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

FIRST SECTION

CASE OF TAMMER v. ESTONIA

(Application no. 41205/98)

JUDGMENT

STRASBOURG

6 February 2001

FINAL

04/04/2001

In the case of Tammer v. Estonia,

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

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr L. FERRARI BRAVO,
Mr GAUKUR JÖRUNDSSON,
Mr C. BÎRSAN,
Mr J. CASADEVALL, *judges*,
Mr U. LÕHMUS, ad hoc *judge*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 16 January 2001,

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

PROCEDURE

1. The case originated in an application (no. 41205/98) against the Republic of Estonia lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Enno Tammer ("the applicant"), on 19 February 1998.

2. The applicant was represented by Mr I. Gräzin, Dean of the Law Faculty at University Nord in Tallinn, Estonia. The Estonian Government ("the Government") were represented by their Agents, Mr E. Harremoes, Special Adviser of the Permanent Representation of Estonia to the Council of Europe, and Ms M. Hion, First Secretary of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs.

3. The applicant alleged a violation of Article 10 of the Convention in connection with his conviction for remarks he made in a newspaper interview.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr R. Maruste, the judge elected in respect of Estonia, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr U. Lõhmus to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 19 October 1999 the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry.].

7. The Government, but not the applicant, filed written observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. At the material time the applicant was a journalist and editor of the Estonian daily newspaper *Postimees*.

9. The applicant's complaint under Article 10 of the Convention relates to his conviction by the Estonian courts of insulting Ms Vilja Laanaru in an interview he had conducted with another journalist, Mr Ülo Russak, which was published in *Postimees* on 3 April 1996. The interview was entitled "Ülo Russak denies theft" and was prompted by an allegation made by Ms Laanaru that Mr Russak, who had helped her to write her memoirs, had published them without her consent. The interview had the following background.

10. Ms Laanaru is married to the Estonian politician Edgar Savisaar. In 1990, when Mr Savisaar was still married to his first wife, he became Prime Minister of Estonia. Ms Laanaru, who had already been working for him, became his assistant. She continued to work with him during the following years and in 1995, when Mr Savisaar held the post of Minister of the Interior, she was one of his counsellors.

11. Ms Laanaru had been politically active in the Centre Party (*Keskerakond*) led by Mr Savisaar and was an editor of the party's paper.

12. In or around 1989 Ms Laanaru gave birth to a child by Mr Savisaar. As she was unwilling to place her child in a kindergarten, the child was entrusted to her parents.

13. On 10 October 1995 Mr Savisaar was forced to resign as Minister of the Interior following the discovery of secret tape recordings of his conversations with other Estonian politicians. On the same day Ms Laanaru issued a statement in which she claimed full responsibility for the secret recordings.

14. Ms Laanaru then left her post in the Ministry of the Interior and began writing her memoirs with the help of a journalist, Mr Russak.

15. In her memoirs, as recounted to Mr Russak, Ms Laanaru recalled her experiences in politics and the government. In considering the issue of the secret tape recordings she conceded that the statement she had made on 10 October 1995 was not true. According to Mr Russak, she also reflected on her relationship with Mr Savisaar, a married man, asking herself whether she had broken up his family. She admitted that she had not been as good a mother as she had wished to be and wondered whether she had paid too high a price in sacrificing her child to her career.

16. In the course of the writing, a disagreement arose between her and Mr Russak as to the publication and authorship of the memoirs.

17. On an unspecified date Ms Laanaru brought a civil action before the Tallinn City Court (*Tallinna Linnakohus*) for the protection of her rights as the author of the manuscript.

18. On 29 March 1996 the City Court issued an order prohibiting Mr Russak from publishing the manuscript pending the resolution of the issue of its authorship.

19. Following the court order, Mr Russak decided to publish the material collected in a different form, namely in the form of the information Ms Laanaru had given him during their collaboration.

20. Mr Russak's account of Ms Laanaru's story began appearing in the daily newspaper *Eesti Päevaleht* on 1 April 1996.

21. Later the same year, Ms Laanaru published her own memoirs. In her book she stated that some of the information published in the newspaper report of Mr Russak's story was incorrect, without specifying in which respect.

