance of O.T.'s function*

...

The Supreme Court states that O.T. has served at the relevant time a politically important function which involved publicity and because of which her person as an official in the presidential candidate's inner circle has attracted justified interest. Another question is, however, whether O.T.'s position has been such that also issues relating to her private life could have been revealed in public without her consent.

...

O.T has served the campaign as a hired expert without herself pursuing political office or other public function. As put forward by the defendants, O.T.'s appointment as the person in charge of communications had probably been affected, in addition to her professional merits, by considerations of a political nature. This does not, however, change the fact that in spite of some other former political positions of trust occupied by her, O.T. was not known as a politician prior to being employed in the electoral campaign nor has she, after having become a temporary campaign assistant, stood as a candidate for any political office. ..... O.T. was not a civil servant but an assistant to a political candidate. Nor does it follow from the political considerations of her recruitment that, considering the nature of the campaign, the protection of her private life would for this reason have become similarly restricted as in respect of the politician she was assisting.

O.T.'s function as an official of the presidential campaign was not, either, the kind that would have made her obliged in her private life to stand for or become committed to the values advanced by the candidate. Even if the communication between O.T. and P.N. could also have had professional content and significance as to O.T.'s function, the intimate nature of the relationship had nothing to do with that aspect of the matter. The extra-marital relationship was not, at any rate, a consideration that would have had an impact on O.T.'s capacities to perform her function as a communications expert hired for the election campaign. .... The consideration mentioned by O.T. that the reason behind the publication of the article would have been to affect the campaign, has no relevance to whether the defendants have been guilty of violating O.T.'s private life. The offender's possible political motivation or O.T.'s assumption about it have no relevance to the justification of the act in case there were no legal grounds for disclosing information concerning private life.

On the above-mentioned grounds the Supreme Court considers that the disclosure in the media of an extra-marital relationship of a person in O.T.'s position or exposure in public of the morals of her private life was not justified by the public's need to receive information nor by the important interests of society. There was thus no legal right to

disclose information about O.T.'s private life in the article on the basis of her functions.

*Significance of the position of other persons mentioned in the article*

...

As mentioned in the preparatory works for Chapter 24, section 8, of the Penal Code, the restrictions on the protection of private life on the basis of a person's position or function only applies to that person him or herself. Even though it would be permissible to write about the private life of a politician or a performing artist, this cannot be extended to such person's relatives, acquaintances or other outsiders (HE 184/1999 vp, p. 32). The Supreme Court states that P.N.'s position and the fact that his ex-spouse was known from the television are not issues that could change the above-mentioned conclusion and justify such publication of information about O.T.'s private life like in the present case.

Nor has the fact that P.N.'s ex-spouse had conducted election debates on television prior to the publishing of the article had any relevance. Even though it is possible that such personal scenario, which is completely irrelevant *vis-à-vis* the presidential candidates, interests certain public circles more than the content of the election debates and the candidates' own performance, such satisfying of curiosity is not a fact that would have justified the publishing of information about O.T.'s private life. There was thus no legal right to disclose information about O.T.'s private life on this ground either.

*Claim that the relationship was known of by outsiders*

The defendants have also claimed that O.T.'s and P.N.'s close relationship had been open and visible to outsiders, and that it was known among politicians. The Supreme Court states that the protection of private life is not only limited to facts or events that take place in private or in closed events. The fact that an issue of private life is noticeable in a certain event or in public places does not mean as such that it would be left outside the protection of private life (see for example the European Court of Human Rights' judgment in the case *Peck v. United Kingdom*, judgment of 28 January 2003, §§ 62-63; and the judgment in the case *von Hannover*, in which the pictures found to violate private life were mostly taken in public places). The contrary can also be true if the persons involved clearly show by their behaviour that they want to make the issue public.

Moreover, the Supreme Court states that the fact that a piece of information about private life has come to the knowledge of a certain group of persons through their own observations or private gossiping is not a ground that would permit distribution of that information through the media to a wider public without the consent of the person concerned. Publication of such an article in the media is conducive to causing harm and suffering to the person concerned and to his or her close ones, just as O.T. has described.

