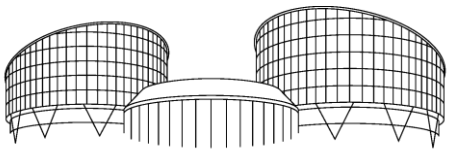

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RISTAMÄKI AND KORVOLA v. FINLAND

(Application no. 66456/09)

JUDGMENT

STRASBOURG

29 October 2013

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 Ristamäki and Korvola v. Finland,

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

Ineta Ziemele, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Vincent A. De Gaetano,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 8 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 66456/09) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Finnish nationals, Mr Juha Arvo Mikael Ristamäki and Mr Ari Jukka Korvola ("the applicants"), on 15 December 2009.

2. The applicants were represented by Mr Markku Hiekkala, 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.

4. On 28 March 2011 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 applicants were born in 1969 and 1953 and live in Espoo and Helsinki respectively.

6. The first applicant is an editor and the second applicant is his immediate superior. Both applicants are employed by a Finnish broadcasting company.

7. On 27 February 2006 the company broadcast on a national TV channel a current affairs programme criticising the lack of co-operation between the authorities concerning a specific investigation into economic crime. It was revealed that the tax authorities had refused the request of the National Bureau of Investigation (*keskusrikospoliisi, centralkriminalpolisen*) to conduct a tax inspection of the functioning of two companies running a certain sports centre. Reference was made in that connection, *inter alia*, to K.U., a well-known Finnish businessman who, at the time, was standing trial for economic offences. In the programme it was stated that the police wanted to know whether the sports centre had been purchased using K.U.'s money.

8. The programme was broadcast anew on the following day. Then the programme included an addition from K.U.'s business partner who indicated that the money spent on the sports centre had in fact come from an insurance company, not from K.U.

9. On 10 December 2007 the public prosecutor initiated criminal proceedings against both applicants. He maintained that the first applicant, by editing the programme, and the second applicant, by allowing its broadcast, had intentionally and in concert made false insinuations about K.U. such that their conduct had been conducive to causing the latter suffering, subjecting him to contempt and causing him damage. A similar accusation was made against the broadcasting company's editor-in-chief who had, along with the second applicant, allowed the second broadcast of the programme. As the false insinuations had been disseminated through the mass media to a large public, and as this had caused K.U. great suffering, the defendants should be convicted for aggravated defamation.

10. K.U., for his part, claimed compensation for mental anguish and legal costs in the same proceedings.

11. The applicants contested the charge and the civil claim. They argued, *inter alia*, that all information imparted had been correct. There had been no false insinuations about K.U., nor any criminal intent on behalf of the applicants. The programme had dealt with an issue of general importance, that is, problems of co-operation between the police and the tax authorities.

12. On 9 May 2008 the Helsinki District Court (*käräjäoikeus, tingsrätten*) issued its judgment. In its reasons the court found it established that the first applicant had edited the programme, broadcast on 27 and 28 February 2006. The programme had reached some 750,000 viewers. It had been announced as a report on the termination of tax inspections of the affairs of a person in a high position and his friend.

13. The court went on to note that at the beginning of the programme footage was shown of the criminal trial concerning K.U.'s alleged economic

offences shot on the same day, that is, 27 February 2006. It was followed by a diagram illustrated by K.U.'s photograph and indicating: "National Bureau of Investigation → [K.U.] → [K.U.'s] business associate → Sports centre." While these images were shown on the screen the narration ran as follows:

> "The Helsinki District Court continued today the examination of an extensive trial concerning economic crime. One of the accused was the businessman [K.U.], with previous convictions for economic offences. He is being charged with having concealed from his creditors millions of his assets. There are nine other defendants who have allegedly hidden [K.U.'s] assets around the world. The National Bureau of Investigation worked for years on this money laundering case, which is probably the largest of its kind in Finland. Now it has come to light that spanners were thrown into the works of the [K.U.] investigation from unexpected quarters. In 2001 one of [K.U.'s] close associates decided to invest in the sports business. He bought himself into a sports centre in Helsinki and became its managing director. The National Bureau of Investigation became interested in whose money was used in the purchase. [K.U.'s] associates' own assets would not have been sufficient to acquire the sports centre. The National Bureau of Investigation asked the tax authorities to conduct a tax inspection of the companies running the centre. The police wanted to know whether it had been purchased using [K.U.'s] money."