22. In the newspaper interview of 3 April 1996, mentioned in paragraph 9 above, the applicant questioned Mr Russak on the issue of the publication of the memoirs and asked him, *inter alia*, the following question:

> "By the way, don't you feel that you have made a hero out of the wrong person? A person breaking up another's marriage [*abielulõhkuja*], an unfit and careless mother deserting her child [*rongaema*]. It does not seem to be the best example for young girls." [*Note by the Registry*: The translation of the Estonian words "*abielulõhkuja*" and "*rongaema*" is descriptive since no one-word equivalent exists in English.}

23. Following the above publication, Ms Laanaru instituted private prosecution proceedings against the applicant for allegedly having insulted her by referring to her as "*abielulõhkuja*" and "*rongaema*".

24. In the proceedings before the City Court, the applicant argued that the expressions used had been intended as a question rather than a statement of his opinion and that a question mark after them had been left out by mistake in the course of the editing. He denied the intent to offend Ms Laanaru and considered the expressions used as neutral. He further claimed that Ms Laanaru's actions had justified his asking the question.

25. By a judgment of 3 April 1997, the City Court convicted the applicant under Article 130 of the Criminal Code of the offence of insulting Ms Laanaru and fined him 220 kroons, the equivalent of ten times the "daily income" rate (see paragraph 31 below). In finding against the applicant, the City Court took note of the expert opinion given by the Estonian Language Institute (*Eesti Keele Instituut*) and of the applicant's unwillingness to settle the case by issuing an apology. It also noted that under the relevant provision of the Criminal Code liability did not depend on whether or not the victim actually possessed the negative qualities ascribed to her by the applicant. According to the expert opinion, the words at issue constituted value judgments which expressed a strongly negative and disapproving attitude towards the phenomena to which they referred. The word "*rongaema*" indicated that a mother had not cared for her child, and the word "*abielulõhkuja*" indicated a person who had harmed or broken up someone else's marriage. Both phenomena had always been condemned in Estonian society and this was also reflected in the language. However, the words were not improper in their linguistic sense.

26. The applicant lodged an appeal with the Tallinn Court of Appeal (*Tallinna Ringkonnakohus*) in which he argued, *inter alia*, that the first-instance court had failed to take into account the context of the whole article in which the two words appeared. He also disputed the qualification of his action as a crime on the grounds that he had lacked criminal intent and that the form used was not improper. He further stressed his right as a journalist freely to disseminate ideas, opinions and other information guaranteed by the Estonian Constitution and argued that the judgment of the first-instance court constituted a violation of his freedom of speech.

27. By a judgment of 13 May 1997, the Court of Appeal dismissed the applicant's appeal and upheld the City Court's judgment. The Court of Appeal noted that in private prosecution cases its examination was limited to the claims put forward by the offended party. The text of the whole interview, however, had been added to the case file. While noting that the impugned expressions were not indecent, the Court of Appeal considered them to be grossly degrading to human dignity and their use by the applicant in the circumstances of the case abusive. Had he expressed his negative opinion about Ms Laanaru by stating that she did not raise her child and that she had destroyed Mr Savisaar's marriage, it would not have constituted an insult. The Court of Appeal pointed out that the Constitution and the Criminal Code expressly provided for the possibility of restricting freedom of speech if it infringed the reputation and rights of others. Despite the special interest of the press in public figures, the latter also had the right to have their honour and dignity protected.

28. The applicant lodged an appeal on points of law with the Supreme Court (*Riigikohus*) arguing, *inter alia*, that the two expressions did not have any synonyms in the Estonian language and he had therefore had no

possibility of using other words. The use of a longer sentence omitting the words had been precluded by objective circumstances peculiar to journalism.

