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Case Comment

Freedom of expression: Prime Minister of Finland - book published by ex-girlfriend

Subject: Human rights . **Other related subjects:** Criminal law. Media and entertainment.

Keywords: Convictions; Freedom of expression; Privacy; Public figures; Public interest; Publishers; Sexual behaviour;

Legislation:

Case:

Ojala v Finland (69939/10) Unreported January 14, 2014 (ECHR)

***E.H.R.L.R. 295 Ojala and Etukeno Oy v Finland (Application No.69939/10)**

European Court of Human Rights (Fourth Section): Judgment of January 14, 2014 ***E.H.R.L.R. 296**

Facts

The applicants are a publisher (the first applicant) and a publishing company (the second applicant). With the former girlfriend of the then Finnish Prime Minister, the applicants wrote and published a book detailing the nine-month relationship between the woman, Ms Ruusunen, and the Prime Minister. The book was published in February 2007, half-way through the period the Prime Minister held office (June 2003 to June 2010). The book covered various aspects of the Prime Minister's personal life, including his sex life. It also discussed the Prime Minister's relationship with his children, and the contrast in lifestyles between the Prime Minister and his girlfriend (who was a single mother he had met on the internet).

In October 2007 the public prosecutor brought charges against the applicants under Chapter 24, section 8, of the Penal Code. This prohibits the spreading of information, an insinuation or an image depicting the private life of another person which was conducive to causing suffering qualified as an invasion of privacy. In February 2008 the book was withdrawn from sale. In March 2008, the Helsinki District Court dismissed the charges. The prosecutor and Prime Minister appealed.

In February 2009, the Helsinki Appeal Court convicted the first applicant. He was fined €840 and ordered to pay the Prime Minister non-pecuniary damages of €1,000 together with his legal expenses. The Appeal Court further ordered that the proceeds of the crime (€4,260) should be forfeit to the State. The second applicant was awarded its costs of the proceedings before the District Court.

In June 2010, the Supreme Court upheld the first applicant's conviction, while quashing the forfeiture order and reducing the amount that the first applicant was to pay towards the costs and expenses incurred by the Prime Minister. The Supreme Court also awarded the second applicant its costs of the proceedings before the Supreme Court.

The Supreme Court interpreted the scope of the Prime Minister's private life more narrowly than the Appeal Court. In contrast to the Appeal Court, the Supreme Court found that the details of how the Prime Minister had met his former girlfriend and how quickly their relationship had developed were relevant to the general public discussion, as they raised questions of the Prime Minister's judgment and honesty. Information relating to the difference in lifestyles between the Prime Minister and his former girlfriend was also relevant to the general public discussion. The Supreme Court further found that the discussion of the Prime Minister's relationship with his children was not likely to have caused the Prime Minister damage, suffering and contempt, as the Ms Ruusunen had only described her attitudes to his children.

It was only the divulgence of information regarding the Prime Minister's sex life that the Supreme

Court found to be illegal. Such information fell within the core area of the Prime Minister's private life, and its publication was conducive of causing suffering and contempt. It was therefore necessary to restrict the applicants' freedom of expression in this respect to protect the Prime Minister's private life.

The applicants applied to the Court of Human Rights arguing that there had been violations of their rights under arts 6 and 10.

Held

1)

The first applicant's complaint concerning art.10 was admissible and the remainder of the complaint inadmissible.

No forfeiture ever took place in respect of the second applicant, it was awarded its reasonable costs of the District Court and Supreme Court proceedings and was never ordered by the domestic courts to withdraw the book from sale. Any losses it may have suffered could not be attributed to the state. It could not be considered a victim of the alleged violation of art.10.

The applicants complained under art.6 that they not been able to question a witness in the Court of Appeal proceedings because the court had not held a hearing. In the light of the **E.H.R.L.R. 297* material before it the Court could not see that this disclosed any appearance of a violation of the Convention.

2)

There had been no violation of art.10.

The first applicant's conviction, the fines imposed on him and the orders to pay compensation as well as costs amounted to an interference with his right to freedom of expression.

The measures were prescribed by law, the Court having held previously that a predecessor provision to Ch.24, s.8 of the Penal Code was not ambiguous, and served the legitimate aim of protecting the private life and reputation of others.

Turning to whether the interference was necessary in a democratic society, the Court considered the criteria identified by the Grand Chamber in *Von Hannover (No.2)* and *Axel Springer AG* as being relevant when the right to freedom of expression is being balanced against the right to respect for private life.

The Court noted that the book described a situation in which two different realities of present day Finnish society met: a wealthy party leader and Prime Minister on the one hand, and a single mother with everyday money problems on the other. Further, the facts had been presented in a compassionate manner, and that the style was not provocative or exaggerated. There had been no evidence or allegations to suggest factual misrepresentation or bad faith on the part of Ms Ruusunen.