... In the present case it has not been shown that O.T., by being with P.N. at the same events or in public places, would have meant their relationship to be public or that information about it should be freely distributable. O.T. cannot be regarded as having performed in a manner that could lead to the conclusion that she, even implicitly,

would have given her consent to the distribution of the information written in the article.

*Conclusions*

On the basis of the above-mentioned, the Supreme Court, like the lower instances, has come to the conclusion that the publication of the article violated O.T.'s private life. The act was intentional, a fact which has not even been contested before the Supreme Court. [The first and second applicants] have thus been guilty of invasion of private life, as already held by the lower courts. ....."

18. The outcome of the Supreme Court's judgment was not unanimous, one of the Justices gave a dissenting opinion. According to him, and taking into account the direct effect of the Strasbourg Court's judgments, the exceptions to Chapter 27, section 3(a), of the Penal Code had to be interpreted extensively, both regarding the extent of the political activity and the scope of a matter of interest to society. O.T.'s recruitment to the presidential election campaign had attracted political interest due to the fact that her party political background was different from that of the candidate she was assisting. There had been public speculation that, by her appointment, her candidate had tried to attract voters from her party and especially female voters. Even though it could not be said that O.T. had, by taking part in the election campaign, become a public figure, she must have understood that, as an important figure in the inner circle of one of the two candidates, she would also attract public interest. O.T. had thus been politically active and this activity had been public. As to the article, the Justice noted that the information about O.T.'s private life, even if not strictly relevant to her functions as the communications official, was conducive to contributing to public debate through the fact that family values had been at the centre of the political value debate in the presidential campaign. The article did not only satisfy the curiosity of certain readers but it also contributed to an important matter of public interest as political background information. One could rely on criminal law sanctions in a case of political journalism only exceptionally, namely if freedom of expression was clearly abused. As this was not so in the present case, the Justice did not consider the publication of the article as a punishable act and would have annulled the previous judgments.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Constitutional provisions

19. Article 12 of the Constitution of Finland (*Suomen perustuslaki, Finlands grundlag*, Act no. 731/1999) provides the following:

> "Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act. Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings."

20. Article 10 of the Constitution guarantees everyone's right to private life. According to it,

> "Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act.
>
> The secrecy of correspondence, telephone and other confidential communications is inviolable.
>
> Measures encroaching on the sanctity of the home, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, may be laid down by an Act. In addition, provisions concerning limitations of the secrecy of communications which are necessary in the investigation of crimes that jeopardise the security of the individual or society or the sanctity of the home, at trials and security checks, as well as during the deprivation of liberty may be laid down by an Act."

## B. Penal Code

21. Chapter 27 (as amended by Act no. 908/1974), section 3(a), of the Penal Code (*rikoslaki*, *strafflagen*) read, at the relevant time, as follows:

> "A person who unlawfully, through the use of the mass media or in another similar manner, publicly disseminates information, an insinuation or an image depicting the private life of another person, such as to cause him or her damage or suffering, shall be convicted of invasion of privacy and sentenced to a maximum term of imprisonment of two years or to a fine. A publication that deals with a person's behaviour in a public office or function, in professional life, in a political activity or in another comparable activity, shall not be considered an invasion of privacy if the reporting was necessary for the purpose of dealing with a matter of importance to society."

22. In the *travaux préparatoires* of the above-mentioned provision (see government bill HE 84/1974) there was no precise definition of private life but matters such as, *inter alia*, family life, spare time activities, health and relationships and such conduct in socially significant positions that had no significance to the relevant exercise of power, were considered as a part of private life. It was further required that the act might have caused damage or suffering. Such damage might have also been "immaterial damage, which might have manifested itself in problems with social interaction or respect". An ordinary person enjoyed the strongest protection of private life. His or her involvement in an incident of importance to society might have

warranted an exception to the protection. In any case, if an offence was of such a kind that it could not be regarded as having social significance, information about that offence was a matter to be protected as belonging to the sphere of private life, otherwise the protection of private life did not restrict publishing. Moreover, the publishing could not be to a greater extent than was necessary. Thus, the necessity of mentioning a person's name or other description of a person enabling identification was always subject to careful consideration.

