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

FOURTH SECTION

CASE OF EERIKÄINEN AND OTHERS v. FINLAND

(Application no. 3514/02)

JUDGMENT

STRASBOURG

10 February 2009

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 Eerikäinen and Others v. Finland,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 20 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 3514/02) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Finnish nationals, Mr Pentti Eerikäinen and Mr Matti Paloaro, on 25 January 2002. The second applicant was the former editor-in-chief of the third applicant, a publishing company named Yhtyneet Kuvalehdet Oy ("the applicants"). The second applicant died on 21 August 2008. His children Mr Ari Paloaro and Ms Ulla Paloaro expressed their wish to pursue the application. For practical reasons Mr Matti Paloaro will continue to be called "the second applicant" in this judgment.

2. The applicants were represented by Mr H. Salo, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicants alleged a violation of Article 10 of the Convention.

4. By a decision of 26 September 2006, the Court declared the application partly admissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

6. In September 2008 third-party comments were received from the European Federation of Journalists, which had been invited by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties replied to the comments (Rule 44 § 5). The third-party comments are summarised below.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1946 and lives in Kauvatsa. The second applicant was born in 1942 and was resident in Härmä at the time of his death.

8. The first applicant is a freelance journalist. In 1997 he wrote an article about criminal proceedings which were then pending before the Turunseutu District Court (*käräjäoikeus, tingsrätten*). Those proceedings were public in nature. A defendant, X, was charged with various counts of tax fraud and aggravated fraud for allegedly deceiving the Social Insurance Institution (*kansaneläkelaitos, folkpensionsanstalten*) and insurance companies. The article was published in issue no. 6/1997 of the magazine *Alibi*, and entitled: "It seemed legal, but... a woman entrepreneur cheated to obtain a pension of over 2 million marks?" (In Finnish: *Näytti lailliselta, mutta... yrittäjärouva huijasi yli 2 miljoonan eläkkeen?*). The article did not mention X's name. In the magazine's table of contents, however, her first name was mentioned. The article included a reproduction of an article which had been published eight years previously with two photographs of X. That article, written by the first applicant, had been published in another magazine and mentioned X's full name and included two photographs of her, one taken inside her home and another in her garden. The article was about a house purchased by the applicant which turned out to be full of rising damp. This situation naturally made her extremely miserable as she had spent her money on an uninhabitable house.

9. In September 1997 X lodged a criminal complaint, and proceedings were instituted against the applicants. On 18 December 1997, however, the Espoo District Court dismissed the charges. X appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*), which upheld the judgment on 1 April 1999. X was ordered to reimburse the applicants' legal costs.

10. Subsequently, X brought civil proceedings against the applicants before the Espoo District Court. She claimed that the said article had incriminated and insulted her and, in the alternative, that her picture had been published without her consent, causing her mental suffering. She requested compensation for non-pecuniary damage amounting to 250,000 Finnish marks (FIM) (approximately 42,047 euros (EUR)). In the alternative, she claimed compensation for the publication of her picture and non-pecuniary damages amounting to FIM 125,000 (EUR 21,023). She also claimed pecuniary damages amounting to FIM 29,234 (EUR 4,917). In a hearing before the court she claimed that publication of the article and photograph had amounted to an invasion of her privacy.

11. In its judgment of 31 March 1998 the District Court found that, given that X had been only a suspect at the time and the criminal case against her had still been pending, it had been wrongly alleged in the table of contents and in the headline of the article that she had obtained pension payments by fraud. The case thus amounted to defamation, as set out in Chapter 27 of the Penal Code (*rikoslaki, strafflagen*). The court found that other parts of the article were not defamatory. Under the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*; Act no. 412/1974), the court ordered the applicants jointly and severally to pay X FIM 80,000 (EUR 13,455) for non-pecuniary damage and FIM 27,554 (EUR 4,634) for pecuniary damage, and to pay her legal costs. Finally, it found that, having regard to the above, there was no need to adjudicate on her second claim.

12. The applicants appealed to the Helsinki Court of Appeal, asserting their right to freedom of expression. X also appealed, requesting that the amount of damages be increased.

13. On 8 December 1999, without holding an oral hearing, the appellate court quashed the judgment, reasoning, *inter alia*, that:

> "... It was clear from the text of the article that it concerned a pending public trial. X's identity was not revealed in the headline, thus she could not be assumed to be guilty of an offence only by reading the headline. Neither was her identity disclosed in the table of contents; to identify her required reading through the article. The text of the article is not defamatory or slanderous on the grounds set out in the District Court's judgment. Publishing an article about charges brought before a public trial is justified, even though it might cause suffering for the accused. The act did not amount to defamation ...
>
> ... the crimes allegedly committed cannot be regarded as minor, taking into account their extent, effects and social importance. An article about this kind of case, and the publication of a photo from which [X] could have been identified, is not a violation of her privacy."

