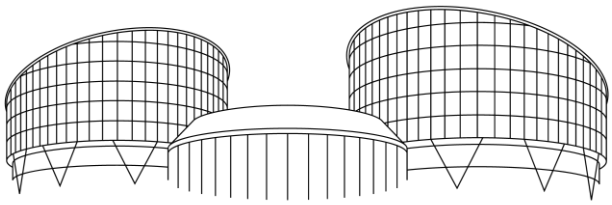

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BJÖRK EIÐSDÓTTIR v. ICELAND

(Application no. 46443/09)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

10/10/2012

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

In the case of Björk Eiðsd**ó**ttir v. Iceland**,**

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 19 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 46443/09) 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, Mrs Björk Eiðsdóttir ("the applicant"), on 20 August 2009.

2. The applicant was represented by Mr Hreinn Loftsson and Mr Gunnar Ingi Jóhannsson, both lawyers practising in Reykjavík. The Icelandic Government ("the Government") were represented by their Agent, Mrs Ragnhildur Hjaltadóttir, of the Ministry of Interior.

3. The applicant alleged a violation of Article 10 of the Convention on account of the unfavourable outcome of defamation proceedings brought against her by a person who had been portrayed in an article published by the *Vikan* magazine on 23 August 2007.

4. On 18 October 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mrs Björk Eiðsdóttir, is an Icelandic national who was born in 1974 and lives in Reykjavík. At the material time she worked as a journalist for *Vikan*, a weekly magazine.

6. In 2007 there was a public debate in the print and televised media in Iceland on whether the regulations pertaining to strip clubs should be made stricter or whether such clubs should be banned. In June 2007 a magazine named *Ísafold* published an article discussing the links between such clubs and prostitution. It maintained that the conditions of strip club dancers originating from eastern Europe could be compared to human trafficking as defined in the relevant United Nations instruments.

7. Subsequently, *Vikan* published in its issue no. 31 interviews with three east European women who worked at a strip club called *Goldfinger* owned by Mr Y. They had stated that they were happy working for Mr Y and that the critical remarks made about strip clubs could only be explained by the envy of certain other women. In the same issue, *Vikan* published the interviews of two anonymous strip dancers who described negative aspects of their jobs, namely that it was accompanied by prostitution and drug addiction.

8. Thereafter *Vikan* was contacted by a young Icelandic woman, Mrs Z, who offered to tell her story. She was a former strip dancer who had worked at several strip clubs and had worked for Mr Y. She said that she had felt offended at seeing strip dancing being portrayed as a glamorous career. Mrs Z met the applicant for an interview, which the applicant tape recorded and then typed up on the basis of the recording. The applicant sent the typed version to Mrs Z by e-mail for confirmation and consent to publish the story. Mrs Z responded in the affirmative.

9. On 23 August 2007 *Vikan* published in its issue no. 34 an article based on the interview conducted by the applicant with Mrs Z. An introduction referred to the above-mentioned coverage in issue no. 31. In the interview, Mrs Z described her work as a striptease dancer in various establishments, notably at *Goldfinger* owned Mr Y. The article, which had a number of sub-headings, comprised, inter alia, Mrs Z's description of prostitution which she was reported to have said went on unhindered in these establishments, for example at *Goldfinger*; her drug addiction after she had started working as a striptease dancer; and threats she had been subjected to in connection with her work. The front cover of the magazine displayed a photograph of Mrs Z, which was also found on the first inside page of the magazine next to an editorial by Mrs G.E.A., the magazine's editor, dealing with the above-mentioned article. Photographs of Mrs Z also featured on the title page of the article, next to its main text and a photograph of Mr Y.

10. Alongside the latter photograph it was stated that the magazine had contacted him and had asked his opinion about Mrs Z's account that he "encourage[d] girls who work[ed] for him to engage in prostitution and act[ed] as an intermediary in this respect". It was further stated:

> "[Mr Y] totally rejected this. 'I can categorically state that not one of my girl employees is encouraged to engage in prostitution. But, on the other hand, I cannot

prohibit acts by them in their free time.' When it was put to him that prostitution reportedly took place within the walls of his club, his answer was that this was not, to his knowledge, true to fact. 'This is simply a tremendous lie and it seems that those who are successful must always be slandered. I have always tried to act as fairly as I possibly can towards my girls. I have been active in this branch for nine years, and I would not have retained my employees if I had asked them to do something against their will, ... [Mr Y] also was of the view that *Vikan*'s account of these matters was prompted by vicarious considerations, as *Vikan* was published by the same company as *Mannlíf* and *Ísafold*, against which he said that he had initiated legal proceedings. [Mr Y] was emphatic that no falsehood should be published about him or his business, and finally stated: 'I hope to God that you will not have any troubles on account of what you publish in your magazine.'"

11. On 5 and 6 September 2007 Mr Y lodged defamation proceedings against the applicant, the editor, Mrs G.E.A., and Mrs Z before the Reykjavík District Court. In his writ, in which he set out the four judicial claims described below, he requested that the following statements published by *Vikan* in the relevant issue, be declared null and void (*dauð og ómerk*):

Judicial claim no. 1 [statements made by Mrs Z]

A. "I ended up working for [Mr Y], but there was a lot of prostitution at his clubs, and huge pressure was placed upon the girls who worked for him to engage in such activities."

B. "[Mr Y] has always been strongly involved in prostitution which occurs inside his clubs. After dancing in private was banned, the prostitution has simply been carried out behind curtains allegedly used for the purpose of talking to the clients in private."

C. "It varies a lot whether the clients pay [Mr Y] himself for the service or deal directly with the girls..."

D. "I have overcome my fear of those men, although I have certainly been threatened with death and for a while I was too afraid to leave the house."

E. "The girls he employs come here temporarily for three months at a time and are treated as if they were in prison."

F. "In between, they are really under house arrest in the building apart from a period of time during which they are permitted to go outside."

G. "The reason for this is that girls were discovered to have found clients for themselves outside the club without [Mr Y] receiving a share of the fee; he wants to control the prostitution himself."