23. In 2000, Chapter 27, section 3(a), of the Penal Code was replaced by Chapter 24, section 8, (Act no. 531/2000, which entered into force on 1 October 2000). Under the new provision on injury to personal reputation (*yksityiselämää loukkaavan tiedon levittäminen, spridande av information som kränker privatlivet*) a person who unlawfully, through the use of the mass media or in another manner, publicly spreads information, an insinuation or an image of the private life of another person in such a way that the act is conducive to causing that person damage or suffering or subjecting that person to contempt, shall be convicted of injuring personal reputation. However, an act shall not constitute an injury to personal reputation if it concerns the evaluation of that person's activities in a professional or public capacity and if it is necessary for the purpose of addressing a matter of importance to society.

24. According to the *travaux préparatoires* (see government bill HE 184/1999), the content of the new provision corresponds to the old Chapter 27, section 3(a), of the Penal Code. The amendments and clarifications made to the existing provision were mainly technical. The provision thus still restricts the protection of the private life of persons having important political or economic powers. This restriction, however, applies only to the persons referred to, not to their close friends and family. According to the Parliamentary Law Committee's Report (*lakivaliokunnan mietintö, lagutskottets betänkande* LaVM 6/2000), the purpose of that provision is to permit the dissemination of information on the private life of such persons if the information may be relevant in assessing the performance of their functions.

25. The government bill HE 184/1999 further provides that in the assessment of interferences with private life, the lawfulness of the interference and the concept of private life are taken into account. A person's consent to the provision of information has relevance in the assessment of the lawfulness of the interference. Without explicit consent, there is usually no reason to believe that the person in question would have consented to the publication of information relating to private life (see Parliamentary Law Committee's Report LaVM 6/2000). With regard to the concept of private life, a reference is made to the explanatory works concerning the Constitution's provisions on fundamental rights and to the government bill HE 84/1974. Moreover, private life is, in particular,

protected against dissemination of information which may be correct as such. In order for the act to be punishable, it is necessary that the information concerns the private life of the person in question (see government bill HE 184/1999).

### C. Provisions concerning liability

26. Section 39 of the Freedom of the Press Act (*painovapauslaki, tryckfrihetslagen*; Act no. 1/1919), as in force at the relevant time, provided that the provisions of the Tort Liability Act applied to the payment of compensation for damage caused by the content of printed material.

27. Chapter 5, section 6, of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*, Act no. 412/1974, as amended by Act no. 509/2004) stipulates that damages may also be awarded for distress arising *inter alia* from an offence against liberty, honour, home or private life. Under Chapter 5, section 1, of the said Act, damages shall constitute compensation for personal injury and damage to property. Section 2 provides that a person who has suffered personal injury shall be entitled to damages to cover medical costs and other costs arising from the injury, as well as loss of income and maintenance and pain and suffering.

28. According to the government bill to amend the Tort Liability Act (HE 116/1998), the maximum amount of compensation for pain and suffering from, *inter alia*, bodily injuries had in the recent past been approximately FIM 100,000 (EUR 16,819). In the subsequent government bill to amend the Tort Liability Act (HE 167/2003, p. 60), it is stated that no changes to the prevailing level of compensation for suffering are proposed.

### D. Supreme Court practice

29. The Supreme Court's decision of 26 September 2001 (*KKO 2001:96)* concerned the publication in a magazine of an article which had described a pending criminal case in which the accused had been charged with, *inter alia*, aggravated fraud. The article had been illustrated, without the accused's permission, with another article published previously in another magazine and with a picture of the accused published in that connection. The accused's name had been given in the text of the article and she could be recognised from the picture. The Supreme Court found that the criminal case had no such social significance that would justify its publication without the accused's permission and, consequently, her private life had been invaded.