14. X applied for leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*).

15. On 21 November 2000 the Supreme Court granted leave to appeal. On 26 September 2001 it issued its judgment, which became a precedent (*KKO 2001:96*). The Supreme Court ruled that, in line with the grounds of the Court of Appeal's judgment, the applicants were not guilty of defamation. It found, however, that by attaching the said illustration (in Finnish: *kuvitus*; that is by reproducing the old article which included X's name and photographs), the applicants had violated her right to privacy, and ordered them jointly to pay FIM 20,000 (EUR 3,364) for non-pecuniary damage together with interest from the service of the summonses in 1997 and to reimburse her legal costs. The court reasoned, *inter alia*, that:

> "...

On the grounds mentioned in the Court of Appeal's judgment, the Supreme Court considers that [the first and the second applicants] have not committed an act of defamation within the meaning of Chapter 27, Article 1 or 2 of the Penal Code as in force at the time of the act. [see paragraph 13 above]

The question thus raised by this case is whether [the first and the second applicants] without a legal right through the use of a mass medium or in another similar manner have publicly spread information, an insinuation or an image depicting the private life of [X] which has been conducive to causing her damage or suffering and are thereby guilty of invasion of privacy within the meaning of Chapter 27, Article 3a, of the Penal Code as in force at the time of the publishing of the article.

According to this provision of law, making public [an article that discusses] a person's actions in public office or function, in business life, in a political or other comparable activity, is not to be considered an invasion of privacy if the reporting is necessary to address a matter of social importance. As noted in the *travaux préparatoires* (HE no. 84/1997 vp ...) this is relevant chiefly in domains where decision-making takes place or in which the circumstances in reality may affect the every-day life of several persons or which have relevance of principle. According to the *travaux préparatoires*, such domains are first and foremost the attendance to a public office or function, business life and political activity. According to the said provision, what is essential is whether there is a significant social need to discuss the acts of the person concerned by making public facts which would otherwise belong to the sphere protected by the right to respect for private life.

The criminal case, which has been the object of the article published in the *Alibi* magazine, has concerned, *inter alia*, the question whether [X] in order to obtain an unlawful financial benefit, by concealing that she received her livelihood as an entrepreneur, had misled the Social Insurance Institution and the insurance companies to grant her a disability pension thereby causing them economic loss. The acts mentioned in the charge related to [X's] actions as an entrepreneur in a relatively small cleaning firm. Although the criminal case concerned substantial financial benefits, it was not a case which, viewed on its own, was of such general public interest that there would have been grounds to reproduce, as part of an article and without [X's] consent, another article that included her name and photograph. Although the underlying purpose of the article might have been to draw attention to the abuse of social benefits in general by using an individual case and thus to a negative social phenomenon, it was not necessary or justified to publish without authorisation an illustration revealing the identity of an individual private person charged with or convicted of such an offence and in a similar position to [X].

Thus, [the first applicant], who wrote the article in question and intentionally used as an illustration the afore-mentioned earlier published article written by him and the photograph of X in that connection, and [the second applicant], who in his capacity as the magazine's editor-in-chief approved the publication of the article, have through their acts without a legal right by the use of a mass medium publicly spread information, an insinuation or photograph depicting the private life of [X] which was conducive to causing her damage or suffering.

Whether or not the fact that [X] was recognisable was due to a mistake or other technical factor when the magazine was printed has no relevance in the legal assessment of the acts of [the first and the second applicants] since the article in

> question together with its illustration has been made public without seeing to and making sure that the typography of the article did not disclose [X's] identity."

16. Meanwhile, on 8 May 2000 the Turunseutu District Court convicted X of, *inter alia*, five offences of tax fraud and two offences of aggravated fraud and sentenced her to an immediate term of one year and ten months' imprisonment. She was also ordered to pay damages.

17. On 28 June 2002 the Turku Court of Appeal upheld X's conviction for, *inter alia*, tax fraud, aggravated fraud and fraud, without amending the sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Legislation

18. Section 10 (as amended by Act no. 969/1995, which took effect on 1 August 1995 and remained in force until 1 March 2000) of the Constitution Act (*Suomen Hallitusmuoto, Regeringsform för Finland*, Act no. 94/1919), provided:

> "Everyone has the right to freedom of expression. The right to freedom of expression entails the right to impart, publish and receive information, opinions and other communications without prior hindrance from anyone. More precise provisions on the exercise of the right to freedom of expression shall be prescribed by an Act of Parliament. Restrictions on pictorial programmes necessary for the protection of children may be prescribed by an Act of Parliament.
>
> 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."

The same provision appears in Article 12 of the current Constitution of 2000 (Act no. 731/1999).

19. Section 8 of the Constitution Act (as amended by Act no. 969/1995) corresponded to Article 10 of the current Constitution, which provides that everyone's right to private life is guaranteed.

20. 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 contents of printed material.