Judicial claim no. 2 [concerning remarks made in sub-headings]

A. "Prostitution the rule rather than the exception."

B. "Threatened with death."

C. "Brought to Iceland without any suspicion of what was going to happen."

Judicial claim no. 3

A. "Threatened with death if she told anyone." [Published as a heading on the front page.]

B. "[Mrs Z] worked as a stripper and tells the *Vikan* reporter all about the prostitution and the threats to her life." [Published in a summary in the table of contents.]

C. "[Mrs Z] says the prostitution is allowed to continue unhindered and that it is conspicuous inside the striptease clubs." [Published in a summary in the table of contents.]

Judicial claim no. 4

"[Mrs Z.] is incredibly brave to have the courage to step forward and tell her story despite having been threatened with death ... ."

12. Mr Y argued that the responsibility for the statements in judicial claim no. 1 lay mainly with Mrs Z or, in the alternative, with the applicant as the author of the article. The latter was responsible for the remarks in judicial claim no. 2 and the defendant G.E.A., as the magazine's editor, was responsible for the remarks in judicial claim no. 3. Alternatively, in the event that the court did not accept this claim, Mr Y requested that the applicant be held responsible as the author of the article referred to in the heading and summary in question.

13. In addition, Mr Y requested an order that the respondents, jointly and severally, be ordered to pay him 5,000,000 Icelandic *krónur* (ISK) in respect of damages and ISK 800,000 to cover the cost of publishing the judgment in the case in three newspapers and also in the following issue of *Vikan*.

14. In disputing the above claims, the applicant and the editor of *Vikan* argued inter alia:

"Most people would agree that the plaintiff is a controversial individual because of the activities in which he has been involved in Reykjavík and Kópavogur. The debate relating to the connection between striptease dancing and prostitution is tenacious, not least because abroad such operations are often run side by side, openly and in a legal manner, but also because of the nature of these activities. As an example of the persistence of such rumours in Iceland, a report on human trafficking in Iceland (court document no. 7), by the US Embassy in Iceland, dating from 2006, could be mentioned. At page 3 of the report, it is stated that during its compilation, a member of the embassy staff was offered sexual services at the restaurant *Goldfinger*. It is an established fact that the operation of pole-dancing establishments comprises obtaining girls, for the most part foreign nationals, for the purpose of dancing scantily clad or nude in front of the clients of the establishment, or in private cubicles, and, as indicated by the term, it is hard to observe everything that goes on inside such closed-off spaces. Furthermore, the plaintiff has admitted in public that there have been incidents at *Goldfinger* where clients were offered sexual services, cf. an interview with the plaintiff on Channel 2, 1 June 2007 (court document no. 6). Because of the mystique, among other things, which to most people, surrounds such activities as well as persistent rumours regarding prostitution and human trafficking, the defendants felt that a discussion of this matter would be of interest and relevance

> to the general public. The defendants refer, for example, to a news item contained in court document no. 9, which cites the Chief of Police in Reykjavík as stating in his report regarding a licence for *Goldfinger* that European research has shown striptease dancers to be subjected to various kinds of abuse and, in many cases, they become the victims of human trafficking or other crimes. The defendants feel that the plaintiff has to accept and tolerate controversial discussion with regard to the operation of *Goldfinger* .... The presentation of the plaintiff's case, however, is characterised by the shortcoming that he appears to identify himself with the operation of all the pole-dancing establishments in Iceland."

15. In the course of the oral proceedings before the District Court, Mr Y and Mrs Z concluded a judicial settlement agreement, whereby he withdrew his action against her. He maintained his claims against the applicant and the editor.

16. By a judgment of 4 April 2008 the District Court found that several of the statements originating from Mrs Z had been defamatory and that she in principle could be held liable but the action against her had been withdrawn. In contrast, the applicant and the editor could not be held liable and so the District Court dismissed Mr Y's action against them.

17. Mr Y then appealed against the District Court's judgment to the Supreme Court.

18. The applicant and the editor referred to their arguments before the District Court and disputed that the allegations that had formed the subject-matter of Mr Y's defamation action had constituted defamatory statements and innuendos against him. In any event, with regard to judicial claim no. 1, according to section 15 of the Printing Act, the respondents could not be held responsible for the affirmations made by Mrs Z in the interview and who ought to be considered as their author. As to judicial claim no. 2, the disputed sub-headings had not contained innuendos directed against the appellant's honour or allegations to the effect that he had organised prostitution or other illicit activities. The interview had been conducted with Mrs Z who had spoken unreservedly about her experience of working as a striptease dancer in a number of striptease establishments. In processing the interview the applicant had used sub-headings in order to divide the text into chapters for clarification and to highlight each topic separately. She had only referred to the interviewee's words and had made no independent contribution. The same or similar considerations applied to judicial claims nos. 3 and 4. The conditions for liability under section 26 of the Damage Compensation Act no. 50/1993 had not been fulfilled. The respondents had not made any allegations that exceeded their constitutionally protected right to freedom of expression (Article 73 of the Icelandic Constitution).

19. By a judgment of 5 March 2009 the Supreme Court rejected Mr Y's appeal in so far as it concerned the editor. In so far as it concerned the applicant, it upheld judicial claim no. 1, items A to C and E to G, and judicial claim no. 2, item A. It ordered the applicant to pay the appellant

ISK 500,000 (approximately 3,000 euros (EUR)) in compensation for non-pecuniary damage and ISK 400,000, plus interest, for his costs before the District Court and the Supreme Court. Its judgment contained the following reasons:

