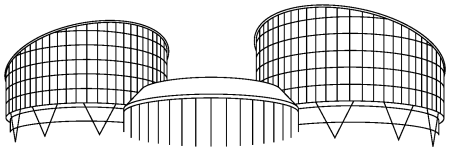

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NISKASAARI AND OTAVAMEDIA OY v. FINLAND

(Application no. 32297/10)

JUDGMENT

STRASBOURG

23 June 2015

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

In the case of Niskasaari and Otavamedia Oy v. Finland,

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

Guido Raimondi, *President,*
George Nicolaou,
Nona Tsotsoria,
Paul Mahoney,
Faris Vehabović,
Yonko Grozev, *judges,*
Mikko Puumalainen, ad hoc *judge,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 June 2015, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32297/10) 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 Mikko Veli Niskasaari, and a Finnish limited liability company Otavamedia Oy ("the applicants"), on 11 June 2010.

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

3. Ms Päivi Hirvelä, the judge elected in respect of Finland, withdrew from the case (Rule 28). Accordingly, the President of the Chamber decided to appoint Mr Mikko Puumalainen to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

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

5. On 10 February 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

7. The first applicant is a journalist for a weekly magazine, *Seura*, which is published by the applicant company.

8. On 16 March 1998 and 19 November 2001 respectively the Finnish national public service broadcasting company broadcast two TV documentaries in its MOT series which concerned mould-infested houses and the protection of forests. They were made by several reporters, including Mr M.B. who was the complainant at the origin of criminal proceedings that were subsequently brought against the first applicant ("the complainant") (see paragraph 12 below).

9. On 18, 19 and 23 March 2002 the first applicant criticised on two separate internet discussion sites, namely on the "Ylevi" site maintained by the Green League (*Vihreä liitto, Gröna förbundet*) and the "Journalism" site maintained by Tampere University, the manner in which these two documentaries had been made. He wrote, *inter alia,* that:

> "[The complainant] is a fanatic warrior of the faith for whom facts are just in the way. He has indisputably been caught at cold, intentional lying."
>
> "[The complainant] in fact claimed that the house was healthy but that one cheating company doing mould inspections had managed to find some insignificant mould spots because of which a completely unnecessary court case was initiated. ... Contrary to [the complainant's] assurances, N.N.'s former house was rotten. ... [The complainant] must have known that. He is thus lying cold-bloodedly and intentionally. ... He thus knew that [the expert] lied but he let it happen."

10. On 31 May 2002 the first applicant published a four-page article in *Seura* magazine, which is one of the biggest nationwide family magazines in Finland, on similar lines. The article had been approved by a lawyer before publication. The article included passages such as:

> "[The complainant] claimed that over 10% of the Finnish forest area was already protected and that conservationists demanded that an additional 10-15% of the forest area in Southern Finland should be preserved. These figures are fabricated....
>
> S.S. thus said in [the documentary] the complete opposite of what her research showed and what was stated in her grant application. When I interviewed [the complainant], he admitted that he had known about the grant and the 1993 research. Still he accepted S.S.'s clearly groundless testimony in the documentary."

11. On 5 July 2002 *Seura* magazine published a two-page reply in which the reporters who had made the documentaries in question replied to the first applicant's criticism. In response to this reply, the magazine published a page-long counter-reply by the first applicant.

12. On 21 September 2002 the complainant reported the matter to the police, asking them to investigate whether the first applicant was guilty of defamation when he called him a liar in his writings. By letter dated 16 October 2002 the complainant presented his claim for damages against the applicants.

13. On 15 and 17 November 2002 the applicant company and the first applicant submitted their replies to the police. On 5 December 2002 the first applicant was questioned by the police for the first time.

14. On 23 April 2004 the public prosecutor pressed charges in the Espoo District Court (*käräjäoikeus*, *tingsrätten*) against the first applicant for defamation. The complainant concurred with the charges brought by the public prosecutor. The compensation claim presented by him previously on 16 October 2002 was joined to the criminal charges. The applicants claimed that the Espoo District Court was not the appropriate court because the forum norms had changed in January 2004.

15. On 8 June 2005 the Espoo District Court found in an interlocutory decision that it was a competent court to decide the case. Even though the article in question had been written and the decision on its publication had been taken in Helsinki, the magazine had been printed and the consequences of the article had arisen in Espoo. As the internet articles concerned the same matter, the court was competent to examine them too.