21. Chapter 5, section 6, of the Tort Liability Act stipulates that damages may also be awarded for distress arising from an offence against liberty, honour or domestic harmony or from another comparable offence. 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.

22. Chapter 27, Article 3a, of the Penal Code, as in force at the relevant time, provided that a person who unlawfully, through the use of the mass media or in another similar manner, publicly spread information, an insinuation or an image depicting the private life of another person which was liable to cause him or her damage or suffering, should be convicted of invasion of privacy and sentenced to a maximum term of two years' imprisonment or to a fine. A publication that discussed a person's behaviour in public office or function, in professional life, in a political or other comparable activity, was not to be considered an invasion of privacy if the reporting was necessary to address a matter of social importance.

23. In 2000, Chapter 27, Article 3a, of the Penal Code was replaced by Chapter 24, Article 8 (Act no. 531/2000). Under the new provision on the injury of 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. According to the Parliamentary Law Committee's 2000 Report (*lakivaliokunta, lagutskottet*; 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.

24. Section 2 of the Public Nature of Court Proceedings Act (*laki oikeudenkäynnin julkisuudesta, lag om offentlighet vid rättegång*; Act no. 945/1984), as in force at the relevant time, provided that the name, profession and domicile of the parties and the nature of the subject matter and the time and place of a hearing were public information from the beginning of the trial at the latest. Section 3 provided that the public had the right to be present during hearings unless otherwise provided in the relevant legislation. Section 9 stated that the provisions laid down in the Openness of Government Activities Act (*laki viranomaisten toiminnan julkisuudesta, lag om offentlighet i myndigheternas verksamhet*: Act no. 621/1999) were applicable to trial documents. Information and documents relating to a trial are, as a rule, public once charges have been brought unless provided otherwise by an Act.

Supreme Court practice

25. In a Supreme Court decision (*KKO 1980 II 123*) the following was noted (summary from the Yearbook):

> "The accused had picked up a photograph of the plaintiff from the archives of a newspaper and published it in the context of an electoral campaign without the plaintiff's consent. He was convicted of a violation of private life and ordered, jointly with the political organisations which had acted as publishers, to pay damages for mental suffering."

26. In June 1997 the Supreme Court delivered two decisions relating to articles which had given information on cases of arson. The first decision (*KKO 1997:80*) concerned a newspaper article (summary from the Supreme Court's Yearbook):

> "A newspaper published an article concerning cases of arson, in which it was said that the suspect was the wife of the head of a local fire department. As it was not even alleged that the head of the fire department had any role in the events, there was no justifiable reason for publishing the information on the marriage between him and the suspect. The publisher, the editor-in-chief and the journalist who wrote the article were ordered to pay compensation for the suffering caused by the violation of the right to respect for private life."

27. The second decision (*KKO 1997:81*) concerned an article published in a periodical, which was based on the afore-mentioned newspaper article (see the previous paragraph) and on the records of the pre-trial investigation and the court proceedings, but did not indicate that the newspaper article had been used as a source (summary from the Yearbook):

> "Compensation was ordered to be paid for the reason that the article violated the right to respect for private life. Another issue at stake in the precedent was the relevance to liability for damages and the amount of compensation in view of the fact that the information had been reported in another publication at an earlier stage."

28. The article published in the periodical had also mentioned the name and profession of the head of the fire department, although the offence was not related to the performance of his duties. Thus, it had not been necessary to refer to his position as head of the fire department or to his marriage to the suspect in order to give an account of the offence. The fact that the information had previously been published in print did not relieve the defendants of their responsibility to ensure, before publishing the information again, that the article did not contain information insulting the persons mentioned in it. The mere fact that the interview with the head of the fire department had been published in the newspaper did not justify the conclusion that he had also consented to its publication in the periodical. Repeating a violation did not necessarily cause the same amount of damage and suffering as the initial violation. The readers of the newspaper and the periodical were partly different, and the circulation of the newspaper apparently did not entirely coincide with that of the periodical. Therefore,

and considering the differences in the content and tone of the articles, the Supreme Court found it established that the article published in the periodical was conducive to causing the head of the fire department additional mental suffering. The events reported in the article did not concern the plaintiff's conduct in the performance of his duties as head of the fire department and it had not been necessary to mention the complainant's name and profession for the purpose of discussing a matter involving significant public interest or reporting on the offences. By associating the complainant's name and profession with the offences in question, the article had unlawfully spread information and insinuations concerning his private life likely to cause him damage and suffering. The disclosure of the complainant's name and the emphasis on his occupation had amounted to an insult. By again reporting on the matter two months after the events had occurred, the periodical was found to have caused the complainant additional suffering for which separate compensation was to be paid.

29. The Supreme Court's decision of 25 June 2002 (*KKO 2002:55*) concerned the broadcasting of the name of a woman who, together with a person in a public position, had been a party to an assault. The court found that the facts discussed in the television programme with regard to the woman 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.

