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

FIRST SECTION

CASE OF A. v. NORWAY

(Application no. 28070/06)

JUDGMENT

STRASBOURG

9 April 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A. v. Norway,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 19 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 28070/06) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Norwegian national, Mr A. ("the applicant"), on 19 June 2006. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr P. Danielsen, a lawyer practising in Oslo. The Norwegian Government ("the Government") were represented by their Agent, Mrs F. Platou Amble, Attorney General's Office (Civil Matters).

3. The applicant alleged, in particular, that the unfavourable outcome of his defamation suit against a newspaper before the Norwegian courts constituted a failure to protect his right to the presumption of innocence under Article 6 § 2 of the Convention and his right to protection of reputation under Article 8.

4. On 5 November 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Kristiansand.

A. Factual background to the defamation proceedings brought by the applicant

6. On 19 May 2000, two girls of eight and ten years of age were raped and stabbed to death in Baneheia, a recreation area in the city of Kristiansand. Two young men were later convicted of the crimes and sentenced to 21 and 19 years of imprisonment respectively for rape and murder committed in particularly aggravating circumstances. The case received intense and extensive coverage in the national media.

7. In 1988 the applicant had been convicted of murder, attempted murder and eight instances of assault, all committed by the use of knife in June 1987 in Kristiansand. He had been sentenced to 11 years' imprisonment and to five years' security measures (*sikring*) (which under the relevant law at the time, could be imposed where it was established that the person concerned was not mentally ill (and thus criminally liable) but had an underdeveloped and permanently impaired mental capacity and that, because of this condition, there was a clear risk of his or her committing further criminal offences). Shortly before the expiry of the security measures on 20 September 1999, the public prosecutor had requested a prolongation, which a first instance court had granted in March 2000 for a period of three years (but which an appellate court refused in January 2001). In May 1999 the applicant had been released from security detention (*lukket sikring*) and had been placed under supervision at liberty (*fri sikring*). Thereafter he had lived in Kristiansand, partly in a camping cabin and partly in his family's cabin by the river and had been working at a protected workplace for persons on rehabilitation scheme. He was a substance abuser and was connected to a group which used to gather at the so-called "Acid Knoll", a place in the recreation area where the murders had taken place.

8. During the early stages of the murder investigation, the applicant and a number of other previously convicted persons were interrogated as witnesses. The police's interest in the applicant attracted considerable media attention.

9. Two days after the murder, the police collected the applicant from his workplace and brought him to the police station. The police interrogated him for 10 hours until 00.30 am on 24 May 2000, and then brought him to his home. The interrogation became known to the press and was presented in the national media on 23 and 24 May 2000 together with information

about his criminal trial in 1988 and the imposition of security measures in his case. In their issues published on those dates, three national newspapers, *Aftenposten*, *Dagbladet* and *Verdens Gang*, reported on the applicant but without stating his identity.

10. Also a national television channel, the *TV2*, gave extensive reports. In a news broadcast on 23 May 2000, at 9 pm (while the applicant was being interrogated), it stated:

> "Possibly the most special candidate of these persons (former convicted, Court's addition) is precisely this 42-year-old because of his past and because he has been seen in the area where the murder occurred, at the time when it occurred, but so far there are no suspects, and it is precisely that which now is a little exciting in this case. Habitually, this type of investigation takes a long time, but when one carries out this type of alibi checkups, the case may soon take a new and special turn."

11. In a news broadcast on 24 May 2000, 6.30 pm, *TV2* reported that members of the press had followed a 42 year old murderer from Kristiansand in his footsteps. Then ensued an interview with the applicant, during which he was filmed from behind and partly from the side, on his way to the so-called "Acid Knoll" in the Baneheia area.

12. On 25 May 2000 *Dagbladet* published information about the applicant's place of residence, in a report which also contained an interview with him.