16. On 26 January 2007 the Espoo District Court dismissed all charges against the first applicant and the compensation claim directed against the applicants. It found first of all that all the articles should be considered as one matter because they concerned the same topic, irrespective of whether they had been published on internet or in the magazine. Both the first applicant and the complainant had had grounds for their views and they had not said anything that was clearly untrue. The documentaries made by the complainant had provoked public discussion, but they had also provoked harsh criticism on account of the manner in which they were presented. Therefore the threshold for acceptable criticism of the complainant and of his documentaries was higher than usual. As there had been insinuations in the documentaries that some of the expert opinions had been false, the first applicant was allowed to use similar wording vis-à-vis the complainant.

17. By letter dated 26 February 2007 the complainant appealed to the Helsinki Appeal Court (*hovioikeus*, *hovrätten*). The Appeal Court held oral hearings on 16 and 17 October and on 27 October 2008.

18. On 30 January 2009 the Appeal Court convicted the first applicant of defamation and sentenced him to 40 day-fines, totalling 240 euros (EUR). He was ordered to pay EUR 2,000 plus interest in damages to the complainant. The applicant company was ordered, together with the first applicant, to pay EUR 4,000 plus interest in damages to the complainant as well as his costs and expenses of EUR 25,500, plus interest, in total. The court found first of all that the Espoo District Court had been the competent

court in the matter. As to the merits, the Appeal Court mentioned Article 10 of the Convention and the principles expressed therein as well as adverting to the Court's case-law and legal literature on Article 10. With reference to the Court's case-law, it recalled that even if everyone was guaranteed freedom of expression, it was not permitted to defame others or to disseminate false information on anybody. In this respect a journalist had the same responsibility as others. The Appeal Court then found that it had not been proved that the complainant had disseminated wrong information in the documentaries in the manner recounted by the first applicant, except for the misleading information given in the context of the reportage on mould-infested houses which the complainant had failed to rectify. It appeared also from the witness statements that different statistical information existed as far as the conserved forest area in Finland was concerned, such that it could not be said that the figures given by the complainant had been fabricated. The first applicant had thus imparted false information on the complainant and these accusations had been serious. The first applicant had not therefore had strong reasons or probable cause to hold his own accusations to be true. The fact that freedom of expression was guaranteed under Article 12 of the Constitution as well as under Article 10 of the Convention together with the fact that the complainant was also a journalist and that the first applicant had been able to give grounds for his own opinion in the media, did not entitle the first applicant to impart the above-mentioned false information. Nor did the first applicant have the right to call the complainant a liar. On these grounds the first applicant was found guilty of defamation.

19. By letter dated 31 March 2009 the applicants appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), claiming that all facts had been correct in the article published in *Seura* magazine. Moreover, during the oral hearing in the Appeal Court, the applicants had not been allowed to put questions to the opposing party's witnesses, whereas the opposing party had been able to question their witnesses. Also the evidence provided by the applicants had not been adequately taken into account by the Appeal Court and the proceedings had taken place in the wrong forum.

20. On 11 December 2009 the Supreme Court refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW

21. 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. ..."

22. Chapter 24, Article 9, paragraphs 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."

23. 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.

24. According to the government bill to amend the Tort Liability Act (HE 116/1998 vp), 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 vp, 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 6 OF THE CONVENTION

25. The applicants made a complaint under Article 6 of the Convention, alleging excessive length of the criminal proceedings brought against them.

26. Article 6 § 1 of the Convention reads in the relevant parts as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

27. On 9 August and 6 September 2012 the Court received friendly settlement declarations signed by the parties under which the applicants agreed to waive any further claims against Finland in respect of the alleged excessive length of proceedings against an undertaking by the Government to pay them 2,500 euros to cover any non-pecuniary damage as well as 1,000 euros (inclusive of value-added tax) to cover any costs and expenses, which would be free of any taxes that might be applicable. These sums would be payable within three months from the date of notification of the decision taken by the Court. In the event of failure to pay these sums within the said three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment would constitute the final resolution of the case.

28. The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of this part of the application. Accordingly, it is appropriate to strike out of the list the complaint as to the alleged excessive length of the domestic legal proceedings.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

29. The applicants complained under Article 10 of the Convention that their freedom of expression had been violated. In their submission, there had been no legitimate reason to interfere with their freedom of expression and the interference had not been necessary in a democratic society.

30. 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."

31. The Government contested that submission.

A. Admissibility

32. The Court is satisfied that this complaint raises arguable issues of fact and law under Article 10 of the Convention, so that it cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further considers that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

33. The applicants claimed that the sanctions imposed on them had not been proportionate or reasonable in relation to the criticism the first applicant had expressed in spring 2002. The first applicant had had to pay a fine of EUR 240 and the applicant company about EUR 32,000 for the complainant's legal costs and EUR 20,000 under the head of its own legal costs. The first applicant had extensive knowledge of environmental issues, whereas the complainant did not. The first applicant's criticism had concerned certain television programmes broadcast on public-service television. The targets of his criticism had thus been common and social interests which had traditionally been considered to fall within the sphere of freedom of expression. It was unlikely that anyone in Finland would deem such criticism to have been intended simply for arousing people's curiosity.