> "The main issue in dispute in the present case is whether the respondents are liable on the basis of section 15 (2) and (3) of the Printing Act, No. 57/1956 for statements that [the applicant] had cited from the interviewee and whether headings and references which the respondents themselves had created, which they maintained was done in close connection with the words used by their interviewee, fell within the provision on freedom of expression in Article 73 of the Icelandic Constitution. The grounds of the case of each party are sufficiently described in the judgment which is being challenged. As indicated therein, the plaintiff based his claim for the annulment of the remarks in judicial claim no. 1, items A to G, on the premise that they contained defamatory *innuendos* regarding his character, which are the responsibility of the [applicant] as the author of the article, see section 15 (2) of Act No. 57/1956. The title page of the article stated that its text had been prepared by [the applicant]. She confirmed at the court hearing that she had been the author of the article and had also formulated the sub-headings. She had determined the wording of the sub-headings, which, like the article, contained a near-verbatim rendering of [Mrs Z]'s statements. This was indeed her ([Mrs Z]'s) account. [The applicant] stated that she had tape-recorded the interview, used the recording as a foundation for the article and had sent the result to [Mrs Z]. Subsequently [Mrs Z] had confirmed by email that this was an accurate rendering of her account. When comparing the manuscript of the interview and its tape-recording, on the one hand, and the article in question with its sub-headings, on the other hand, it is however clear that this is not a verbatim rendering of the interviewee's statements. However, it is also clear that the [applicant] in the main accurately rendered the substance of what her interviewee had said. As mentioned above, she had later confirmed that her story had been accurately rendered. Since the [applicant] is, as stated on the front page [...], the author of the text and has admitted to having written the article and its sub-headings, she is considered to be the author of the article and the sub-headings in the sense of section 15 (2) of Act No. 57/1956 and as such bears responsibility for this work. It is of no consequence whether [Mrs Z] may also be regarded as the author of the article in the sense of this provision of the law.
>
> By the remarks identified in items A, B, C and D of judicial claim no. 1 of his claim, the plaintiff [Mr Y] is alleged to be guilty of offences under Article 206 of the Penal Code [...], by organising for his own profit prostitution among the girls working for him on his premises and by exerting pressure on them for this purpose. The words in items E and F, however, convey the suggestion that Mr Y had deprived the girls who worked for him of their freedom, which constituted an offence under Article 226 of the Penal Code. The main text under the sub-heading 'Prostitution the rule rather than the exception' contained, inter alia, the words specified in items A and B of judicial claim no. 1, as well as other allegations relating to [Mr Y] and his striptease premises, *Goldfinger*. It is clear from the relationship between the main text and the heading, that the heading is directed against [Mr Y]. The same applies to this heading as to the remarks in judicial claim items A, B., C and G above. The remarks identified in items A, B, C, E, F and G of judicial claim no. 1 and the sub-heading referred to in item A of judicial claim no. 2 constitute a violation of Article 235 of the Penal Code. They do not comprise an expression of opinion or values but statements of fact that are not covered by Article 73 of the Icelandic Constitution with respect to freedom of

expression. In accordance with Article 241 (1) of the Code they are declared null and void by the court.

The words mentioned in item D of judicial claim no. 1 were directed against unspecified persons, not against the appellant [Mr Y]. The sub-headings in items B and C of judicial claim no. 2 were of a general nature; nor did the text below those headings appear to link them to [Mr Y]. Therefore, the [applicant] is acquitted with respect to those judicial claims. The words indicated in judicial claim nos. 3 and 4 of the claim, for which the respondent [editor, G.E.A.] bears responsibility according to section 15 (3) of Act No. 57/1956, are also of a general nature and she is therefore acquitted with respect to these judicial claims.

The reasoning and conclusions of the present judgment are to be published in the first issue of *Vikan* that appears after its delivery. However, the claim in respect of expenses for further publication are rejected.

Under section 26 (1)(b) of the Damage Compensation Act No. 50/1993, [Mr Y] is awarded compensation, to be paid by [the applicant] with respect to the above-mentioned defamatory statements, in an amount of ISK 500,000, plus interest [...], which is deemed actionable. In accordance with this conclusion, the [applicant] is ordered to pay the appellant legal costs before the District Court and the Supreme Court [...]. In other respects, legal costs are not recoverable."

II. RELEVANT DOMESTIC LAW

20. Article 73 of the Constitution of the Republic of Iceland, Act No. 33/1944, read:

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."

21. The Penal Code No. 19/1940 contained in Chapter XXV, entitled "Defamation of character and violations of privacy', 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 of 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 of up to one years."

Article 236

"The making or spreading of an injurious allegation against a person's better knowledge, this shall be subject to up to 2 years imprisonment.

If an allegation is published or spread in a public manner, even where the person spreading the allegation did not have a probable reason to believe it to be correct, this shall be subject to fines or up to 2 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."

22. Section 26(1) of the Tort Liability Act No. 50/1993 provided:

"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."

23. The Printing Act No. 57/1956, Chapter V on the liability for the contents of publications, contained 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 lettering."

24. The Code of Ethics of the Icelandic Journalists Association included the following provisions:

Article 1

"A journalist will endeavour to do nothing which will bring discredit upon his or her profession or professional association, paper or newsroom. A journalist shall avoid any actions which could undermine the public opinion of journalists' work or damage

the interests of the profession. A journalist shall always exhibit fairness in dealings with colleagues."

Article 2

"A journalist is aware of his or her personal responsibility for what he or she writes. He or she shall bear in mind that he or she will generally be regarded as a journalist in his or her writings and speech, even when he or she is acting outside his or her profession. A journalist will respect the confidentiality of his or her sources."

Article 3

"A journalist will exercise care in his or her gathering of material, the use of the material and presentation to the extent possible, and show due consideration in sensitive matters. A journalist shall avoid any actions which could cause unnecessary distress or dishonour."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant complained that the Icelandic Supreme Court's judgment of 28 July 2008 amounted to an interference with her right to freedom of expression that was not "necessary in a democratic society" and thus violated Article 10 of the Convention, which reads:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

26. The Government contested that argument.

A. Admissibility

27. The Court finds 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

28. The Court considers that the impugned measure constituted an "interference by [a] public authority" with the applicant's right to freedom of expression as guaranteed under the first paragraph of Article 10.

29. That interference had a legal basis in Articles 235 and 241(1) of the Penal Code, section 15(2) of the Printing Act and section 26(1) of the Tort Liability Act and was in this sense "prescribed by law" for the purposes of the second paragraph of Article 10.

30. In this connection the Court observes that in the course of the proceedings before it the applicant in addition maintained, with reference to the above-mentioned criterion – "prescribed by law" – that by having held her responsible of the impugned statements as an "author" under section 15(2) of the Printing Act, the Supreme Court had applied national law in a manner that had not been foreseeable. In other words, whilst she did not argue that the interference had lacked a legal basis in Icelandic law, she disputed the quality of the law with reference to the requirement of foreseeability stemming from the Court's autonomous interpretation of the lawfulness requirement in its case-law. However, the Court does not find it necessary to pronounce on this issue which appears to concern a separate matter raised by the applicant for the first time in her observations of 8 April 2011 in reply to those of the Government of 16 February 2011.

