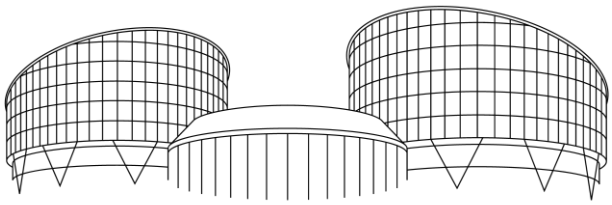

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ERLA HLYNSDÓTTIR v. ICELAND

(Application no. 43380/10)

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 Erla Hlynsdóttir 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. 43380/10) 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, Ms Erla Hlynsdóttir ("the applicant"), on 21 June 2010.

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 *DV* newspaper on 26 February 2009.

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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Ms Erla Hlynsdóttir, is an Icelandic national who was born in 1978 and lives in Reykjavík. She is a journalist working for the newspaper *DV*. In February 2009, a Mr A contacted the applicant about a

story which he asked to be published by *DV*. According to Mr A's account Mr B, a person known for being violent and whose acts of violence had recently been commented on in the press, had attacked him at his strip club, called *Strawberries*. He had allegedly done so on the order of the owner of a rival strip club. The applicant responded that she would look into the story and would contact Mr B in order to hear his account and also the owner of the rival strip club. Being dissatisfied with the applicant's reply, Mr A insisted that his version of events be published. The applicant refused to do so and decided to carry out research in relation to Mr A's account. She interviewed him and recorded the interview on tape.

6. On 26 February 2009 *DV* published a news report by the applicant entitled "Strip Kings Battle", on the subject of Mr A's accusations against Mr B with regard to the alleged assault at the *Strawberries* strip club. The article referred to interviews with Mr A, Mr B and Mr Y.

7. Mr A was reported to have stated that on the night before 7 February 2009, Mr B had been among the patrons of *Strawberries* accompanied by two other men. He left the club in the course of the night, but returned just before closing time, when he allegedly attacked the employees of the restaurant. Following this Mr A had tried to show him out. Suddenly Mr B attacked Mr A and struck him with his fist, as a result of which he sustained a cracked skull and severe injuries to his eye. Mr A reported the incident to the police.

8. Mr B., whose interview with the applicant was published in the same news coverage, was reported to have denied all the accusations made by Mr A. According to Mr B, he and his two friends had been out partying and had decided to visit the *Strawberries* club. They had only been there for a short while when Mr A insisted that they leave. As they refused, the doormen forcibly removed Mr B. In the commotion both he and Mr A had been injured.

9. Mr A instituted defamation proceedings against the applicant before the Reykjavík District Court, arguing that the following statement made by Mr B amounted to unlawful defamation in breach of Articles 234, 235 and/or 236 of the Penal Code and requested that it be declared null and void (*dauð og ómerk*) under Article 241(1):

Item 1

> "He [the plaintiff] has been spreading all around town the rumour that no one with an attitude would come to *Strawberries*, because he has the Lithuanian mafia in there, and that I was just taken and beaten up in there. I don't really get this. He really needs to make up his mind whether he thinks I was beaten up or he was."

10. He also submitted that the following sub-heading amounted to unlawful defamation and should be declared null and void:

Item 2

"Rumour about the mafia"

11. Mr A in addition sought 2,000,000 Icelandic *krónur* (ISK) (corresponding approximately to 13,850 euros (EUR) at the time) plus interest in compensation for damages, an order under Article 241(2) to pay him ISK 500,000 to cover the costs of publication in the press of the court's reasons and conclusion in the defamation case, plus legal costs.

12. In her pleadings before the District Court, the applicant prayed in aid the freedom of expression guaranteed under Article 73 of the Icelandic Constitution and Article 10 of the Convention as well as the Court's case-law. She further relied on section 15(2) of the Printing Act no. 57/1956, according to which the author of a statement was responsible for the publication of its content. The article had indicated the identity of the author of the disputed statements and the transcripts of the interview had shown that they had been quoted from their named author, Mr B. Accordingly the applicant could not be regarded as the author of the allegations. In so far as the sub-heading was concerned, she pointed out that this had only paraphrased Mr B's remarks.

