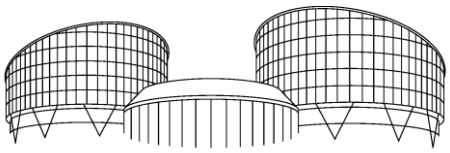

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF OJALA AND ETUKENO OY v. FINLAND

(Application no. 69939/10)

JUDGMENT

STRASBOURG

14 January 2014

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 Ojala and Etukeno Oy v. Finland,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 10 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 69939/10) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Mr Kari Markus Ojala ("the first applicant"), and a Finnish limited liability company Etukeno Oy ("the applicant company"), on 26 November 2010.

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

3. The applicants alleged, in particular, that their right to freedom of expression under Article 10 of the Convention had been violated.

4. On 2 July 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1952 and lives in Helsinki. The applicant company has its seat in Helsinki.

6. The applicants, a publisher and a publishing company, wrote and published, together with the former girlfriend of the Prime Minister at the

time, an autobiographical book about her relationship with the Prime Minister. The book described a period of nine months in their lives from the point of view of the girlfriend, a single mother. The Prime Minister had earlier divorced his wife. The book described the dating couple's life and their intimate interaction. The book was published on 19 February 2007. The Prime Minister held office from June 2003 to June 2010 when he stepped down.

7. On 5 October 2007 the public prosecutor brought charges under Chapter 24, section 8, of the Penal Code against the first applicant and the girlfriend for having disclosed information about the Prime Minister's private life (*yksityiselämää loukkaavan tiedon levittäminen, spridande av information som kränker privatlivet*). He also requested that the proceeds of the crime received by the applicant company be ordered forfeit to the State in accordance with Chapter 10, section 2, of the Penal Code. The Prime Minister concurred with the charges brought by the public prosecutor against the first applicant. He also pursued a compensation claim against the first applicant which was joined to the criminal charges. The girlfriend has lodged a separate application with the Court (see *Ruusunen v. Finland*, no. 73579/10).

8. On 15 February 2008 the book was withdrawn from sale.

9. On 5 March 2008 the Helsinki District Court (*käräjäoikeus, tingsrätten*), after having voted, dismissed the charges against the first applicant and rejected the request that the proceeds of the crime received by the applicant company be ordered forfeit to the State. It found that the book disclosed a lot of information about the Prime Minister's private life but that he had already widely disclosed information about his family and habits as well as about his relationship with the girlfriend. Even though he himself had published an autobiography in 2005, had given several interviews, ran a blog and even permitted photographs to be taken at his home, he was known as a politician who strictly controlled his public image. The book also contained some information which had not previously been disclosed to the public. In this respect the court found that these new details only completed the information the Prime Minister had disclosed earlier. It was never suggested that the facts disclosed were not true. The book covered a period of nine months in the girlfriend's and the Prime Minister's private life. The court found that the girlfriend had the right to recount her private life. She also described the Prime Minister, his actions and family in a compassionate manner. The court found that, even though the information disclosed in the book had no direct relevance to the Prime Minister's political functions or his hierarchical position in the State, it had relevance as far as the Prime Minister's person was concerned. The Constitution required that ministers were "known to be honest and competent". Moreover, the book described a situation in which two different realities of present day Finnish society met: a wealthy party leader and Prime Minister on the one hand, and a single

mother with everyday money problems on the other hand. The court found that the fact that the girlfriend was writing about her life and her relationship with one of the highest authorities in the country did not restrict but in fact widened her freedom of expression. When weighing the freedom of expression against the protection of private life, the court found that the need to resort to criminal liability decreased when the disclosed information became more widely known. Criminal liability was the last resort in guiding human behaviour and its use had to be proportionate. The court could therefore not hold that the publication of the applicants' book was a criminal act. Moreover, as the first applicant had obtained an opinion from a lawyer before publishing the book, he could not be regarded as having acted with intent and could not therefore be considered as a perpetrator.

10. By letter dated 18 April 2008 the public prosecutor appealed to the Helsinki Appeal Court (*hovioikeus, hovrätten*). The Prime Minister also appealed.