34. According to the applicants, in its judgment the Appeal Court had not addressed in any way either this issue or Article 10 § 2 of the Convention. Instead, the Appeal Court had stated that no-one was permitted to defame another or to spread false information, but no mention had been made of the necessity to be shown for any restriction on freedom of expression. In its judgment the Appeal Court had dismissed the charges against the editor-in-chief, *inter alia*, as he had had grounds to consider that the factual content of the article had been correct and he had checked the facts with an attorney familiar with environmental law. It was difficult to

see why the editor-in-chief should be judged differently to the first applicant, to whom the same criteria should have been applied.

35. The applicants also pointed out that the District Court, when dismissing the charges against the first applicant, had found that his criticism had not overstepped the limits of propriety. When doing so, the District Court had not referred at all to Article 10 of the Convention, including, in particular, the "necessity" requirement in Article 10 § 2. It had found that neither the first applicant nor the complainant had made a false statement. The complainant could himself be criticised for having used similar expressions in his programme. Moreover, both parties had had the opportunity to state their opposing views in *Seura* magazine.

(b) The Government

36. The Government acknowledged that the conviction of the first applicant and the ordering of both applicants to pay damages and costs had amounted to an interference with the exercise of their freedom of expression under Article 10 of the Convention. However, in their submission the impugned measures had had a basis in Chapter 24, section 9, of the Penal Code and in Chapter 5, section 6, of the Tort Liability Act which fulfilled both the requirements of precision and clarity. The interference had thus been "prescribed by law". In addition, it had pursued the legitimate aim of the protection of the reputation or the rights of others, as required by Article 10 § 2 of the Convention.

37. As to the necessity in a democratic society, the Government noted that the prosecutor had taken into account the socially significant role of the press and had paid attention to the question of whether the case involved disclosure of information of significance for the general interest in society. Subsequently, when the District Court had decided to dismiss the charges, the prosecutor had used his discretion and had not found it appropriate to appeal against that judgment.

38. The Government stressed that the issue at hand was a dispute between two journalists, namely two persons whose profession was to pursue critical journalism. Journalists who used strong expressions and pursued so-called investigative journalism could be expected to tolerate even severe criticism of their activities. In the present case, the national courts had weighed in the balance in their judgments different considerations going to freedom of expression and the protection of private life and had exercised the discretion available to them. It was the Appeal Court which had considered that the limits of acceptable criticism had been exceeded, holding that the first applicant had intentionally made serious accusations against the complainant and had defamed him by calling him a liar.

39. The Government observed that cases like the present one, where an individual's right directly opposes another right of another individual, have

their special features. The Government referred in this respect to the subsidiarity principle. In their view, the impugned measures could be regarded as proportionate to the legitimate aim pursued and the reasons adduced by the domestic courts had been relevant and sufficient. There was thus no violation of Article 10 of the Convention.

2. The Court's assessment

a. Whether there was an interference

40. The Court agrees that the first applicant's conviction and the award of damages and costs imposed on both applicants 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

41. The Government's position was that the impugned measures had a basis in Finnish law, namely in Chapter 24, section 9, of the Penal Code and in Chapter 5, section 6, of the Tort Liability Act, and that the interference complained of pursued a legitimate aim, namely the protection of the reputation or rights of others. The applicants did not dispute that position.

42. The Court for its part, likewise accepts that the interference, based on Chapter 24, section 9, of the Penal Code, 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*, no. 3514/02, § 58, 10 February 2009) and that it 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

43. 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". Given that the exceptions set out in Article 10 § 2 must 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).

44. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The national authorities of the Contracting States have a certain margin of appreciation in assessing whether such a need exists, but this margin 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).

45. The Court's task in exercising its supervision is not to take the place of national authorities but rather to review under Article 10 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).

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

47. 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).

48. 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, 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).

49. In *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 104-107, ECHR 2012) 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 Convention interests. The Court went on to identify a number of criteria as being relevant where the right to freedom of expression is to be 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;

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

(vi) severity of the sanction imposed.

