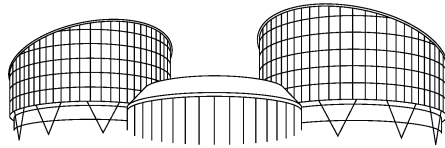

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TRAUSTASON AND OTHERS v. ICELAND

(Application no. 44081/13)

JUDGMENT

STRASBOURG

4 May 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Traustason and Others v. Iceland,

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

Linos-Alexandre Sicilianos, *President,*
Ledi Bianku,
Aleš Pejchal,
Robert Spano,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 4 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 44081/13) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Icelandic nationals, Mr Reynir Traustason (the first applicant), Mr Jón Trausti Reynisson (the second applicant) and Mr Ingi Freyr Vilhjálmsson (the third applicant), on 6 June 2013.

2. The applicants were represented by Mr Einar Gautur Steingrímsson, a lawyer practising in Reykjavík. The Icelandic Government ("the Government") were represented by their Agent, Ms Ragnhildur Hjaltadóttir, Permanent Secretary of the Ministry of the Interior.

3. The applicants complained, under Article 10 of the Convention, that the District Court judgment of 5 March 2012 and the Supreme Court's judgment of 15 November 2012 entailed a violation of their right to freedom of expression under Article 10 of the Convention.

4. On 20 November 2015 the application was communicated to the Government. On 1 April 2016 the Government submitted their observations.

5. On 30 June 2016, the applicants submitted observations in reply and a claim for just satisfaction. The applicants' submissions were made outside the time-limit granted by the Court and no extension was requested before the allotted period expired. Therefore, pursuant to Rule 38 § 1 of the Rules of Court and § 20 of the Court´s Practice Direction on Written pleadings, the President of the Section decided that the applicants' submissions should not be included in the case file for the consideration of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1953 and lives in Mosfellsbær, the second applicant was born in 1980 and lives in Reykjavík and the third applicant was born in 1980 and lives in Seltjarnarnes. At the material time the first and second applicants were on the editorial board of the newspaper *DV* and the third applicant was a journalist for *DV*.

7. On 30 September 2010, an Icelandic private limited company, (hereafter "the company"), was declared bankrupt. The company was established in 1960 and is one of the leading industrial companies in Iceland in the production of plastic packaging material**.**

8. In October 2010 the liquidator of the bankruptcy estate hired an accountancy firm to investigate the company's accounts.

9. On 31 January 2011 the accountancy firm finalised a report indicating a suspicion of criminal misconduct by the board members. The chairman of the board, A, who was also one of the owners of the company, was an assistant professor at the University of Iceland at the time.

10. The liquidator reported the suspected criminal misconduct to the police. A holding company and a bank also reported the company and A to the police.

11. On 14 March 2011 *DV* published a picture of A on its front page under the headline "Black report on [the company]: Police investigate Assistant Professor". An article on the matter was printed on pages 2 and 3. The third applicant was identified as its author. The headline of the article read "Assistant professor entangled in police investigation" and another picture of A appeared beside the headline. The article was based on information from the accountancy firm's report. It is not known how the applicants knew about the report and its contents. The article discussed *inter alia* A, who was a board member and one of three owners of the company and the former supervisor of the MBA programme and assistant professor of business studies at the University of Iceland. The article described the company´s situation with reference to the accountancy firm´s report. It stated that the report had concluded the company had paid for the A´s expenditures, which were unlikely to be connected to the company´s operations. The report had also indicated that A and one of his co-owners had known about the grave financial situation of the company long before it had been declared bankrupt in 2010. The report had concluded that the company´s assets had been partly expended when it was clear that it was insolvent. These assets had in fact been transferred to another company, owned by the A´s co-owner.When the company was declared bankrupt on 30 September 2010 the company owed approximately 1,100,000,000 ISK

(approx. 7,150,000 euros at the time) to a large bank in Iceland. The amount had increased significantly after the financial crisis in 2008.

12. On 16 March 2011 A's lawyer received an email from a police prosecutor confirming that the liquidator's complaint had been received and was being "examined" and that two other complaints received by the police were also under consideration. He stated that no formal decision had been taken to instigate a police investigation. A's lawyer sent this email to the first applicant and requested correction of the impugned statements. The first applicant refused his request.