29. By a judgment of 26 August 1997, the Supreme Court's Criminal Division rejected the applicant's appeal and upheld the Court of Appeal's judgment. Its judgment included the following reasons:

> "I. The principle of freedom of speech, including the principle of freedom of the press provided for in Article 45 § 1 of the Constitution of the Republic of Estonia ('the Constitution') and Article 10 § 1 of the European Convention on Human Rights ('the ECHR'), is an indispensable guarantee for the functioning of a democratic society and therefore one of the most essential social values.
>
> ...
>
> According to Article 11 of the Constitution the restriction of any rights or freedoms may take place only pursuant to the Constitution; such restrictions must moreover be necessary in a democratic society and must not distort the nature of the restricted rights and freedoms. Freedom of speech, including freedom of the press, as a fundamental right may be restricted pursuant to Article 45 of the Constitution for the protection of public order, morals, the rights and freedoms of other persons, health, honour and good name. Under Article 10 § 2 of the ECHR, freedom of speech may be restricted by law also for the protection of morals and the reputation or rights of others.
>
> II. In Estonia a person has in principle the right to protect his or her honour as one aspect of human dignity by bringing either civil or criminal proceedings.
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> According to section 23(1) of the Law on General Principles of the Civil Code, a person has the right to apply for a court order to put a stop to the besmirching of his or her honour, the right to demand rebuttal of the impugned material provided that the person defaming him or her fails to prove the truthfulness of the material and also the right to demand compensation for pecuniary or non-pecuniary damage caused by the attack on his or her honour.
>
> Thus a person can seek protection through a civil procedure only if the person feels that his or her honour has been sullied with a statement of fact, as only a fact can be proved to be true. However, if a person feels that his or her honour has been besmirched by a value judgment, it is impossible to prove that allegation in a legal sense. In its Lingens v. Austria (1986) and Thorgeir Thorgeirson v. Iceland (1992) judgments, the European Court of Human Rights has also taken the view that a clear distinction must be made between facts and value judgments. Since the truth of a value judgment cannot be proved, the European Court of Human Rights has found that if a person offended by a journalist through a value judgment goes to a national court in order to prove the value judgment, this constitutes a violation of the freedom of speech provided for in Article 10 of the ECHR. Therefore, a person in Estonia has in fact no possibility of protecting his or her honour through civil-law remedies if he or she has been defamed by means of a value judgment. It follows that in [such] cases ... a person can only resort to criminal-law remedies for protecting his or her honour – by initiating a private prosecution under Article 130 of the Criminal Code. In the present case, the victim has availed herself of this sole opportunity.

III. The Criminal Division of the Supreme Court considers the judgments delivered by the Tallinn City Court and the Tallinn Court of Appeal on 3 April 1997 and 13 May 1997 respectively to be lawful and not subject to annulment.

In response to the arguments put forward in the appeal, the Criminal Division of the Supreme Court considers it necessary to note the following.

The appellant's statement that the words '*rongaema'* and '*abielulõhkuja*' could not be offensive to V. Laanaru since the sentence in the article which contained these words did not include the name of V. Laanaru, meaning that the words have not been used against anyone personally, is groundless and fabricated. Both the City Court and the Court of Appeal have correctly concluded that the expressions '*rongaema*' and '*abielulõhkuja*' have been used by [the applicant] to characterise the victim V. Laanaru (Savisaar). The Criminal Division of the Supreme Court wishes to add that in the formulation of his next argument – that it is legitimate to use the impugned expressions towards public figures – the appellant has considered V. Laanaru to be a public figure, thereby in fact invalidating his first argument.

Although Article 12 of the Constitution stipulates the equality of everyone before the law, the Criminal Division of the Supreme Court does not consider it necessary to question the special interest of the press towards public figures – a principle recognised in the practice of the European Court of Human Rights. However, the Criminal Division of the Supreme Court wishes to stress that in Estonia there is no legal definition of a public figure and in the practice of the European Court of Human Rights no one has been considered a public figure for the reason that he or she is a spouse, cohabitant, child or other person close to a public figure. It must be emphasised nevertheless that it cannot be concluded from the practice of the European Court of Human Rights that the special interest of the press towards public figures means that public figures cannot be offended. On the contrary, according to the criminal laws of several countries, such as Germany, the act of offending a public figure qualifies as a crime. The public has the right to expect the press to describe the life of public figures more thoroughly than the life of ordinary people, but the public has no right to expect the honour of public figures to be degraded, especially in the press and in an improper manner.

