Flinkkilä v. Finland

Closed

Expands Freedom of Expression

Region and Country: Finland, Europe

Judicial Body: European Court of Human Rights, Fourth Section

Type of law: Criminal law, International law

Themes: Privacy, Data Protection and Retention

Tags: Newspaper articles, public interest, reasonable expectation of privacy

Mode of expression: Press/Newspapers

Date of decision: July 6, 2010

Outcome: Convention Articles on Freedom of Expression and Information violated

Case number: Application no. 25576/04

**Summary and outcome**

The European Court of Human Rights (ECtHR) found that the State of Finland violated Article 10 of the European Convention when its national courts ordered the editors and journalists of two magazines to pay fines and damages, in the context of criminal proceedings, for publishing news articles mentioning the name and identity of B, the female friend of the National Conciliator, and their involvement in a violent altercation. The national courts considered that these articles were an unjustified invasion of B’s privacy. For the ECtHR the interference on the freedom of expression of the claimant, although it was prescribed by law and pursued a legitimate aim, was disproportionate and thus not necessary in a democratic society, since B’s identity had been previously disclosed on national television, the questioned news articles were of public interest, and the sanctions too severe.

**Facts**

On December 4, 1996, A, Finland’s then National Conciliator, and B entered late at night into A’s house, where his wife was present. The situation escalated, involving A’s children, and the police was called. A was arrested that day. Both A and B were criminally charged. On December 18, 1996, the Helsinki District Court convicted A “to a four-month conditional prison sentence for resisting arrest and for criminal damage, and B. to a fine for assault” (par. 7).

On January 17, 1997, A was dismissed from his post as National Conciliator by the Council of State. An Appeal Court, on June 25, 1997, upheld the criminal conviction against B. As regards A., the case had lapsed as he had died on 14 May 1998 (par. 7).

On January 31 and March 1, 1997, *Seura* and *Nykyposti* magazines, respectively, published press articles about A. In the first article, based on an interview with A, B’s name and age were mentioned along with her picture. The article concerned A.’s “feelings about his dismissal and his possible divorce in the aftermath of the incident of 4 December 1996” (par. 8). The second article was also about A’s divorce and the aforementioned incident. In that context, B’s name was mentioned too.

Before these two articles, B’s identity was revealed in a Swedish newspaper (January 21, 1997) and in a Finnish television broadcast (January 23, 1997).

A and B requested, in the spring of 1997, criminal investigations against the journalists who wrote about the incident of December 4, 1996. The public prosecutor brought charges for invasion of privacy against Mr. Jouni Mikael Flinkkilä, Ms. Sanna Rakel Wirtavuori —editors-in-chief of *Seura* magazine —, Ms Jaana Helena and Mr Risto Valdemar Ainasoja —editor-in-chief and a journalist of Nykyposti—"under Chapter 27, section 3(a), paragraph 2 of the [Finnish] Penal Code” (par. 11).

On December 15, 2000, the Espoo District Court dismissed all the charges. The court argued 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” (par. 13). The court also considered there was no proof against the defendants regarding the intention of invading B’s privacy.

The Appeal Court, on May 15, 2003, quashed the Disitrict’s Court decision and convicted the defendants “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, [Flinkkilä] and [Wirtavuori] were ordered jointly to pay B. EUR 5,000 plus interest and [Isosaari] and [Ainasoja] EUR 3,000 plus interest for nonpecuniary damage as well as her costs and expenses jointly with the publishing company” (par. 15).

For the Appeal Court the information mentioned on the articles amounted to a violation of the private life of B. The fact that she was a friend of A’s and was involved in the incident that led to his dismissal didn’t justify revealing her identity, the court noted. The tribunal also considered that the crime in question didn’t require proof of intent: “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” (par. 16).

The Supreme Court of Finland refused an appeal on January 20, 2004, lodged by Flinkkilä Wirtavuori, Isosaari and Ainasoja.

On July 19, 2004, Flinkkilä Wirtavuori, Isosaari and Ainasoja (from here on the applicants) lodged an application before the European Court of Justice alleging  that their right to freedom of expression, as laid out by article 10 of the European Convention of Human Rights (ECHR), had been violated.

**Decision Overview**

The European Court of Human Rights analyzed if the State of Finland violated the freedom of expression of the applicants by criminally convicting them and ordering the payment of damages to B. for publishing news articles which revealed her identity. The main issue before the Court was whether the interference to the freedom of expressions of the applicants was prescribed by law, pursued a legitimate interest and was necessary in a democratic society.

The applicants argued that the criminal convictions issued against them were not prescribed by law and were not necessary in democratic society. According to them “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” (par. 49). The applicants considered too that the provision used to convict them, or the preparatory works for said law, “had mentioned that the provision would apply to the publication of an accused or convicted person’s name.” (par. 55).

Regarding the necessity of the interference on freedom of expression, the applicants considered it was “grossly disproportionate, especially in view of their obligation to pay very substantial damages in the case” (par. 49). The applicants argued that since B actively participated in the December 4, 1996 incident and was subsequently fined, “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” (par. 49).

Similarly so, the applicants noted that B’s identity had already been revealed publicly, not only in the media, but in the judgements of her criminal case: “this public information could not have become retrospectively private” (par. 55). Ultimately, the applicants considered that the sanctions imposed upon them (fines, non-pecuniary damages, legal expenses) violated Article 10 of the ECHR.