13. On 28 April 2011 A lodged defamation proceedings against the applicants and *DV* before the Reykjavík District Court and requested that the statements published by *DV,* "Police investigate Assistant Professor" and "Assistant Professor entangled in police investigation", be declared null and void and that the applicants be ordered to pay compensation, including expenses for publishing the final judgment.

14. The applicants and A were heard and the email of 16 March 2011 from the police prosecutor to A's lawyer was submitted as evidence.

15. By a judgment of 5 March 2012 the District Court found that both disputed statements had been defamatory and ordered the applicants to pay 200,000 Icelandic *Krónur* (ISK) (approximately 1,600 euros (EUR)) to A in compensation for non-pecuniary damage, plus interest, ISK 200,000 for the cost of publishing the judgment and ISK 500,000 (approximately 4,200 EUR) for A's legal costs before the District Court. The statements were declared null and void.

16. The judgment contained the following reasons:

> "... According to Article 73(1) of the Constitution everybody has the right to freedom of opinion and belief. However, Article 73(3) of the Constitution allows certain restrictions on the freedom of expression. It states that freedom of expression may only be restricted by law in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others, if such restrictions are deemed necessary and in agreement with democratic traditions. In Chapter XXV of the Penal Code, freedom of expression is restricted in the interest of the rights and reputation of others. When deciding the limits of freedom of expression, the possibility of a public debate has to be guaranteed.
>
> [The applicants] claim that the statements are true and refer to the principle that they cannot be held liable for true statements. It is undisputed that, before the newspaper coverage, [the police] had been informed by the liquidator of a reasonable suspicion of criminal acts by the company's board members, of which A was one. It is also clear that the information given by the liquidator was based on [the accountancy firm's] report of 31 January 2011. An email of 16 March 2011 from [the prosecutor] to [A's] lawyer stated that the liquidator's report was being "examined" ["*til skoðunar"*]. Furthermore, it was stated that two other entities [had reported, *inter alia,* A] to the police and that those reports "were also being considered" [*litið til framangreindra kæra*]. However, it is stated that no formal decision has been taken about a police investigation nor possible criminal acts defined.

[The applicants] base their defence on the fact that nothing in their statements, which [A] wants declared null and void, indicates that a formal decision had been taken to start [a police] investigation and that the wording of the statements should not be interpreted more widely than its general meaning indicates. Here it has to be taken into account that in general the media are required to base coverage on thorough research of the facts. Taking this into account, and having regard to [the absence of a formal decision by the police to investigate] [the company] and its board members, including [A], the court cannot accept [the applicant's] arguments. No police investigation had been instigated against [A], thus the statements *"Police investigate Assistant Professor"* and *"Assistant professor entangled in police investigation"* were factually wrong, but both statements did in fact have the same meaning. It was not unreasonably difficult to verify whether such an investigation had in fact been opened. The wording of the statements was of such a nature as to make the reader believe that [A] was a suspect in a police investigation because of his criminal and punishable acts. This damaged [A's] reputation. Therefore, the court has to agree with [A] that [the applicants] violated Article 235 of the Penal Code No 19/1940 (*Almenn Hegningarlög*) by publishing the aforementioned statements. In the light of the aforesaid, and with reference to Article 241(1) of the Penal Code, [A's] request to declare the statements null and void is granted. However, there is no reason to impose punishment; therefore [A's] request that [the applicants] be punished is rejected ..."

17. On 8 May 2012 the applicants appealed to the Supreme Court against the District Court's judgment.

18. By judgment of 6 December 2012 the Supreme Court confirmed the District Court's judgment and ordered the applicants to pay, in addition, ISK 500,000 for A's legal costs before the Supreme Court.

19. As to the reasoning, the Supreme Court stated:

"... The aforementioned email from [the police prosecutor] can only be understood as meaning that no investigation had been instigated on account of the three reports [to the police] which are referred to in the email. There is nothing to indicate that such an investigation was initiated later and it will not be held against [A] that he did not provide confirmation of that during the proceedings as requested by [the applicants].