The Criminal Division does not agree with the standpoint put forward in the appeal that, since the words '*rongaema*' and '*abielulõhkuja*' are not vulgar or indecent, their use in referring to a person cannot be considered as degrading that person's honour and dignity in an improper manner, which is an obligatory element of the definition of the offence under Article 130 of the Criminal Code. Improper form as a legal category within the meaning of Article 130 of the Criminal Code does not only include the use of vulgar or indecent words, but also the use of negative and defamatory figurative expressions. Besides, improper form may also be non-verbal, for example a caricature. Both the City Court and the Court of Appeal have correctly taken the view, on the basis of an expert opinion, that by using the words '*rongaema*' and '*abielulõhkuja*' in reference to V. Laanaru in the newspaper article [the applicant] has treated the victim in public in a defamatory and thus improper manner.

The statement of [the applicant's] defence lawyer ... that the Court of Appeal had no right to prescribe which style a journalist was to use when writing a newspaper article is without foundation. Such a statement can be accepted in so far as the journalistic style does not offend or degrade human dignity. Concerning the protection of the

honour and dignity of a person, the court was correct in pointing out that the idea expressed in an improper form could also be expressed in a proper form in Estonian.

The argument of the appellant that the offensive expressions '*rongaema*' and '*abielulõhkuja*' were used due to the absence in the Estonian language of synonymous terms and that the use of a longer sentence avoiding these words was precluded by objective circumstances peculiar to journalism, is also ill-founded. There are probably no synonyms for several vulgar and indecent expressions in Estonian. This, however, does not justify their use. Any objective circumstances inherent in the functioning of the press – such as consideration of newspaper space and information density, according to the appellant – being values whose scope is limited to a particular sphere, cannot be compared to such values as human dignity.

Under Article 65 § 4 of the Code of Criminal Procedure in Appeal and Cassation Proceedings, the Supreme Court lacks competence to establish factual circumstances. Accordingly, the Supreme Court cannot reconsider the decision which the City Court and the Court of Appeal took on the basis of an expert opinion that the use of these offensive expressions constituted a value judgment by the journalist and not a question. However, the Criminal Division of the Supreme Court finds it necessary to point out that the prevailing opinion in legal writing is that insult is in principle possible also in the form of a question. It is also important to stress that if the newspaper *Postimees* has violated the rights of the author [the applicant] and distorted his intent by an incompetent technical editing [by leaving out the question mark at the end of the two expressions] (letter of the chief editor of *Postimees* of 16 May 1996 in the file), it would have been possible for [the applicant] or the newspaper to remedy the damage in an out-of-court settlement by simply publishing an apology as the victim had expressed readiness to reach such a settlement. However, neither [the applicant] nor the newspaper *Postimees* was willing to acknowledge in public that they had made a mistake and this constituted further evidence of direct intent to insult."

II. RELEVANT DOMESTIC LAW

30. The relevant provisions of the Estonian Constitution read as follows:

Article 45

"Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights and freedoms, health, honour and good name of others."

Article 11

"Rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted."

31. The relevant provisions of the Criminal Code read as follows:

Article 130 – Insult

"The degradation of another person's honour and dignity in an improper form shall be punished with a fine or detention."

Article 28 – Fine

"1. A fine is a penalty which the court can impose up to a limit of nine hundred times a person's daily income. The 'daily income' rate is calculated on the basis of the average daily wage of the defendant following deduction of taxes and taking into account his or her family and financial status."

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant submitted that the decisions of the Estonian courts in which he was found guilty of insult constituted an unjustified interference with his right to freedom of expression under Article 10 of the Convention, which provides:

"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."

A. Existence of an interference

33. The Court notes that it is undisputed that the applicant's conviction amounted to an interference with his right to freedom of expression.

B. Justification for the interference

34. An interference contravenes Article 10 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims referred to in paragraph 2 of Article 10 and is "necessary in a democratic society" for achieving such an aim or aims.

1. "Prescribed by law"

35. The applicant submitted that Article 130 of the Criminal Code, upon which his conviction was based, was not formulated with sufficient precision and clarity.

36. The Government argued that the Article defined the offence of insult in precise terms so as to allow the applicant to regulate his professional activities accordingly. The interpretation and application of Article 130 by the national courts did not go beyond what could reasonably be foreseen in the circumstances by the applicant.