31. The Court is further satisfied that the interference pursued the legitimate aim of protecting "the reputation or rights of others".

32. It remains to consider whether the interference was "necessary in a democratic society".

1. Arguments of the parties

(a) The applicant

33. The applicant maintained that although it could be argued that some of the remarks published were statements of fact rather than value judgments, it was clear that this was not a sufficient reason for restricting her freedom of expression as a journalist under Article 10 of the Convention. She had acted in good faith and her intention had not been to damage Mr Y's reputation but to contribute to an on-going social debate on the operation of strip clubs. The article had concerned a matter of serious public concern. By prohibiting dissemination of the information in question, the Supreme Court's judgment had entailed an unreasonable restriction on the applicant's journalistic freedom as protected by Article 10 that could not be regarded as "necessary in a democratic society". By having been required to adduce solid evidence as proof of Mrs Z's statements, the applicant had been faced with an unreasonable, if not an impossible, task (*Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 65, Series A no. 239).

34. In the applicant's view, there was ample factual basis for allowing the publication of the impugned allegations made by Mrs Z in her interview.

35. In the first place, the applicant referred to the fact that the interview related to a public discussion on whether prostitution occurred in the strip club *Goldfinger*, owned and operated by Mr Y, and whether he was directly involved in that activity. The story had been based on an interview with a woman, Mrs Z, who had worked for Mr Y and who over a long period had had first-hand experience of the situation in strip clubs, including *Goldfinger*. In addition, it ought to be borne in mind that a few weeks before, *Vikan* had published an interview with three east European women who had given a glamorous picture of strip dancing. Also, in the same magazine, two Icelandic women who had experience of strip dancing had been interviewed anonymously, both of whom shared Mrs Z's experience regarding prostitution in strip clubs. Thirdly, in the course of the domestic proceedings, the applicant had filed with the District Court, a report by the Embassy of the United States of America (USA) on sex crimes in Iceland, describing one incident where one of its employees had been offered sex for money when visiting the strip club *Goldfinger* for research. Fourthly, the applicant had referred to a report by the Chief of Police in Reykjavík, who had objected to *Goldfinger'*s request for renewal of its licence to serve alcoholic beverages, with reference to the police's suspicion of illegal activities associated with the establishment. The report affirmed that research had shown that there was a connection between prostitution and strip clubs and that the police objected to the renewal of *Goldfinger*'s licence to serve alcoholic beverages.

36. In addition, the applicant referred to another defamation case (Supreme Court judgment (no. 475/2008) of 30 April 2009), instituted by Mr Y against another magazine before the District Court almost simultaneously with the present case. In that case, a former head doorman of *Goldfinger* (for several years) and its co-manager, had testified before the Reykjavík District Court claiming that Mr Y had allowed prostitution to go on unhindered in the establishment. According to this testimony, Mr Y had received half of the revenue derived from this activity. In that case, which the Supreme Court decided on 30 April 2009, Mr Y had called for the annulment of eight statements containing allegations that prostitution occurred frequently in *Goldfinger*. The Supreme Court rejected Mr Y's request to have all the remarks relating to prostitution in *Goldfinger* declared null and void. This was because it could be established that prostitution went on inside *Goldfinger*, although it had not been claimed in the magazine that Mr Y personally gained from that activity.

37. The applicant stressed that Mr Y himself had admitted during a television interview, around the same time as the publication of the disputed article, that there had been incidents of prostitution which he had dealt with although he would not elaborate on how. A transcript of the interview had

been submitted in the national proceedings. In that same interview Mr Y had also admitted that the strip dancers had been deprived of their freedom whilst pointing out that this had been necessary to protect them from customers wanting something more than dances in private. It was also revealed in the case that the Ministry for Social Affairs had requested the police to open an investigation into whether workers at strip clubs had been deprived of their liberty. The applicant added that Mr Y, who ran the club's day-to-day activities and who had an office on its premises, could not have been ignorant of any illegal activities taking place there.

38. The applicant found peculiar the Government's comment that "*Goldfinger* [was] still doing business", whilst in actual fact strip dancing had been banned in Iceland.

39. The applicant believed that the aforementioned facts provided ample reason to discuss the issue of alleged prostitution in strip clubs freely and openly.

40. The applicant stressed that the reporting in question had been based on a reliable source, namely a first-hand witness account from a woman who had contacted the magazine *Vikan* and had wished to tell her story. This was after the women had read an interview in the same magazine, published three weeks before, with three east European women all working for Mr Y at *Goldfinger*, in which they had glamorised the profession. Mrs Z had felt offended by their description of the profession. There was no indication that the applicant had acted in bad faith or that the ethics of good journalism had been violated and she objected to the Government's contention that she had been careless. The case had not been brought before the Ethics Committee of the Icelandic Press Association ("IPA"). In fact, the IPA had openly expressed its outrage over the Supreme Court's judgment. The applicant stressed that the interview had been part of an on-going public debate in Iceland on whether to ban strip clubs. Mr Y had been given an opportunity to comment on the article, of which he had availed himself, and in so doing had denied all the accusations.

41. The applicant, relying on *Selistö v. Finland* (no. 56767/00, 16 November 2004), invited the Court to consider whether Mr Y, who was a highly controversial figure and who owned and ran a highly controversial business, had such undoubted interest in protecting his reputation as could outweigh the interest in discussion on an important matter of legitimate public concern.

42. The applicant had no reason to believe that the information might not be truthful and she in fact considered it to be accurate and correct. It was undisputed that the interviewee had worked for many years as a strip dancer, including for Mr Y at his clubs, notably at *Goldfinger*. She had no reason to defame Mr Y. In her statement to the District Court she had argued that since her affirmations to the magazine were true, they could not have been defamatory. She also testified to that effect before the District

Court. However, in the course of the first instance hearing, Mr Y opted to reach a judicial settlement agreement with the interviewee, whereby he withdrew his action against her and settled all her expenses, leaving it to the applicant alone to respond to his claim that the story was false and therefore defamatory.