With these comments, [and] with reference to the District Court's reasoning, the Supreme Court confirms the District Court's decision on declaring the statements null and void and confirms the publication of the judgment in the next issue of *DV* and the next online edition of *DV* after the delivery of this judgment. The annulled statements were wrong and defamatory for [A]. When examining the coverage and the publication of pictures of [the company] and its representatives in the printed issue of *DV* and in the online edition of *[DV]*, [A's] reputation was attacked, at a time when there were no grounds for it ..."

20. By letter of 31 May 2013 the Special Prosecutor notified another company representative that "the investigation" into the complaints against him and A had been closed and the case had been dismissed.

II. RELEVANT DOMESTIC LAW

21. The relevant provisions of the Icelandic Constitution (Stjórnarskrá lýðveldisins Íslands), the Penal Code (Almenn Hegningarlög) and the Tort

Liability Act (Skaðabótalög) are set out in the case of *Erla Hlynsdottir v. Iceland (no. 3)*, no. 54145/10, § 18 to 22, 2 June 2015.

22. The Printing Act No. 57/1956 (Lög um prentrétt), Chapter V, on the liability for the content of publications, contains the following relevant provisions.

Section 13

"Any person who publishes, distributes, or is involved in the publishing or distribution of any publication other than a newspaper or periodical shall bear criminal liability and liability for damages pursuant to the general rules of law if the substance of the publication violates the law."

Section 15

"As regards liability for newspapers or magazines other than those listed in section 14, the following rules shall apply:

The author is subject to criminal liability and liability for damages if he or she is identified and either resident in Iceland when the publication is published or within Icelandic jurisdiction at the time proceedings are initiated.

If no such author is identified, the publisher or editor are liable, thereafter the party selling or distributing the publication, and finally the party responsible for its printing and lettering."

23. Section 52 of the Act on Criminal Procedure No. 88/2008 (*Lög um meðferð sakamála*) reads:

"The investigation of criminal cases is handled by the police, under the direction of the National Prosecuting Authority or a police commissioner, unless other arrangements are specified in law.

Whenever necessary, the police shall initiate an investigation on the basis of an awareness or suspicion that a criminal offence has been committed, whether or not they have received a complaint. Furthermore, the police shall investigate deaths, disappearances, fires, accidents and other untoward events even if there is no suspicion of criminal activity. The Director of Public Prosecutions may order the police to commence an investigation (*cf.* the third paragraph of Section 21)

Complaints concerning criminal offences or requests for investigations shall be made to the police or to a prosecutor. Where the conduct involved is only punishable if the injured party demands the institution of criminal proceedings, an investigation shall only be initiated at the injured party's demand. Section 144 applies, as appropriate, to other aspects of charges.

The police shall dismiss charges regarding criminal offence if there is not sufficient reason to commence investigations into them. Where an investigation has commenced, the police may also drop it if there are no grounds for continuing it, for example if it comes to light that there was no reasoned basis for the charge or if the offence is minor and it can be foreseen that the investigation will involve disproportionately great effort and expense. There shall be no obligation to give the party concerned the opportunity of expressing himself or herself before such a decision is taken.

When a charge is dismissed or an investigation is dropped as provided for in the fourth paragraph, the police are obliged to inform the person submitting the complaint if he or she has interests at stake. He or she shall also be informed that an appeal against the decision may be lodged with the Director of Public Prosecutions under the sixth paragraph.

A person with interests at stake may appeal to the Director of Public Prosecutions against a decision taken by the police under the fourth paragraph within one month of being informed of it or becoming aware of it in another manner. The Director of Public Prosecutions shall adopt a position on the appeal within three months of receiving it. The Director of Public Prosecutions may also decide, on his or her own initiative, that a charge is to be dismissed, or an investigation dropped, providing that any one of the conditions in the fourth paragraph applies. There shall be no obligation to give the party concerned the opportunity of expressing himself or herself before such a decision is taken; however, the person submitting the complaint shall be informed of the decision as described in the fifth paragraph.

The police shall be obliged to state briefly the reasons for their decisions under the fourth paragraph if this is requested."