37. The Court reiterates that one of the requirements flowing from the expression "prescribed by law" is the foreseeability of the measure concerned. A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, for example, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

38. The Court notes that Article 130 of the Criminal Code is worded in rather general terms, but finds that the statutory provision cannot be regarded as so vague and imprecise as to lack the quality of "law". It reiterates that it is primarily the task of national authorities to apply and interpret domestic law (see, for example, *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Series A no. 295-A, p. 17, § 45). In the circumstances of the present case the Court is satisfied that the interference was "prescribed by law".

2. Legitimate aim

39. It was common ground that the interference in issue pursued the aim of "the protection of the reputation or rights of others".

40. Having regard to the circumstances of the case and to the judgments of the domestic courts, the Court considers that the conviction of the applicant pursued the legitimate aim of the protection of the reputation or rights of Ms Laanaru. The interference complained of therefore had a legitimate aim under paragraph 2 of Article 10.

3. "Necessary in a democratic society"

41. The applicant argued that his conviction was not proportionate to the legitimate aim pursued and that it was not necessary in a democratic society.

42. He disputed the qualification of the impugned expressions as insulting and contended that the courts had followed uncritically the flawed expert opinion of the Estonian Language Institute. The expert opinion and the courts had failed to make a distinction between the two impugned terms. The term "*abielulõhkuja*" was a statement verifiable by the facts whereas the term "*rongaema*" was a value judgment. The factual circumstances of the case proved the validity of the former term: Ms Laanaru's relationship was with a married man and it had actually destroyed his family. Ms Laanaru herself had admitted this in her memoirs. The applicant contended that the relationship had also been within the public domain. He acknowledged that in Estonian tradition the term "*rongaema*" had a significant negative emotional connotation. However, in the pragmatic use of today's language the traditional connotation of the term might have disappeared. The experts, adopting a conservative interpretation of the word, had ignored the radical changes which had taken place in Estonian society concerning the issue of single motherhood over the last century. Moreover, his interview had not been published for a narrow group of linguistic experts but for the public at large. Even the traditional interpretation of the term put it outside vulgar or insulting language. Although the expression was less factual than "*abielulõhkuja*", it was based on Ms Laanaru's own reflections on her relationship with her child. As both impugned expressions were thus not disproportionate to the underlying facts, they should not have been regarded as offensive.

43. The applicant contended that by asking the question with the two impugned expressions he had not intended to offend Ms Laanaru. His intent had been to provoke and receive a reaction from Mr Russak to his question and not to state an opinion of his own. Furthermore, the question had not been about Ms Laanaru as an individual, but about the attitude of the press towards a particular type of personality in Estonian society.

44. In addition, the applicant submitted that the dispute had been of a civil nature and should not have been tried in a criminal court. He argued that the Supreme Court, in its judgment of 26 August 1997, had held incorrectly that the protection of someone's honour against attacks through value judgments was possible only through criminal measures. He pointed out that on 1 December 1997 the Supreme Court had reversed this position,

holding that civil law provided remedies to protect a person's honour. The availability of civil remedies made it a grave injustice to sentence him as a criminal.

45. The applicant contended that Ms Laanaru was a public figure in her own right, a fact which made her open to heightened criticism and close scrutiny by the press. She had played an independent role in the political life of Estonia by holding the high and influential position of counsellor to the Minister of the Interior as well as by being an active social figure and an editor of a popular magazine. By putting herself in the centre of the secret tape-recording scandal, Ms Laanaru had attempted to obtain additional publicity for herself.

46. The applicant argued that the fact that Ms Laanaru had herself made the question of her interference into Mr Savisaar's first marriage as well as her relationship with her child a public issue had lessened the scope of her privacy.

47. The motive behind his question had been legitimate and had concerned a matter of public interest. The discovery of the secret recordings of Mr Savisaar's conversations with other politicians as well as several earlier controversial measures involving Mr Savisaar at a time when Ms Laanaru was his official counsellor had raised legitimate questions about the ethics and values of those in positions of power in Estonia. In this context, the modest and concerned question about the personality of Ms Laanaru had seemed perfectly justified. The impugned expressions had been used to serve the interests of the public in receiving information and not for the sole purpose of gratifying human curiosity without any real information value.

48. The applicant considered that he had not exceeded the limits of acceptable criticism and that his journalistic freedom outweighed Ms Laanaru's right to respect for her private and family life. The decisions of the Estonian courts amounted to a kind of censure which was likely to discourage journalists from making criticism of that kind again in the future.