30. The Supreme Court's decision of 25 June 2002 (*KKO 2002:55*) concerned an incident following which A., a public figure, and B., his female friend, had been convicted. When interviewing A., B.'s name was mentioned in the television broadcast in January 1997, that is, after they had

been convicted. The court found that the facts discussed in the television programme with regard to B. were part of her private life and enjoyed the protection of privacy. The fines imposed on her as punishment for the assault did not constitute a criminal-law sanction justifying publication of her name. The interviewer and the television company were ordered to pay B. damages in the amount of EUR 8,000 for disclosing her identity in the television programme.

31. The decision of 4 July 2005 (*KKO 2005:82*) concerned the present case. An article had been written about a relationship between A., who worked as a press officer for a candidate in the presidential elections, and B., the ex-spouse of a TV journalist. A.'s photo was included in the article. The Supreme Court, having assessed the provision on the invasion of privacy in the Penal Code in the light of this Court's case-law, found that A. did not hold a position that meant that such details of her private life were of public importance. The article had thus invaded A.'s privacy.

32. In a decision of 19 December 2005 (*KKO 2005:136*), the Supreme Court noted that an offence was not a private matter for the offender. In principle, however, a person convicted of and sentenced for having committed an offence also enjoyed the right inherent in private life to live in peace. According to the Personal Data Act, any information about the commission of an offence and the resulting sentence qualified as “sensitive” personal data. The publicity *per se* of criminal proceedings and of related documents did not mean that information made public during the proceedings could be freely published as such by the media. The Supreme Court concluded that publishing the name of a person convicted of, *inter alia*, assault and deprivation of liberty did not invade his privacy as the person concerned had been convicted of offences of violence which had also degraded the victim's human dignity. Furthermore, the article in question did not include his photo.

33. The Supreme Court's decision of 16 March 2006 *(KKO 2006:20)* concerned the scope of the private life of a leading public prosecutor whose name or identify had not been revealed in an article which mainly concerned his wife, who had been suspected of having committed a crime. The Supreme Court concluded that the issue had had social significance as the person under suspicion was the public prosecutor's wife. Even though the public prosecutor could have been identified from the article, this was justified by the fact that his own impartiality as a prosecutor was at stake.

34. In the Supreme Court's decision of 22 January 2009 (*KKO 2009:3*) A. had been convicted of incest with his children and the case file was declared secret. Later A. revealed certain details of the case in a television programme. The court found that, even though the children had remained anonymous in the programme, they could still be identified because A. had appeared in the programme undisguised and his first name had been given. The privacy of the children and their mother had thus been invaded.

35. The latest Supreme Court decision of 16 June 2010 (*KKO 2010:39*) concerned invasion of privacy of the Prime Minister by his ex-companion. The Supreme Court found that the ex-companion had had no right to disclose intimate details about the Prime Minister's private life and their dating in her book.

### E. Self-regulation of journalists

36. The Union of Journalists in Finland (*Suomen Journalistiliitto, Finlands Journalistförbund ry*) publishes Guidelines for Journalists (*Journalistin ohjeet, Journalistreglerna*) for the purposes of self-regulation. The 1992 Guidelines were in force at the material time and provided, *inter alia,* that matters falling in the sphere of private life, being detrimental to the relevant party or his or her near relative, should not be published unless the matters are of general significance (Article 24).

37. New Guidelines came into force in 2005, which noted that when publishing public material regard must be had to the protection of private life. Highly delicate information relating to one's personal life may only be published with the consent of the person in question, or if such matters are of considerable public interest (Article 27).

38. Also the Council for Mass Media (*Julkisen sanan neuvosto, Opinionsnämnden för massmedier),* which is a self-regulating body established in 1968 by publishers and journalists in the field of mass communication and whose task it is to interpret good professional practice and defend the freedom of speech and publication, has issued a number of resolutions and statements, *inter alia,* in 1980 and 1981. The former concerned the content of private life and the latter disclosure of names in crime news coverage.

