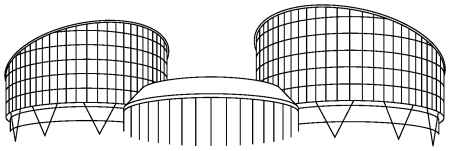

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OLAFSSON v. ICELAND

(Application no. 58493/13)

JUDGMENT

STRASBOURG

16 March 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.

In the case of Olafsson v. Iceland,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Aleš Pejchal,
Robert Spano,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 21 February 2017,

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

PROCEDURE

1. The case originated in an application (no. 58493/13) 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 an Icelandic national, Mr Steingrímur Sævarr Ólafsson ("the applicant"), on 20 August 2013.

2. The applicant is represented by Mr Jónas Friðrik Jónsson, a lawyer practising in Reykjavik. The Icelandic Government ("the Government") were represented by their Agent, Ms Ragnhildur Hjaltadóttir, Permanent Secretary of the Ministry of the Interior.

3. The applicant complained, under Article 10 of the Convention, that the Icelandic Supreme Court' s judgment of 21 February 2013 had entailed an interference with his right to freedom of expression that was not prescribed by law and not necessary in a democratic society.

4. On 20 November 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Reykjavik. At the material time he was an editor of the web-based media site *Pressan*.

6. On 2 November 2010 two adult sisters published an article and a letter on their website encouraging people to study the background of candidates

in the forthcoming Constitutional Assembly elections. In particular, the sisters warned against A, a relative of theirs, who was standing for election. In the letter they alleged that A had sexually abused them when they were children. The sisters had previously sent the letter to their relatives, the police and the child protection services. For some unknown reason, the police had not instigated an investigation.

7. On 7 November 2010, *Pressan* published an article about the sisters' allegations. The article was based on an interview with one of the sisters and on the letter posted on their website. A was also contacted and his response, in which he denied the allegations, as well as his statement that he would not make any further remarks on the matter, were reported in the article. Pictures of the sisters were published with the article.

8. On 8 November 2010 *Pressan* published an article about comments made by A to a newspaper where he rejected all the allegations and threatened *Pressan* with a lawsuit for being the first to publish the allegations. Furthermore, the article contained comments from one of the sisters. Pictures of one of the sisters and of A were published with the article.

9. On 27 January 2011 *Pressan* published an article about the sisters' having received a letter from A's lawyer offering to settle the matter, failing which A would bring defamation proceedings against them, and about the sisters welcoming the opportunity to prove their allegations in court. The article was based on an interview with the sisters and statements on their website. A's rejection of the allegations was also included in the article. Pictures of the sisters were published with the article.

10. On 22 and 23 February and 30 May 2011, *Pressan* published further articles about the matter, based on the sisters' statements on their website and in other media interviews, on A' s comments in other media and on A's daughter's comments in a television interview. Pictures of the sisters were published with all the articles.

11. Other media also published articles and interviews with the sisters.

12. In the meantime, on 10 April 2011, A lodged defamation proceedings before the Reykjavík District Court against the applicant and requested that the following statements be declared null and void:

A. "Sisters: We will not keep quiet while a child abuser stands for election to the Constitutional Assembly"

B: "We cannot sit quietly by while a child abuser stands for election to the Constitutional Assembly"

C: "I do not know whether our actions are legal, however that is a secondary point. The man is dangerous and on the loose"

D: "The sisters will not be silenced by [A's] daughter – Child abuse is not the private affair of his family"

E: "Child abuse is never a private affair that the family of child abusers can undertake to solve. Child abuse is a crime"

F: "Child abusers should not be allowed to hide – Forgiveness cannot entail co-dependency".

13. According to Section 15, subsection 3, of the Printing Act (no. 57/1956, *Lög um prentrétt*) the publisher or editor is liable for the publication if no author is identified. A argued that responsibility for the statements lay with the applicant as the editor of *Pressan* by virtue of Section 15 of the Printing Act, applied by analogy, since the author of the articles was not identified.