13. The applicant further disputed that item 1 was defamatory. The first part of that remark had consisted of Mr B's account that the plaintiff had himself spread the rumour that no one came to the *Strawberries* club with an attitude, because the Lithuanian mafia was present there. Mr B's remark did not amount to an allegation that the Lithuanian mafia was present at *Strawberries*, but that Mr A wanted the rumour to be spread. In fact, it was clear from the interview that those interviewed by the applicant thought that no Lithuanians went to the club but that this was a false rumour that the plaintiff wanted to have spread around town. When considering the remark in its true context, it was clear that in no way did it contain Mr B's claim that the plaintiff was involved in criminal conduct. Whatever could be said about mafia operations, the remark contained no allegation regarding the plaintiff's activities that could be singled out as mafia related, i.e. criminal conduct. The main point was whether the plaintiff had been accused of such conduct. This had clearly not been the case. Accordingly, there was no basis for considering that the remarks were covered by the provisions in the Penal Code on protection of reputation. Moreover, the word "mafia" had no defined meaning in the Icelandic language.

14. As regards the second part of the remark, Mr B had stated that Mr A was spreading the rumour that Mr B had been taken and beaten up inside *Strawberries*. As could be gathered from the interview and the remark itself, it was nowhere stated that the plaintiff had beaten up Mr B or anyone else. However, the interview and the above-mentioned remark stated that the plaintiff had mentioned in many places the story that Mr B had been beaten up inside the club. That statement was true, as Mr B had been in a fight

inside the club and the plaintiff had taken the initiative to contact *DV* and had provided information regarding that incident.

15. Finally, the applicant stressed that the whole dispute had originated in Mr A's own initiative to have the story published. It would have been reasonable for him to expect that the journalist would seek to provide information about both versions of the events and that the person against whom he had levelled serious accusations would have a different version.

16. By a judgment of 21 December 2009 the District Court found for the plaintiff Mr A and against the applicant, giving the following reasons.

> "The defendant bases her claim for acquittal mainly on lack of involvement, as the remarks have been quoted word for word from their named author, [Mr B].
>
> The defendant admitted in court to have written the said article and stated that she believed she had been the author of the disputed sub-heading.
>
> According to an audio recording of the [applicant's] interview with [Mr B], the disputed statement made by [Mr B] went as follows: 'He has been spreading rumours all around town about it. That no-one really enters *Strawberries* with an attitude you see. 'Cause he has the Lithuanian mafia and I was just taken and beaten up in there, you know.' A slight change in wording has been made in the [applicant's] article, not affecting the contents and only involving removing the emphasising words you see and you know. The remark was published within quotation marks in the paper.
>
> Having regard to the Supreme Court's judgment in case No. 328/2008, the [applicant] is found to be the article's and sub-heading's author for the purposes of section 15(2) of the Printing Act No. 57/1956, regardless of whether Mr B can also be found to be the author of the remarks quoted verbatim after him, and the [applicant] is responsible for remarks presented there, as well as sub-headings.
>
> It is clear that the interview with the plaintiff, [Mr A], whether he initiated it or not, had been taken with his consent and wishes, even though he was dissatisfied with the article when it was published in the paper, where also the opinions expressed by other persons in interviews conducted by the [applicant] had been published. In her interview with the plaintiff he had accused [Mr B] of various matters. It ought to have been clear to him that his remarks would be shown to the person concerned and that this person would be given an opportunity to state his version of events. The words that the article's author had quoted directly from [Mr B], which had been the cause for the plaintiff's action, are intended to give the article's readers the impression that the plaintiff is in charge of an organised, international criminal organisation. The journalist has not demonstrated or sought to ascertain that the allegation, which rendered [Mr B]'s words, is true. The allegation contained a defamatory *innuendo*, see Article 235 of the Penal Code, and should, in accordance with the plaintiff's claim, be declared null and void, as should the sub-heading 'Rumour about the mafia', which referred to the remark.
>
> By virtue of the statements declared null and void the [applicant] has unlawfully injured the plaintiff's honour. She is therefore obliged to pay him damages in accordance with section 26 (1) of the Damage Compensation Act No. 50/1993. In the present case the amount of ISK 200,000 [approximately EUR 1,100 at the time] is deemed a reasonable level of compensation. ...
>
> With reference to Article 239 of Act No. 19/1940 the plaintiff's request that the [applicant] be punished for the statements is rejected.

> The plaintiff is found to be entitled to the reimbursement of expenses incurred for the publication of the motives and conclusions of the judgment, as he requested under Article 241(2) of the Penal Code. The plaintiff has not presented any particulars in support of his claim as to the size of the amount requested nor supported it with any arguments. This item will therefore be determined on the basis of the court's own assessment and the amount of ISK 150,000 is considered reasonable.
>
> In light of the foregoing, the [applicant] is required to pay the plaintiff's legal costs, which it is considered reasonable to assess at ISK 350,000 (inclusive of VAT)."