39. In its statement of 1980, the Council for Mass Media stated, *inter alia,* that the protection of private life applies, in principle, to all citizens. The greater and more profound social implications a matter has, the more important it is to be able to publish information thereon. The Council divided persons into three groups as to the protection of identity: (1) persons exercising political, economic or administrative power; (2) other public persons, for example in the sectors of entertainment, sports, arts or science; and (3) ordinary citizens. The Council noted that the protection of identity is narrowest for group 1 and most extensive for group 3. However, this scale was not to be used formally, but the extent of protection should be interpreted on a case by case basis. A person's position had a great significance in determining the protection of private life but that alone could not be considered as a decisive factor. The significance of a matter also had an important impact. The conduct of a well-known person appearing in public in connection with his or her professional tasks or public role does not as such belong to such person's protected private life. On the contrary,

information concerning lifestyle does normally belong to such person's sphere of private life even though his or her sphere of protection is narrower than that of an ordinary citizen. In some cases information concerning one's lifestyle can be closely connected to his or her professional tasks in a way that its publishing is justified. It is required, however, that the matter in question does have considerable general significance. Also, the publishing should not extend further than is necessary for the consideration of the matter. Finally, it is in accordance with good journalistic practice to see to it that the publishing does not cause undue suffering for the person in question or for his or her relatives.

### III. RELEVANT INTERNATIONAL MATERIALS

40. 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 10 OF THE CONVENTION

41. The applicants complained that their right to freedom of expression had been violated. Article 10 of the Convention 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."

42. The Government contested that argument.

## A. Admissibility

43. The Court notes that the application 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 applicants

44. The applicants argued that freedom of expression had a special significance in matters relating to political and social discussion and that this term had to be interpreted expansively. It should be extremely exceptional to interfere with the freedom of expression relating to political activity. It should be possible only when there was a clear misuse of freedom of expression.

45. The applicants stressed that the content of the impugned article had mainly been political and that it had concerned the Finnish presidential election campaign. The article had aimed to have an impact on public discussion and the information contained in it had been of public interest. The journalists had acted in good faith and the information had been correct and in accordance with the ethics of journalism. There had been no compelling reasons to interfere with the applicant's freedom of expression. No just balance between the freedom of expression of the applicants and the protection of private life had been found. The actions of the national courts had been conducive to preventing the free flow of information and free discussion of issues relating to political activity. There had thus been a violation of Article 10 of the Convention.

#### (b) The Government

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

47. As to the requirement that measures be “prescribed by law” the Government pointed out that the applicants had not contested this. In any event, the impugned measures had had a basis in Finnish law, namely in Articles 8, 10 and 12 of the Constitution and, in particular, in Chapter 27, section 3(a), of the Penal Code. At the relevant time the Penal Code provision had been in force for more than 20 years and it had been interpreted by the Supreme Court on several occasions prior to the

publication of the impugned article. 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.

48. Moreover, the Guidelines for Journalists and the practice of the Council for Mass Media both regulated also publication of information concerning one's private life. The Council had stated that the conduct of a well-known person appearing in the public connected to his or her professional tasks or public role did not as such belong to such person's protected private life. On the contrary, information concerning lifestyle did normally belong to such person's sphere of private life. Accordingly, the interference had been "prescribed by law" as required by Article 10 § 2 of the Convention. Moreover, the legitimate aim had been to protect the private life of O.T., that was, the reputation and rights of others.

49. The Government maintained that the interference had also been "necessary in a democratic society". It was undisputed that the information published concerned O.T.'s private life and that she was not a public figure within the meaning of Chapter 27, section 3(a), of the Penal Code. In any event, the private life of public officials, politicians or actors in business life was not automatically public but could be revealed if necessary in dealing with a socially important matter. The Supreme Court had noted that O.T. was not a public official but an assistant in elections of a political candidate. The political motivations connected to her recruiting could not be considered to entail that protection of her private life would become narrower. The extra-marital relationship had not, at any rate, had any impact on O.T.'s capacities to perform her function as a communications expert for the election campaign. The purpose of the impugned article had not been to make a political commentary but simply to satisfy readers' curiosity.