30. Another decision of 4 July 2005 (*KKO 2005:82*) concerned an article 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.

31. In a decision of 19 December 2005 (*KKO 2005:136*), the Supreme Court noted that an offence is not a private matter of the offender. In principle, however, a person convicted of and sentenced for having committed an offence also enjoys 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 qualifies as “sensitive” personal data. The publicity *per se* of criminal proceedings and of related documents does not mean that information made public during the proceedings can 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 impugned article did not include his photo.

Guidelines for Journalists

32. 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 the publication of a name and other identifying information in the context of reporting on offences was justified only if a significant public interest was involved. The suspect's identity was not usually to be published before a court hearing unless there were important reasons relating to the nature of the offence and the suspect's position which justified publication (Article 26).

33. New Guidelines came into force in 2005, which noted that when publishing public material regard must be had to the protection of private life. The public nature of information does not necessarily mean that it may be published. Special care must be observed when discussing matters concerning a minor (Article 30). The name, photograph or other identifying facts of a convicted criminal may be published unless it is considered unjust in terms of his/her position or offence. As regards a minor or an unaccountable person information should be disclosed with restrain (Article 31). A journalist must be careful not to present information that may lead to the identification of a person in cases where he/she is only a suspect or has merely been charged (Article 32).

III. RELEVANT INTERNATIONAL MATERIALS

34. On 10 July 2003 the Committee of Ministers of the Council of Europe adopted Recommendation No. Rec(2003)13 on the provision of information through the media in relation to criminal proceedings. In point 8 of the principles appended to the recommendation, it considers as follows:

> "Protection of privacy in the context of on-going criminal proceedings
>
> The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle."

35. The commentary to the recommendation considers as follows (paragraphs 26 and 27):

> "Everyone has the right to the protection of private and family life under Article 8 of the European Convention on Human Rights. Principle 8 recalls this protection for suspects, the accused, convicted persons and other parties to criminal proceedings, who must not be denied this right due to their involvement in such proceedings. The mere indication of the name of the accused or convicted may constitute a sanction which is more severe than the penal sanction delivered by the criminal court. It furthermore may prejudice the reintegration into society of the person concerned. The same applies to the image of the accused or convicted. Therefore, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.
>
> An even stronger protection is recommended to parties who are minors, to victims of criminal offences, to witnesses and to the families of suspects, the accused and convicted persons. In this respect, member states may also refer to Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure and Recommendation No. R (97) 13 concerning the intimidation of witnesses and the rights of the defence."

IV. THIRD-PARTY INTERVENTION

36. The European Federation of Journalists submitted the following.

37. In France and Spain, there is no restriction on publishing pictures of persons subject to pending criminal proceedings, provided that the journalist, according to generally accepted procedure, clearly and explicitly mentions that the person has not yet been found guilty.

38. In Belgium, there is no restriction on pub1ishing the photograph of a person accused of a crime, unless the person himself/herself or the court explicitly expresses his or her wish not to be photographed or not to be published. In practice, publication of names and photos happens daily, with the clear mention that the person is suspected but not guilty. The Declaration of Duties and Rights of Journalists and the Code of Conduct of Journalism also impose an obligation to check the information, to respect privacy, and to correct false information if necessary.

39. Article 8 of the German Press Code provides that the press must respect the private life and intimate sphere of persons. If, however, the private behaviour of a person touches upon public interests, then it may be reported on in individual cases. Care must be taken to ensure that the privacy rights of uninvolved persons are not violated. The press must respect a person's right to self-determination concerning information about them and guarantee editorial data protection.

40. The United Kingdom Code of Conduct sets out the basic principles of responsible independent journalism and has been the model for numerous other journalist codes. It states, among other things, that a journalist shall

strive to ensure that information disseminated is honestly conveyed, accurate and fair and does nothing to intrude into a person's private life, grief or distress unless justified by overriding public interest considerations. In addition, the Code of Practice of the Press Complaints Commission states that, in reporting on crime, relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.

41. There is no hard and fast rule in the Finnish Guidelines for Journalists. The 2005 Guidelines urge caution and judgment, especially when a case is only at the accusation stage. However, a public figure is less protected than an ordinary person. A politician or a business leader accused of an offence can be identified for a less serious crime. The gravity of the crime is also an obvious relevant factor. The central question is who is a public figure. There have been cases where spouses, girlfriends or boyfriends of public figures have argued that they were not, and won their case in court. Recently following a school massacre the Minister of the Interior disclosed the name of the killer in a live televised press conference, a few hours after the incident. The police also recently published the name and picture of a man accused of (and later convicted of) spreading HIV, as well as the names and pictures of two escaped convicts. The basis of the decision was public security. Many companies have their own code of conduct. According to most of the companies the name of a convicted person can be published if the sentence is two years or more in prison, that is, where the crime is serious. But this is usually restricted if publishing the name may disclose the identity of the victim (child abuse cases, for example,) or if the person convicted is a minor.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

42. The applicants complained under Article 10 of the Convention of a violation of their right to freedom of expression, on the ground that they had been ordered to pay damages for reporting on pending criminal proceedings which dealt with a matter of general interest. Their intention had not been to reveal any information about X's private life. Article 10, in its relevant parts, reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to ... impart information ... without interference by public authority ...
>
> 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."