Although this will usually represent the best manner of ensuring Convention compliance, it is not as such necessary that the national authorities, notably the courts, should make express reference to the Convention or cite this Court's case-law, provided that in substance, be it in terms of national law, they sufficiently weigh in the balance, on the basis of the relevant criteria, the two conflicting Convention interests. Where the balancing exercise between the conflicting interests attaching to privacy and media freedom has been undertaken by the domestic courts in conformity with the criteria laid down in the Court's case-law, the Court "would require strong reasons to substitute its own view for that of the domestic courts" (see, for example, *Von Hannover v. Germany (no. 2)* [GC], cited above, § 107).

50. Turning to the facts of the present case, it is to be noted that the first applicant was charged, prosecuted and convicted of defamation in his capacity as a journalist and that he was ordered, together with the applicant company, to pay damages and costs to the complainant who is also a journalist by profession.

51. The first applicant was convicted by the Appeal Court for having criticised the complainant on two separate internet discussion sites and in an article published in *Seura* magazine by calling him a liar and by accusing

him of disseminating false information and fabricating figures (see paragraph 18 above). He was convicted by the Appeal Court because it had not been found to be proved in the proceedings before that court that the complainant had disseminated wrong or misleading information in the television documentaries in question, with the consequence that the first applicant had not had strong reasons or probable cause to hold his own accusations to be true. Nor had the first applicant had the right to call the complainant a liar. On these grounds the Appeal Court found the first applicant guilty of defamation.

52. 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, among other things, examine whether the balancing exercise between the freedom of expression and the right to respect for private life, including the right to reputation, has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law.

53. The Court considers that the general subject-matter which was at the heart of the article and the internet discussions in question, namely the limits of critical and investigative journalism, was clearly a matter of legitimate public interest. The journalism criticised by the applicant related in particular to the topics of the television documentaries which concerned mould-infested houses and the protection of forests. At first instance, the District Court had found that, while the documentaries made by the complainant had provoked public discussion, they had also, on account of the manner in which they were presented, provoked harsh criticism. From the point of view of the general public's right to receive information about matters of public interest, and thus from the standpoint of the press, there were therefore justified grounds for discussing the limits of critical and investigative journalism in the public domain (see paragraph 16 above).

54. Both parties to these discussions were professional journalists who were relatively well-known to the general public. The discussions were published on two internet discussion sites, namely on the "Ylevi" site maintained by the Green League (*Vihreä liitto, Gröna förbundet*) and the "Journalism" site maintained by Tampere University. The impugned article was published in the weekly magazine *Seura*, which is one of the biggest nationwide family magazines in Finland. Moreover, it is also noteworthy that *Seura* magazine provided the reporters who had made the documentaries in question, including the complainant, with an opportunity to reply to the first applicant's criticism. In response to this reply, the magazine subsequently published a page-long counter-reply by the first applicant (see paragraph 11 above).

55. There is no suggestion that details of the article or the internet discussions were obtained by subterfuge or other illicit means (compare *Von Hannover v. Germany*, no. 59320/00, § 68, ECHR 2004-VI). On the contrary, the details were based on the two television documentaries

broadcast by the Finnish national public-service broadcasting company some years earlier and, in particular, on the manner in which these documentaries had been made.

56. As to the veracity of the information, the domestic courts drew different conclusions: at first instance the District Court found that both the first applicant and the complainant had had grounds for their views and that they had not said anything that was clearly untrue. On the other hand, the Appeal Court held that it was not proved that the complainant had disseminated wrong or misleading information in the television documentaries in question and that the first applicant did not therefore have strong reasons or probable cause to hold his own accusations to be true. It also appears from the Appeal Court judgment that, *inter alia*, different statistical information existed as far as the conserved forest area in Finland was concerned and that it could not therefore be said that the figures given by the complainant were fabricated.

57. The Court notes also the severity of the sanctions imposed on the applicants. The first applicant was convicted under criminal law and was ordered to pay 40 day-fines totalling EUR 240. He was also ordered to pay EUR 2,000 plus interest in damages to the complainant. The applicant company was ordered, together with the first applicant, to pay EUR 4,000 plus interest in damages to the complainant as well as the latter's costs and expenses of EUR 25,500, plus interest, in total. The amounts of compensation must be regarded as substantial, given that the maximum compensation afforded to victims of serious violence varies between EUR 3,000 and 5,000 (see paragraph 24 above).