11. On 10 February 2009 the Helsinki Appeal Court convicted the first applicant for disseminating information violating personal privacy and sentenced him to 60 day-fines, in total 840 euros. He was ordered to pay the Prime Minister 1,000 euros plus interest for non-pecuniary damage and 9,344 euros plus interest for his costs and expenses before the District Court and the Appeal Court. The proceeds of the crime, 4,260 euros, were ordered forfeit to the State. The applicant company was to receive 4,000 euros as compensation for its costs and expenses before the District Court. The court found that the passages in the book concerning the Prime Minister's intimate dating and his children's feelings and behaviour unnecessarily violated the core areas of his protected private life. He had not previously disclosed these details of his private life in the media. The fact that he had disclosed some parts of his private life, the protection of which was, due to his status, much narrower than a private person's, did not mean that he could not benefit at all from any protection of his private life. He had thus not waived his right to the protection of private life, nor implicitly consented to the disclosure of information concerning details of his private life. Even though the girlfriend had the right to write about her private life, disclosure of intimate details of another person's private life always required his or her consent. The aim of the applicants' book had been to discuss matters of private life and it had no relevance to the Prime Minister's political functions or his hierarchical position in the State. Nor had it any relevance to the assessment of his personal qualities, such as any lack of honesty and judgment, as the relationship fell within the core areas of his private life and had no relevance to his position as Prime Minister. Moreover, the first applicant could be held as a perpetrator even though he had obtained a legal opinion about the book before its publication. His acts had been intentional.

12. By letter dated 14 April 2009 the applicants appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), requesting that the court establish a precedent in the case as the court had not yet in its case-law assessed freedom of expression in the context of an autobiography.

13. On 11 June 2009 the Supreme Court granted the applicants leave to appeal.

14. On 16 June 2010 the Supreme Court, after having held an oral hearing, upheld the Appeal Court's conviction but quashed the forfeiture in respect of the first applicant and reduced the costs and expenses to be paid to the Prime Minister for the proceedings before the District Court and the Appeal Court to 6,000 euros plus interest. The first applicant was ordered to pay the Prime Minister 4,500 euros plus interest for his costs and expenses before the Supreme Court. The applicant company was to receive 2,000 euros as compensation for its costs and expenses before that court. In particular, by referring extensively to the Court's case-law, the Supreme Court gave a more narrow scope to the Prime Minister's private life than the Appeal Court. The court found that information about the Prime Minister's sex life and intimate events and his children's feelings and behaviour had not been disclosed to the public before. The fact that some details of his private life had been disclosed before did not mean that they could not fall within the scope of criminal liability under Chapter 24, section 8, of the Penal Code. The Prime Minister had not waived his right to protection of private life in these respects, nor had he given his consent to their publication by consenting to the use of his photograph on the cover of the book. The court considered, contrary to the Appeal Court, that the information about how and when the Prime Minister had met the girlfriend and how quickly their relationship had developed had had relevance to general public discussion as these issues had raised the question of whether in this respect he had been dishonest and lacked judgment. Also the information concerning the great differences in the standard of living between the girlfriend and the Prime Minister, his lifestyle, the data protection concerns and the protection of the highest political authorities in general had had relevance to general public discussion. The court found also that disclosure of information about the Prime Minister's children was not conducive to causing him damage, suffering and contempt as the girlfriend had only given her own interpretation of the children's attitudes. However, the only references which, according to the court, had illegally disclosed information about the Prime Minister's private life were the information and hints about the sex life and intimate events between the girlfriend and the Prime Minister. The court enumerated in particular seven parts of the book which contained information about the start of the sex life in the beginning of their relationship, descriptions of their brief and passionate intimate moments as well as giving massages to each other, and accounts of their sexual intercourse. The court found that such information and hints fell

within the core area of private life and their unauthorised publication was conducive of causing the Prime Minister suffering and contempt. It was thus necessary to restrict the applicants' freedom of expression in this respect in order to protect the Prime Minister's private life.

II. RELEVANT DOMESTIC LAW

A. Constitution

15. Article 10 of the Constitution of Finland (*Suomen perustuslaki, Finlands grundlag*, Act no. 731/1999) guarantees everyone's right to private life. According to it:

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

16. According to Article 12 of the Constitution,

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

B. Penal Code

17. According to Chapter 24, section 8, of the Penal Code (*rikoslaki, strafflagen*, Act no. 531/2000),

> "A person who unlawfully
>
> (1) through the use of the mass media, or
>
> (2) otherwise by making available to many persons
>
> disseminates information, an insinuation or an image of the private life of another person, so that the act is conducive to causing that person damage or suffering, or

subjecting that person to contempt, shall be sentenced for *dissemination of information violating personal privacy* to a fine or to imprisonment for at most two years.