24. Section 84 of the Act on Bankruptcy No. 21/1991 (*Lög um gjaldþrotaskipti o.fl.*) read:

"If the liquidator in bankruptcy becomes aware of any facts in the course of his functions which he deems indicate that the bankrupt or others may be guilty of punishable conduct, he shall notify this to the Office of a Special Prosecutor. The liquidator shall not be required to search for such indications beyond what is necessary for the gathering of information for the purposes of his own work."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicants complained that the domestic courts' judgments had entailed an interference with their right to freedom of expression that was not necessary in a democratic society and thus violated 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."

26. The Government contested that argument.

A. Admissibility

27. 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

28. The applicants submitted that the domestic courts had convicted them of defamation on account of a narrow legal interpretation of the words "investigation" (*rannsókn*) and "examine" (*skoðun*) which was out of line with their general meaning in the Icelandic language. The definitions of the words in the Icelandic dictionary were similar.

29. In the applicants' view the domestic courts could not require journalists, when writing about complaints received by the police, to know the different legal meaning of the words "investigate" and "examine" instead of their everyday meaning.

30. The applicants also pointed out that, although the word "investigation" had a special legal meaning according to the Act on Criminal Procedure, the prosecution did not make a clear distinction as to when a complaint in a case went from being "examined" to being "investigated".

31. Moreover, the media coverage in question had contributed to a public debate on the financial situation and suspected criminal activity of the company. Prior to the coverage, the company's representatives had appeared in the media and explained its financial difficulties. The *DV* coverage was therefore of public concern and part of a discussion that had been ongoing in the media. In addition the applicants stated that, when deciding the case, the domestic courts had not taken into account the content of the article in the context of the Icelandic financial crisis when considering what kind of media coverage was of public concern.

32. The applicant also referred to section 52 of the Act on Criminal Procedure and section 84 of the Act on Bankruptcy which, in the applicants' opinion, clearly obliged the police to investigate complaints from a liquidator of bankruptcy that included a suspicion of major criminal misconduct.

(b) The Government

33. In the Government's opinion, the impugned restrictions on the applicants' exercise of freedom of expression had corresponded to a pressing social need, had been justified by relevant and sufficient reasons, namely the reputation and rights of A, and the measures taken had been proportionate to the legitimate aim pursued.

34. The Government maintained that the disputed statements had been statements of fact which the applicants had failed to present in a balanced manner. The statements had been based on factual errors, which could easily have been verified. The applicants had not tried to verify the information by contacting A by various other means available to them. After the information was published, A had presented them with an email from a police prosecutor stating that no investigation had been instigated. The applicants had not published any retraction or correction in the paper. In this respect the Government referred to the cases of *Ruokanen and Others v. Finland*, no. 45130/06, 6 April 2010 and *Rusu v. Romania*, no. 25721/04, 8 March 2016.

35. The Government claimed that the term "police investigation" had a clear and definite meaning in legal and general terms. In order to provide the general public with accurate and reliable information in accordance with the tenets of responsible journalism it was essential to use legal terms correctly in news coverage. Anything else could be misleading and, as in the current case, factually wrong. The applicants were an experienced journalist and two editors, who should have been fully aware of the importance of using correct legal terms about police investigations or complaints sent to the police.

36. Finally, the Government claimed that the statements had not contributed to public debate on social issues. Even though the financial crash had been an important social matter, a vast number of companies, private entities and individuals had encountered financial difficulties as a result and they should not endure public scrutiny just because these had been related to the financial crash. Furthermore, A was not a public person or well-known in Icelandic society.

2. *The Court's assessment*

(a) Whether there was an interference

37. It is common ground between the parties that the impugned judgments constituted "interference by [a] public authority" with the applicants' right to freedom of expression as guaranteed under the first paragraph of Article 10.

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

38. Furthermore, it is not in dispute that the impugned measures had a basis in Articles 235 and 241 of the Penal Code, Section 15(3) of the Printing Act and Section 26 (1) of the Tort Liability Act and had a legitimate aim, namely the protection of the reputation and rights of A.

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

(i) General principles

39. The principles concerning the question of whether an interference with freedom of expression is "necessary in a democratic society" are well-established in the Court's case-law (see, among other authorities, *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 131 and 132, ECHR 2015, with further references).

40. Moreover, having been required on numerous occasions to consider disputes requiring an examination of the fair balance to be struck between the right to respect for private life under Article 8 of the Convention and the right to freedom of expression, the Court has developed abundant case-law in this area (see, among other authorities, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 83 to 93, ECHR 2015 (extracts)).