14. The court went on to summarise the programme noting that:

> "After this a criminal inspector explains that in November 2001 the National Bureau of Investigation lodged a written request with the tax administration for tax inspection concerning two companies in the sports business and that, according to the information acquired, such inspections were not carried out. It was then noted in the programme that [this kind of omission] was very rare in the co-operation between the police and the tax authorities and that this was the only branch in the [K.U.] investigation, where the tax authorities refused to co-operate with the police. It was also mentioned in the programme that in 2001 the Uusimaa Tax Office (*verovirasto, skatteverk*) had, at the request of the police, carried out inspections of the tax affairs of the director general for the National Board of Patents and Registration (*Patentti- ja rekisterihallitus, Patent- och registerstyrelsen*) and that in these investigations the tax inspectors had [come across] the aforementioned sports centre. It was deemed that a good friend and a business associate to the director general had invested in the sports centre. In May 2001 the head of the tax inspection unit had put the brakes on the investigation into the director general's affairs and called off the inspections of the companies running the sports centre.
>
> It was also mentioned in the programme that after the sports centre came into the possession of [K.U.'s] friend, the National Bureau of Investigation had asked the tax authorities to continue the inspections of the companies running the sports centre but nothing happened. During the investigations the director general of the National Board of Patents and Registration and the tax commissioners attempted to hinder the tax inspectors' work.
>
> Finally, it is mentioned in the programme that if the investigation concerning the sports centre had been continued because of [K.U.], that might have again raised delicate issues concerning the friend of the director general of the National Board of Patents and Registration and the commission [he] was paid in connection with the change of office quarters of the latter. But since nothing was done, nothing was found out. In this context, the diagram with [K.U.'s] photograph was again shown."

15. The District Court found it established that the second applicant had been the first applicant's immediate superior. He had read the script and authorised its broadcast. The court noted that prior to the rebroadcast of the programme K.U. had contacted the first applicant and insisted that the part concerning him be removed. The court found it established that the second applicant and the editor-in-chief had discussed K.U.'s demand and decided not to accede to it. The court further found it established that the second applicant had watched the programme before its second broadcast. He had then decided that at the end of the rebroadcast the announcer would inform the viewers that, in regard to the sports centre coverage, K.U.'s business associate submitted that he had received the money for the purchase from an insurance company and not from K.U.

16. The court also referred to a later broadcast on 6 March 2006 of the same series of current affairs programmes, which was a follow-up to the above-mentioned programme. In that programme it was mentioned, *inter alia*, that K.U.'s business associate, who had been a shareholder in the company which purchased the sports centre in 2000, had presented the contracts concerning the purchase. It transpired from those contracts that the sports centre, and its debts, had been purchased with a loan granted by an insurance company. According to the business associate, K.U.'s money had not been invested in the sports centre.

17. In its assessment the District Court observed that there was nothing to suggest that the information contained in the programme broadcast on 27 and 28 February 2006 had been false as such. It went on to state:

> "The District Court finds that the script of the programme and the use of the footage from the trial concerning [K.U.'s] alleged economic offences and the diagram concerning [K.U.] taken together create an impression that [K.U.] had made himself guilty of a crime by investing his assets in the sports centre business. It has not been asserted directly that [K.U.] had committed an offence. The programme was structured around [K.U.] On the above grounds the District Court finds that a false insinuation was made concerning [K.U.] in the programme broadcast on 27 and 28 February 2006, giving the impression that [he] had committed an offence by using assets concealed from his debtors for the purchase of the sports centre.
>
> The addition made to the rebroadcast on 28 February 2006 does not exclude the false insinuation that [K.U.'s] money has ended up in sports centre business.
>
> Defamation is only punishable where there is criminal intent. The defendants have not shown that they had strong grounds or probable reasons to believe that the false insinuation was accurate. The addition made to the rebroadcast, and the programme of 6 March 2006, indicate that [K.U.'s] money had not been used to finance the sports centre. It follows that further information concerning the insinuation had been available and it could have been verified. The defendants are responsible for the programme and the false insinuation contained therein. They must have considered it very likely that the programme contained a false insinuation aimed at [K.U.]. That insinuation concerns a serious act and sufficiently strong factual grounds are to be expected.

> This kind of false insinuation implying that [K.U.] has committed an offence has been conducive to causing him suffering and damage and to subjecting him to contempt.
>
> The exercise of freedom of expression, or the fact that [K.U.] is a public figure, does not justify the false insinuation given by the defendants.
>
> The defendants have stressed that the programme concerned co-operation between the authorities. The District Court considers that presenting [that issue] would not have required connecting [K.U.] to the matter.
>
> Whether the broadcast was deliberately or by chance scheduled on the same day as [K.U.'s] criminal trial is not relevant in this case.
>
> The District Court finds that the [first and second] defendants have, in the above described manner, intentionally disparaged [K.U.'s] honour. ..."

18. The District Court lastly found that, having regard to the nature and content of the false insinuation and the fact that K.U. had, at the time, been charged with a similar economic offence, the defendants were not guilty of aggravated defamation. It convicted all defendants of [regular] defamation pursuant to Chapter 24, section 9, subsection 1, point 1, of the Penal Code. The applicants were sentenced to 30 day-fines each, amounting to a total of 810 euros (EUR) and EUR 1,230 respectively. They were also ordered to pay to K.U., jointly and severally with the third defendant, EUR 1,800 for suffering and EUR 1,500 in legal costs.

19. The District Court was composed of one professional judge and three lay judges. One of the lay judges was in favour of an acquittal.

20. The applicants and the third defendant appealed against the judgment to the Helsinki Court of Appeal (*hovioikeus, hovrätten*) maintaining, *inter alia*, that the District Court had given too little weight to the fact that the information given in the programme had been accurate. The programme had not focused on K.U. but on the problems of co-operation between the authorities, which was an issue of major general importance. The defendants also contested the lower court's view that it would have been possible to report on the issue without making any connection to K.U. At the time of the broadcasting, K.U. and a number of other persons had been charged with serious economic offences. The problems of co-operation between the authorities reported in the programme had occurred in the investigation of that very case. The defendants further contested the lower court's finding of criminal intent and that K.U. had sustained damage.

21. On 30 December 2008 the Court of Appeal dismissed the appeal. It upheld the lower court's judgment without giving any further reasons of its own.

22. On 16 December 2009 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW

23. The Finnish Constitution (*Suomen perustuslaki, Finlands grundlag*, Act no. 731/1999) provides in relevant parts:

> "Section 10 – The right to privacy
>
> Everyone's private life, honour and the sanctity of the home are guaranteed. ...
>
> ...
>
> Section 12 – Freedom of expression and right of access to information
>
> Everyone has the freedom of expression. Freedom of expression entails the right to express, impart 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. ..."

24. Chapter 24, section 9, subsections 1 and 2, of the Penal Code (*rikoslaki, strafflagen*; Act no. 531/2000) provide:

> "A person who
>
> 1) gives false information or makes a false insinuation about another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt, or
>
> 2) disparages another person in a manner other than referred to in point 1
>
> shall be convicted of defamation and sentenced to a fine or imprisonment for a maximum period of six months.
>
> Criticism that is directed at a person's activities in politics, business, public office, public position, science, art or in comparable public activity, and which does not clearly overstep the limits of what can be considered acceptable, does not constitute defamation as set out in point 2 of paragraph 1."