43. To hold the applicant liable for defamation simply because she could not provide solid evidence for all the statements of the interviewee deprived her of her right as a person and a journalist to disseminate important information of public concern. The Supreme Court's judgment offered no clues on how a journalist could avoid liability when reporting or presenting an article on the darker side of society. It failed to strike a fair balance between the applicant's freedom of expression, on the one hand, and Mr Y's interest in protection of his reputation, on the other hand.

44. Finally, the applicant maintained that the amount of compensation which the Supreme Court had ordered her to pay to Mr Y – ISK 1,102,599, inclusive of two years' default interest, which according to the 2007 exchange rate had amounted to approximately EUR 12,500 – had corresponded to five times her monthly salary (EUR 2,600), not counting her own legal expenses before the District Court and the Supreme Court. In her view, the size of the award had been disproportionate to the aim pursued.

(b) The Government

45. The Government emphasised at the outset that in their interpretation of Article 73 of the Icelandic Constitution, the Icelandic courts had traditionally relied heavily on standards similar to those applied by the European Court in interpreting Article 10 of the Convention and had also considered such factors in their examination of the present case.

46. The Government pointed out that, as could be seen from the Supreme Court's judgment, the remarks which were found to violate Mr Y rights were deemed to constitute statements of fact rather than value judgments. This approach was fully consistent with the European Court's case-law.

47. Since the allegations that Mr Y was guilty of serious criminal offences had been presented as facts, the Icelandic courts enjoyed a greater margin of appreciation in restricting her freedom of expression than would have been the case had the statements consisted of value judgments.

48. The remarks published in the applicant's article must be considered in the context in which they had appeared and with regard to the way they had been presented in the magazine in question. The article had been the main story in the magazine and had featured as a headline on the front cover, in addition to being the main topic of the magazine's editorial column. Of the sub-headings in the article authored by the applicant which she had indisputably selected from her interviewee's account, the phrases

"Prostitution the rule rather than the exception", "Threatened with death" and "Brought to Iceland without any suspicion of what was going to happen" were particularly shocking and injurious to Mr Y's character, whose name was repeatedly mentioned in the article. Even though the applicant was not responsible for remarks that had appeared on the front cover or in the editorial, the entire context and presentation of the article and its sub-headings were such as to constitute serious allegations against Mr Y.

49. The Government accepted that prostitution and other related criminal activities were important social matters and that it was of great consequence for such matters to be freely discussed in the public sphere. It was clearly a social problem of great public concern in Iceland as in other European States and had been discussed openly in Icelandic media both in newspapers and on radio and television. Amendments had been called for to Icelandic criminal law providing for heavier punishment and criminalising the act of buying the services of prostitutes and called for special action plans within the law enforcement system as well as more emphasis in international police co-operation. There had been prosecutions and convictions in criminal cases before the Icelandic courts in the last years involving both prostitution and trafficking crimes. These cases had attracted a lot of media attention. Neither Mr Y nor his club had any connection with these cases.

50. This state of affairs did not confer on the applicant a right to publish false allegations to the effect that particular individuals had committed crimes connected to such activities. Thus, Mr Y was not required to endure a declaration of his guilt and assertions that he had derived income from prostitution, had deprived women of their freedom and had forced them to engage in prostitution. In other words, the fact that a public debate had taken place concerning the issue of prostitution in clubs comparable to the ones operated by Mr Y did not of itself provide a factual basis for statements that he was guilty of such crimes. The remarks regarding Mr Y in the article written by the applicant and their context were clearly not a necessary contribution to the said public debate. Indeed, in its judgment the Supreme Court distinguished between general statements on the subject and specific remarks directed against Mr Y's person, the latter not being considered a necessary contribution to public debate.

51. The applicant's argument that the police had refused to extend Mr Y's licence to serve alcohol for reasons relating to prostitution is also without any foundation or merit; even if this had been the case, it is clear that no evidence has been provided to support this allegation. Mr Y has neither been charged nor convicted of any of the offences described in the applicant's article and his restaurant, *Goldfinger*, was still doing business.

52. It should also be borne in mind that Mr Y had not been in a position where he might expect to endure harsher criticism or allegations in connection with a public debate on social issues. He had not engaged in politics or held public office. Moreover, his restaurant business had not been

of such a nature as to justify subjecting him to harsher condemnation than any other person. He had not been convicted of any crime, as suggested in the newspaper article written by the applicant, and should be afforded the same protection of his private life as other private individuals.

53. The Government objected strongly to the applicant's argument that since, in her view, Mr Y was already a highly controversial character with ties to various controversial people, she enjoyed a wider freedom as a journalist in publishing statements concerning his guilt than in the case of other private individuals. No principles of that kind could be deduced from the Court's case-law. Nor did "highly controversial characters" correspond to any category of individuals for whom private life and reputation deserved less protection against violations by the media.

54. The applicant's attitude towards Mr Y made it seem doubtful that she had acted in good faith and as a responsible journalist. In her view the statements about Mr Y that she had obtained from Mrs Z needed no further investigation or confirmation by other sources.

55. The Government did not argue that the applicant should be required to provide proof beyond reasonable doubt of Mr Y's guilt in respect of the accusations. However, the statements had been published without necessary attempts to verify them through research and without consulting other reliable sources or carrying out an investigation with a view to establishing a more solid factual basis to support Mrs Z's allegations. The references made by the applicant to other relevant material concerning prostitution in strip clubs did not reveal that she had taken any initiative to verify these statements and provide accurate and reliable information.

56. Praying in aid the Court's judgment in *Ruokanen and Others v. Finland* (no. 45130/06, § 48, 6 April 2010), the Government maintained that Mr Y should benefit from the presumption of innocence under Article 6 § 2 of the Convention.

57. The Government further submitted that the applicant had failed to abide by the journalistic duties identified by the Court in its case-law and that in the circumstances of the case there had indeed been carelessness on her part. She had been unable to verify, or provide evidence for, the false allegations contained in Mrs Z's remarks. When it became apparent that she could not find a factual basis for Mrs Z's allegations against Mr Y, she should have arranged the presentation of Mrs Z's remarks accordingly. The Government also referred to Article 3 of the Code of Ethics of the Icelandic Journalists Association (see paragraph 24 above).