50. The Government pointed out that P.N.'s position in the organisation and his marriage to the person hosting the election debate had been in itself a piece of information of social importance but it had had no relevance to the present case. The provision limiting the protection of private life applied only to persons in a position of importance to society and not to persons belonging to his or her inner circle. O.T.'s appearance with P.N. in public places did not reduce the protection of her privacy nor could it be considered as tacit consent to the disclosure of such information. The article had thus invaded O.T.'s privacy.

51. As to the fines imposed, the Government argued that they had been moderate. The damages and the costs the applicants had been ordered to pay to O.T. had also been reasonable. 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*

**1. Whether there was an interference**

52. 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**

53. As to whether the interference was "prescribed by law", 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 Court has already found on several occasions that this provision did not suffer from any ambiguity as to its contents (see, for example, *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X, *Eerikäinen and Others v. Finland*, no. 3514/02, § 58, 10 February 2009; and *Flinkkilä and Others v. Finland*, no. 25576/04, § 68, 6 April 2010). The Court concludes therefore that the interference was "prescribed by law". In addition, 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**

54. 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).

55. 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).

56. 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).

57. 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, Series A no. 30; *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).

58. 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.).

59. The limits of permissible criticism are wider as regards a politician 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).

60. The Court reiterates that civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than is the case of 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*, no. 31611/96, § 48, ECHR 2002-II).

61. 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).

62. 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 photographs 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.

63. Turning to the facts of the present case, the Court notes that the first and second applicants were convicted and fined on the basis of the remarks made in the article in their capacity as a journalist or as editor-in-chief and that they, together with the applicant company, were ordered to pay damages and costs.

64. The Court observes at the outset that, in the article of 3 February 2000 in *Ilta-Sanomat*, O.T.'s name, function in the election campaign as well as her civilian job, together with the fact that she was a mother, were mentioned in the article. Moreover, it was mentioned that she was the new companion of P.N. The article, which also included a photograph of O.T., was entitled "*The ex-husband of [R.U.] and the person in charge of communications for the Aho campaign have found each other*".

65. The Court notes that these facts were presented in an objective manner. There is no evidence, or indeed any allegation, of factual misrepresentation or bad faith on the part of the applicants. Nor is there any suggestion that details about O.T. 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.

66. The Court notes that O.T. had been politically active in local politics and that her recruitment to the presidential election campaign had attracted political interest. Even though she could not be considered as a civil servant or a politician in the traditional sense of the word, she was not a completely private person either. Due to her function in the presidential election campaign, she had been publicly promoting the goals and objectives of one of the presidential candidates by belonging to his inner circle and by being therefore visible in the media during the campaign. The Court considers that, when taking up her duties as a communications officer for one of the two presidential candidates, she must have understood that her own person would also attract public interest and that the scope of her protected private life would become somewhat more limited. On this point, the Court disagrees with the assessment made by the majority in the Supreme Court of O.T.'s status. For the Court, the majority did not give sufficient weight to the political nature of her functions and to the public context in which she discharged these functions.

67. The Court observes in this connection that the impugned article had a direct bearing on matters of public interest, namely the presidential election campaign. Moreover, the facts that P.N.'s ex-spouse had conducted election debates on television prior to the publishing of the article and that the article had apparently been politically motivated and intended to affect the campaign are also of relevance in this respect. Taking into account that the article was published during the presidential election campaign and was thus closely linked to it in time, the Court considers that, unlike in the *Von Hannover* case, the article did not only satisfy the curiosity of certain readers but it also contributed to an important matter of public interest in the form of political background information (compare and contrast *Von Hannover v. Germany*, cited above, § 76).