49. The Government maintained that the interference was necessary in a democratic society, in other words it corresponded to a “pressing social need”, it was proportionate to the legitimate aim pursued and the reasons given to justify it were relevant and sufficient. They contended that, in the present case, the domestic authorities had not exceeded the margin of appreciation available to them in assessing the need for such interference.

50. They argued that the wider limits of journalistic freedom applicable to civil servants and politicians acting in their public capacity did not apply to the same extent in the case of Ms Laanaru. She was active in politics only as the wife, collaborator and supporter of Mr Savisaar, not independently of him. The disobliging references to an ordinary citizen's private life and history, even if her name was linked to that of a prominent politician, could not constitute a matter of serious public concern. The relationship between a

woman, who had withdrawn from the civil service, and a man, who at that time had withdrawn from politics, was a very private matter which could not be considered a question affecting the public. The impugned words did not bear on any matter of serious public interest and concern. There was no social purpose in making insulting comments on a private person's family life.

51. The Government refuted the applicant's argument concerning the need to inform the public about Ms Laanaru's private life. The applicant had chosen the words to provoke and to create sensational headlines and had not acted in good faith. In any event, such an argument could under no circumstances exonerate him from following the basic ethics of journalism and the defamation laws.

52. The Government stressed that the applicant had not been convicted for describing a factual situation or for expressing a critical opinion about Ms Laanaru's personality or about her private or family life. His conviction was based on his choice of words in relation to her which were considered to be insulting. Had the applicant just described Ms Laanaru as having been the cause of a divorce, as having broken up someone's marriage or as not taking care of her child, this would not have constituted an insult, as pointed out by the Court of Appeal (see paragraph 27 above).

53. The Government noted that the expressions "*rongaema*" and "*abielulõhkuja*" had a very special meaning in the Estonian language, and that they had no equivalent in English. When interpreting the words and their meaning, their specific nature within the Estonian language and culture should also be taken into account.

54. The Government argued that the applicant had used the impugned words not, as he claimed, to describe aspects of Ms Laanaru's private life which were largely known to the public, but to denigrate her in public opinion. They recalled that Ms Laanaru had entrusted her child to her mother as she did not wish to put the child into a kindergarten. It was quite common in Estonia today for grandparents to take care of their grandchildren.

55. The Government disputed the applicant's allegation that Ms Laanaru had herself placed her private life within the public domain. The interview published in April 1996 was not an interview with Ms Laanaru about her private and family life, but an interview with another journalist about the publication of Ms Laanaru's memoirs and her private life. They recalled that on 29 March 1996 Ms Laanaru had obtained a court order prohibiting the publication of her memoirs. At that time, she no longer had any intention of making them public.

56. As regards the proportionality of the interference to the legitimate aim pursued, the Government pointed out that the case was one of private prosecution, in other words the proceedings were initiated by the aggrieved Ms Laanaru and not by the prosecution authorities. The Tallinn City Court

had made an attempt to settle the case during the proceedings, but the applicant had refused to accept the proposal of apologising to Ms Laanaru. At no time had the public prosecutor intervened or associated himself with the proceedings, although he had had the right to participate in them and the court had invited him to do so. The executive had taken no action whatsoever before the national courts and had remained entirely neutral throughout the proceedings.

57. Furthermore, the Government submitted that the applicant had been sanctioned only with a modest fine of 220 kroons – an amount ten times the minimum daily salary.

58. Finally, the Government maintained that the decisions of the national courts had been based on the striking of a balance between a right protected under Article 8 of the Convention and a right protected under its Article 10. The Supreme Court, in rejecting the applicant's complaint, had applied the same test as the European Court of Human Rights does and there was ample reference in its judgment to the latter's case-law. The Supreme Court, in its thoroughly reasoned judgment, had duly and carefully balanced the applicant's interest in freely expressing his opinion against the need to protect the reputation and rights of Ms Laanaru.

59. 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, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". This freedom is subject to the exceptions set out in Article 10 § 2, which must, however, be construed strictly. The need for any restrictions must be established convincingly (see, for example, *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 41, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

60. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see *Lingens*, cited above, p. 25, § 39, and *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I).

61. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the 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 are "relevant and sufficient" (see The Sunday Times *v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 38, § 62; *Lingens*, cited above, pp. 25-26, § 40; *Barfod v. Denmark*, judgment of 22 February 1989, Series A no. 149, p. 12, § 28; *Janowski*, cited above; and *News Verlags GmbH & CoKG 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*, judgment of 23 September 1994, Series A no. 298, pp. 23-24, § 31).

62. The Court further recalls 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*, cited above, pp. 23-24, § 31; *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233-34, § 37; and Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III). In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38, and Bladet Tromsø *and Stensaas*, cited above). The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments (see, for example, *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, pp. 23-24, § 46, and *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, pp. 1567-68, § 54).

63. In sum, the Court's task in exercising its supervision is not to take the place of national authorities but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I).

64. Turning to the facts of the present case, the Court notes that the applicant was convicted on the basis of the remarks he had made in his capacity as a journalist in a newspaper interview with another journalist. The interview concerned the issue of publication of Ms Laanaru's personal memoirs following a dispute between her and the interviewed journalist who had helped writing them.

65. It observes that the domestic courts found the use of the words "*rongaema*" and "*abielulõhkuja*" offensive to Ms Laanaru and the imposed

restriction justified for the protection of her reputation and rights (see paragraphs 25, 27 and 29 above). In the context of the freedom of the press, the requirements of such protection have to be weighed in relation to the interest of the applicant as a journalist in imparting information and ideas on matters of public concern.

66. In this connection, the Court notes that the impugned remarks related to the aspects of Ms Laanaru's private life which she described in her memoirs written in her private capacity. While it is true that she herself had intended to make these details public, the justification for the use of the actual words by the applicant in the circumstances of the present case must be seen against the background which prompted their utterance as well as their value to the general public.

67. In this connection, the Court observes that the remarks were preceded by the reflections of Ms Laanaru on her role as a mother and in breaking up Mr Savisaar's family. It notes, however, that the domestic courts found that the words "*rongaema*" and "*abielulõhkuja*" amounted to value judgments couched in offensive language, recourse to which was not necessary in order to express a "negative" opinion (see paragraph 27 above). It considers that the applicant could have formulated his criticism of Ms Laanaru's actions without resorting to such insulting expressions (see, for example, *Constantinescu v. Romania*, no. 28871/95, § 74, ECHR 2000-VIII).

68. The Court notes the differences in the parties' position concerning the public-figure status of Ms Laanaru. It observes that Ms Laanaru resigned from her governmental position in October 1995 in the wake of the affair of the secret tape recordings by Mr Savisaar, for which she claimed responsibility (see paragraph 13 above). Despite her continued involvement in the political party, the Court does not find it established that the use of the impugned terms in relation to Ms Laanaru's private life was justified by considerations of public concern or that they bore on a matter of general importance. In particular, it has not been substantiated that her private life was among the issues that affected the public in April 1996. The applicant's remarks could therefore scarcely be regarded as serving the public interest.

69. In considering the way the domestic authorities dealt with the case, the Court observes that the Estonian courts fully recognised that the present case involved a conflict between the right to impart ideas and the reputation and rights of others. It cannot find that they failed properly to balance the various interests involved in the case. Taking into account the margin of appreciation left to the Contracting States in such circumstances, the Court considers that the domestic authorities were, in the circumstances of the case, entitled to interfere with the exercise of the applicant's right. It recalls that, in assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see, for example, *Ceylan v. Turkey* [GC], no. 23556/94, § 37,

ECHR 1999-IV). In this respect, it notes the limited amount of the fine imposed on the applicant as a sanction provided for in Article 28 of the Criminal Code (see paragraph 31 above).

70. Having regard to the foregoing, the Court considers that the applicant's conviction and sentence were not disproportionate to the legitimate aim pursued and that the reasons advanced by the domestic courts were sufficient and relevant to justify such interference. The interference with the applicant's right to freedom of expression could thus reasonably be considered necessary in a democratic society for the protection of the reputation or rights of others within the meaning of Article 10 § 2 of the Convention.

71. There has consequently been no breach of Article 10 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

Done in English, and notified in writing on 6 February 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President