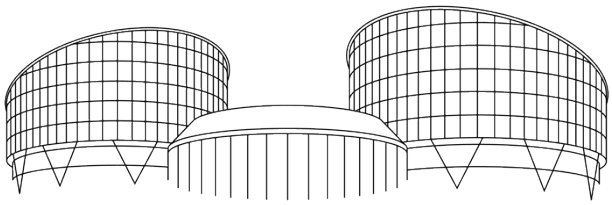

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF FLINKKILÄ AND OTHERS v. FINLAND

(Application no. 25576/04)

JUDGMENT

STRASBOURG

6 April 2010

FINAL

06/07/2010

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

In the case of Flinkkilä and Others v. Finland,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Päivi Hirvelä,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 25576/04) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Finnish nationals, Mr Jouni Mikael Flinkkilä, Ms Sanna Rakel Wirtavuori, Ms Jaana Helena Isosaari and Mr Risto Valdemar Ainasoja ("the applicants"), on 19 July 2004.

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

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

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1948, 1951, 1962 and 1951 respectively and live in Helsinki, except for Ms Isosaari who lives in Ikkala.

6. The first and second applicants are editors-in-chief of the nationwide magazine *Seura* and the third and fourth applicants are an editor-in-chief and a journalist of the nationwide magazine *Nykyposti*.

7. On 4 December 1996 A., the National Conciliator (*valtakunnansovittelija, riksförlikningsmannen*) at the time, and B., his female friend, entered late at night A.'s home where his wife was present. The situation escalated, the police were called and the incident, which subsequently involved also A.'s grown-up children, led to A.'s arrest. Due to the incident, criminal charges were brought against both A. and B. on 18 December 1996. On 16 January 1997 the Helsinki District Court (*käräjäoikeus, tingsrätten*) sentenced A. to a four-month conditional prison sentence for resisting arrest and for criminal damage (*vahingonteko, skadegörelse*), and B. to a fine for assault. On 17 January 1997 the Council of State (*valtioneuvosto, statsrådet*) dismissed A. from his post as National Conciliator. On 25 June 1998 the Appeal Court (*hovioikeus, hovrätten*) upheld the judgment with respect to B. As regards A., the case had lapsed as he had died on 14 May 1998. On 15 December 1998 the Supreme Court (*korkein oikeus, högsta domstolen*) refused B. leave to appeal.

8. On 31 January and 1 March 1997, respectively, the magazines published an article about A. The article of 31 January 1997 in *Seura* magazine was based on A.'s interview, and B.'s name and age, together with her picture, were mentioned once in the article. The article was entitled *"A.'s sincerity in the balance"* and it concerned A.'s feelings about his dismissal and his possible divorce in the aftermath of the incident of 4 December 1996. The article of 1 March 1997 in *Nykyposti* magazine, which was entitled *"Divorced wives' club"*, also dealt *inter alia* with A.'s possible divorce and his feelings about his dismissal. It was claimed that A.'s divorce proceedings had accelerated due to the incident of 4 December 1996, and B.'s name was mentioned once in that context. This article contained no pictures of B. Prior to these articles, B.'s identity had been revealed at least in a Swedish newspaper on 21 January 1997 and in a Finnish nationwide television broadcast on 23 January 1997.

9. In the spring of 1997 A. and B. requested that criminal investigations be conducted against journalists who had written about the incident on 4 December 1996 and the circumstances surrounding it. They made such a request with respect to the applicants, claiming that the articles published in *Seura* and *Nykyposti* had invaded B.'s privacy. It appears that in regard to

all but one of these requests no charges were brought. On 17 September 1998 the public prosecutor decided not to bring charges against the applicants as, according to him, there was no indication of any crime.

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

11. On 15 November 1999 the public prosecutor, by order of the Deputy Prosecutor-General, brought charges against the applicants under Chapter 27, section 3(a), paragraph 2 of the Penal Code. At the same time charges were also brought against another journalist and editor-in-chief of another magazine to be examined in the same proceedings. This journalist and editor-in-chief have lodged a separate appeal with the Court (see *Tuomela and others v. Finland*, no. 25711/04, 6 April 2010).

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

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

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

15. In its judgment of 15 May 2003, the Appeal Court first decided to declare all parts of the case file secret for ten years except for the applicable legal provisions and the conclusions. Additionally, B.'s identity was not to be revealed in the public parts of the judgment. The court found that the matter was very sensitive, that it fell within the scope of private life, and that the secrecy accorded did not violate Articles 6 or 10 of the Convention.