B. Publication giving rise to the defamation proceedings brought by the applicant against *Fædrelandsvennen*

13. On 24 May 2000, the newspaper *Fædrelandsvennen*, which is mainly a subscription newspaper (45,000 subscribers) and the principal district newspaper on the southern coast of Norway, published a report on the *Baneheia* case. The front page carried the following headline and introduction:

> "**Convicted Murderer: I am completely innocent**
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> AT WORK: At 7.10 this morning, a 42-year-old convicted murderer from Kristiansand toddled off to the bus to return to work. Last night, he had been driven home by the police, after having been interrogated for approximately 10 hours concerning his movements on Friday, the day when C and D were killed.
>
> ALIBI: - I am completely innocent, said the 42-year-old to *Fædrelandsvennen* in the early hours of today. The man says he has an alibi for Friday night. The 42-year-old, who was seen by several witnesses in Baneheia on Friday, is probably the most interesting of several criminally convicted persons whose movements are now being checked by the police.
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> SENTENCE TO SECURITY MEASURES: In 1988, the 42-year-old was sentenced to 11 years imprisonment and five years security measures [*sikring*] for one murder by knife, one attempted murder and several other acts of violence, with knife. The term

of security measures [*sikringstid*] imposed on him expired on 20 September last year, but as late as in March this year, he was sentenced to another three years of security measures. The judgment has been appealed against."

Inside the newspaper at page 4 appeared an article entitled

"**Murder convict returns to work today**"

With the subtitle:

"**I am completely innocent**"

14. The article contained a brief interview with the applicant, in which he stated that he had nothing to do with the matter and that he had witnesses. Next to the article appeared a large photograph showing the applicant from the side while entering a bus, not showing his head and the upper part of his bust inside the bus. A caption stated that the 42 year old was on his way to work at 7 am and: "'I am completely innocent`", says the previously murder convicted man who yesterday was interrogated for 10 hours."

15. Underneath on the same page, the paper reproduced another article entitled:

"**Sent home after 10 hours' interrogation**"

The introduction stated**:**

"At 2 pm yesterday a 42 year old murder convict was fetched by the police at his workplace. 11 hours later he was brought to his home"

16. The article was accompanied by a large photograph of "the 42-year-old", with his head blurred, accompanied by two police officers.

17. The article stated that the police had collected him at his workplace in the afternoon of 23 May 2000 for a 10 hour long interrogation. It described *inter alia* the background for the police's interest in the applicant, reiterating that he had purportedly been seen by several witnesses in Baneheia on Friday night when the two girls had disappeared. Furthermore, reference was made to the factual background of his conviction in 1988. The following sub-titles were used: "Seen by the police", "Released for one year", "Berserk with a knife", and "Victims at random".

18. The article further quoted statements by a Chief Constable, Mr A. Pedersen, underlining that there "were still no suspects in the case" and that all of the people summoned for questioning had "formal status as witnesses in the case." This point was further elaborated on in an interview with the Chief Constable on the same page, entitled "No one imprisoned today."

19. In yet another article appearing under the heading "Have got the murderer in the papers", the Chief Constable was quoted to have said to *Verdens Gang* that "the police have received so much information of

substance that they have the answer in their documents to the question who had murdered the two young girls."

20. The *Baneheia* case was also the main item on the front page of *Fædrelandsvennen* on 25 May 2000, with the heading "DNA traces found at murder place". The article reiterated that according to the preliminary autopsy report, both of the girls had been sexually abused, that they had been murdered with a pointed and sharp penetrating arm, most probably with a knife. Page 6 of the paper contained an interview with some neighbours of the 42 year old, entitled "Neighbours fear prejudgment", published together with a photograph of a residential development site. The article named a specific residential development area, Q, and its precise location, Z, stating that it was the "nearest neighbour to the 42-year-old convicted of murder."

21. In a further article on the same page, under the heading "They want to know where I am", the paper mentioned the name of the street where the applicant lived (Y), that of his neighbourhood (Z), and that of the company where he worked. The article rendered a statement by the applicant maintaining his innocence and informing that the police had wanted to know his whereabouts but had let him in peace. Next to the article appeared a photograph of the applicant seen from behind, at a relatively long distance, on his way down towards the Z-river, with the caption: "The 42 year old murder convict on his way home yesterday".

22. On the same page appeared an article headed "Searching for a locally known murderer", which quoted Chief Constable Pedersen as stating *inter alia* that the main emphasis of their investigation had been based on the belief that the murderer(s) had been locally known but that a wider Nordic focus had also been discussed. He had added that it was dangerous to concentrate the investigation on a specific milieu.

23. At the material time, *Fædrelandsvennen* was published in the afternoon, whereas *Dagbladet*, *Verdens Gang* and *Aftenposten* were published in the morning.