14. During the proceedings before the District Court, B, a journalist, was identified as the author of the articles. He gave a statement before the District Court, but was not involved further in the proceedings. B stated that he had contacted A for comments before publishing all the articles, but he had been unsuccessful after publishing the first article. He also stated that he had tried to establish the sisters' credibility and the truthfulness of the allegations by interviewing the sisters, A's son, the police, one of the sisters' employers, another alleged victim and other people mentioned by the sisters in their writings, who could confirm that the allegations were not appearing for the first time because of A's candidacy, but had been known to the family and the police for years. B had also tried to contact the Child Protection Services, without success.

15. Before the District Court, the sisters stated that they had been quoted correctly in *Pressan* and they had approved the publishing of their statements. Furthermore, they said that A had not initiated defamation proceedings against them.

16. By judgment of 22 February 2012 the District Court found in favour of the applicant.

17. As regards the issue of legality, the District Court came to the conclusion that Section 15 of the Printing Act did not apply to material published solely on the internet and that section 15, subsection 3, could not be applied by analogy in the case. However, the District Court stated that a supervisory obligation was placed on editors of web media, where articles were published without identifying the authors, and that the editor was obliged to ensure that material published on web-based media did not cause others harm or interfere with a person's private life. Therefore, the District Court rejected the applicant's claim that the case was wrongly directed against him.

18. As regards the merits of the case, the judgment contained the following reasons:

> "The impugned statements were published on [*Pressan*] on 7 November 2010 after [A] had, along with about 500 people, declared his candidacy for the Constitutional Assembly. It was a gathering of 25 elected members, established by law by

Parliament, which would prepare a proposal for a new constitution. There would be general elections, where the same rules about eligibility and the right to vote applied as in the Parliamentary election"...

When the statements in sections A-C are compared to the sisters' writings on their website on 2 November 2010, the court has to agree with [the applicant] that both the headline in section A and the statements in sections B and C are verbatim from their letter. [...] Furthermore, it cannot be overlooked that the sisters' allegations were not emerging for the first time because of [A's] candidacy; they had been proclaimed for at least a few years and were known to many, including the police. [The applicant] was therefore not publishing allegations that were being directed against [A] for the first time, but disseminating further allegations regarding offences that had emerged long before. [The applicant's] arguments about the public having the right to be informed about the candidates in public elections cannot be ignored. By introducing themselves publicly to gain voters' confidence and to persuade people to vote for them, [candidates] in a way become public persons and cannot expect all media coverage about them to be as positive as their own. Disputes, resolved and unresolved, regarding their earlier behaviour are matters to which one can expect attention to be drawn. By competing for voters' attention, candidates usually undertake to be heavily criticised and have to tolerate this up to a point, although that point should be determined on a case-by-case basis. [The applicant] did not present the sisters' allegations as his own, he just disseminated them further. Therefore, he will not be held accountable for the statements which are directly quoted from the sisters, which the latter have confirmed before the court to be theirs. The court does not agree with [A] that [the applicant] went beyond the limits of his freedom of expression under Article 73 of the Constitution. ...

The statements in sections D and E were published on 23 February 2011 when the elections for the Constitutional Assembly were over. [A's] daughter had discussed the sisters' writings about her father in a television interview and declared, *inter alia*, that he was not a public person and that allegations about child abuse did not belong in the media. The sisters reacted to this criticism on their website and then [*Pressan*] published their reactions. [...] No new discussions about [A's] case were initiated by the sisters this time, their writings were by way of reply. The statement in section D that appeared as a headline on [*Pressan*] quotes the sisters' replies but is partly rephrased. The statement in section E published in an article on [*Pressan*] is mostly directly quoted. However, this statement can be understood as a statement by the media itself. Even though the statement is not directly quoted, it is of a general nature and refers to child abusers in general. The sisters have also testified before the court that they consider that they have been correctly quoted. So the court concludes that [the applicant] did not go beyond the limit of the freedom of expression guaranteed in Article 73 of the Constitution, with the statements in sections D and E."

19. On 1 August 2012 A appealed to the Supreme Court against the District Court's judgment.

20. By a judgment of 21 February 2013 the Supreme Court partly overturned the District Court's judgment and found defamatory the statements in sections A, B, D and part of the statement in section C, consisting of insinuations that A was guilty of having abused children, and ordered the applicant to pay, under the Tort Act, 200,000 Icelandic *Krónur* (ISK) (approximately 1,600 euros (EUR)) for non-pecuniary damage, plus interest in compensation and ISK 800,000 (approximately 6,500 EUR) for

A's legal costs before the District Court and Supreme Court. Under Article 241 of the Penal Code the statements were declared null and void.