As to the merits of the case, the court, without holding an oral hearing, quashed the District Court's judgment and sentenced the applicants to pay twenty day-fines, amounting to 1,180 euros (EUR), EUR 1,100, EUR 1,020 and EUR 120 respectively, for invasion of private life. Moreover, the first and second applicants were ordered jointly to pay B. EUR 5,000 plus interest and the third and fourth applicants EUR 3,000 plus interest for non-pecuniary damage as well as her costs and expenses jointly with the publishing company. The applicants paid in total EUR 22,074.31 in fines and compensation.

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

17. By letter dated 10 July 2003 the applicants applied for leave to appeal to the Supreme Court, claiming, *inter alia*, that the provision of the Penal Code in question did not define with sufficient clarity which acts fell within its scope and that, as a result, the Penal Code had been applied *ex analogia*. No intent had been shown, and nor was the Appeal Court judgment adequately reasoned in this respect. Moreover they claimed that, in declaring that the case file was to remain secret, the Appeal Court had not given reasons which would constitute sufficient grounds for the measure. Finally, the Appeal Court had not even tried to indicate on what grounds freedom of expression could be restricted in this case, and therefore the Appeal Court judgment was in contradiction with Article 10 of the Convention.

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

II. RELEVANT DOMESTIC LAW AND PRACTICE

Legislation

19. Section 10 of the Constitution Act (*Suomen Hallitusmuoto, Regeringsform för Finland*, Act no. 94/1919, as amended by Act no. 969/1995, which took effect on 1 August 1995 and remained in force until 1 March 2000), 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 (*Suomen perustuslaki, Finlands grundlag*, Act no. 731/1999).

20. 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.

21. 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.

22. 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.

23. 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.

24. 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."

25. 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 position 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 with 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, it 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.

26. In 2000, Chapter 27, section 3(a), of the Penal Code was replaced by Chapter 24, section 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.

27. 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.

28. 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 the government bill HE 184/1999).

29. Section 2 of the Act on the Publicity of Court Proceedings (*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

30. The Supreme Court decision (*KKO 1980-II-99*) concerned public showing of a series of photographs of half-naked children. The act was committed before the entry into force of Chapter 27, section 3(a), of the Penal Code and no criminal sanctions were requested.

31. 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."

32. On 11 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."

33. 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 of the fact that the information had been reported in another publication at an earlier stage."

34. The article published in the periodical had similarly 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.

35. 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.

36. The Supreme Court's decision of 25 June 2002 (*KKO 2002:55*) concerned the same facts as the present case: 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.

37. 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.

38. In a decision of 19 December 2005 (*KKO 2005:136*), the Supreme Court noted that an offence was not a private matter of 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.

39. 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.

40. In the Supreme Court's latest 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 through the fact that 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.

Self-regulation of journalists

41. 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).

42. 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 or her position or offence. As regards a minor or an

unaccountable person information should be disclosed with restraint (Article 31). A journalist must be careful not to present information that may lead to the identification of a person in cases where he or she is only a suspect or has merely been charged (Article 32).

43. 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 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.

44. In its statement of 1981, the Council for Mass Media stated, *inter alia,* that according to the main principle of protection of identity, it is justifiable to publish a person's name in crime news coverage only if there is a significant public interest in doing so. A journalist shall consider such publication separately in each individual case, weighing the harm that may be caused to the person concerned and to his or her family and close persons against the general importance of publishing the name. Furthermore, the Council stated that the aggravated, cruel or special nature of an act does not alone suffice to justify disclosing the perpetrator's identity. An offence may, however, arouse so much public attention as to warrant publishing the name. Finally, 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.

III. RELEVANT INTERNATIONAL MATERIALS

45. 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."

46. 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."

47. 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 ARTICLES 7 AND 10 OF THE CONVENTION

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

49. The applicants complained under Article 10 of the Convention that the restrictions on their right to freedom of expression had not been prescribed by law and had not been necessary in a democratic society for the protection of the reputation or rights of others. The disclosure of B.'s

name had not fallen within the protection of private life as the national courts had not declared any parts of her criminal case file secret. She had been an active participant in the incident of 4 December 1996 and had subsequently been sentenced to a fine. The public had a right to know about issues of public interest, especially in this type of case where the person concerned had been a defendant in a high-profile criminal case. Moreover, the information in the articles had been correct in every respect. The Appeal Court had not even tried to indicate on what grounds freedom of expression could have been restricted in this case. In any event, the restrictions imposed on the applicants had been grossly disproportionate, especially in view of their obligation to pay very substantial damages in the case.