17. The applicant sought to appeal to the Icelandic Supreme Court but on 25 March 2010 the latter refused her leave to appeal. This was on the ground that the financial value of what was at stake in the appeal (legal costs not being relevant) did not reach the statutory minimum level for grant of leave to appeal and that there were no special circumstances warranting an exception being made to this requirement in the applicant's case.

II. RELEVANT DOMESTIC LAW

18. 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."

19. 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."

20. 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."

21. 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."

22. 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

23. The applicant complained that the District Court's judgment of 21 December 2009, in respect of which leave to appeal was refused by the Supreme Court on 25 March 2010, entailed 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."

24. The Government contested that argument.

A. Admissibility

25. 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

26. 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.

27. 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.

28. 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 for the impugned statements as an "author" under section 15(2) of the Printing Act, the District 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 13 April 2011 in reply to those of the Government of 16 February 2011.

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

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

1. Arguments of the parties

(a) The applicant

31. The applicant disputed the view that the impugned remarks could be interpreted as containing an allegation that Mr A was in charge of an international criminal organisation. The District Court had not held that the remarks constituted statements of fact but had merely concluded that they could be perceived by readers as an allegation that Mr A was the head of an international criminal organisation.

32. Neither the applicant nor the other person interviewed had been of the view or attempted to argue that Mr A was the head of the Lithuanian Mafia in Iceland. In fact, Mr A, an Icelandic national, had not been referred to in the disputed article as anything but the owner of the club *Strawberries*. The alleged false rumour which Mr A was claimed to be spreading, namely that members of the Lithuanian mafia frequented his night club, contained no allegation of fact to the effect that he was the leader of that organisation. It was not established, nor even known, whether any member of the Lithuanian mafia, if such an organisation existed, had been present or had ever visited Iceland.

33. By having been required to adduce solid evidence as proof of the statements in question, 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. The applicant strongly disagreed with the Government's argument that the remarks were not a necessary contribution to a public debate on a social issue. The operation of strip clubs had long been the subject of public debate and whether such establishments should be permitted was considered an important social issue in Iceland. According to official reports, because of the criminal activities associated with these clubs, the Icelandic police had been against their existence. On one occasion the police had raided the *Strawberries* night club, ran by Mr A, and had shut it down temporarily. Eventually, after a lengthy public debate, including in Parliament, night clubs offering strip dancing were banned in Iceland.

35. The applicant's article had contributed to this debate. As evidenced by various materials submitted in support of her application, there had been frequent clashes between rival strip club owners. Mr A claimed in an earlier interview with the same newspaper that he had been beaten up with a baseball bat and blamed his rival competitor for having organised the attack. On one occasion there had been a struggle between the two, during which gun shots had been fired. In the article in question, Mr A had blamed his rival competitor for sending Mr B, "a well-known felon who had been convicted many times for random violent acts", together with two other persons to cause trouble. This had ended in a fight. The ongoing battle between these two figures had been the main story in the applicant's article.

In response to Mr A's verbal attacks, Mr B had recounted his version of the story. The applicant was of the opinion that the content of the interview concerned a subject of public debate that was of serious public concern.

36. Likewise, whether the Lithuanian mafia had established itself in the country was an issue of great importance which should be open to free discussion.

37. Her journalistic reporting had been based on a reliable source, namely a first hand witness account, and both parties had been interviewed. There was no indication that the applicant had acted in bad faith against Mr A or in breach of the ethics of journalism. Nor had the statements been excessive or misleading. The case had not been brought before the Ethics Committee of the Icelandic Press Association ("IPA"). In fact, the IPA had openly expressed its objections to the conviction of journalists for publishing statements made by others, especially matters of public interest. The applicant stressed that the interview had been a part of an on-going public debate in society, namely whether to allow the operation of strip clubs. Mr A had been given a chance to comment on the article; he did so and made accusations against Mr B, who replied to his comments.

38. The applicant, relying on *Selistö v. Finland* (no. 56767/00, 16 November 2004), invited the Court to consider whether Mr A, who had a highly controversial reputation 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.

39. By holding her liable for defamation of Mr A simply on the grounds that some readers of the newspaper might have understood Mr B's statements to mean Mr A was the head of the Lithuanian mafia and that the applicant could not provide evidence to substantiate that allegation, she was deprived of her right as a person and a journalist to disseminate important information of public concern. The District Court's judgment entailed a violation of her right to freedom of expression and journalistic freedom under Article 10 of the Convention.