The spreading of information, an insinuation or an image of the private life of a person in politics, business, public office or public position, or in a comparable position, does not constitute dissemination of information violating personal privacy, if it may affect the evaluation of that person's activities in the position in question and if it is necessary for purposes of dealing with a matter with importance to society."

18. Chapter 10, section 2, of the same Code (Act no. 875/2001) provides that:

"The proceeds of crime shall be ordered forfeit to the State. The forfeiture shall be ordered on the perpetrator, a participant or a person on whose behalf or for whose benefit the offence has been committed, where these have benefited from the offence.

If no evidence can be presented as to the amount of the proceeds of crime, or if such evidence can be presented only with difficulty, the proceeds shall be estimated, taking into consideration the nature of the offence, the extent of the criminal activity and the other circumstances.

Forfeiture of the proceeds of crime shall not be ordered in so far as they have been returned to the injured party, or in so far as they have been or will be ordered to be reimbursed to the injured party by way of compensation or restitution. If a claim for compensation or restitution has not been filed or if the claim has still not been decided when the request for forfeiture is being decided, the forfeiture shall be ordered."

C. Criminal Records Act

19. Section 2, subsections 1-2, of the Criminal Records Act (*rikosrekisterilaki*, *straffregisterlagen*, Act no. 770/1993) provide that

"[o]n the basis of notices by courts of law, data shall be entered in the criminal records on decisions whereby a person in Finland has been sentenced to unsuspended imprisonment; community service; suspended imprisonment; suspended imprisonment supplemented with a fine, community service or supervision; juvenile punishment; a fine instead of juvenile punishment; or dismissal from office; or whereby sentencing has been waived under chapter 3, section 4, of the Penal Code (39/1889). However, no entries shall be made in the criminal records on the conversion of fines into imprisonment, nor on imprisonment imposed under the Civilian Service Act (1723/1991). Data on fines imposed on the basis of the provisions governing corporate criminal liability shall also be entered in the criminal records.

Furthermore, entries shall be made in the criminal records, as provided by Decree, on court decisions whereby a Finnish citizen or a foreigner permanently resident in Finland has been sentenced abroad to a penalty equivalent to one mentioned in paragraph (1)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicants complained under Article 10 of the Convention that their right to freedom of expression had been violated when the first applicant had been convicted of disclosing information about somebody else's private life.

21. Article 10 of the Convention reads as follows:

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

22. The Government contested that argument.

A. Admissibility

23. The Government argued that the applicant company could not be considered a victim within the meaning of Article 34 of the Convention. The District Court had rejected the public prosecutor's request that the court declare the criminal proceeds forfeit to the State. This decision had been upheld by the Appeal Court and the Supreme Court. Moreover, the applicant company had received compensation of 6,000 euros for its legal expenses. The domestic courts had never ordered the applicant company to withdraw the book from sale, nor had any attempts been made to prevent its sale. Accordingly, the applicant company had not been able to show that it had been a victim of the alleged violation. Therefore, this part of the application should be declared incompatible *ratione personae* with the provisions of the Convention. In any event, the Government argued that the applicant had not suffered significant disadvantage and that the complaint should therefore be declared inadmissible.

24. The applicants argued that the applicant company had suffered a significant loss of income since 2008 when the present case commenced at the national level. Its commercial activity had practically come to an end. It could thus be considered a victim.

25. The Court notes that the forfeiture request directed against the applicant company was rejected by the District Court, upheld by the higher instances. No forfeiture thus ever took place in respect of the applicant company. The applicant company also received reasonable compensation for its costs and expenses before the domestic courts. Moreover, the applicant company was never ordered by the domestic courts to withdraw the book from the market but was able to keep it on sale. The possible financial losses suffered by the applicant company cannot therefore be attributed to the State but appear to be caused by the actions taken by the applicant company itself. In these circumstances the Court considers that the applicant company cannot be considered a victim as it is not directly affected by the alleged violation of Article 10 of the Convention. The Court therefore accepts the Government's preliminary objection and declares this complaint, as far as the applicant company is concerned, inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention for being incompatible *ratione personae* with the provisions of the Convention.