A. The parties' submissions

1. The applicants

43. The applicants submitted that the present case, as well as other Supreme Court judgments restricting freedom of expression in the media, had received attention in Finland. A public debate had taken place, in which those judgments had been criticised. Furthermore, in December 2005 the Supreme Court had decided a case (no. *2005:136*; see paragraph 31 above) which concerned another article published in the *Alibi* magazine. In that case, the majority of the Supreme Court judges had taken the view that the magazine had been entitled to publish the name of a convicted criminal. The incompatibility of that Supreme Court judgment with its judgment in the present case was, in itself, sufficient reason to find a violation. The applicants also observed that it was difficult for the Finnish media to report on legal proceedings because the domestic courts' decisions had made it difficult to predict when disclosure of the identity of a defendant or convicted person was within the sphere of freedom of expression and the public nature of legal proceedings and when, in contrast, disclosure constituted a criminal offence giving rise to a liability to pay damages. In the present case the Supreme Court had not even mentioned the Convention or Article 10 thereof. The names of accused and convicted persons were published daily in the Finnish media. There were no legal provisions defining when a defendant's identity could be revealed. In the present case, the applicant's actions had complied with the Guidelines for Journalists and no complaints had been lodged with the Mass Media Council (*julkisen sanan neuvosto, opinionsnämnden för massmedier*).

44. The applicants contested the Government's view that the interference was prescribed by law. They stressed that the impugned article concerned a public trial. The District Court had held at least nine hearings before the impugned article was published. The applicants were surprised that neither the Government nor the Supreme Court had mentioned the principle of the public nature of legal proceedings, given that the case related exclusively to the disclosure of the identity of a defendant in such proceedings. Finnish legislation contained no provision which required the accused person's consent prior to publication of his or her name or picture. At the relevant time the Constitution Act had not included a separate provision on the protection of privacy. The defendant's identity in a trial had never before

been considered as belonging to a person's private life within the meaning of Chapter 27, Article 3a, of the Penal Code, and this principle still applied to public legal proceedings. For example, in its decision no. *2005:136* the Supreme Court majority had reached the opposite conclusion with regard to the publication of a convicted person's name, ruling that "a criminal offence is not the private matter of the individual who committed the offence". In the applicants' view, the Government defined the concept of private life too broadly when they claimed that information was part of private life unless specifically found otherwise. This claim contradicted the provisions of the Public Nature of Court Proceedings Act.

45. The provision on invasion of privacy required that, in order to constitute a criminal offence, the publication of the information had to be unlawful and intentional and had to relate to a person's private life. The impugned article met none of these criteria. Firstly, the publication of public information, namely a person's identity, was a legal right. Secondly, being accused of an offence in legal proceedings was not part of a person's private life. Thirdly, the requirement of intent in criminal law was not met when a reporter had no idea that the disclosure of a defendant's identity could constitute a criminal offence. The Supreme Court's judgment in the present case was probably the first in Finnish history in which the opposite view had been upheld. The appellate court had found, in accordance with legal precedent until the present case, that reporting on charges which were the subject of public legal proceedings was legitimate, even though the information published could cause anguish to the defendant. The Guidelines for Journalists did not meet the "prescribed by law" requirement since they could not be applied when deciding whether an act constituted a criminal offence. The applicants did not deny the ethical demands placed upon the profession by the Guidelines. They observed that, despite their legal rights, they had sought to protect X's identity in the article by crossing out her surname and her picture, but because of a printer's error, her face and surname had been shown.

46. The applicants argued that the protection of X's identity was not necessary in a democratic society. There was no pressing social need to depart from the established practice and regulations. In a democratic State, legal proceedings were public and a defendant's identity was public information; this also served to ensure the legal protection of defendants. The question of whether the disclosure of X's identity had been necessary for the purpose of dealing with a socially important matter was irrelevant, since the provisions on the public nature of legal proceedings were not associated with matters of social significance. In any event, the proceedings against X had significance for society. Offences of tax and accounting fraud did not belong to private life, and fraud concerning a disability pension amounting to almost FIM 2.5 million was a major offence. X had ultimately

received a heavy sentence. The criminal charges against X had been significant enough to justify the publication of her name.

47. The applicants also pointed out that it was not easy to identify X from the impugned article. The only persons likely to have identified her were those in her immediate social circle. In any event, it was established practice that persons who allowed themselves to be interviewed could be discussed in the public domain, even if the context was different. In the present case, X herself had taken the initiative of having an article about herself published in another magazine eight years previously. As a result she had become known to a large group of people.