68. Finally, the Court has taken into account the severity of the sanctions imposed on the applicants. It notes that the first and second applicants were convicted under criminal law and observes that they were ordered to pay ten day-fines, amounting to EUR 270 and EUR 650 respectively. In addition, they were, together with the applicant company, ordered to pay damages jointly and severally to O.T. in a total amount of EUR 5,045.64 plus interest and her legal fees and witness costs amounting to EUR 6,500 plus interest and to EUR 2.415,60 plus interest. 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 paragraph 28 above).

69. The Court would observe in this connection that in view of the margin of appreciation left to Contracting States a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 59, ECHR 2007-..., *Radio France and Others v. France*, no. 53984/00, § 40, ECHR 2004-II and *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 68, 14 February 2008). Nevertheless, when a statement, whether qualified as defamatory or insulting by the domestic authorities, is made in the context of a public debate, the bringing of criminal proceedings by a public prosecutor (like in other Finnish cases, see for example *Niskasaari and Others v. Finland*, no. 37520/07, § 77, 6 July 2010 and *Ruokanen and Others v. Finland*, no. 45130/06, § 50, 6 April 2010) against the maker of the statement entails the risk that a prison sentence might be imposed. In this connection, the Court points out that the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 only in exceptional circumstances, notably where other fundamental rights have been 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). For the Court, similar considerations should apply to insults expressed in connection with a public debate (see *Długołęcki v. Poland*, no. 23806/03, § 47, 24 February 2009). 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 (Resolution *Towards decriminalisation of defamation* adopted on 4 October 2007). For the Court, similar considerations should apply to infringements of privacy which arise in circumstances such as those in the instant case.

70. The Court considers that such consequences, viewed against the background of the circumstances resulting in the interference with O.T.'s right to respect for her private life, were disproportionate having regard to the competing interest of freedom of expression.

71. In conclusion, in the Court's opinion the reasons relied on by the domestic courts, 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 notwithstanding 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.

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

## II. 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 14,900.24 in respect of pecuniary damage, that was, EUR 920 for the fines, EUR 5,045.64 for damages paid to O.T., and EUR 6,500 for O.T.'s legal costs and witness costs in the District Court and EUR 2.415,60 for those in the Supreme Court.

75. The Government noted that the pecuniary damages had been paid by the publishing company Sanoma Osakeyhtiö, which was party to the domestic proceedings. However, the payment receipt did not correspond to the total amount of pecuniary damage claimed. The applicant company was not party to the domestic proceedings.

76. The Court finds that there is a causal link between the violation found and the pecuniary damage alleged, and that 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 the sum claimed in full.

### B. Costs and expenses

77. The applicants also claimed EUR 27,245.62 for the costs and expenses incurred before the domestic courts and EUR 12,200 for those incurred before the Court.

78. The Government considered that the applicants had not submitted sufficient specification of the costs and expenses, as required by Rule 60 of the Rules of Court, as the hours used or the total cost for each measure performed had not been specified. They left it to the Court's discretion whether the specification provided had been sufficient. The applicant's claims also included postage, telephone and copying costs which were already included in counsel's fee. Moreover, the payment receipt by Sanoma Osakeyhtiö did not correspond to the total amount of costs and expenses claimed. The Government found the applicants' claims too high as to *quantum* and considered that, in any event, the total amount of compensation for costs and expenses for all applicants should not exceed EUR 7,500 (inclusive of value-added tax) with respect to the proceedings before the domestic courts and EUR 4,000 (inclusive of value-added tax) with respect to the proceedings before the Court.

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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 13,000 (inclusive of value-added tax) covering costs under all heads.

### 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 application admissible;

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

3. *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 14,900.24 (fourteen thousand nine hundred euros and twenty-four cents) to the applicants jointly, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 13,000 (thirteen 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;

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

Done in English, and notified in writing on 12 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Lawrence Early<br>Registrar | Nicolas Bratza<br>President |