41. It will be recalled that in order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and its manner must cause prejudice to personal enjoyment of the right to respect for private life. The criteria which are relevant when balancing the right to freedom of expression against the right to respect for private life are: the contribution to a debate of general interest; how well known is the person concerned and what is the subject of the report; his or her prior conduct; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and the severity of the sanction imposed (see, for example, *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 83 and 89 to 95, 7 February 2012 and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 108 to 113, ECHR 2012).

(ii) Application of those principles to the present case

42. In the present case the Court considers it appropriate to examine the abovementioned principles in the following order; the method of obtaining the information and its veracity; the content, form and consequences of the publication; the contribution to the debate of general interest; how well known is the person concerned, the subject matter of the report and the prior conduct of the person concerned; and the severity of the sanctions imposed.

(α) Method of obtaining the information and its veracity

43. The crux of the matter before the domestic courts was whether the police had been "investigating" or "examining" the report received from the liquidator, subsequent to the suspicion of criminal conduct expressed in the report of 31 January 2011 by the accountancy firm. The domestic courts thus made a clear distinction between the Icelandic words "*rannsókn*" and "*til skoðunar*" which, it is not disputed, have the same meaning as "investigation" and "to examine" in English.

44. The District Court, in its judgment of 5 March 2012, stated that it was undisputed that, before the newspaper coverage, the police had been informed by the liquidator of a reasonable suspicion of criminal acts by the company's board members, of whom A was one, and that the information given by the liquidator was based on the accountancy firm's report of 31 January 2011. However, referring to the email of 16 March 2011 from a police prosecutor to A's lawyer confirming that the liquidator's complaint had been received and was being "examined", that two other complaints received by the police were also under consideration, and that no formal decision had been taken to instigate a police "investigation", the District Court concluded that the statements *"Police investigate Assistant Professor"* and *"Assistant professor entangled in police investigation"* were factually wrong. It added that the media are generally expected to build their discussions on a thorough examination of the facts and that it would not have been unreasonably difficult for the applicants to verify whether an investigation had in fact been opened. The Supreme Court upheld this finding.

45. The Court agrees that there were no special grounds to dispense the media from their ordinary obligation to verify factual statements that are or may be defamatory of private individuals. It will consider the impugned article as a whole, having particular regard to the words used in the disputed parts of the article and the context in which it was published, as well as the manner in which it was prepared. The Court must examine whether the applicants acted in good faith and made sure that the article was written in compliance with ordinary journalistic obligations to verify factual allegations. This obligation requires the journalist to rely on a sufficiently accurate and reliable factual basis which can be considered proportionate to the nature and degree of their allegation, given that the more serious the allegation, the more solid the factual basis has to be (see, *inter alia, Björk Eiðsdóttir v. Iceland*, no. 46443/09, § 71, 10 July 2012).

46. The Court notes that the applicants did not request confirmation by the police or the prosecution of whether the report by the liquidator was being examined or investigated before publishing the disputed article on 14 March 2011, nor did they correct the impugned statements at the request of A's lawyer, after having received a copy of the above-mentioned email of 16 March 2011.

47. The applicants submitted, however, that they merely used the everyday meaning of "investigation" and that it cannot be required that journalists, when writing about complaints received by the police, know the different legal meaning of the words "investigate" and "examine". They pointed out that although the word "investigation" had a special legal meaning according to the Act on Criminal Procedure, the prosecution did not make a clear distinction as to when a complaint in a case went from being "examined" to being "investigated".

48. As the Court has previously found, a journalist cannot be required in a publication disseminated to a general audience fully to reflect the conceptual and practical details of law enforcement or judicial proceedings (see, *Ormanni v Italy*, no. 30278/04, § 69, 17 July 2007). It follows that the Court does not accept that the applicants could have been required under Article 10 § 2 of the Convention to distinguish between "investigating" and "examining" the case in question or provide specific technical details of the police proceedings to which they referred, at least to the extent that the terms used did not have a direct bearing on the reader's understanding of the subject matter to the detriment of A (see paragraph 43 above). Moreover, the Court observes that it appears from the notification of 31 May 2013 from the Special Prosecutor that at some point in time the complaints against A changed from being "examined" to being "investigated" and ultimately to being "closed" (see paragraph 20 above), without the notification stating when a decision had been made on moving the case from the stage of "examination" to its "investigation" stage.