2. The Government

48. The Government conceded that the liability to pay damages amounted to an interference with the exercise of the applicants' right to freedom of expression. The interference was nonetheless prescribed by law, having a basis in Chapter 27, Article 3a, of the then Penal Code and section 10, subsection 1, of the Constitution Act in force at the material time. The grounds relied on by the Finnish courts were consistent with the legitimate aim of protecting X's private life.

49. The applicants had stated in their application that X could be identified, although not easily, in the reproduced article. In another part of their application they had stated that only X's immediate social circle could have identified her. The Government pointed out that the text of the earlier article which accompanied the 1997 article had mentioned X's full name as well as her domicile. In their opinion, a glance through the article sufficed to identify the person concerned. Furthermore, X's first name had been mentioned in the magazine's table of contents.

50. The Government emphasised that in the present case X was the owner of a small cleaning business and thus did not hold an important position such as a politician or an official. Her private life therefore enjoyed more protection. Moreover, the case concerned the abuse of social insurance (her own pension), which was not a very important matter in terms of public interest and did not therefore warrant publishing her name and photograph. By publishing the previous article concerning a house deal the applicant had been caused unnecessary additional suffering. Furthermore, it would have been possible to discuss the phenomenon without identifying an individual suspect.

51. The Government observed that the publication of names had never been usual in news reports on offences. In particular, the publication of the names of suspects or accused persons had not been considered to be consistent with good journalistic practice. They noted that self-regulation within the mass media played a role in defining the limits on the protection of honour and privacy. According to the Guidelines for Journalists, when reporting on offences, the publication of a name and other identifying

information was justified only if it was in the public interest. The suspect's identity was not to be published in advance of a court hearing unless there were important reasons relating to the nature of the offence and the suspect's position to justify such a move.

52. Furthermore, the Mass Media Council in Finland, a body which examined complaints concerning both the press and the electronic media, had stated as far back as 1981, that the publication of names in connection with offences was justified only if required in the public interest.

53. The Government observed that the present application differed from the case of *News Verlags GmbH & Co.KG v. Austria* (no. 31457/96, ECHR 2000-I), which concerned the publication of a suspect's picture in connection with a report on offences (the sending of letter bombs to politicians etc., severely injuring several victims). In that case the media, other than the applicant company, were free to continue to publish the suspect's picture throughout the criminal proceedings against him. Moreover, it was not the pictures but only their combination with the text that interfered with his rights. The absolute prohibition on the publication of the suspect's picture went further than was necessary to protect him against defamation or against a violation of the presumption of innocence.

54. In the Government's opinion the question of who had taken the initiative of publishing the earlier article was irrelevant; this had also been the view of the Supreme Court.

55. Under the domestic legislation compensation may be awarded for suffering. The amount of compensation that could be awarded for non-pecuniary damage was to be based on an equitable assessment made by the relevant court within the limits of its competence.

56. As for the applicants' reference to the Supreme Court's decision no. *2005:136*, the Government argued that it concerned the publishing of the name of a person convicted of a serious violent crime, not that of a suspect. The Supreme Court's judgment in the present case was in line also with other precedents (nos. *1997:80 and 81, 2000:54 and 2002:55*).

B. The Court's assessment

1. Whether there was an interference

57. The Court agrees with the parties that the award of damages constituted an interference with the applicants' 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

58. As to whether the interference was “prescribed by law”, the applicants argued that the names of accused persons were published daily in

the Finnish media and that they had not therefore been able to foresee that the publication of X's name and photograph would render them liable in damages. The Government argued that the publication of names had never been usual in Finland in news reports on offences and that it had not been considered consistent with good journalistic practice to publish names of suspects or accused persons. The Court does not discern any ambiguity as to the contents of the relevant provision of the Penal Code (the spreading of information, an insinuation or an image depicting the private life of another person which was conducive to causing suffering qualified as invasion of privacy; see paragraph 22 above). Nor was Chapter 5, section 6, of the Tort Liability Act unclear (see paragraph 21 above). Having regard also to the domestic case-law on the subject, the possibility that a sanction would be imposed was not unforeseeable. The position taken in the Supreme Court's subsequent decision of 2005 does not detract from this position as the circumstances of that case concerning the conviction of a person of violent crime degrading the victim's human dignity (see paragraph 31 above) were significantly different. The Court therefore concludes that the interference 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 and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X). 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

59. The test of "necessity in a democratic society" requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30). In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10 (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III).