26. As concerns the Government's second preliminary objection alleging insignificant disadvantage, the Court considers that this objection is closely related to the merits of the first applicant's complaint. It will therefore examine this preliminary objection together with the merits of the case. The Court therefore concludes that this complaint, as far as the first applicant is concerned, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

27. The first applicant noted that there had clearly been an interference with his right to freedom of expression. He contended that the domestic legal framework did not offer justification or basis for denying him his freedom of expression. The legal framework should have also taken into account the Court's case-law which took primacy over the domestic law. As the balancing exercise had not been carried out in accordance with the Court's case-law, the interference had not been prescribed by law.

28. The first applicant maintained that a Prime Minister was an even more public figure than "normal" politicians and that all aspects of his or her life related to his or her functions. For example, the fact that the former Prime Minister had not publicly admitted that he had been using internet dating services had raised questions about his suitability for office and about the soundness of his judgment. It had been generally recognised by the domestic courts and the Government that the impugned book had not criticised the former Prime Minister but was rather a tender account of a

relationship. The veracity of the details disclosed in the book had never been questioned. Nor had this information been obtained by inappropriate means. Nothing suggested that the interference was justified on the grounds of the application of the margin of appreciation of the member State.

29. As to the balancing exercise, the first applicant noted that the Supreme Court had concluded that the book, taken as a whole, did not shock or offend even though some parts of it did. Those parts only referred to rather normal human behaviour between couples. The former Prime Minister had consented to the publishing of a photograph on the cover of the book. This photograph already indicated tenderness and sexuality. The behaviour which the Supreme Court had found offensive, including references to taking sauna baths, related to normal behaviour in the Finnish cultural context. In addition, no details were ever given. Such conduct, as part of two Finnish persons' life together, did not subject the former Prime Minister or anybody else to negative publicity or personal suffering as such conduct was inherent in Finnish culture. Moreover, the first applicant also maintained that the sanctions imposed were not necessary or legitimate in the terms of the Convention and that these sanctions were criminal in nature.

30. The Government agreed that the first applicant's conviction, the fines imposed on him, and the obligation to pay compensation and legal expenses to the former Prime Minister constituted an interference with his right to freedom of expression. However, the interference had a basis in Finnish law, in particular in Chapter 24, section 8, of the Penal Code which fulfilled the criteria of precision, clarity and foreseeability. The first applicant had consulted a lawyer before publishing the book and he had thus been aware of the legal risks connected with the publishing. The interference was thus "prescribed by law" and pursued the legitimate aim of protecting the private life and reputation of others.

31. As to the necessity, the Government noted that the present case did not concern political debate but concerned the nine-month relationship of the then Prime Minister and his former girlfriend, told from the latter's point of view. The first applicant had written substantial parts of the book, at least the epilogue. As the expected public interest in the book had been based mainly on the publishing of private information about the former Prime Minister, the publication rather constituted a memoirs-style exposé than an autobiography. Although dating fell within the scope of private life, it could, in the context of a Prime Minister, involve public interest of a kind that justified the right of the public at large to be informed about the dating. That information could influence the opinion of the public at large of a Prime Minister and of his or her ability to perform his or her official duties.

32. The Government noted that the Supreme Court had held in the present case that the information about how and where the relationship between the former Prime Minister and his former girlfriend had begun had

not been insignificant from the public point of view. The court had further noted that a politician's family life, dating and other activities as a private person could be the object of justified public interest. This was the case especially when knowledge about a politician's private life had a relevant connection with questions raised by him or her in societal activities. Behaviour that was not directly connected with the politician's performance in public office or duty or other societal activities could be relevant for assessing the person's qualities required for these activities. The Supreme Court had pointed out that a Prime Minister enjoyed a narrower protection of his or her private life than a private individual. The Government maintained that although a politician had to tolerate more criticism, judgment and public interest in him or her than a private individual, a politician also enjoyed a sphere of privacy and was entitled to demand that it be respected.