21. As regards the issue of legality, the Supreme Court noted that the author of the articles had been identified and that the applicant had confirmed that he had agreed to the publication of the articles. The Supreme Court also confirmed that Section 15 of the Printing Act did not apply to material solely published on the internet. Furthermore, the Supreme Court stated that Section 15, subsection 3, of the Printing Act could not be applied by analogy to the case. However, the applicant had a supervisory obligation which entailed that he should conduct his editorial duties in such a way that the published material would not harm anyone by being defamatory. The Supreme Court referred in this respect to a Supreme Court judgment of 24 November 2011. Therefore, the Supreme Court rejected the applicant's claim about the case being wrongly directed against him.

22. As to the merits of the case, the judgment contained, *inter alia*, the following reasons:

> "The court can agree with [the applicant] that candidates for assignments in the public interest have to endure a certain amount of public discussion of their ability and skills and attributes and whether or not they can be trusted to bear this kind of responsibility. However, this cannot justify that [A], without any further or additional information, was accused of this criminal act in the media, [act] punishable by the Penal Code. Here it has been taken into account that [A] has not been found guilty of the conduct nor has he been under investigation because of it. It does not change anything that the journalist discussed the matter with [A] and others, who claimed they could testify about the incident, while working on the story and [A] rejected the allegations. In the light of the aforementioned, the limitation on the freedom of expression had to be justified in accordance with Article 73(2) of the Constitution."...

II. DOMESTIC LAW AND PRACTICE

23. The relevant provision of the Icelandic Constitution (*Stjórnarskrá lýðveldisins Íslands*) reads as follows:

Article 73

> "Everyone has the right to freedom of opinion and belief.
>
> Everyone shall be free to express his thoughts, but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to freedom of expression.
>
> 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."

24. The Penal Code No. 19/1940 (*Almenn Hegningarlög*), Chapter XXV, entitled "Defamation of character and violations of privacy", sets out the following relevant provisions:

Article 234

"Any person who harms the reputation of another person by an insult in words or in deed, and any person spreading such insults shall be subject to fines or to imprisonment for up to one year."

Article 235

"If a person alleges against another person anything that might be harmful to his or her honour or spreads such allegations, he shall be subject to fines or to imprisonment for up to one year."

Article 236

"Anyone who, against his or her better knowledge, makes or disseminates a defamatory insinuation shall be liable to up to two years' imprisonment.

Where such an insinuation is published or disseminated publicly, even though the person publishing or disseminating it has no reason to believe it to be correct, the sentence shall be a fine or up to two years' imprisonment."

Article 241

"In a defamation action, defamatory remarks may be declared null and void at the demand of the injured party.

A person who is found guilty of a defamatory allegation may be ordered to pay to the injured person, on the latter's demand, a reasonable amount to cover the cost of the publication of a judgment, its main contents or reasoning, as circumstances may warrant in one or more public newspapers or publications."

25. Section 26(1) of the Tort Liability Act No. 50/1993 (*Skaðabótalög*) reads:

"A person who

a. deliberately or through gross negligence causes physical injury or

b. is responsible for an unlawful injury against the freedom, peace, honour or person of another party may be ordered to pay non-pecuniary damages to the injured party."

26. 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 or typesetting."

27. Section 51 of the Media Act No. 38/2011 (*Lög um fjölmiðla*), which entered into force on 21 April 2011, reads:

Article 51

"Liability for textual content**.**

If textual content is in violation of the law, penalties and criminal and compensatory liability shall be as follows:

a. An individual shall be liable for the content he writes in his own name or with which he clearly identifies himself if he is domiciled in Iceland or is subject to Icelandic jurisdiction on other grounds. If textual content is correctly quoted as being that of a named individual, the person quoted shall be liable for his own statements if he gave consent for their being published or made available and he is either domiciled in Iceland or is subject to Icelandic jurisdiction on other grounds.

b. The purchaser of commercial communications, whether an individual or a legal person, shall be liable for their content if he is domiciled in Iceland or is subject to Icelandic jurisdiction on other grounds.

c. In instances other than those covered by items a and b above, the content manager in question and/or the person liable for the media service provider shall be liable for the content published.