60. Press freedom is of cardinal importance in a democratic society, the press having both a right and a duty to impart information and ideas on all matters of public interest and concern. Article 10 of the Convention does not, however, guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it "duties and responsibilities", which also apply to the press. These

"duties and responsibilities" are significant when, as in the present case, there is a question of undermining the "rights of others". Also of relevance for the balancing of competing interests which the Court must carry out is the fact that under Article 6 § 2 of the Convention X had a right to be presumed innocent of any criminal offence until proved guilty (see Bladet Tromsø *and Stensaas v. Norway* [GC], cited above, § 65). By reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I).

61. The concept of private life includes elements relating to a person's right to their image and the publication of a photograph falls within the scope of private life (see *Von Hannover*, 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 photos or articles in the press to a debate of general interest (see *Tammer v. Estonia*, no. 41205/98, §§ 59 et seq., ECHR 2001-I; *News Verlags GmbH & Co. KG v. Austria*, cited above, §§ 52 et seq.; and *Krone Verlag GmbH & Co. KG v. Austria*, no. 34315/96, §§ 33 et seq., 26 February 2002). The Court thus found, in one case, that the use of certain terms in relation to an individual's private life was not "justified by considerations of public concern" and that those terms did not "[bear] on a matter of general importance" (see *Tammer*, cited above, § 68) and went on to hold that there had not been a violation of Article 10. In another case, however, the Court attached particular importance to the fact that the subject in question was a news item of "major public concern" and that the published photographs "did not disclose any details of [the] private life" of the person in question (see *Krone Verlag GmbH & Co. KG*, cited above, § 37) and held that there had been a violation of Article 10. Similarly, in a case concerning the publication by President Mitterrand's former private doctor of a book containing revelations about the President's state of health, the Court held that "the more time that elapsed, the more the public interest in discussion of the history of President Mitterrand's two terms of office prevailed over the requirements of protecting the President's rights with regard to medical confidentiality" (see *Editions Plon v. France*, no. 58148/00, § 53, ECHR 2004-IV) and held that there had been a breach of Article 10.

63. While reporting and commenting on court proceedings, provided that they do not overstep the bounds set out above, contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public, it is to be noted that

the public nature of court proceedings does not function as a *carte blanche* relieving the media of their duty to show due care in communicating information received in the course of those proceedings (see Council of Europe Recommendation No. Rec(2003)13 on the provision of information through the media in relation to criminal proceedings; paragraphs 34 and 35 above). In this connection, the Court notes that the Finnish Guidelines for Journalists, as in force at the relevant time, stated that the publication of a name and other identifying information in this context was justified only if a significant public interest was involved (see paragraph 32 above).

64. The Court observes at the outset that the 1997 article recounted the facts of a criminal case pending before the District Court in which X was a defendant. The pictures of X were accompanied by a question (see paragraph 8 above): "It seemed legal, but ... a woman entrepreneur cheated to obtain a pension of over 2 million marks?" Reading the 1997 article as a whole, the Court cannot find that this statement was excessive or misleading as it was clearly phrased as a question. Furthermore, it is of importance that the depicted events and quotations in the article were taken from the public prosecutor's bill of indictment, which had become a public document the moment it was received by the District Court. In this case it is not in dispute that the reporting on the criminal case was based on facts. The article stated that charges had been brought against X and that the case was pending before the District Court.

65. There was no connection between the earlier article and the 1997 article other than the fact that they were about the same person. The situation described in the earlier article did not come within the sphere of any public debate. That being said, in the earlier article the applicant had willingly shared with the readers her personal experiences and had consented in this connection to having her photograph published. The 1997 article must be considered to have reproduced an article which was irrelevant to the subject under discussion, giving X's name and picture, which were thereby expressly communicated to the general public. It is however not for this Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted by journalists (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). For the sake of clarity, it is not the initial publication of that article which is before the Court but its use as an illustration in the 1997 article.

66. The Court can accept that the purpose of the 1997 article was to contribute to a public discussion. The criminal case brought against X was selected as an example illustrating the problems involved. While it is perfectly legitimate to use individual cases to highlight a more general problem, the question is whether the applicants went too far when they communicated X's identity to the public. It is plain that X was not a public figure or a politician but an ordinary person who was the subject of criminal

proceedings (see *Schwabe v. Austria*, 28 August 1992, § 32, Series A no. 242-B). The fact that she ran a relatively small cleaning firm and had given an interview eight years previously to a magazine, which had come about in circumstances apparently not discussed during the domestic proceedings or at any length before the Court, does not mean that she had knowingly entered the public arena (see, *mutatis mutandis*, *Fayed v. the United Kingdom*, 21 September 1994, § 75, Series A no. 294-B). X's status as an ordinary person enlarges the zone of interaction which may fall within the scope of private life. The fact that she was the subject of criminal proceedings cannot remove from her the protection of Article 8 (see *Sciacca v. Italy*, no. 50774/99, § 28-29, ECHR 2005-I).