The Court reiterated that the Prime Minister was a public figure, and was expected to tolerate a greater degree of public scrutiny which may have a negative impact on his honour and reputation than a completely private person. There had been no suggestion that the information had been gathered using subterfuge or illicit means.

The Court considered that even though the emphasis in the book was on Ms Ruusunen's private life it nevertheless contained elements of public interest. The Supreme Court had identified elements of the account which raised concerns about the Prime Minister's judgment and honesty and the protection of official information. The Supreme Court had also analysed what information in the book had already been widely disclosed.

The Court observed that in their analysis the domestic courts had attached

importance to both Ms Ruusunen's and the first applicant's right to freedom of expression and the Prime Minister's right to respect for his private life. Accordingly, it found that the domestic court had examined the case in conformity with art.10 and the Court's recent case-law. The Supreme Court had narrowed down the scope of problematic passages, finding only that parts relating to Prime Minister's sexual activities fell within the core area of his private life. This reasoning was acceptable. The reasons for the restrictions of the exercise of the first applicant's freedom of expression had been established convincingly by the Finnish Supreme Court taking into account the Court's case-law.

Finally, the sanctions imposed were reasonable, with the exception of the obligation to pay the Prime Minister's legal costs and expenses. That ground alone was not, however, sufficient to lead the Court to find a violation of art.10.

Cases considered

Axel Springer AG v Germany (App. No.39954/08), judgment of February 7, 2012

Barfod v Denmark (1991) 13 E.H.R.R. 493

Bladet Tromsø v Norway (2000) 29 E.H.R.R. 125

Castells v Spain (1992) 14 E.H.R.R. 445

De Haes v Belgium (1998) 25 E.H.R.R. 1

*Eerikäinen v Finland (App. No.3514/02), judgment of February 10, 2009 *E.H.R.L.R. 298*

Fayed v United Kingdom (1994) 18 E.H.R.R. 393

Flinkkilä v Finland (App. No.25576/04), judgment of April 6, 2010

Fressoz v France (2001) 31 E.H.R.R. 2

Incal v Turkey (2000) 29 E.H.R.R. 449

Janowski v Poland (2000) 29 E.H.R.R. 705

Jersild v Denmark (1995) 19 E.H.R.R. 1

Karhuvaara v Finland (2005) 41 E.H.R.R. 51

Lahtonen v Finland (App. No.29576/09), judgment of January 17, 2012

Lingens v Austria (1986) 8 E.H.R.R. 407

MGN Ltd v United Kingdom (App. No.39401/04), judgment of January 18, 2011

News Verlags GmbH & Co KG v Austria (2001) 31 E.H.R.R. 8

Nikula v Finland (2004) 38 E.H.R.R. 45

Nilsen v Norway (2000) 30 E.H.R.R. 878

Prager v Austria (1996) 21 E.H.R.R. 1

Reinboth v Finland (App. No.30865/08), judgment of January 25, 2011

Saaristo v Finland (App. No.184/06), judgment of October 12, 2010

Selistö v Finland (2006) 42 E.H.R.R. 8

Steel v United Kingdom (2005) 41 E.H.R.R. 22

Sunday Times v United Kingdom (1979–80) 2 E.H.R.R. 245

Von Hannover v Germany (2005) 40 E.H.R.R. 1

Von Hannover v Germany (No. 2) (App. Nos.40660/08 and 60641/08), judgment of February 2, 2012

Commentary

This case addresses the vexed issue of the interaction between arts 10 and 8 with regard to the private lives of those in the public eye. The case is intriguing, as it concerns the right to privacy of a leading political figure, who, as the Court observed, can be expected to tolerate a greater degree of

media scrutiny than other citizens. It also raises questions about the relevance of previous engagement with the press: the Prime Minister had spoken to the media about his relationship with Ms Ruusunen, and had also agreed to be photographed in his family home with his children.

That said, this was probably a relatively straightforward case. If it is accepted that a politician's art.8 rights will ever override the art.10 rights of others, then the most obvious candidate for protection is information about intimate sexual encounters. The case made clear the classic distinction between matters in which the public is interested and matters in respect of whose publication there is little public interest. In this case, several of the *Von Hannover (No.2)* and *Axel* factors supported publication; the Court found that the tone was "compassionate", the facts were not in dispute, the details had not been gathered through subterfuge, and the Prime Minister had a limited expectation of privacy in any event. However, despite all of these factors, the subject matter—the Prime Minister's intimate sexual life—and the corresponding lack of public interest in publication meant that the criminal conviction of the publisher was not a breach of his art.10 rights.

Perhaps the more interesting and difficult questions raised by this case concerned the publication of less obviously intimate details, for example, regarding the behaviour and feelings of the Prime Minister's children. As publication of these details had been found not to breach Finish law, they did not form the basis of the applicant's complaint and the scope of the Court's analysis was restricted accordingly.

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