25. Chapter 24, section 10, of the Penal Code provides that if, in the defamation referred to in section 9, the offence is committed through the use of the mass media or otherwise by making the information or insinuation available to a large number of people, the offender shall be sentenced for aggravated defamation to a fine or to imprisonment for at most two years.

26. Chapter 5, section 6, of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*; Act no. 412/1974, as amended by Act no. 509/2004) provides that a person may be awarded compensation for suffering if, *inter alia*, his or her liberty, peace, honour, or private life has been violated through a punishable act. In assessing the level of that suffering the nature of the violation, the status of the victim, the relationship between the offender and the victim as well as the possible public exposure of the violation are to be taken into account.

27. 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. In the recommendation of the Personal Injury Advisory Board (*Henkilövahinkoasiain neuvottelukunta, Delegationen för personskade-ärenden*) in 2008, compensation awards for distress in defamation cases can go up to EUR 10,000 and in cases concerning dissemination of information violating personal privacy up to EUR 5,000. On the other hand, the maximum award for, for example, attempted manslaughter, murder or killing varies between EUR 3,000 and EUR 5,000.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

28. The applicants complained about a violation of their right to freedom of expression as provided in Article 10 of the Convention, which 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."

29. The Government contested that argument.

A. Admissibility

30. The Court notes that the application 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

(a) The applicants

31. The applicants maintained that there had been an interference with their right to freedom of expression. Even though the domestic law allowed such an interference, it had not been necessary in a democratic society. The applicants considered that it was not only the media's right but also its duty towards citizens to disclose a problem of public interest such as the lack of cooperation between the police and the tax authorities in the present case. In the television programme two separate cases were discussed which had both attracted considerable publicity. It was unusual that in those cases the tax authorities had declined the police's request to conduct a tax inspection, and this issue was revealed in the programme. It was undisputed that the information in the programme had been true and correct.

32. The applicants claimed that the national courts had arrived at erroneous conclusions in the present case. The applicants had learned from the police themselves about the issue and they had considered this source reliable. The applicants had been acting in good faith and there was no intention to defame on their part. The national courts concluded that the programme contained no allegation of K.U. being guilty of a crime but a deliberate insinuation that he had invested funds in an activity to the detriment of his creditors. It would not have been possible to criticise the tax authorities' conduct without introducing the two cases which were separate but linked. It had been precisely in these two cases that the cooperation between the authorities had failed. After having received new information about the financing, this information was duly introduced in the rebroadcast of the programme. The applicants maintained that the domestic courts had failed to strike a proper balance between the competing interests.

(b) The Government

33. The Government agreed that the applicants' conviction, the fines imposed on them and the obligation to pay costs and damages to K.U. constituted an interference with their right to freedom of expression under Article 10 of the Convention. The Government agreed with the applicants that the impugned measures had had a basis in Finnish law, in particular in Chapter 24, section 9, of the Penal Code. The interference had also had a legitimate aim, namely the protection of the private life of others.

34. As to whether the interference was necessary in a democratic society, the Government pointed out that the general subject-matter of the television programme in question, namely the cooperation problems between the police and the tax authorities, could be considered a matter of general public interest. There had thus been justified grounds to support the

need to encourage public discussion of the matter in general. However, the applicants had not been convicted for having alerted the public to this issue but for having indirectly alleged that K.U. was guilty of an offence, which had to be considered as defamation. A large number of persons had become aware of the programme. Even though the applicants could have been convicted of aggravated defamation for this reason, the District Court did not find their offence to be aggravated as a whole. Even though the applicants had on 28 February 2006 added to the programme that the money in question had come from an insurance company and not from K.U., the District Court found that such an addition did not make good the fact that a false insinuation had been made in the first broadcast. The applicants had ignored K.U.'s request to remove the parts concerning him, and they had continued making an indirect allegation. They had not verified the facts before the first broadcast or between the two broadcasts even though they had had a possibility to do so.