C. Defamation proceedings brought by the applicant against *Fædrelandsvennen*

24. In October 2000, after the arrest of the actual perpetrators in the *Baneheia* case, the applicant, represented by a lawyer, demanded that *Fædrelandsvennen* apologise for its coverage and compensate him for pecuniary and non-pecuniary damage he had sustained. As the newspaper refused, in December 2000 the applicant's lawyer brought on his behalf defamation proceedings before the Kristiansand City Court (*tingrett*) against *Fædrelandsvennen*, its editor-in-chief, Mr F. Holmer-Hoven and journalist B. The applicant claimed compensation for pecuniary and non-pecuniary damage.

25. By a judgment of 16 April 2003 the City Court rejected the applicant's action.

26. The applicant then appealed to Agder High Court (*lagmannsrett*). He waived his claim for pecuniary damage, which matter was formally discontinued (*hevet*), but maintained his claim for non-pecuniary damage.

27. By a judgment of 23 December 2004, the High Court, sitting with three judges, found that an ordinary reader could perceive the impugned press reports published by the *Fædrelandsvennen* on 24 and 25 May 2005 as pointing to the applicant as a possible perpetrator of the murders of the two girls in Baneheia. The High Court observed that, although the paper had not mentioned the applicant by name, it ought to have been possible for those who knew him in advance to recognise him, in particular from the photograph taken of him from behind and from the information about his residence- and work places contained in the 25 May 2000 issue. It was hard to derive anything specific about the strength of the suspicion. Although it was true that formally speaking the applicant had only been given witness status, seen as a whole the report was capable of giving the ordinary reader the impression that the paper regarded the applicant as a person who already at an early stage of the investigation had stood out as the most probable perpetrator among those who had been in the police's search light. The High Court moreover noted a number of other aspects of the publications confirming this impression. It concluded that the impugned publications were defamatory in the sense of Article 247 of the Penal Code.

28. As to the question whether the publications were unlawful (*rettstridig*), the High Court was of the view that it generally should fall within the State's margin of appreciation to strike a fair balance between the interests in protection of freedom of speech under Article 10 of the Convention and the interests in protection of reputation under Article 8, bearing in mind also the presumption of innocence under Article 6 § 2. On the particular facts of this case, the High Court considered that there was undoubtedly a great public interest in the investigation of the murders and in the pursuit of the culpable persons. However, with two votes to one, the High Court found that, on balance, the interests in allowing the publications weighed more heavily than those against and that the impugned news coverage had therefore not been unlawful.

29. The dissenting member found that the "identification" of the applicant and its extensive press coverage by *Fædrelandsvennen* had been unlawful and that he should be awarded compensation under section 3-6 of the Damage Compensation Act 1969, namely NOK 150,000 by the newspaper and NOK 25,000 each from the editor-in-chief and from the journalist.

The applicant appealed against the High Court's application of the law to the Supreme Court, alleging that it entailed a violation of Articles 6 § 2 and 8 of the Convention. He maintained that in its coverage on 24 and

25 May 2000 the *Fædrelandsvennen* had portrayed him as the perpetrator of the most aggravated offences seen in modern times in Norway. He had not consented to the media coverage which had been a great burden to him. He had lost his job and home and suffered from serious psychological problems.

30. By a judgment of 14 December 2004 the Supreme Court, by three votes to two, found in favour of the respondents and rejected the applicant's claim.

31. Mr Justice Stang Lund, whose reasoning was endorsed in the main by the other judges in the majority, inter alia concurred with the High Court's finding that, the *Fædrelandsvennen*'s focus on the applicant as a previously convicted knife killer, his presence in Baneheia on the day when the criminal acts had been committed and the investigation of the applicant, for an ordinary reader must have been perceived as if he could be suspected of having committed the murders. It had already been publicly known that the perpetrators of the murders had used pointed penetrating weapons against the girls. This information together with the rendering of parts of the judgment by which the applicant had been convicted in 1988 and the security measures case, were likely to harm his good name and reputation and to expose him to hatred and contempt, thus fulfilling the objective constitutive elements in Article 247 of the Penal Code. On these points Mr Justice Stang Lund stated:

> "(56) Taking as a starting point the wording, typography, the internal context and the use of photographs it must be ascertained how the report and articles were likely to be understood by the ordinary reader.... The statements must be considered in the context of the whole report they are part of.
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> (57) The High Court unanimously found that the factual information had to be considered in the context of the other content of the reports and the articles published on 24 and 25 May 2000, and concluded:
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> 'In the High Court's opinion the conclusion of the interpretation is that *Fædrelandsvennen* pointed to [the applicant] as a possible perpetrator of the murders of the two girls in Baneheia. His name is not stated, but it was possible for those who previously knew [the applicant] to recognize him in particular because of the photograph taken of him from behind and because of the information about where he lives and the work place in the report dated 25 May. It is difficult to evaluate how strong the suspicion created was. Even though it is correctly underlined that the police had given [the applicant] only a witness status without formally charging or suspecting him, in the High Court's view the report as a whole was capable of giving the ordinary viewer the impression that the newspaper considered [the applicant] to be a man who already at this early stage in the investigation stood out as the most likely perpetrator among the persons who were in the police's search light.'
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> (58) The High Court, amongst other aspects, emphasised that in the front page story of 24 May it was stated that [the applicant] was 'probably the most interesting of several convicted persons whose movements are now being checked by the police', that he had been questioned for 10 hours after having been collected by the police at

his work place, and that the report was illustrated with *Dagbladet*'s photograph of [the applicant] with his head blanked, being escorted by two police officers. The High Court found that the photograph created associations of arrest. This was presented together with the information that, after having been brought home, another police car with a dog patrol had arrived at the house, had passed by in low speed, had turned and had vanished in the dark. In addition to this the newspaper rendered statements by a police inspector to *Verdens Gang* that the police had received much information with substance, and that the answer to who had killed the two little girls was to be found in the police records. Also the rendering on 25 May that the police were looking for a locally known murderer with a greatly deviant personal character, in the High Court's opinion supports the view that the applicant may be a person with the special character that are a requisite for committing such a heinous crime. The High Court did not find that the rendering of [the applicant]'s denial and of the neighbours' warning against prejudging were sufficient to weaken the suspicion created by the newspaper coverage as a whole.

(59) I concur with the High Court in that the focus by *Fædrelandsvennen* on [the applicant] as a previously convicted knife killer, his presence in Baneheia that afternoon the misdeed was carried out, and the investigation of him, for an ordinary reader must have been perceived as if he could be suspected of having committed these killings. It was already publicly known that the perpetrator(s) had used knives when the girls were killed. This information, together with the description of parts of his criminal conviction from 1988 and the security measures [*sikring*], was likely to harm [the applicant]'s good name and reputation and to expose him to hatred and contempt. The objective description of the offence in Article 247 is therefore fulfilled.

(60) The adversary party has stated that the reports in *Fædrelandsvennen* of 24 and 25 May did not contribute to identify [the applicant] beyond that occurred in *TV2* in the evening of 24 May, where he was interviewed and filmed from behind and from the side while walking towards Baneheia. My comment to this is that *Fædrelandsvennen* in connection with the reports of 25 May 2000 about [the applicant] informed about 'the 42 year old's' work place and place of residence. The photograph from the previous day depicting [the applicant] entering a bus, a new photograph of 25 May showing [the applicant] with the same jacket and with a plastic bag on his way home 'to the house in ....[the applicant]'s road at Z', and the article from the newly constructed housing area in Æ at Z, may have led to more people in the near environment becaming aware of [the applicant]'s identity."

32. As to the further question whether the allegations were unlawful (*rettstridige*), Mr Justice Stang Lund observed *inter alia* the following with regard to the concrete circumstances of the case:

"(76) It is self-evident that the rapes and killings in Baneheia on Friday, 19 May 2000 were of great public interest. The news media had a duty to report, and the public had a right to receive, information about the misdeed, the investigation and the progress in the case. It is clearly a matter of public interest that previously convicted felons are in the police's searchlight, and that interrogations and other police work is taking place to check witnesses out of the case or to charge them. In the near environment it may be of public interest to be informed about the fact that a previously convicted killer in the area in respect of whom a case concerning prolongation of security measures was pending, has been brought in by the police for questioning.