Media service providers shall be liable for the payment of fines and compensation payments that their employees may be ordered to pay under this Article.

Media service providers shall be obliged to provide any persons who consider they are the victims of a violation as a result of the publication of text content with information indicating who is liable for the content."

28. By judgment of 24 November 2011 (case No 100/2011), which concerned defamation proceedings against editors and a journalist of a newspaper and newspaper website, the Supreme Court of Iceland found that before the Media Act entered into force, there had been no applicable legal rule about the responsibility of an editor of web-based media which published material solely online. The court further stated that Section 15 of the Printing Act did not apply and could not be applied by analogy. Nevertheless, the court concluded that editors had a supervisory obligation which entailed that they should conduct their editorial duties in such way that the published material would not harm anyone by being defamatory.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

29. The applicant complained that the Supreme Court's judgment of 21 February 2013 had entailed an interference with his right to freedom of expression that was not prescribed by law and 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."

30. The Government contested that argument.

A. Admissibility

31. The Court notes that this complaint 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

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

33. It remains to be determined whether the interference was "prescribed by law", "pursued a legitimate aim" and was "necessary in a democratic society".

1. Prescribed by law

(a) The parties' submissions

34. The applicant argued that his liability for the defamatory comments published on the news website, as established by the Supreme Court, was not prescribed by law because there was no legal provision concerning liability of editors of web-based media. The Government submitted that the interference had a basis in domestic law and practice and referred, *inter alia*, to the Articles of the Penal Code, Section 26 of the Tort Law and the responsibility of the media in a democratic society.

(b) The Court's assessment

35. As regards the words "in accordance with the law" and "prescribed by law" which appear in Articles 8 to 11 of the Convention, the Court observes that it has always understood the term "law" in its "substantive" sense, not its "formal" one; it has included both written law, encompassing enactments of lower-ranking statutes and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament, and unwritten law. "Law" must be understood to include both statutory law and judge-made "law". In sum, the "law" is the provision in force as the competent courts have interpreted it (*Leyla Şahin v. Turkey* [GC], no. 44774/98, § 88, ECHR 2005-XI, with further references).

36. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – 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 (see, among other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V and *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I). However, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among other authorities, *Karácsony and Others v. Hungary* [GC], no. 42461/13, § 123, ECHR 2016 (extracts)).

37. The Court notes at the outset that the annulment of the statements in question and the imposition of non-pecuniary damages were prescribed by the Penal Code and the Tort Act (see paragraph 20 above). Furthermore, the Court points out that the Supreme Court rejected A's claim that the applicant's liability could be established on the basis of the editorial liability provisions of the then applicable Printing Act no. 57/1956, applied by analogy to online publications. However, the Supreme Court found that under domestic law the applicant, as editor, was subject to an unwritten supervisory duty consisting of preventing the publication of harmful content

on the website, referring in this regard to a previous Supreme Court judgment in case no. 100/2011. Taking into account the nature of the editorial activity in question, that the liability was foreseeable to the applicant with appropriate legal advice, and the judgments of the Supreme Court as the ultimate interpreter of domestic law, the Court thus considers that it has been adequately established that the applicant's liability was prescribed by domestic law within the meaning of Article 10 § 2 of the Convention.

2. Legitimate aim

38. It is common ground between the parties that the interference pursued a legitimate aim, namely the protection of the reputation or rights of others.

3. Necessary in a democratic society

(a) The parties' submissions

(i) The applicant

39. The applicant submitted that the statements alleging sexual offences had been directed at a public figure, as confirmed by the Supreme Court. A had been a candidate for the Constitutional Assembly and information about the character of the candidate had been of public interest and should be imparted to the public. Furthermore, there had been an ongoing debate in Iceland about the issue of sexual offences, in particular against children, and society's reaction to such offences. The issue had therefore been socially important and of public interest in general.

40. The applicant maintained that the news articles had been drafted in accordance with journalistic standards and in good faith. The journalist who had written the articles had sought information on the background to the allegations and the reliability of the accusers. He had talked to the person against whom the allegations had been made, the sisters, a third woman who had also claimed to be a victim, the sisters' relatives, the authorities and one of the sisters' employers. *Pressan* had kept its distance from the content of the statements made by the sisters and clearly referred to them as allegations, thus avoiding presenting them as facts. The accused person had been given an opportunity to comment, and his rejection of the allegation had been reported. Furthermore, his views about the allegation expressed in other media had also been reported by *Pressan*.