33. The Government noted that although the public at large could be considered to have the right to receive information about a Prime Minister's private life, no particular grounds warranted expanding this right to encompass information about his or her intimate life. The Supreme Court had defined in the present case that sex life and details of intimate events fell within the core area of private life: not even a leading politician's private life, and especially its core area, could be excluded from the protection of private life. In this respect the protection of privacy had superseded the freedom of expression. The Supreme Court had not considered the book, when assessed as a whole, to violate the privacy of the former Prime Minister. On the contrary, the court had noted that the former Prime Minister himself had disclosed many of the facts discussed in the book. The Supreme Court held that only the references to the sex life and intimate events between the former Prime Minister and his girlfriend had violated the privacy of the former. The first applicant should have had his consent to describe them. Although the former Prime Minister's consent to use his photograph on the cover of the book was requested and received, this consent and the fact that he had not tried to prevent the publication of the book had not meant that he had given tacit consent to publish the information presented in the book.

34. The Government further noted that it had been public knowledge that the former Prime Minister had tried to protect his privacy and had been particular about what kind of information to disclose. Although he had in some contexts permitted, for instance, his children to be photographed and had described his home life and relationships, he had not disclosed information about his sex life or any other intimate details to the public. Thus, this information had not previously appeared in the public sphere. The fact that the content and the tone of the description of his private life had not been insulting was without significance. Disclosing the information discussed above could not be considered to have contributed to a societally

important or relevant debate but had instead served to satisfy the curiosity of a particular readership. The book had sold several thousand copies and might still be available in some bookstores. Accordingly, a large number of people nationally had become aware of the details of his intimate life.

35. Finally, the Government maintained that the day-fines imposed on the first applicant had been lower than the fines imposed in previous Finnish cases, even though he was a publishing professional. The impugned measures taken had thus not been disproportionate to the legitimate aim pursued. The Government further noted that imprisonment had not even been requested by the prosecutor or the former Prime Minister. Moreover, the Supreme Court had in its judgment fully recognized that the present case had involved a conflict between the right to impart ideas and information, on one hand, and the reputation and rights of others, on the other hand. It had thus undertaken a balancing exercise in conformity with the criteria laid down in the Court's case-law. Accordingly, the Supreme Court had not failed to balance properly the various interests in the case and it had not transgressed its margin of appreciation.

2. The Court's assessment

a. Whether there was an interference

36. The Court agrees that the first applicant's conviction, the fines imposed on him and the obligation to pay compensation as well as costs and expenses to the former Prime Minister constituted an interference with his right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

b. Whether it was prescribed by law and pursued a legitimate aim

37. The Court notes that, according to the Government, the impugned measures had a basis in Finnish law, namely in Chapter 24, section 8, of the Penal Code. Moreover, the interference complained of had a legitimate aim, namely the protection of the private life and reputation of others. On the contrary, the first applicant appears to argue that Chapter 24, section 8, of the Penal Code fails to meet the standards of the Court's case-law.

38. As concerns the provision in question, Chapter 24, section 8, 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), in which the earlier provision of the Penal Code was at stake, and in the *Reinboth* case (see *Reinboth and Others* v. Finland, no. 30865/08, § 71, 25 January 2011), 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 an invasion of privacy. Furthermore, the Court notes that the exception in the second sentence of the provision concerning persons holding a public

office or function, or involved in professional life, a political activity or in another comparable activity is equally clearly worded (see *Flinkkilä and Others v. Finland*, no. 25576/04, § 66, 6 April 2010, in respect of the earlier provision; *Reinboth and Others v. Finland*, cited above, § 71; and *Saaristo and Others v. Finland*, no. 184/06, § 58, 12 October 2010).

39. The Court accepts 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; *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X; and *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.

c. Whether the interference was necessary in a democratic society

40. 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).

41. 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).

42. 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).

43. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks made by the applicant and the context in which she

made them. In particular, it must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient" (see Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30; *Lingens v. Austria*, cited above, § 40; *Barfod v. Denmark*, 22 February 1989, § 28, Series A no. 149; *Janowski v. Poland*, cited above, § 30; and *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I). In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

44. 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 v. Denmark*, 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).

45. The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see Bladet Tromsø *and Stensaas v. Norway*, 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.).