58. If it were accepted that a journalist could be released from the obligation to verify statements made by his or her sources simply by publishing them as direct quotes, this would undermine the important principle that journalists should exercise care in the gathering, use and presentation of material.

59. The Government therefore disputed the applicant's argument that it would undermine the independence of the media if they could be held liable for quoting remarks made by third parties. It was indeed the role, as well as the right, of the media to disseminate information and personal opinions. However, this was subject to the condition that the use, presentation and context in which such information was published met the requirements of responsible journalism. The applicant in the present case failed to meet these requirements.

60. In the Government's opinion, the impugned restriction on the applicant's exercise of freedom of expression in this case had corresponded to a pressing social need and had been justified by relevant and sufficient reasons. Since she publicised false allegations that Mr Y had committed serious criminal offences, important individual rights to personal privacy, honour and reputation were at stake. The respondent State's positive obligation to protect these individual rights by law had constituted an important public interest for the national courts when striking, within their margin of appreciation, a fair balance between the competing interests.

61. Finally, it should be stressed that the measures were proportionate to the legitimate aim pursued. The amounts of compensation that the applicant was ordered to pay were fully consistent with settled national judicial practice. In no way were they particularly onerous for her.

2. Assessment by the Court

(a) General principles

62. In the judgment of *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, ECHR 2004-XI, the Court summarised the general principles in its case-law as follows:

> "68 The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to 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 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, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII).
>
> 69. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole, including the content of the comments held against the applicants and the context in which they made them (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I).

> 70 In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were 'relevant and sufficient' and whether the measure taken was 'proportionate to the legitimate aims pursued' (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, judgment of 25 November 1997, *Reports* 1997-VII, pp. 2547-48, § 51)."

63. Moreover, as also affirmed in the above-cited *Pedersen and Baadsgaard* (ibidem, § 71), freedom of expression 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. As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among other authorities, *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, p. 23-24, § 31; *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I; and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV).

64. In its recent Grand Chamber judgment in *Axel Springer AG v. Germany* ([GC], no. 39954/08, § 83, 7 February 2012), the Court reiterated that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI; *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §91, ECHR 2004-XI; *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007; and *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010). However, as the Court also pointed out in that judgment, in order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see also *A. v. Norway*, no. 28070/06, § 64, 9 April 2009; and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII).

65. A central factor for the Court's determination in the present case is the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, in particular in respect of 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. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. In addition, the Court is mindful of the fact that journalistic freedom

also covers possible recourse to a degree of exaggeration, or even provocation. In cases such as the present one the national margin of appreciation is circumscribed by the interest of democratic society in enabling the press to exercise its vital role of "public watchdog" in imparting information of serious public concern (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III; *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 82, 1 March 2007, with further references).

(b) Application of those principles to the present case

66. The Court notes, as observed by the Supreme Court in upholding the District Court's conclusions, that the impugned statements (quoted under judicial claims no. 1, items A to C and E to G and claim no. 2, item A in paragraph 11 above) contained in the applicant's article had consisted of allegations, firstly, that for his own profit Mr Y had been organising prostitution on the premises of his strip club *Goldfinger* and had to this end exerted pressure on the women working there. Secondly, he was alleged to have deprived the women who had worked for him of their freedom. These allegations involved accusations of criminal conduct proscribed by Articles 206 and 226 of the Penal Code, respectively. Under Article 241(1) of the Code, the Supreme Court declared the statements null and void. The Court sees no cause for questioning the Supreme Court's assessment that the allegations were defamatory and that the reasons relied on by the latter were relevant to the legitimate aim of protecting the rights and reputation of Mr Y.

67. As to the further question whether those reasons were sufficient for the purposes of Article 10, the Court must take into account the overall background against which the statements were published. The Court is not persuaded by the Government's argument that the applicant's portrayal of Mr Y in her article "was clearly not a necessary contribution to the said public debate". Whether or not a publication concerns an issue of public concern should depend on a broader assessment of the subject matter and the context of the publication (*Tønsbergs Blad A.S. and Haukom*, cited above, § 87). In this regard it is to be noted that well before the publication on 23 August 2007 of the applicant's article, there was an ongoing public debate in Icelandic print and televised media on the tightening of strip club regulations or the banning of such clubs altogether. Another magazine, *Ísafold*, had in June 2007 published an article on the links between such clubs and prostitution maintaining that the conditions of strip club dancers originating from eastern Europe were comparable to human trafficking. Thereafter *Vikan* had published interviews with three east European women who worked at Mr Y's club, *Goldfinger*, and who affirmed that they were happy working for him and that criticism of strip clubs could only be explained by the envy of certain women. In the same issue, *Vikan* had

published interviews with two anonymous strip dancers who described prostitution and drug addiction as the negative side of their jobs. In reaction to the positive portrayal of the business conveyed by the former three women, Mrs Z had contacted *Vikan* to offer her story about her own experience of working as a strip dancer at several strip clubs, including for Mr Y at *Goldfinger*. In the Court's view, which moreover does not appear to be disputed, there can be no doubt that the applicant's article seen as a whole concerned a matter of serious public concern in Iceland, as in other European States. However, it does not transpire from the Supreme Court's reasoning that this consideration carried any weight in, let alone was seen as relevant to, its assessment.

68. The Court considers that, by having engaged in the particular kind of business in question and bearing in mind also the legitimate public concern highlighted in paragraph 67 above, Mr Y must be considered to have inevitably and knowingly entered the public domain and lain himself open to close scrutiny of his acts. The limits of acceptable criticism must accordingly be wider than in the case of a private individual or an ordinary professional (see, *mutatis mutandis*, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II; Timpul Info-Magazin *and Anghel v. Moldova*, no. 42864/05, § 34, 27 November 2007).

69. The most careful scrutiny on the part of the Court is called for when, as in the present case, the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see *Jersild*, cited above, pp. 25-26, § 35; and Bergens Tidende *and Others v. Norway*, no. 26132/95, § 52, ECHR 2000-IV, *Tønsbergs Blad A.S. and Haukom*, cited above, § 88; compare *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011; *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 106-107, 7 February 2012; *Axel Springer AG*, cited above, §§ 87-88, 7 February 2012).