41. The applicant also maintained that the information had already been publicly available on the internet and had been widely disseminated. The statements in the news articles had either been based on an interview with one of the sisters or on the content available on the sisters' webpage, which was accepted by the District Court.

(ii) The Government

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

43. The Government claimed, *inter alia*, that the statements published by the applicant had been deemed to be facts and therefore the Icelandic courts had enjoyed a greater margin of appreciation in restricting his freedom of expression. The Government agreed with the applicant that A, as a candidate for general elections, was to be considered a public person and that persons running for election had to suffer greater scrutiny, but also considered that such persons were not stripped of their constitutional rights. The statements had not been a necessary contribution to a public debate and had resulted in unlawful accusations against A.

44. The Government pointed out that although journalists and the media played a key role in communicating information in democratic societies, the Court had previously acknowledged that while journalists did indeed have a great deal of freedom to fulfil that role, they also had certain responsibilities. The Supreme Court had found that the applicant had not relied on sufficiently reliable sources for the published statements. He had failed to abide by the journalistic duties identified by the Court and to prepare the material in "good faith". The Supreme Court had balanced the opposing interests in the case and there had been a pressing social need to restrict the applicant's freedom of expression.

45. The amount of compensation imposed on the applicant had been fully consistent with the recognised practice of the Icelandic courts and in no particular way onerous for the applicant. It had been foreseeable and proportionate. Finally, the "penalty" imposed had been in the form of compensation for non-pecuniary damage under the Tort Act, as opposed to criminal sanctions under the Penal Code.

(b) The Court's assessment

(i) General principles

46. The principles concerning the question 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 to 132, ECHR 2015, with further references). Furthermore, the Court has addressed the distinction between the internet, as an information and communication tool, and the printed media (see, among other authorities, *Delfi AS v. Estonia,* § 133, cited above, *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, § 58, 16 July 2013, *Editorial Board of* Pravoye Delo *and Shtekel v. Ukraine*,

no. 33014/05, § 63, ECHR 2011 (extracts) and *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 27, ECHR 2009).

47. 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 and the right to freedom of expression, the Court has developed general principles emerging from 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)).

48. In particular, 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

49. The Court notes, as observed by the Supreme Court in its judgment of 21 February 2013, that the impugned statements in the articles published on *Pressan* consisted of an insinuation that A was guilty of child abuse, an offence punishable under the Penal Code. Under Article 241 of the Penal Code, the Supreme Court declared the statements null and void. The Court sees no cause to question the Supreme Court's assessment that the allegations were defamatory or that the reasons relied on by that court had the legitimate aim of protecting A's rights and reputation.

50. The Court will proceed to examine whether those reasons were sufficient for the purpose of Article 10. As to the issue of whether or not the articles concerned an issue of public concern, the Court observes that A was a candidate for the Constitutional Assembly, which was a gathering of twenty-five members elected by general election, having the purpose of making proposals for a new Icelandic Constitution. Furthermore, the issue of sexual violence against children is a serious topic which is of public interest. The Court thus agrees with the applicant that the general public had a legitimate interest in being informed about A´s running for general election and of such serious matters as child abuse.

51. As to the question of how well-known the applicant was and the subject matter of the report, the Court considers that, by running for office in general elections, A must be considered to have inevitably and knowingly entered the public domain and laid himself open to closer scrutiny of his acts. The limits of acceptable criticism must accordingly be wider than in the case of a private individual (see, *inter alia*, *Couderc and Hachette Filipacchi Associés v. France*, cited above, §§ 117 to 123 and *Erla Hlynsdóttir v. Iceland*, no. 43380/10, § 65, 10 July 2012, with further references).

52. The Court notes that neither the domestic courts nor the parties commented on A's prior conduct.

53. As regards the method of obtaining the information in the present case and its veracity, the Court finds that there were no special grounds to dispense the media from their ordinary obligation to verify factual statements that are defamatory of private individuals. It will consider the impugned articles as a whole, having particular regard to the words used in the disputed parts of the articles and the context in which they were published, as well as the manner in which they were prepared. The Court must examine whether the applicant acted in good faith and made sure that the articles were 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).