49. Lastly, and importantly, prior to the publication of the article, the applicants were aware of the accountancy firm's report of 31 January 2011 indicating a suspicion of criminal misconduct by the board members. They were also aware of the liquidator reporting this to the police (see section 84 of the Act of Bankruptcy in paragraph 24 above). The Court notes, however, that they were not, and could not have been, aware of the official email from a police prosecutor, confirming that the complaints were being "examined" (see paragraph 11 above), which was not sent nor forwarded to the applicants until two days after publication. It is therefore clear that the article had a sufficiently accurate and reliable factual basis. The Court thus considers that the Government have not demonstrated that the applicants acted in bad faith or neglected to make sure that the article was written in compliance with ordinary journalistic obligations to verify factual allegations.

(β) Content, form and consequences of the impugned article

50. As to the content (that is the manner in which the person concerned is represented in a photo or report (see *Axel Springer AG v. Germany*, § 94, cited above)), the domestic courts found that the impugned statements implied, for the readers, that A was a suspect in a criminal investigation

because of his criminal and punishable conduct. The Court therefore does not call into question the Government's submission that the article prejudiced A's reputation in a manner that engaged Article 8 of the Convention.

51. Referring to its finding above, that in the circumstances of the present case the applicants could not be required to distinguish between "investigating" or "examining", the Court considers that the content of the article was limited to revealing to the reader that the police had been informed by the liquidator of a reasonable suspicion of criminal acts by the company's board members, of which A was one; that the information given by the liquidator was based on the accountancy firm's report of 31 January 2011; and that the report was under consideration. Importantly, the article did not state that A was being charged, indicted, on trial, guilty or convicted of a crime. Therefore, the content of the article, viewed as a whole and in context, did not go further than portray the nature and scope of the factual information upon which the applicants based their reporting.

(γ) Contribution to a debate of general interest

52. The domestic courts stated that when deciding the limits of freedom of expression the possibility of a public debate had to be guaranteed. It is not clear whether the domestic courts reached a conclusion in this respect, but it has not been disputed that, prior to the publication of the impugned newspaper article, the company's representatives had discussed the reasons for its financial difficulties on more than one occasion in the media. The Court therefore considers that the general subject matter of the article, the suspicion of criminal misconduct by the company's board members, was a matter of legitimate public interest, also bearing in mind that it could have justifiably been seen within the larger context of the financial crisis in Iceland.

(δ) How well known is the person concerned and the subject matter of the report and A´s prior conduct to the publication of the impugned articles

53. The domestic courts did not specifically address whether A was well known, nor his prior conduct. The Government maintained that A did not engage in politics or hold any public office. Furthermore, he was not a public person or well-known in Iceland. The Court considers that A's status must be assessed in the context of considering the legitimate public interest nature of the article published by the applicants (see paragraph 52 above). In this regard the Court notes that A was an assistant professor of business studies, i.e. a university level teacher in the field, as well as chairman of the board and one of the owners of a leading industrial firm. Furthermore, the subject matter of the liquidator's report on which the article was based was the suspicion of criminal misconduct by the company's board, of which A was a member. Therefore, the Court cannot accept the Government's

argument that A was fully entitled to the same level of protection as a private person wholly unknown to the public taking account of his professional position together with the subject matter of the article and his links with the issues raised (see *Axel Springer AG v. Germany*, § 91, cited above).

(ε) Severity of the sanction imposed

54. The Court notes that the defamation proceedings brought by A against the applicants ended in an order by the domestic courts declaring the statements null and void and requiring the applicants to pay to A ISK 200,000 in compensation for non-pecuniary damage under the Tort Liability Act, plus interest, ISK 200,000 for the publication of the judgments in two newspapers and ISK 1,000,000 for A's legal costs before the domestic courts. Although the compensation was not a criminal sanction, and the amount may not appear harsh, the Court reiterates that in the context of assessing proportionality, irrespective of whether or not the sanction imposed was a minor one, what matters is the very fact of judgment being made against the persons concerned, even where such a ruling is solely civil in nature. Any undue restriction on freedom of expression effectively entails a risk of obstructing or paralysing future media coverage of similar questions (see, for example, *Couderc and Hachette Filipacchi Associés v. France,* cited above, § 151).