(77) This must however be weighed against the interest of privacy and the protection of reputation, when the media circles in and identifies one or a few previously convicted persons being under investigation. At this stage the public normally has no legitimate interest to receive detailed information about previously convicted persons and their identity, hereunder descriptions of the criminal offences for which they have been convicted. However, in this very special case people living in the vicinity had a particular interest in knowing that a person who had previously been found guilty of murder and of violent assault and who had been sentenced to security detention, was living in the area, so that they could protect their own and their children's interests.

(78) The character of the allegation and, in particular, its seriousness is an important factor in the balancing exercise to be carried out when determining whether the interests of protection of personal life justify an interference with the freedom of expression, see Norwegian case-law reports (*Norsk Retstidende* (*Rt.*)) 2002 p. 764 on pp 774-775. In accordance with the case-law of the European Court and the Norwegian Supreme Court a distinction ought to be made between statements of fact and value judgments, because only statements of fact may be susceptible to proof. Normally statements which may be understood to mean that a person is or may be suspected of a criminal offence must be considered to be statements of facts which need to be proven.

(79) The respondents have argued that the impugned statement only concerns whether the unnamed 42 year-old 'is probably the most interesting among several previously convicted felons whose movements are now being checked by the police'. The leader of the investigation has later confirmed that the applicant was the most interesting person on whom efforts were deployed at the beginning of the investigation. The statement is alleged to have been correct, and its publication is claimed not to be unlawful.

(80) When one, as I do, has reached the conclusion that the newspaper's reports and articles considered as a whole left the impression that [the applicant] could be a suspect in the case, the evidence must concern whether he has committed the crime he has been accused of. It is not sufficient that the newspaper gave an accurate description of the factual circumstances adduced to show that there was a basis for suspicion. As an exception to this general rule case law has accepted the publication of charges. Here the evidence is acceptable when it is proven that the reporting of the charge in itself is correct, see Rt. 1999 p. 1742 (*Landåssaken*). There is no corresponding exception for reporting on suspicion.

(81) In this case *Fædrelandsvennen* has not rendered a suspicion stated by others. The newspaper coverage and the articles mainly consist of reporting on the judgment from 1988, the relevant preventive supervision case [*sikringssak*] and the statements made by leaders of the investigation. It appears clearly that the applicant has been interrogated as a witness and that neither he nor anyone else is under investigation as a suspect. The most direct statement indicating suspicion is attenuated in its form in that [the applicant] according to the newspaper is 'probably the most interesting of several criminally convicted persons whose movements are now being checked by the police'. His statements in an interview published on 24 May 2000 about his being completely innocent, has been published in the head line on top of the front page.

(82) In balancing the competing interests in the concrete case I have with some doubt found that it was not unlawful for *Fædrelandsvennen* on 24 and 25 May 2000 to

publish that [the applicant] was the most interesting of several convicted persons investigated by the police, even though this in the context may be perceived to mean that he was or could be a suspect. The monstrous sexual offences and consequent killings in Baneheia were of particularly great public interest throughout the country, especially in Kristiansand and in the Agder counties. The people in the vicinity around Baneheia and in the vicinity where [the applicant] lived, had a particular interest in receiving continuous and concrete information about the investigation.

(83) In my opinion the journalist and the editor have not been negligent. The intense and extensive interest shown by the national news media directed against [the applicant] before *Fædrelandsvennen's* own publishing, his own statements to the media and the public interest justified the publication of the information about [his] workplace and place of residence and the use of anonymous photos of his person. When considering the question of negligence, I also emphasize that the coverage and articles were balanced, that their main content consisted of reporting true factual information, and that the police underlined that no one was under suspicion and that the [applicant]'s view was presented clearly. I add that since this case presented itself at the early stage of the investigation, the newspaper had no cause to investigate further if [the applicant] could be the perpetrator....”

33. Mrs Justice Coward, whose opinion was endorsed in the main by the other judge of the minority, stated, amongst other:

“(93) There was obviously public interest attached to the investigation in the *Baneheia* case. The nation was shocked, and it was a task for the media to inform of the crimes and the work of the police. In the High Court it was agreed that it must be allowed to impart an information that a previously convicted felon was in the police's search light and had been subjected to a long interrogation - even though the reporting would make it possible to understand who this was for those who had special knowledge or for those who carried out investigations on their own. I too agree with that. The disagreement in the High Court concerned whether the further identification provided by *Fædrelandsvennen* - in particular by revealing the workplace and residence was justified.