46. The limits of permissible criticism are wider as regards a politician than as regards a private individual. Unlike the latter, the former inevitably and knowingly lay themselves open to close scrutiny of their words and deeds by journalists and the public at large, and they must consequently display a greater degree of tolerance (see, for example, *Lingens v. Austria*, cited above, § 42; *Incal v. Turkey*, 9 June 1998, § 54, *Reports* 1998-IV; and *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236). Similar considerations apply also to persons in the public eye (see *Fayed v. the United Kingdom*, 21 September 1994, § 75, Series A no. 294-B; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II; and contrast with *Von Hannover v. Germany*, no. 59320/00, § 65, ECHR

2004-VI; and *MGN Limited v. the United Kingdom*, no. 39401/04, § 143, 18 January 2011). In certain circumstances, even where a person is known to the general public, he or she may rely on a "legitimate expectation" of protection of and respect for his or her private life (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 97, ECHR 2012).

47. Moreover, the Court has recently set out the relevant principles to be applied when examining the necessity of an instance of interference with the right to freedom of expression in the interests of the "protection of the reputation or rights of others". It noted that in such cases the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 84, 7 February 2012; and *MGN Limited v. the United Kingdom*, cited above, § 142).

48. In *Von Hannover v. Germany (no. 2)* [GC] (cited above, §§ 104-107) and *Axel Springer AG v. Germany* [GC] (cited above, §§ 85-88), the Court defined the Contracting States' margin of appreciation and its own role in balancing these two conflicting interests. The Court went on to identify a number of criteria as being relevant where the right of freedom of expression is being balanced against the right to respect for private life (see *Von Hannover v. Germany (no. 2)* [GC], cited above, §§ 109-113; and *Axel Springer AG v. Germany* [GC], cited above, §§ 89-95), namely:

(i) contribution to a debate of general interest;

(ii) how well-known is the person concerned and what is the subject of the report;

(iii) prior conduct of the person concerned;

(iv) method of obtaining the information and its veracity/circumstances in which the photographs were taken;

(v) content, form and consequences of the publication; and

(vi) severity of the sanction imposed.

49. Turning to the facts of the present case, the Court notes that the first applicant was convicted for disseminating information violating personal privacy and sentenced to 60 day-fines, totalling 840 euros. Moreover, he was ordered to pay compensation as well as costs and expenses to the former Prime Minister.

50. The Court observes at the outset that the impugned book described a period of nine months in the life of the girlfriend of the Prime Minister at the time when she, as a single mother, dated the Prime Minister who had divorced his wife. The book described the dating couple's life and made reference to their intimate interaction. Even if the emphasis in the book was on describing the girlfriend's private life, the book also described, as noted by the District Court, a situation in which two different realities of present

day Finnish society met: a wealthy party leader and Prime Minister on the one hand, and a single mother with everyday money problems on the other hand.

51. The Court notes that the facts set out in the book in issue were not in dispute even before the domestic courts. In fact, the District Court observed that it was never even suggested that the facts disclosed were not true. The Court notes that the facts in the book were presented in a compassionate manner and the style was not provocative or exaggerated. There is no evidence, or indeed any allegation, of factual misrepresentation or bad faith on the part of the girlfriend or the first applicant (see, in this connection, *Flinkkilä and Others v. Finland*, cited above, § 81).

52. Moreover, the Court notes that it was equally clear that the former Prime Minister had been, at the time when the book was published, a public figure. He was thus expected to tolerate a greater degree of public scrutiny which may have a negative impact on his honour and reputation than a completely private person (see paragraph 46 above). There is no suggestion that details of the book or the photograph of the former Prime Minister were obtained by subterfuge or other illicit means (compare *Von Hannover v. Germany*, cited above, § 68). On the contrary, the former Prime Minister's consent to the use of his photograph on the cover of the book had been requested and received.

53. 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 relevance and sufficiency of the reasons given by the domestic courts for convicting the first applicant and imposing a fine. The Court must determine whether his conviction and the criminal sanctions imposed on him struck a fair balance between the public and the former Prime Minister's interests and whether the standards applied were in conformity with the principles embodied in Article 10 (see *Von Hannover v. Germany (no. 2)* [GC], cited above, §§ 109-113; and *Axel Springer AG v. Germany* [GC], cited above, §§ 89-95).