70. The Court observes in this connection that protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (see, for example, *Goodwin*, cited above, p. 500, § 39; *Fressoz and Roire* cited above, § 54-I; Bladet Tromsø *and Stensaas*, cited above, § 65; *McVicar v. the United Kingdom*, no. 46311/99, § 73, ECHR 2002-III; and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI). Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. These "duties and responsibilities" are significant when there is a question of attacking the reputation of a named individual

and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations (see, among other authorities, *McVicar*, cited above, § 84, ECHR 2002-III; Bladet Tromsø *and Stensaas*, cited above, § 66; and *Pedersen and Baadsgaard*, cited above, § 78).

71. The Court finds that there are no such special grounds as described above in the present instance. It will consider the impugned article as a whole and have particular regard to the words used in the disputed parts of the article and the context in which it was published, as well as the manner in which it was prepared (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 62, ECHR 1999-IV). The Court must examine whether the applicant acted in good faith and complied with the ordinary journalistic obligation to verify a factual allegation. This obligation required that she should have relied on a sufficiently accurate and reliable factual basis which could 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 *Pedersen and Baadsgaard*, cited above, § 78).

72. In the first place the Court notes that, according to the findings made by the Supreme Court, the impugned allegations consisted of factual statements, not value judgments, and imputed criminal conduct to a named individual, Mr Y. The Court sees no reason to disagree with this assessment and considers, moreover, that the accusations were of such a nature and gravity as to be capable of causing considerable harm to his honour and reputation.

73. On the other hand, it is accepted that the disputed statements originated from the interviewee, Mrs Z (compare *Ruokanen*, cited above, § 47). She had contacted the applicant in order to have published her own account of her personal experience of the profession in question, including at the time when Mr Y was her employer. According to the findings of the Supreme Court, when comparing the manuscript of the interview and the tape-recording of the interview, it was clear that the article was not a verbatim rendering but was nonetheless, for the most part, an accurate rendering of the substance of Mrs Z's statements, who later confirmed that her story had been accurately rendered. All but one of the impugned statements, namely the sub-heading in item A of judicial claim no. 2 ("Prostitution the rule rather than the exception") had, with Mrs Z's approval, been presented as a quotation. The Supreme Court does not seem to have considered the said item differently from the afore-mentioned quotes (see paragraph 19 above). The Court discerns no reason for doing so either, finding it sufficiently clear that the sub-heading merely reproduced

Mrs Z's account and opinions (see *Thoma v. Luxembourg*, no. 38432/97, § 64, ECHR 2001-III; compare *Verdens Gang and Aase v. Norway* (dec.), no. 45710/99, ECHR 2001-X).

74. In so far as there may have been a legitimate interest in protecting Mr Y against the impugned defamatory accusations made by Mrs Z in her interview, that interest was in the Court's view largely preserved by the possibility open to him under Icelandic law to lodge defamation proceedings against her (see, *mutatis mutandis*, *Jersild*, cited above, § 35). This he did. The Court regards it as significant that, after Mrs Z had given oral evidence before the District Court, Mr Y opted to withdraw his libel action against her and to cover her legal costs. The Court cannot but note that as a result of this settlement Mrs Z, the source of the impugned accusations, was removed as a party to the proceedings in which Mr Y continued to seek to have the applicant held liable in respect of the same allegations, thereby reducing considerably any possibility for her to substantiate them.

75. The applicant did nonetheless adduce evidence in support of the disputed statements. Apart from having assessed for herself the reliability of Mrs Z's first hand account, the applicant submitted a number of items of evidence to the District Court and the Supreme Court. This included inter alia an incident described by the US Embassy in a report on human trafficking in Iceland describing how one of its staff members had been offered sexual services at the restaurant *Goldfinger*. She further relied on the recording of a television interview with Mr Y broadcast on Channel 2 on 1 June 2007, in the course of which he conceded that there had been incidents at *Goldfinger* where clients had been offered sexual services and that strip dancers had been deprived of their liberty – with the aim of protecting them from customers who solicited forms of entertainment other than dancing.

76. Nevertheless, although it reached the conclusion that the impugned statements were factual allegations rather than value judgments and found the applicant liable for defamation, the Supreme Court omitted in its judgment of 5 March 2009 to deal with the above-mentioned factual arguments in the applicant's case, in light of Mr Y's discontinuation of his action against Mrs Z. In the Court's view, therefore, it may even be questioned whether the applicant was afforded a real opportunity to absolve herself of liability by establishing that she had acted in good faith and, in the case of the factual allegations, by ascertaining their truth (see *Mamère v. France*, no. 12697/03, § 23, ECHR 2006-XIII; and *Castells v. Spain*, 23 April 1992, § 48, Series A no. 236).

77. The Court has also taken notice of the information provided by the applicant, and undisputed by the Government, concerning defamation proceedings lodged by Mr Y against the journalists who had written the article published in *Ísafold* in June 2007 (see paragraph 6 above) and which

he pursued in parallel to those of the present case. As it appears from a judgment of the District Court of 4 June 2008, in those proceedings, his requests to have declared null and void a number of allegations to the effect that prostitution had been taking place at his club (though not implying that he had been involved as an intermediary or otherwise or had profited therefrom) were dismissed.

78. The Court is therefore unable to accept the Government's argument that the applicant failed to ascertain whether there was a factual basis for B.'s accusations against Mr Y.

79. It is further to be observed that in *Vikan*'s issue no. 34, the applicant's interview with Mrs Z was presented with certain counter-balancing elements (see *Jersild*, cited above, § 34, and Bergens Tidende *and Others v. Norway*, no. 26132/95, § 58, ECHR 2000-IV). She had offered Mr Y an opportunity to comment and her article quoted his reply (see *Melnychuk v. Ukraine* (dec.), no. 28743/03, ECHR 2005-IX) to Mrs Z's allegation that he "encourage[d] girls who work[ed] for him to engage in prostitution and act[ed] as an intermediary in this respect". The article explicitly referred to issue no. 31, published a few weeks earlier. The latter contained inter alia interviews with three current employees at *Goldfinger* refuting the negative comments that had been made about working at this establishment. It should be recalled that the methods of objective and balanced reporting may vary considerably, depending among other things on the medium in question; it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted by journalists (see *Jersild*, cited above, pp. 23-25, §§ 31 and 34, and *Bergens Tidende and Others*, cited above, § 57). Though they may have been capable of causing injury to Mr Y's reputation, the Court sees no cause for criticising the applicant for not having distanced herself from the contents of Mrs Z's statements (*Thoma v. Luxembourg*, no. 38432/97, § 64, ECHR 2001-III; *Standard Verlags GmbH v. Austria*, no. 13071/03, § 53, 2 November 2006).