67. In order to assess whether the "necessity" of the restriction of the exercise of the freedom of expression has been established convincingly, the Court must examine the issue essentially from the standpoint of the relevancy and sufficiency of the reasons given by the Supreme Court for requiring the applicants to pay compensation to X. The Court must determine whether the applicants' liability in damages struck a fair balance between the public interest involved and X's interests and whether the standards applied were in conformity with the principles embodied in Article 10 (see *Nikula v. Finland*, cited above, § 44).

68. The Court considers that the general subject matter which was at the heart of the article concerned – namely, the abuse of public funds – was a matter of legitimate public interest, having regard in particular to the considerable scale of the abuse. From the point of view of the general public's right to receive information about matters of public interest, and thus from the standpoint of the press, there were justified grounds supporting the need to encourage public discussion of the matter in general.

69. The Court observes that it is not evident that the Supreme Court in its analysis as to whether the applicant's privacy had been invaded attached any importance to the fact that the information given was based on a bill of indictment prepared by the public prosecutor and that the article clearly stated that the applicant had merely been charged.

70. Nor is it apparent what significance the Supreme Court attached to the publication of X's photographs together with her name. The publication of a photograph must, in the Court's view, in general be considered a more substantial interference with the right to respect for private life than the mere communication of the person's name. As the Court has held, although freedom of expression also extends to the publication of photos, this is an area in which the protection of the rights and reputation of others takes on particular importance (see *Von Hannover*, no. 59320/00, §§ 50-53 and 59, ECHR 2004-VI). Nor did the Supreme Court analyse the significance of the fact that the photographs had been taken with the applicant's consent and with the intention of their being published, albeit in connection with an earlier article and a different context.

71. Having regard to the foregoing the Court concludes that the grounds relied on, although relevant, were not sufficient to justify the interference with the applicants' right to freedom of expression, in terms of a "pressing social need".

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. Under the head of pecuniary damage the applicants claimed 9,179.68 euros (EUR) broken down into EUR 4,791.74 for the compensation they had been ordered to pay X for suffering (including statutory interest) and EUR 4,387.94 for the legal costs they had been ordered to reimburse to X. Both sums had been paid by the third applicant.

75. Under the head of non-pecuniary damage the first and the second applicants claimed EUR 8,000 each.

76. The Government considered that the applicants may be entitled to reimbursement of the compensation and the legal costs paid to X. The claim for non-pecuniary damage was excessive as to *quantum.* The award should not exceed EUR 2,500 each.

77. The Court finds that there is a causal link between the violation found and the alleged pecuniary damage. Consequently, there is justification for awarding EUR 9,179 under that head to the third applicant who had paid the total sum.

78. The Court accepts that the first and the second applicants have also suffered non-pecuniary damage, such as distress and frustration resulting from the obligation to pay compensation etc., which is not sufficiently made good by the findings of violation of the Convention. Making its assessment on an equitable basis, the Court awards them EUR 5,000 each under this head.

B. Costs and expenses

79. The applicants claimed EUR 10,491.35 as compensation for their costs and expenses in the domestic proceedings broken down as follows:

- EUR 1,118.11 paid by the second applicant's insurance company and policy holder's excess plus VAT EUR 929.90 paid by the second applicant as regards the District Court proceedings;

- EUR 2,318.02 the third applicant's costs in the District Court and the Court of Appeal;

- EUR 423.41 paid by the second applicant's insurance company and EUR 77.36 paid by the second applicant as regards the Court of Appeal proceedings;

- EUR 134.55 and EUR 2,745 the third applicant's costs in the Court of Appeal and the Supreme Court respectively;

- EUR 2,201.17 paid by the second applicant's insurance company and EUR 543.83 paid by the second applicant.

The applicants claimed EUR 4,000 (inclusive of VAT) for the costs incurred before the Court.

80. The Government submitted that only one complaint had been declared admissible, and thus, any reimbursement should be adjusted accordingly. The applicants had not, for the most part, specified the costs of each item incurred in the domestic proceedings or in the proceedings before the Court. Furthermore, the hours used for each measure had not been specified but the measures had only been listed for each day. This made it difficult to estimate the workload needed for the preparation of the case and the hourly rate charged. Therefore, the Government left it to the Court's discretion whether the applicants had submitted the requisite documents. As to the domestic proceedings, the payments by the second applicant's insurance company should not be compensated. The VAT should not be compensated as it was a company which had paid it. In sum, the claim for costs incurred in the national proceedings and in the proceedings before the Court were excessive as to *quantum*. The total amount should not, in any case, exceed EUR 5,500 (inclusive of value-added tax).

81. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, *among other authorities*, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). 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 total sum of EUR 9,800 (inclusive of VAT) for costs and expenses in the domestic proceedings and the proceedings before the Court.

C. Default interest

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

2. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) EUR 9,179 (nine thousand one hundred and seventy-nine euros) to the third applicant, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros) each to the first and the second applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 9,800 (nine thousand eight hundred euros) to the applicants jointly, 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;

3. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 10 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President