50. Article 7 reads as follows:

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

51. Article 10 reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

52. The Government contested these arguments.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicants

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

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

56. The applicants pointed out that, as B.'s name had appeared in all of the judgments in her criminal case, this public information could not have become retrospectively private. Once somebody's name had become public information, its publication could not be unlawful and could not violate that person's private life. B.'s identity and the issues discussed in the articles had already been published earlier. Moreover, B. had not been a passive object of publicity but had participated actively in an incident of public interest. No margin of appreciation could exist at the expense of the legality

principle or the freedom of expression. The amount of sanctions inflicted on the applicants, including the fines, the compensation and the legal costs, had been such that it alone constituted a violation of Article 10.

(b) The Government

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

58. As to the requirement that measures be "prescribed by law" and in compliance with Article 7, the Government pointed out that the impugned measures had had a basis in Finnish law, namely in the Constitutional Act and, in particular, in Chapter 27, section 3(a), of the Penal Code. B.'s name constituted information referred to in the latter provision, which also separately mentioned a picture, and thus the provision had fulfilled the clarity requirement. At the relevant time the provision had been in force more than 20 years and it had been interpreted by the Supreme Court, prior to the publication of the impugned article, in precedent cases *KKO 1980 II 99* and *KKO 1980 II 123*. The rules on criminal liability could thus be regarded as having been gradually clarified through judicial interpretation in a manner which had been consistent with the essence of the offence. The liability therefore could reasonably have been foreseen.

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

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

aggravated offences and sentenced to imprisonment, did not enjoy any protection of personal identity or private life.

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

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

1. Whether there was an interference

62. 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

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

64. The Court notes that the parties agree that the interference complained of had a basis in Finnish law, namely Chapter 27, section 3(a), of the Penal Code. The parties' views, however, diverge as far as the foreseeability of the said provision is concerned. The Court must thus examine whether the provision in question fulfils the foreseeability requirement.

65. The Court has already noted that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the individual to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the

circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may entail excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are a question of practice (see Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30 and mutatis mutandis *Kokkinakis v. Greece*, 25 May 1993, § 40, Series A no. 260-A).

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

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

68. The Court concludes therefore that the interference was "prescribed by law" (see *Nikula v. Finland*, no. 31611/96, § 34, ECHR 2002-II; *Selistö v. Finland*, no. 56767/00, § 34, 16 November 2004 and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X, *Eerikäinen and Others v. Finland*, cited above, § 58). 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

69. 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).

70. 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).

71. 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).

72. 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).

73. 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.).

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

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

76. 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.

77. Moreover, one factor of relevance is whether freedom of expression was used in the context of court proceedings. While reporting and commenting on court proceedings, provided that they do not overstep the bounds set out above, contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public, it is to be noted that the public nature of court proceedings does not function as a *carte blanche* relieving the media of their duty to show due care in communicating information received in the course of those proceedings (see Council of Europe Recommendation No. Rec(2003)13 on the provision of information through the media in relation to criminal proceedings; paragraphs 45 and 46 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 41 above).

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

79. Turning to the facts of the present case, the Court notes that the applicants were convicted on the basis of the remarks made in two articles in their capacity as a journalist or as editors-in-chief.

80. The Court observes at the outset that the article of 31 January 1997 in *Seura* magazine was based on A.'s interview and B.'s name and age, together with her picture, were mentioned once in the article. The article was entitled *"A.'s sincerity in the balance"* and it concerned A.'s feelings about his dismissal and his possible divorce in the aftermath of the incident of 4 December 1996. The article of 1 March 1997 in *Nykyposti* magazine, which was entitled *"Divorced wives' club"*, also dealt, *inter alia*, with A.'s divorce and his feelings about his dismissal. It was claimed that A.'s divorce proceedings were accelerated due to the incident of 4 December 1996, and B.'s name was mentioned once in that context. This article contained no pictures of B.

81. The Court notes that 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 B. were obtained by subterfuge or other illicit means (compare *Von Hannover v. Germany*, cited above, § 68). The facts set out in the articles in issue were not in dispute even before the domestic courts.

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

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

84. The Court further observes that the information in the two articles mainly focused on A.'s behaviour, and that it contained information volunteered by A. in the course of an interview, namely about the consequences of his involvement in the incident of 4 December 1996 and his subsequent dismissal and conviction. No details of B.'s private life were mentioned, save for the fact that she was involved in the incident of 4 December 1996 and that she was A.'s female friend, both circumstances being already public knowledge before the publication of the articles in issue. Thus, the information concerning B. was essentially limited to her conviction and to facts which were inherently related to A.'s story. In this respect the case differs from the case of *Von Hannover v. Germany* (cited above, § 72).