35. In the Government's view the television programme as a whole gave an impression that K.U. was possibly guilty of a crime. The message conveyed by the programme did not in any way require K.U.'s photograph to be shown or his name to be mentioned. The applicants had admitted before the Court of Appeal that K.U. had not been the subject of the programme but alleged now in their observations to the Court the contrary. The whole programme had been structured around K.U. The District Court considered that the applicants had to consider it very likely that the programme contained a false insinuation aimed at K.U. and that the applicants had thus acted with intent. The applicants had not sought judicial advice on the advisability of publishing K.U.'s name and photograph before the first broadcast or even after K.U. had contacted them after the first broadcast. Even though K.U. could be considered a public figure, that fact did not justify making a false insinuation about him. As to the penalties, the Government noted that the sanction had been modest and considerably smaller than in some other previous cases. The interference was thus not disproportionate to the legitimate aim pursued, and a fair balance had been struck between the competing interests.

2. The Court's assessment

(a) Whether there was an interference

36. The Court agrees that the applicants' conviction and the award of damages and costs constituted an interference with their 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 9, of the

Penal Code. Moreover, the interference complained of had a legitimate aim, namely the protection of the private life of others. The applicants did not dispute this.

38. The Court notes that freedom of expression is subject to the exceptions set out in Article 10 § 2 of the Convention. The Court accepts that the interference was based on Chapter 24, section 9, of the Penal Code, as in force at the relevant time. It was thus "prescribed by law" (see *Nikula v. Finland*, no. 31611/96, § 34, ECHR 2002-II; *Selistö v. Finland*, no. 56767/00, § 34, 16 November 2004; *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 43, ECHR 2004-X; and *Eerikäinen and Others v. Finland*, no. 3514/02, § 58, 10 February 2009) and it pursued the legitimate aim of protecting the private life of others, within the meaning of Article 10 § 2.

(c) Whether the interference was necessary in a democratic society

39. 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).

40. 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).

41. 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).

42. 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).

43. 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).

44. 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.).

45. 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).

46. 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).

47. 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 relevant paragraphs of the latter judgment read as follows:

> "85. The Court reiterates that, under Article 10 of the Convention, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent an interference with the freedom of expression guaranteed under that provision is necessary (see *Tammer v. Estonia*, no. 41205/98, § 60, ECHR 2001-I, and *Pedersen and Baadsgaard*, cited above, § 68).
>
> 86. However, this margin goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court (see *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 38, ECHR 2004-X, and *Flinkkilä and Others*, cited above, § 70). In exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see *Petrenco v. Moldova*, no. 20928/05, § 54, 30 March 2010; *Polanco Torres and Movilla Polanco*, cited above, § 41; and *Petrov v. Bulgaria* (dec.), no. 27103/04, 2 November 2010).
>
> 87. In cases such as the present one the Court considers that the outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher who has published the offending article or under Article 8 of the Convention by the person who was the subject of that article. Indeed, as a matter of principle these rights deserve equal respect (see *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, § 41, 23 July 2009; *Timciuc v. Romania* (dec.), no. 28999/03, § 144, 12 October 2010; and *Mosley v. the United Kingdom*, no. 48009/08, § 111, 10 May 2011; see also point 11 of the Resolution of the Parliamentary Assembly – paragraph 51 above). Accordingly, the margin of appreciation should in principle be the same in both cases.

88. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited*, cited above, §§ 150 and 155, and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 57, 12 September 2011)."

48. 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 applicants were convicted of defamation in their capacity as journalists, and that they were ordered to pay damages and costs to K.U.

50. The Court observes at the outset that the impugned television programme focused on criticising the lack of co-operation between the police and the tax authorities in two specific cases concerning economic crime. It was revealed that the tax authorities had refused the request of the National Bureau of Investigation to conduct a tax inspection into the functioning of two companies running a certain sports centre. Reference was made in that connection to K.U., a well-known Finnish businessman who, at the time, was standing trial for economic offences.