40. Mr A's sole purpose in lodging defamation proceedings against her had been to drag her into a costly trial and to send a message to the media to stop publishing information about strip clubs. Despite having been aware that the interview had been recorded on tape, he had deliberately opted not to pursue his defamation action against the person, Mr B, who had made the statements. Mr A's attorney had even requested and received a copy of the recording before initiating the legal proceedings against the applicant.

(b) The Government

41. 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.

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

43. Since the allegations that Mr A was engaged in criminal activities 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.

44. The Government pointed out that the subject-matter of the article authored by the applicant had not related to an important social issue where free public discussion was of great consequence. The false allegations that Mr A engaged in criminal activities had not been linked to or been made in the context of an ongoing public discussion on a matter of public interest. Notwithstanding the applicant's attempt to place her articles in the context of discussions on strip dancing clubs and that the owners of such clubs were engaged in an internal feud, the Government rejected the contention that false statements and personal allegations against Mr A regarding participation in organised crime conveyed any message of public concern.

45. It should also be stressed that Mr A was not in a position where he might expect to endure harsher criticism or allegations in connection with a public debate over social issues. He did not engage in politics nor did he hold public office. Neither could he be considered to be a public person or well known in Icelandic society. Moreover, the nature of his restaurant business was not such that he should be subjected to harsher public condemnation than any other person.

46. The Government did not disagree that issues related to criminal activities and to possible links between night clubs, prostitution and even human trafficking were matters of serious public concern, However, the ongoing debate in Icelandic society on such matters did not justify that every person who was legally running a night club ought to tolerate the publication of erroneous allegations that he or she was involved in crime of any kind without a factual basis. It had not been revealed that Mr A or his club had been under police investigation for criminal activities such as prostitution, organised crime or other related crimes. He should be afforded the same protection of his private life as other private individuals.

47. The Government objected strongly to the applicant's argument that since in her view Mr A 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 created by the media itself for whom private life and reputation deserved less protection against violations by the media.

48. The applicant's attitude towards Mr A made it seem doubtful that she had acted in good faith and as a responsible journalist, since in her view the statements about Mr A that she had obtained from Mr B needed no further investigation or confirmation by other sources. Nor was Mr A offered an opportunity to comment on the allegations.

49. The Government did not argue that the applicant should be required to provide proof beyond reasonable doubt to confirm that Mr A participated in the criminal activity in question. However, the statements had been published without necessary attempts to verify them or to ascertain whether they had a factual basis.

50. 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 A should benefit from the presumption of innocence under Article 6 § 2 of the Convention.

51. 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 there had indeed been carelessness on her part. She had been unable to verify, or provide evidence for, the false allegations contained in the remarks aimed at Mr A. When it became apparent that she could not find a factual basis for Mr B's allegations against Mr A, she should have arranged the presentation of Mr B remarks accordingly. The Government also referred to Article 3 of the Code of Ethics of the Icelandic Journalists Association (see paragraph 22 above).

52. 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.

53. 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.

54. 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 had publicised false allegations that Mr A had participated in serious criminal activities, 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.

55. 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

56. 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)."

57. 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).

58. 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).

59. 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

60. The Court observes from the outset that the defamation in respect of which the applicant was held liable, was based on Mr B's account and the sub-heading under items 1 and 2, respectively:

Item 1

"He [the plaintiff] has been spreading all around town the rumour that no one with an attitude would come to *Strawberries*, because he has the Lithuanian mafia in there, and that I was just taken and beaten up in there. I don't really get this. He really needs to make up his mind whether he thinks I was beaten up or he was."

Item 2

"Rumour about the mafia"

61. In its judgment of 21 December 2009, the District Court found that the above statements would give readers of the article the impression that Mr A was "in charge of an organised, international criminal organisation." Since the applicant had not demonstrated or sought to ascertain the truth of this allegation – an *innuendo* –, she was found liable under Article 235 of the Penal Code and the statement was declared null and void (Article 241), as was item 2 which referred to it. On 25 March 2010 the Supreme Court refused the applicant leave to appeal against the District Court's judgment.