80. In this connection, the Court reiterates that news reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of "public watchdog" (see *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216; and *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298). Moreover, the 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 *Jersild*, cited above, ibidem). However, whilst this consideration was apparently not addressed in the Supreme Court's assessment, the Court is not convinced that there were any such strong reasons in the instant case.

81. Having regard to all of the above considerations, notably that the disputed statements based on a first-hand account given by another person in an interview with the applicant, that the latter assessed the reliability of the said account and adduced evidence in support of the statements, the Court finds in the concrete circumstances of the present case that the applicant journalist cannot be criticised for having failed to ascertain the truth of the disputed allegations and is satisfied that she acted in good faith**,** consistently with the diligence expected of a responsible journalist reporting on a matter of public interest (see, for instance, *Wizerkaniuk v. Poland*, no. 18990/05, § 87, 5 July 2011).

82. Nonetheless, the defamation proceedings brought by Mr Y against the applicant ended in an order by the Supreme Court declaring the statements null and void and requiring the applicant to pay to Mr Y ISK 500,000 (approximately 3,000 euros) in compensation for non-pecuniary damage and ISK 400,000, plus interest, for his costs before the District Court and the Supreme Court.

83. Accordingly, the reasons relied on by the respondent State, although relevant, are not sufficient to show that the interference complained of was "necessary in a democratic society". The Court considers that there was no reasonable relationship of proportionality between the restrictions resulting from the measures applied by the Supreme Court on the applicant's right to freedom of expression and the legitimate aim pursued.

There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. Article 41 of the Convention provides:

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

A. Pecuniary damage

85. The applicant sought compensation for pecuniary damage in respect of amounts totalling 1,102,599 Icelandic *krónur* (ISK) that she had been ordered by the Supreme Court, in its judgment of 5 March 2009, to pay to Mr Y for non-pecuniary damage (ISK 500,000), for legal costs (ISK 400,000) plus interest. Using the exchange rate of 5 September 2007, these amounts corresponded to 12,537 euros (EUR).

86. The Government disputed the date proposed by the applicant for the rate of exchange, which in their view should be 8 March 2009, the date when she paid the award to Mr Y. According to the rate applicable on the latter date, the claimed amount corresponded to EUR 7,790.

87. The Court, sharing the Government's view regarding the rate of exchange and being satisfied that there was a causal link between the violation found and the pecuniary damage alleged, awards the applicant EUR 7,790 under this heading.

B. Non-pecuniary damage

88. The applicant further claimed ISK 10,500,000 or EUR 119,386 in compensation for non-pecuniary damage that she had suffered as a result of the violation of the Convention entailed by the Supreme Court's judgment of 5 March 2009. The proceedings against her had not only subjected her to a heavy burden as a journalist living on a modest income but had also aroused considerable media attention. After the said judgment it had become a habit to refer to her as "the convicted journalist". A national newspaper with a large readership had published an interview with Mr Y in which he had made particularly hurtful comments about her professional integrity and performance. She had quit her job at the *Vikan* magazine and had gone abroad for two years. Her honour and reputation, both on a personal and on a professional level, had suffered. The matter had caused the applicant and her family emotional and psychological pain and suffering. The Supreme Court's judgment which set out her name had been made accessible to the public at large through its publication on internet.

89. The Government disputed the above claim, considering that a finding of violation by the Court would constitute adequate just satisfaction. In any event, should the Court be minded to make a pecuniary award, the amount requested was clearly excessive. EUR 2,000 would be a more appropriate sum in light of the Court's case-law in similar cases.

90. The Court accepts that the applicant suffered distress and frustration as a result of the violation of the Convention which cannot be adequately compensated by the findings in this respect. Making an assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

C. Costs and expenses

91. The applicant further sought the reimbursement of legal costs and expenses, totalling ISK 4,176,713, in respect of the following items:

(a) ISK 1,425,088 incurred for her own legal costs before the domestic courts (ISK 916,725 before the District Court and ISK 508,363 before the Supreme Court);

(b) ISK 2,000,000 for her lawyers' work in the proceedings before the Court;

(c) ISK 751,625 for translation costs in the Convention proceedings.

Taking the rate of exchange applicable on 5 September 2007, the above amounts corresponded to EUR 16,203, EUR 22,740 and EUR 8,546,

respectively, thus totalling approximately EUR 47,489, and included value added tax ("VAT").

92. The Government disputed the applicant's choice of date or rate of exchange, which in their view should be the date of payment. Thus calculated, the amounts corresponded to EUR 10,068, EUR 12,147 and EUR 4,311, respectively. Moreover, the Government considered the claims made in respect of legal fees before the Strasbourg Court to be excessive.

93. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria, documents in its possession and the fact that only parts of the claims for costs were supported by vouchers, the Court considers it reasonable to award EUR 10,000 in respect of item (a), EUR 10,800 for item (b) and EUR 4,200 for item (c) (inclusive of VAT).

D. Default interest

94. The Court has taken note of the applicant's invitation to apply a default interest to its Article 41 award "equal to the monthly applicable interest rate published by the Central Bank of Iceland ... until settlement", which should run from 5 March 2009, the date of the Supreme Court's judgment.

95. However, the Court is of the view that the applicant's interest in the value of the present award being preserved has been sufficiently taken into account in its assessment above and in point 3(b) of the operative part below. In accordance with its standard practice, the Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Icelandic *krónur* at the rate applicable at the date of settlement:

(i) EUR 7,790 (seven thousand, seven hundred and ninety euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 25,000 (twenty-five thousand euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President