(94) In assessing the character of the allegation it is a point that this constituted an affirmation of suspicion, which when considering the seriousness is different from an accusation of being the perpetrator. But, on the other hand, the suspicion was related to particularly heinous crimes. The crimes aroused strong feelings of abhorrence and hatred in the population, and it is difficult not to think that it must have been awful to have been exposed to suspicion for having committed them. I agree with the High Court minority when it states that 'strong reasons for protecting the privacy militate for protecting the identity of an individual who for different reasons has come in the search light of the police in the investigation of criminal cases. This consideration is, not the least, important in serious criminal cases where great public interests are attached to clearing up the case'. And precisely a person like [the applicant], who with his background more easily than others would be suspected, had a special need for the protection offered by the presumption of innocence.

(95) I cannot see that it betters things, as stated by *Fædrelandsvennen*, that [the applicant] was given the opportunity to declare his innocence on the front page of the newspaper's issue of 24 May 2000: 'Convicted murderer: I am completely innocent'. It emerges from this report that none of 'a not insignificant number of people' being checked in the case were under suspicion. However, neither this was likely to weaken

the suspicion towards [the applicant] as the likely perpetrator. I agree with the High Court - all three justices - when it states:

'Not in the least the High Court finds that the total search light directed against [the applicant] is important. He represents both the starting point and most of the reporting done by *Fædrelandsvennen* covering the *Baneheia*-case those days. Given the reluctance the press in accordance with the ethics of journalism usually show by not identifying individuals being in the police's search light, this to a large extent must strengthen the ordinary reader's impression of [the applicant] as being the most possible perpetrator.'

(96) I cannot see that the total reporting by *Fædrelandsvennen* should be considered balanced, even though the factual information taken apart had not been incorrect, [the applicant] had been given the opportunity to claiming his innocence and the police's statement that no one was to be suspected had been referred to. When it comes to heinous crimes of such gravity as here, in my opinion the press should not be allowed to publish untrue suspicions against identifiable individuals, even though the coverage should otherwise be characterized as being balanced.

(97) I add that [the applicant] was persecuted by assertive media people against whom he found it difficult to protect himself. That he at no point accepted to be identified, must be obvious.

(98) The difference of opinion between the majority and the minority of the High Court was related to the significance of other media identifying [the applicant]. In the evening of 24 May 2000 *TV2* showed a report where he was filmed from behind and somewhat from the side. On 25 May 2000 *Dagbladet* informed that he worked in a protected workplace in Kristiansand and lived in his brother's cabin in Y at Z. The newspaper also showed a photo of him taken from behind. *Fædrelandsvennen* went the furthest in publishing identifying information about [the applicant] - in particular by revealing his workplace and residence, but besides this the articles in this most important district newspaper must have made it possible for more people to identify him than those who watch *TV2* or read *Dagbladet*.

(99) The High Court minority point to an important consideration in emphasising at the end stating the need for the individual to be protected from collective media pressure:

'The minority also attaches considerable weight to the fact that the coverage in *Faedrelandsvennen* appeared as an extensive and independent contribution from the newspaper and that the damaging effect for [the applicant] and the problems caused for him must have been caused by the total pressure from the media coverage during a short and concentrated period of time where *Fædrelandsvennen's* contribution was of particular significance. The minority is inclined to accept that [the applicant] had become 'free game' as a result of the fact that some media had identified him. Such a solution is not adequate for protecting each individual against libellous reporting in mass media and does not coincide with the independent responsibility each newspaper has in circumstances where judicial and ethical press norms may be under challenge due to a situation of competitiveness .'

(100) I concur with this, and conclude - in accordance with the vocabulary used by European Court - that a pressing need existed for interfering with the freedom of expression in the way of a reaction to the coverage by *Fædrelandsvennen*.

(101) The conditions for compensation in accordance with section 3-6 of the Damage Compensation Act have been fulfilled. Since I am aware that I represent a minority, I see no reason to go into detail with regard to the amount of compensation. However, in view of *Fædrelandsvennen*'s pleadings I point to the fact the harm caused by the offence to a large extent must be objectified: Also people who are socially marginalised must enjoy effective protection against libellous allegations. Like the minority in the High Court, I vote for compensating [the applicant] with NOK 150,000 from the newspaper and NOK 25,000 from the editor. The contribution from the journalist was more peripheral, and she should not be ordered to pay compensation. ..."