62. The Court observes that the above-mentioned meaning of the defamatory statement was one derived by the District Court, not from the express terms but, so it appears, from the general tenor of the statements. However, in the Court's view it is not clear that these had as their common sting (see Bergens Tidende *and Others v. Norway*, no. 26132/95, § 56, ECHR 2000-IV) a suggestion that Mr A was "in charge of ... an international crime organisation". The words "he has the Lithuanian mafia in there" might very well be understood as meaning that persons so described were present on the premises of the club. The District Court did not in its judgment explain how the words used in the article, notably "the Lithuanian mafia", could have conveyed to the reader that an "international criminal organisation" was being referred to. Nor did it explain how the statements would be perceived by the ordinary reader as an allegation that Mr A was "in charge" of an "international criminal organisation", let alone his involvement with something described as "Lithuanian mafia". In the absence of any such explanations, the District Court's analysis of the contents of the defamation appears unconvincing and gives reason to doubt whether the reasons it relied on were relevant to the legitimate aim of protecting the rights and reputation of Mr A.

63. In any event, even assuming that there existed reasons that were relevant for the above-mentioned purposes, the Court, having regard to the considerations relied on in paragraphs 69 to 71 of its judgment in *Björk Eiðsdóttir v. Iceland* (no. 46443/09, delivered simultaneously with the present judgment), is not convinced that they were also sufficient.

64. The Court is not persuaded by the Government's argument that the "subject-matter" of the applicant's article and the impugned statements did not concern an important social issue and did not represent a necessary contribution to any ongoing 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 v. Norway*, no. 510/04, § 87, 1 March 2007). In the Court's view, the article was aimed at shedding light on the occurrence of violent clashes between rival strip clubs owners and must be seen in the wider context of the public debate in Icelandic print and televised media on the tightening of strip club regulations or the banning of such clubs altogether, a debate which by the time of the publication of the applicant's article had been going on for quite some time (see *Björk Eiðsdóttir*, cited above, §§ 6 to 10 and 64). There can be no doubt that the applicant's article, seen as a whole, was related to a wider issue of legitimate public interest in Iceland. However, it does not transpire from the District Court's reasoning that this consideration carried any weight in or was relevant to its assessment.

65. 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 A 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).

66. Nor did the District Court pronounce any view on whether the impugned *innuendo* constituted a factual allegation or a value judgment, beyond holding that the applicant journalist had "not demonstrated or sought to ascertain that the allegation, which rendered Mr B's words, [was] true". Whilst in the Court's view this ought to be considered a factual allegation, the various statements from which the District Court had derived the contested *innuendo*, consisted in part of Mr B's opinions or value-judgments ("spreading all around town the rumour that no one with an attitude would come to Strawberries, because ...."; "He really needs to make up his mind whether he thinks I was beaten up or he was";), and in part of statements of fact ("he has the Lithuanian mafia in there, and ... I was just taken and beaten up in there", "Rumours about the mafia"). The latter were somewhat vague (see for instance the observations at paragraph 59 above) and could to some extent be said to include an element of personal opinion. In the particular circumstances of the present case, the Court considers that, even if understood in a narrower literal sense only, the statements were such as to be capable of causing injury to Mr A's personal honour and reputation.

67. On the other hand, it is not contended that the disputed statements originated from the applicant herself but from another named individual, Mr B (compare *Ruokanen*, cited above, § 47), whom the applicant had interviewed after having heard Mr A's version of the violent incident. As it

appears from the District Court's findings, leaving aside some slight editing, the quotes under item 1 had consisted of a verbatim rendering of Mr B's statements made in the interview. The District Court does not seem to have considered item 2 differently from the afore-mentioned quotes (see paragraph 16 above). The Court discerns no reason for doing so either, finding it sufficiently clear that the sub-heading merely reproduced Mr B'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).

68. In so far as there may have been a legitimate interest in protecting Mr A against the impugned defamation made by Mr B in his interview, that interest was in the Court's view largely preserved by the possibility open to the former under Icelandic law to lodge defamation proceedings against the latter (see, *mutatis mutandis*, *Jersild*, cited above, § 35). The Court regards it as significant that Mr A opted to institute libel proceedings against the applicant journalist only. It cannot but note that this had the effect of reducing considerably any possibility for the applicant to substantiate the allegations.