85. Moreover, it is to be noted that the disclosure of B.'s identity in the reporting had a direct bearing on matters of public interest, namely A.'s conduct and his ability to continue in his post as a high-level public servant. As B. had taken an active and willing part in the events of 4 December 1996, leading to A.'s conviction and dismissal, it is difficult to see how her involvement in the events was not a matter of public interest. Therefore, the Court considers that there was a continuing element of public interest involved also in respect of B. In this connection, the Court notes that the national authorities and the national courts reached very different conclusions as to whether B. could be considered as having waived her right to privacy when choosing to become involved with a public figure and in being a party to the incident of 4 December 1996, leading also to her conviction. In the Court's opinion this indicates that, at least to some degree, the national authorities also considered that the public interest was engaged in the reporting.

86. The Court further notes that the emphasis in the articles in question was clearly on A.'s feelings after his dismissal and conviction, and on the repercussions of the incident on his family life. One of the articles was based on A.'s interview. It is possible that the events were presented in a somewhat colourful manner to boost the sales of the magazines, but this is not in itself sufficient to justify the applicants' conviction.

87. The Court next observes that the incident of 4 December 1996 and the subsequent dismissal of A. and the convictions of A. and B. had been widely publicised and discussed in the media, including in a programme broadcast nationwide on prime-time television (see paragraphs 8 and 36 above). Thus, the articles in question did not disclose B.'s identity in this context for the first time (see *Eerikäinen and Others v. Finland*, cited above; and *Egeland and Hanseid v. Norway*, cited above).

88. Moreover, the Court notes that the articles were published right after the convictions of A. and B., leading to the dismissal of A. The articles were thus closely linked in time to these events.

89. Finally, the Court has taken into account the severity of the sanctions imposed on the applicants. It notes that the applicants were convicted under criminal law and observes that they were all ordered to pay twenty day-fines, amounting to EUR 1,180, EUR 1,100, EUR 1,020 and EUR 120 respectively. In addition, all the defendants, together with the publishing company, were ordered to pay damages jointly and severally in a total amount of EUR 8,000. The severity of the sentence and the amounts of compensation must be regarded as substantial, given that the maximum compensation afforded to victims of serious violence was approximately FIM 100,000 (EUR 17,000) at the time (see paragraph 23 above).

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

91. The Court considers that such severe consequences, viewed against the background of the circumstances resulting in the interference with B.'s right to respect for her private life, were disproportionate having regard to the competing interest of freedom of expression.

92. In conclusion, in the Court's opinion the reasons relied on by the Appeal Court, although relevant, were not sufficient to show that the interference complained of was "necessary in a democratic society".

Moreover, the totality of the sanctions imposed were disproportionate. Having regard to all the foregoing factors, and 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.

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

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

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

II. REMAINDER OF THE APPLICATION

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

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

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

98. As to the reasons for declaring the case file secret, the Court notes that the Appeal Court referred to Articles 6 § 1 and 10 of the Convention and concluded that the case contained sensitive private information and that secrecy was not in contradiction with these Articles. The Court considers that the declaring secret of the case file had no impact on the applicants' position as parties to the case nor on the actual fairness of the proceedings. Also in this respect, the Court finds the Appeal Court's reasoning acceptable.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicants claimed EUR 22,074.31 in respect of pecuniary damage and EUR 5,000 each in respect of non-pecuniary damage.

102. The Government noted that the pecuniary damages accrued, with exception of the fines imposed on the applicants, had been paid by the publishing company, which was not a party to the present case. As the publishing company had not asked the applicants to pay their parts, no actual pecuniary damage had accrued to them. As to the non-pecuniary damage, the Government considered that the applicants' claims were excessive as to *quantum* and that the award should not exceed EUR 2,000 per applicant and EUR 8,000 in total.

103. The Court finds that there is a causal link between the violation found and the alleged pecuniary damage. Consequently, there is justification for making an award to the applicants under that head. Having regard to all the circumstances, the Court awards the applicants jointly EUR 22,000 in compensation for pecuniary damage. Moreover, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicants EUR 2,000 each in respect of non-pecuniary damage.

B. Costs and expenses

104. The applicants also claimed EUR 12,490.31 for the costs and expenses incurred before the domestic courts and EUR 6,000 for those incurred before the Court.

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

106. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the global sum of EUR 5,000 (including any value-added tax) under this head.

C. Default interest

107. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

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

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

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 22,000 (twenty two thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 2,000 (two thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 5,000 (five thousand euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Lawrence Early
Registrar

Nicolas Bratza
President