On its part, the Government of Finland argued that the sanctions imposed upon the applicants, although can be considered interferences to freedom of expression, were prescribed by law. Finland argued that Chapter 27, section 3(a), of the Penal Code were the basis of the enacted measures: “At the relevant time the provision had been in force more than 20 years, and it had been interpreted by the Supreme Court […] 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” (par. 58), noted the respondent State.

The Government also mentioned the Guidelines for Journalists, by The Union of Journalists in Finland, and the practice of the Council for Mass Media (Julkisen sanan neuvosto, Opinionsnämnden för massmedier), to highlight the fact that both “had restricted the disclosure of a person’s name in crime news coverage. Offences were not automatically issues of private life” (par. 59).

Given this regulatory framework, the Government considered 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” (par. 59).

For Finland, the measures against the applicants did pursue a legitimate aim, that is the protection of B’s private life.

Regarding the necessity of the measures in a democratic society, the respondent argued that B’s conduct was not a matter of public relevance, and that the articles describing her behavior didn’t contribute to “any discussion of general interest but had been intended to satisfy public curiosity” (par. 61). According to the Government of Finland, there was no need in mentioning B’s name to report on the events of December 4, 1996.

The ECtHR began its considerations by analyzing whether the measures enacted against the applicants were prescribed by law. According to the Court the criminal provision, found on the penal code, used to convict the applicants were clear enough and free of ambiguities, so “that the possibility that a sanction would be imposed for invasion of private life was not unforeseeable” (par. 66).

The Court also noted that Guidelines for Journalists and the practice of the Council for Mass Media provided a set of rules stricter than those found on the Penal Code, so the applicants, who are professional journalists, “could not claim to be ignorant about the content of the [penal code]” (par. 67). For these reasons the Court considered that the interference on the freedom of expression of the applicant was indeed prescribed by law.

Upon analyzing if the aforementioned interference pursued a legitimate aim, the ECtHR noted that it was not disputed by the parties that the measures pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2 (par. 68).

When analyzing the necessity of the interference in a democratic society, the Court highlighted the value of journalism, as a cornerstone for the development of democratic society and its individuals. Thus, for the ECtHR freedom of expression doesn’t protect exclusively “’information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb” (par. 69).

In this context, the Court argued that any interference to freedom of expression must be proportionate to the aims it pursues. In this particular case , the ECtHR considered that freedom of expressions had to be balance against private life, as laid out in Article 8 of the ECHR.

In cases where freedom of expression and privacy come into conflict, the Court has considered that factors such as “the contribution made by photos or articles in the press to a debate of general interest” (par. 76) are important. Similarly so, if freedom of expression is used to report on court proceedings is also a factor relevance, since that contributes to the publicity of hearings.

The Court also noted that there was “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 mean” (par. 81).

Regarding the status of B, the Court argues that since she is an ordinary person, the scope of protection of her private life is larger: “The fact that she had been the subject of criminal proceedings cannot deprive her of the protection of Article 8” (par. 82).

Nonetheless, the Court argues, B was involved in a public disturbance outside the house of a senior public figure. Thus, B, “notwithstanding her status as a private person, can reasonably be taken to have entered the public domain” (par. 83).

The ECtHR also considered that the articles published by *Seura* and *Nykyposti* magazines about the incidents of 4 December 1996, focused mainly on A’s behavior, made no reference to B’s private life, except for her involvement on the aforementioned incidents and her relationship with A, “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.” (par. 84).

For the ECtHR, B’s identity and her involvement in the incident of December 4, 1996, “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. 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” (par. 85).

The Tribunal also noted that the articles in question didn’t disclose for the first time B’s identity. The events of December 4, 1996, and the dismissal of A, along the conviction of A and B, were widely publicized on nationwide prime time television.

In light of these factors, the Court found that the sanctions imposed upon the applicants were too severe. The fines and the order “to pay damages jointly and severally in a total amount of EUR 8,000” (par. 89) were deemed drastic by the ECtHR “ given that the maximum compensation afforded to victims of serious violence [in Finland] was approximately FIM 100,000 (EUR 17,000) at the time.

Given the circumstances and the consequences and the severity of the interference on freedom of expression, the Court found that the measures enacted against the applicants were disproportionate and that “domestic courts failed to strike a fair balance between the competing interests at stake” (par. 92).

Since the interference was disproportionate, hence not necessary in a democratic society, the ECtHR considered the applicant’s right to freedom of expression, under Article 10 of the ECHR, was violated.

The Court awarded the applicants EUR 22,000 jointly in compensation for pecuniary damage. Moreover, each applicant was awarded, on an equitable basis, EUR 2,000 for non-pecuniary damage. Finally, the applicants were awarded jointly EUR 5,000 for costs and expenses .

**Decision Direction**

**Expands Freedom of Expression**

By considering that the measures enacted against the applicants were disproportionate the Court provides a robust protection of press freedom, when in conflict with the right to privacy, in matters of public relevance. Also, by arguing that the pecuniary sanctions were too severe, the Court also expands the scope of freedom of expression considering the chilling effect this interference can have when reporting issues of general interest.

**Global Perspective**

**Art. 10, ECHR**

**Chapter 27, section 3(a), of the Penal Code**

**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**

**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**

**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**

**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**

**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**

**Case significance**