(ζ) Conclusion

55. In the light of the above-mentioned considerations, the Court finds that the domestic courts failed to take the relevant criteria under the Court's case-law into account when balancing the applicants' right to freedom of expression against A's right to reputation both in relation to the publication of the article on 14 March 2011 as well as the asserted failure of the applicant to correct the article after 16 March 2011. Notably, it is not clear from the reasoning of the domestic courts what pressing social need in the present case justified protecting A's rights over the rights of the applicants or whether the interference in issue was proportionate to the legitimate aim pursued (see, *Ristamäki and Korvola v. Finland*, no. 66456/09, § 56, 29 October 2013) also taking account of the judgment rendered against the applicants in defamation proceedings.

56. In these circumstances, the Court cannot but conclude that the domestic courts failed to strike a reasonable balance of proportionality between the measures restricting the applicants' right to freedom of expression, imposed by them, and the legitimate aim pursued.

57. The Court therefore finds that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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.”

59. Rule 60 of the Rules of Court states:

> “1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
>
> 2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant’s observations on the merits unless the President of the Chamber directs otherwise.
>
> 3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.
>
> ...”

60. The applicants submitted their claims for just satisfaction outside the assigned time-limit without requesting an extension of time before the allotted time period expired (see paragraph 5 above). The Court considers that there is no call to award them any sum on that account.

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;

Done in English, and notified in writing on 4 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Koskelo is annexed to this judgment.

L.A.S
A.C

CONCURRING OPINION OF JUDGE KOSKELO

1. I have voted with my colleagues in favour of finding a violation of Article 10 in this case, and while agreeing broadly with the reasons given in the judgment I would nevertheless like to add the following remarks.

2. The present case is a good illustration of the particular importance of the quality of the domestic proceedings and decisions in situations of this kind, where the underlying issue involves the opposing Convention rights of two or more individuals. Only at the domestic level do the proceedings involve both of the parties whose opposing rights are at stake. Therefore, full procedural fairness and equality of arms between those parties can only be secured at the domestic level. In proceedings before this Court the configuration is not comparable, as one of the original parties to the dispute is absent and the complaint made by the other party is considered without any input from his opponent at the domestic level. While the Government, as respondents before this Court, are able to defend the domestic decisions, it is not their role to represent the other private party whose rights were also at issue in the underlying domestic proceedings, nor are they in a position to do so. The proper balancing of the opposing individual rights thus depends fundamentally on the quality of those domestic proceedings and decisions, with this Court's role being limited to a review of the domestic decisions as they stand, on the basis of the complaints and observations submitted in the present procedure. Any shortcomings in the proceedings before the domestic courts may prevent this Court from having the full picture before it and/or from considering all the aspects of the underlying domestic case, even where they might otherwise have been relevant to the analysis under the Convention.

3. In the present case the domestic proceedings arose from a compensation claim filed by A against the applicants on the grounds that the latter had given front-page coverage to a criminal complaint that had been submitted to the police involving A. He had been identified both by name and in pictures, in print as well as online.

4. In these types of situations, the balance to be struck between the competing rights, namely freedom of expression as protected under Article 10 on the one hand and the right of the individual concerned to the protection of his reputation as recognised under Article 8 on the other hand, depends on a whole range of circumstances and considerations, as developed and elaborated upon in the Court's case-law. Although the general principles that should guide the assessment are well established, it is both clear and inevitable that the outcomes will largely depend not only on the factual circumstances of each case but on how those circumstances have been dealt with in the domestic proceedings. This in turn depends both on how the circumstances have been presented, proven and argued at the domestic level and on how they have been addressed and considered by the

domestic courts. The quality of the domestic proceedings is not just important, it may be decisive for the outcome, including the outcome of the review undertaken by this Court.

5. When an individual, as a result of references that identify him or her personally, is "outed" by the media before the public as being suspected of serious criminal conduct, it is not a trivial matter. In such a delicate context, several elements must, in line with the Court's case-law, be taken into account when considering whether and to what extent the right to freedom of expression outweighs the right of the individual to benefit, in addition to the protections to which he or she is entitled *vis-à-vis* the State authorities under Article 6, from some measure of fair treatment in the media and before the general public.