51. The Court notes that in the programme it was stated that the National Bureau of Investigation had asked the tax authorities to conduct a tax inspection into the two companies running the centre as they wanted to know whether it had been purchased using K.U.'s money. For the Court, this is a pure statement of fact having no element of insinuation. The programme was clearly aimed at disclosing a malfunctioning of the administration in two specific cases which both involved influential persons. Both of these persons, including K.U., were mentioned in the programme rather as examples but their role was not decisive. The major part of the programme focused on the tax authorities.

52. The Court notes that the facts set out in the programme in issue were not in dispute even before the domestic courts. In fact, the District Court observed that there was nothing to suggest that the information contained in the programme broadcast on 27 and 28 February 2006 had been false as

such. The Court notes that the facts in the programme were presented in an objective 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 applicants (see, in this connection, *Flinkkilä and Others v. Finland*, no. 25576/04, § 81, 6 April 2010).

53. Moreover, the Court notes that, according to the domestic courts, it was equally clear that K.U. had been, at the time the programme was broadcast, already in the limelight. In fact he was standing trial for economic crimes on the very day that the programme was first broadcast. There is no suggestion that details of the programme or the photograph of K.U. were obtained by subterfuge or other illicit means (compare *Von Hannover v. Germany*, cited above, § 68). On the contrary, the programme was based on information given by the police authorities and K.U.'s photograph was taken at a public event.

54. 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 applicants and for requiring them to pay compensation and costs to K.U. The Court must determine whether the applicants' conviction and the liability in damages and costs struck a fair balance between the public and K.U.'s interests and whether the standards applied were in conformity with the principles embodied in Article 10 (see *Nikula v. Finland*, cited above, § 44).

55. The Court considers that the general subject matter which was at the heart of the programme in question, namely the unsuccessful criminal investigation of economic crime and the unwillingness of the tax authorities to contribute to this investigation, was a matter of legitimate public interest. This is particularly so as the applicants had wanted to expose a particular problem in their programme, namely the lack of cooperation between the police and the tax authorities in connection with two particular cases. From the point of view of the general public's right to receive information about matters of public interest, and thus from the standpoint of the media, there were justified grounds for reporting the matter to the public.

56. The Court observes that the domestic courts did not, in their analysis, attach any importance to the applicants' right to freedom of expression, nor did they balance it in any considered way against K.U.'s right to reputation. It is not clear in the reasoning of the domestic courts what pressing social need in the present case justified protecting K.U.'s rights over the rights of the applicants. Nor is it clear whether, according to the domestic courts, the interference in issue was proportionate to the legitimate aim pursued.

57. As to the rebroadcast on 28 February 2006, the District Court found that the addition made to the rebroadcast did not remove the false

insinuation that K.U.'s money had ended up in sports centre business. Assessing the programme and its rebroadcast as a whole, the Court finds that, assuming that there was an insinuation in the first place, it was corrected during the rebroadcast when K.U.'s business partner provided information that the money did not come from K.U. but from an insurance company.

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The first applicant claimed EUR 1,910 and the second applicant EUR 2,330 in respect of pecuniary damage.

62. The Government noted that even though the above-mentioned sums had been imposed on the applicants by the domestic judgments, the applicants had failed to provide any proof that those sums had actually been paid by them. Accordingly, these claims should be rejected.

63. The Court finds that there is a causal link between the violation found and the pecuniary damage alleged and that, consequently, there is justification for making an award to the applicants under that head. Considering the domestic judgments as adequate proof of payment of the amounts in question, the Court awards the applicants the full sums claimed.

B. Costs and expenses

64. The applicants also claimed EUR 4,236.48 for the costs and expenses incurred before the Court.

65. The Government noted that the hourly rate used was somewhat high. In the Government's view the total amount of compensation for costs and expenses should not exceed EUR 2,700 (inclusive of value-added tax).

66. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,500 (inclusive of value-added tax) for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 1,910 (one thousand nine hundred and ten euros) in respect of the first applicant and EUR 2,330 (two thousand three hundred and thirty euros) in respect of the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President