69. In this context, the Court will also have regard to the role of the injured party in the present case (see *Nilsen and Johnsen*, cited above, § 52-53; *Oberschlick v. Austria (no. 2)*, 1 July 1997, §§ 31-35, *Reports of Judgments and Decisions* 1997-IV). It cannot but note that what had prompted the applicant to write the article had been that Mr A, the person considered the victim of the accusations, had contacted the applicant in the first place asking that *DV* publish his own account of the relevant violent incident at *Strawberries*. That account, which the applicant accepted to render in her article, contained serious accusations levelled against Mr Y, the owner of the rival club *Goldfinger*, and Mr B, the person whom Mr A claimed was known for being violent and, sent by Mr Y, had attacked him at his club. In the District Court's reasoning, it ought to have been clear to Mr A that his remarks would be shown to Mr B and that he would be given an opportunity to state his version of events. Whilst the District Court does not appear to have drawn any consequences from this state of affairs, the Court for its part attaches importance to this factor. By the manner in which he chose to express himself publicly, Mr A had knowingly exposed himself to criticism and should therefore display a greater degree of tolerance in this respect (*Nilsen and Johnsen*, cited above, § 52).

70. Moreover, by reproducing not only Mr B and Mr Y's versions of events but also that of Mr A, the applicant must be considered to have sought to achieve a balance in her reporting. 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 A's reputation, the Court sees no cause for criticising the applicant for not having distanced herself from the contents of Mr B's statements (*Thoma*, cited above, § 64; *Standard Verlags GmbH v. Austria*, no. 13071/03, § 53, 2 November 2006).

71. 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*, cited above, § 35). 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 insignificant for the District Court's assessment, the Court is not convinced that there were any such strong reasons in the instant case.

72. Having regard to all of the above considerations, notably the lacunae in the District Court's analysis of the impugned statements, that the latter had been given by another person in an interview with the applicant and the particular role of the injured party, 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).

73. Nonetheless, the defamation proceedings brought by Mr A against the applicant ended in an order by the District Court declaring the statements null and void and requiring the applicant to pay to Mr A altogether ISK 700,000 (approximately EUR 3,920 at the time). This included ISK 200,000 in compensation for non-pecuniary damage, ISK 150,000 to cover the costs of the publication in the press of the reasons and conclusions of the District Court's judgment and ISK 350,000 for his costs before the District Court.

74. Accordingly, the reasons relied on by the respondent State, even assuming that they were 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 measures applied by the District 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

75. 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

76. The applicant sought compensation for pecuniary damage in respect of amounts totalling 700,000 Icelandic *krónur* (ISK) that she had been ordered by the District Court, in its judgment of 21 December 2009, to pay to Mr A for non-pecuniary damage (ISK 200,000), for the publication of the reasons and operative part of the District Court's judgment (ISK 150,000) and for legal costs (ISK 350,000).

77. The Government objected to the reimbursement of any of the above amounts which she did not appear to have paid yet.

78. The Court observes that the effect of the present judgment does not automatically lead to the quashing of the District Court's order that the applicant pay Mr A the above-mentioned amounts. Moreover, according to material submitted to it, Mr A has no intention of waiving his claim against her. Being satisfied that there was a causal link between the violation found and the pecuniary damage alleged, it awards the applicant 4,000 euros (EUR) under this heading.

B. Non-pecuniary damage

79. The applicant further claimed ISK 5,500,000 (corresponding as of 13 April 2011 to approximately to EUR 33,700) in compensation for non-pecuniary damage that she had suffered as a result of the violation of the Convention entailed by the District Court's judgment of 9 December 2009. The proceedings against her had subjected her to a heavy burden as a journalist living on a modest income. After the said judgment it had become a habit to refer to her as "the convicted journalist". 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 District Court's judgment, which stated her name, had been made accessible to the public at large through publication on internet.

80. 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.

81. 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

82. The applicant further sought the reimbursement of legal costs and expenses, totalling ISK 3,057,490 (corresponding to approximately EUR 18,000), in respect of the following items:

(a) ISK 1,057,490 (approximately EUR 5,750) incurred for her own legal costs before the domestic courts (ISK 952,425 before the District Court and ISK 105,065 in seeking to obtain leave to appeal to the Supreme Court);

(b) ISK 2,000,000 (approximately EUR 12,250) for her lawyers' work in the proceedings before the Court.

The above amounts included value added tax ("VAT").

83. The Government considered item (a) unreasonably high and invited the Court to determine a realistic amount for fees, whilst pointing out that no particulars had been submitted to show that the applicant had paid the costs in question. Item (b) was in their opinion excessive and they requested the Court to determine what would constitute a reasonable amount.

84. 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 5,000 respect of item (a) and EUR 7,500 for item (b) (inclusive of VAT).

D. Default interest

85. 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", that should run from 21 December 2009, the date of the District Court's judgment.

86. 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 4,000 (four thousand 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 12,500 (twelve thousand five hundred 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	Lech Garlicki
Registrar	President