6. When the media engage in crime reporting and identify individuals in the process, in particular during ongoing proceedings, they can and must be expected to live up to certain standards of professionalism not only with regard to the factual basis of the reporting but also with regard to the basic legal aspects of criminal proceedings, such as the key distinctions between the different stages of such proceedings and their bearing on the position of the person or persons who are the subject of the reporting. In my opinion, it is not asking too much to require that professional journalists in this field should know, and make known, matters such as the difference between someone having been reported to the police on the grounds of a suspicion of criminal conduct, and someone being the subject of an investigation opened by the police on the grounds of such a suspicion. In particular, it is not asking too much to require that any significant mistakes or inaccuracies in such (or similar) respects concerning an individual who has been publicly identified as a suspect should be subsequently corrected, at least on request.

7. Moreover, I would regard it as a basic requirement for professional journalism that if and when freedom of expression is exercised by identifying an individual in a context such as the present one, he or she should be offered a real and fair opportunity to respond to and comment on the report either in the same context or at least shortly afterwards. Another relevant element is whether and how the initial reporting is followed up as the proceedings progress and reach their formal conclusion.

8. Turning to the present case, the domestic courts' decisions were focused on the question whether the impugned statements could be considered factually correct, given that no formal investigation by the police had been opened at the time. According to the domestic courts, the published statements had been wrong and defamatory as A's reputation had been attacked at a time when there were no grounds for it.

9. I can agree with the majority that in the context of the impugned statements, the mere choice of words, that is, the failure to make a formal distinction between the police having "examined" rather than officially "investigated" the suspicion that had been reported to it, should not in itself

be viewed as decisive, especially with regard to the general connotation of the wording used (see paragraph 51 of the judgment). I can also agree with the finding that given A's position as a university-level teacher in business studies, the fact that the accountants engaged by the bankruptcy liquidator had produced a report raising suspicions of criminal wrongdoing relating to company assets on the part of the management of which A was a member, and that such a report had been submitted to the police, raised an issue of public interest of a kind that could justify his being identified to the public at that stage of the proceedings, in particular in the wider context of media coverage dealing with the aftermath of the financial crisis in the country (see paragraph 53 together with paragraph 52 of the judgment).

10. I am, however, left with some doubts regarding certain other aspects of A's treatment by the applicants in their article. It transpires from the Government's submissions that the applicants had not made any serious attempt to reach A for comment in advance of publication. In such circumstances – as it is hard to see any justification for not providing a person identified as a "suspect" with a fair chance to respond – it is all the more significant what follow-up was given to the initial article. In this regard, we are faced with some unaddressed questions that would, at least for me, have been relevant considerations, such as whether or not A was offered a subsequent opportunity to comment and give the public his version of the events, and whether or not the applicants continued to cover the matter to the point of also reporting to the public, at a later stage, that the police investigation had been closed without any charges being brought against A (see paragraph 20 of the present judgment).

11. As matters stand, it is not known to us whether such factual elements were even raised before the domestic courts, or whether the domestic courts failed to address them, either way, in conducting their own balancing exercise.

12. In this regard it is worth noting, as far as the Convention case-law is concerned, that in the case of *Ormanni v. Italy* (no. 30278/04, 17 July 2007, cited in paragraph 48 of the present judgment), while the plaintiff in the underlying domestic proceedings had not even at the outset been targeted in the impugned article in a similarly spectacular manner as in the present case, the Court, in finding no violation of Article 10, gave weight to the fact that his version of the subject-matter had been made public separately, in the wake of the original story. Thus, in addition to publication itself, the follow-up may be of importance when assessing whether the treatment in the media of an individual whose conduct has been the subject of publicised suspicions has remained within the boundaries dictated by the protection of the latter's reputation under Article 8.

13. The present case is, however, framed before us in narrower terms. Given the factual elements relied upon, the submissions made and the considerations set forth in the domestic decisions, I concur with the majority

in finding that the reasons given by the domestic courts were not sufficient to justify the interference with the applicants' rights under Article 10.