54. The Court considers that even though the emphasis in the book was on the girlfriend's private life, it nevertheless contained elements of public interest. The Supreme Court considered, contrary to the Appeal Court, that the information about how and when the former Prime Minister had met the girlfriend and how quickly their relationship had developed had relevance to general public discussion as these issues raised the question of whether in this respect he had been dishonest and lacked judgment. The Supreme Court also found that the information concerning the great differences in the standard of living between the girlfriend and the former Prime Minister, his lifestyle, the data protection concerns and the protection of the highest political authorities in general had relevance to general public discussion. The Court agrees with this. From the point of view of the general public's

right to receive information about matters of public interest, there were thus justified grounds for publishing the book.

55. The Court notes that the domestic courts also took into account that a majority of the information concerning the former Prime Minister's private life which was disclosed in the book had already been widely disclosed. The former Prime Minister had disclosed information about his family and habits as well as about his relationship with the girlfriend, and he had even published an autobiography in 2005. The Supreme Court also found that information about the former Prime Minister's sex life and intimate events and his children's feelings and behaviour had not been disclosed to the public before. However, the Supreme Court found only the references to the sex life and intimate events between the girlfriend and the former Prime Minister illegal.

56. Moreover, the Court observes that in their analysis the domestic courts attached importance both to the girlfriend's and the first applicant's right to freedom of expression as well as to the former Prime Minister's right to respect for his private life. The domestic courts examined the case in conformity with principles embodied in Article 10 and the criteria laid down in the Court's recent case-law. All domestic courts, and especially the Supreme Court, balanced in their reasoning the first applicant's right to freedom of expression against the former Prime Minister's right to reputation, by considering them from the point of view of "pressing social need" and proportionality. The Supreme Court also narrowed down the scope of the problematic passages in the book. It enumerated only certain parts of the book which it considered to contain information falling within the core area of the private life of the former Prime Minister (see paragraph 14 above). The Supreme Court found that such information and hints and their unauthorised publication was conducive of causing the former Prime Minister suffering and contempt. According to the Supreme Court, it was thus necessary to restrict the applicants' freedom of expression in this respect in order to protect the former Prime Minister's private life.

57. The Court finds this reasoning acceptable. The restrictions of the exercise of the applicants' freedom of expression were established convincingly by the Supreme Court, taking into account the Court's case-law. The Court recalls its recent case-law according to which the Court would require, in such circumstances, strong reasons to substitute its view for that of the domestic courts (see *Von Hannover v. Germany (no. 2)* [GC], cited above, § 107; and *Axel Springer AG v. Germany* [GC], cited above, § 88).

58. Finally, the Court has taken into account the severity of the sanctions imposed on the first applicant. The first applicant was convicted under criminal law and was ordered to pay 60 day-fines amounting to 840 euros. Moreover, he was ordered to pay 1,000 euros plus interest for non-pecuniary damage and 10,500 euros plus interest as costs and expenses

to the former Prime Minister. Moreover, the Court notes that, according to the domestic law, no entry of the conviction was made on the first applicant's criminal record as the sanction imposed only concerned a fine (see paragraph 19 above). The Court finds the sanctions imposed reasonable (compare and contrast *Flinkkilä and Others v. Finland*, cited above, §§ 89-91; and *Lahtonen v. Finland*, no. 29576/09, § 78, 17 January 2012), except the obligation to pay the costs and expenses of the former Prime Minister. However, this ground alone is not sufficient for the Court to reach another conclusion.

59. In conclusion, in the Court's opinion the reasons relied on by the domestic courts were both relevant and sufficient to show that the interference complained of was "necessary in a democratic society". Having regard to all the foregoing factors, and taking into account the margin of appreciation afforded to the State in this area, the Court considers that the domestic courts struck a fair balance between the competing interests at stake.

60. There has therefore been no violation of Article 10 of the Convention. For the above reasons, the Court considers that there is no longer any need to take a stand on the Government's preliminary objection based on insignificant disadvantage.

II. REMAINDER OF THE APPLICATION

61. The applicants also complained under Article 6 of the Convention that they had not been allowed to question a witness during the Appeal Court proceedings as that court had not held an oral hearing. Moreover, the charges had been unspecified as no passages of the book had been identified.

62. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the first applicant's complaint concerning Article 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 14 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President