58. While the Appeal Court made some limited reference to Article 10 of the Convention and to case-law and legal literature on Article 10 in its judgment (see paragraph 18 above), thereby recognising as a matter of principle the relevance of Article 10 for the domestic decision whether to convict the first applicant of defamation, it did not, as required by Article 10, proceed to a sufficient evaluation of the actual impact of the first applicant's right to freedom of expression on the outcome of the case. In particular, the Appeal Court did not balance the first applicant's right to freedom of expression (under Article 10 of the Convention), on the basis of the relevant criteria (as summarised at paragraph 49 above), in any considered way against the complainant's conflicting right to reputation (under Article 8 of the Convention). It does not emerge from the reasoning of the Appeal Court what "pressing social need" in the present case was taken to justify protecting the complainant's right to reputation over the freedom of expression of the applicants, in particular as both the first applicant and the complainant were professional journalists discussing the limits of critical journalism. Nor is it clear whether, according to the Appeal Court, the resultant interference with the applicants' freedom of expression was proportionate to the legitimate aim pursued (see paragraph 18 above).

In this connection, as has been remarked in the Court's case-law, journalists in the position of the first applicant who are disseminating information or commenting on a matter of public interest, as well as their publishers, are to be taken as enjoying a higher level of protection of their freedom of expression under Article 10 than, for example, persons expressing themselves in a private dispute (see *Jersild v. Denmark*, cited above, § 31; and *Flinkkilä and Others v. Finland*, no. 25576/04, § 73, 6 April 2010). Also of relevance in the present case for the requisite judicial balancing exercise to be carried out is the fact that the complainant, while entitled to benefit from the protection afforded to every individual's reputation by Article 8 as part of the right to respect for private life, was himself an investigative journalist involved in making TV documentaries on controversial issues for a public broadcasting company; that is to say, he was engaged in an activity very much in the public domain in a manner and in circumstances where he could himself expect to be the subject of robust scrutiny, comment and criticism regarding his professional conduct. In these two respects the judicial examination by the Appeal Court of the factors justifying the imposition of a criminal sanction on the applicants for the exercise by them of their freedom of expression cannot be said to have paid sufficient attention to the "journalistic" hue of the case.

59. 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 undertake an assessment capable of striking a fair balance between the competing interests at stake under Articles 8 and 10 of the Convention. In conclusion, in the Court's opinion the reasons relied on by the domestic courts, although relevant in so far as they went, were not sufficient to show that the interference complained of was "necessary in a democratic society".

60. There has accordingly been a violation of Article 10 of the Convention in relation to both applicants.

III. THE REMAINDER OF THE APPLICATION

61. The applicants also contended that, in violation of Article 6 § 1 and 6 § 3 (d) of the Convention, they had not been allowed to put questions to the opposing party's witnesses, whereas the opposing party had been able to question their witnesses. Also the evidence provided by the applicants had not been adequately taken into account. They further maintained that, contrary to Article 6 § 1 of the Convention, the proceedings had taken place in the wrong forum.

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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicants claimed EUR 31,942.29 in respect of pecuniary damage and the first applicant claimed EUR 5,000 in respect of non-pecuniary damage.

65. The Government considered that, should the Court find a violation of Article 10 of the Convention, the applicants should be awarded as pecuniary damages the sums paid by them. As to the non-pecuniary damage, the Government considered that the first applicant should be awarded reasonable compensation for non-pecuniary damage which in the circumstances of the present case should not exceed EUR 1,500.

66. 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. The Court therefore awards the applicants the full sum claimed. In addition, the Court considers that the first applicant must have sustained some non-pecuniary prejudice. Ruling on an equitable basis, it awards the first applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicants also claimed EUR 18,500 for the costs and expenses incurred before the domestic courts and EUR 5,000 for those incurred before the Court.

68. The Government noted that the applicants had not submitted any receipt for the payment of the amounts claimed in the domestic proceedings or for the proceedings before the Court. In the Government's view, the claims made should therefore be rejected. At any rate, in their submission the total amount of compensation should not exceed EUR 4,000 (inclusive of value-added tax) for costs and expenses incurred in the domestic proceedings and EUR 2,500 (inclusive of value-added tax).in respect of the proceedings before the Court.

69. 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 rejects the claim for costs and expenses in the domestic proceedings for lack of supporting documents and considers it reasonable to award the sum of EUR 3,000 (inclusive of value-added tax) for the proceedings before the Court.

C. Default interest

70. 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. *Decides* to strike the complaint concerning the alleged excessive length of the proceedings out of its list of cases in accordance with Article 39 of the Convention;

2. *Declares* the complaint concerning Article 10 of the Convention admissible and the remainder of the application inadmissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 31,942.29 (thirty-one thousand nine hundred and forty-two euros and twenty-nine cents), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, to the first applicant in respect of non-pecuniary damage;
      (iii) EUR 3,000 (three thousand 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;

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

Done in English, and notified in writing on 23 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Guido Raimondi
Deputy Registrar	President