54. In the present case the Court accepts that the journalist tried to establish the sisters' credibility and the truth of the allegations by interviewing several relevant persons, *inter alia,* the sisters, A's son, the police, one of the sisters' employers, another alleged victim and other people mentioned in the sisters' writings. The journalist also tried to interview the child protection services, but without success (see paragraph 14 above)

55. It is further observed that in the articles containing the impugned statements, and in other articles published by *Pressan* on the same topic at the same time, the sisters' interviews and allegations were presented with certain counter-balancing elements, in that the journalist who wrote the articles offered A an opportunity to comment on the sisters' allegations. A responded by denying the allegations and by stating that he would not discuss the matter further. The journalist tried to contact A in relation to later articles, but without success. However, in later articles published by *Pressan* on the matter, A's response, denying the allegations, was reported. Furthermore, in an article published on 8 November 2011 A's response to the allegations which had been published by another newspaper *Vísir,* was reported and in an article published on 22 February 2011, parts of a

television interview with A's daughter on the subject were reported (see paragraphs 7 - 10 above).

56. The Court further reiterates that a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas (see, among other authorities, *Saygılı and Falakaoğlu v. Turkey*, no. 39457/03, § 23, 21 October 2008), and that "punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so" (see, for example, *Delfi AS v. Estonia*, cited above, § 135).

57. In these circumstances, being aware that the applicant was the editor, not the journalist, the Court considers that the applicant acted in good faith and made sure that the article was written in compliance with ordinary journalistic obligations to verify a factual allegation.

58. As to the content, form and consequences of the impugned statements, the Court notes in the first place that, according to the findings made by the Supreme Court, the impugned statements consisted of insinuations about A being a child abuser and, under Article 241 of the Penal Code, the Supreme Court declared the statements null and void as stated above. The Court agrees that those allegations were of such nature and gravity as to be capable of causing harm to A's honour and reputation.

59. On the other hand, it is clear that the disputed statements did not originate from the applicant himself nor from the journalist who wrote the articles, but from the sisters. They had, already in 2008, written a letter containing part of the allegations and sent this to their extended family, the police and the child protection services. They had published that letter and all the impugned statements on their own website before the articles were published on *Pressan*. As it appears in the domestic courts' findings, the quotations under items A-C and D in paragraph 12 were a verbatim rendering of the sisters' statements in their letter, on their website and from their interviews with the journalist who had written the articles. Furthermore, they later confirmed that their statements had been accurately quoted and published with their consent (see paragraphs 15 and 18 above).

60. In so far as the applicant's conviction may have been in the legitimate interest of protecting A against the impugned defamatory allegations made by the sisters, that interest was, in the Court's view, largely preserved by the possibility open to him under Icelandic law to bring defamation proceedings against the sisters. The Court regards it as significant that A opted to institute proceedings against the applicant editor only. It refers in this respect to the fact that A's lawyer sent a letter to the sisters offering to settle the case, failing which defamation proceedings

would be brought against them. However, according to the sisters' statements before the domestic courts, A never brought court proceedings against them. In these circumstances, it may be open to question whether the applicant was afforded a real opportunity to absolve himself of liability by establishing that he had acted in good faith and, in the case of factual allegations, by ascertaining their truth.

61. As regards the severity of the penalty imposed, the Court notes that the defamation proceedings brought by A against the applicant ended in an order by the Supreme Court declaring the statements null and void and requiring the applicant to pay to A ISK 200,000 in compensation for non-pecuniary damage under the Tort Act, plus interest, and ISK 800,000 for A's 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 person 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).

62. In the light of all the above-mentioned considerations, the Court considers that the arguments of the domestic courts, although relevant, cannot be regarded as sufficient to justify the interference in issue. In assessing the circumstances submitted for their appreciation, the Supreme Court did not give due consideration to the principles and criteria as laid down by the Court's case law for balancing the right to respect for private life and the right to freedom of expression. It thus exceeded the margin of appreciation afforded to it and failed to strike a reasonable balance of proportionality between the measures imposed, restricting the applicant's right to freedom of expression, and the legitimate aim pursued.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

64. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award 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 16 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Linos-Alexandre Sicilianos
Deputy Registrar	President