D. Defamation proceedings brought by the applicant against *TV2*

34. In October 2003 the applicant brought defamation proceedings against *TV2 AS* (Ltd.) before the Kristiansand City Court claiming compensation with regard to *TV2*'s news coverage on 23 and 24 May 2000 of the *Baneheia* case. The City Court found for *TV2* and rejected the applicant's claims. On an appeal by the applicant, on 8 December 2006 the Agder High Court upheld the applicant's claim that the news coverage constituted unlawful defamation and ordered the defendants to pay him NOK 250,000 in compensation for non-pecuniary damage and discontinued the case with regard to his claim for pecuniary damage. As regards the contents of the disputed broadcasts and their defamatory effect, the Agder High Court made similar findings in the *TV2* case as made by the appellate courts in the present case. In finding the defamation unlawful it had regard to several factors, notably *TV2*'s national as opposed to local media role, unlike that of *Fædrelandsvennen*, the potency of the televised medium, the rule of caution applicable to the press with regard to identification of person regarding coverage of early stages of criminal investigations and the fact that, although aware of an autopsy report made available on 24 May 2000 revealing that the murders had involved rape, *TV2* had in the evening news of that date continued to focus on the applicant notwithstanding the fact that his 1988 criminal conviction had not concerned sexual offences. *TV2* had also been the first medium to insinuate suspicion against the applicant and to identify him in its broadcasts and had taken the lead in this regard. On 19 February 2007 the Appeals Leave Committee of the Supreme Court refused *TV2* leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. Conditions for holding a defendant liable for defamation are set out in Chapter 23 of the Penal Code, Article 247 of which provides:

"Any person who, by word or deed, behaves in a manner that is likely to harm another person's good name and reputation or to expose him to hatred, contempt, or loss of the confidence necessary for his position or business, or who is accessory

> thereto, shall be liable to fines or imprisonment for a term not exceeding one year. If the defamation is committed in print or in broadcasting or otherwise under especially aggravating circumstances, imprisonment for a term not exceeding two years may be imposed."

A limitation to the applicability of Article 247 follows from the requirement that the expression must be "unlawful" ("*rettsstridig*"). While this is expressly stated in Article 246, Article 247 has been interpreted by the Supreme Court to include such a requirement.

36. For further specific information on the relevant national law, reference is made to paragraphs 41 to 45 and 47 of *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, ECHR 2007-...

III. RECOMMENDATION BY THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

37. The Appendix to the Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings (Adopted by the Committee of Ministers on 10 July 2003 at the 848th meeting of the Ministers' Deputies) contains the following principle of particular interest to the present case:

> "**Principle 8 - Protection of privacy in the context of on-going criminal proceedings**
>
> The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

38. The applicant complained that the unfavourable outcome before the Norwegian courts of his defamation suit against *Fædrelandsvennen* constituted a failure by the national authorities to protect his right to the presumption of innocence under Article 6 of the Convention, which as far as relevant reads:

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. The parties' submissions

(1) The applicant

39. The applicant emphasised that, despite the utmost importance of not prejudging him, as even pointed out by some of the neighbours in the disputed press coverage, the newspaper had exposed him as the most likely perpetrator of the crime and had thereby subjected him to prejudgment that was particularly damaging to his reputation.

40. He argued that in criminal cases it was for the police, not for the press, to identify possible perpetrators. Only when a person had been formally charged was it permissible for the press to divulge information about suspicion, provided that the information about the charge had been presented correctly.

41. The police had had the situation well under control. They had interviewed the applicant as a matter of routine and had considered him only as a witness. Had the police found a need to warn people in the neighbourhood, they would have done so. In any event, the newspaper was aware of the police's presence in the area.

42. The applicant stressed that publishing suspicion of serious crime might influence a trial court negatively and cause prejudice to judicial independence and the course of justice. As correctly pointed out by the minority of the Supreme Court, it should not be permissible for the press to publicise unfounded suspicion of aggravated crime, like here, against identifiable individuals.

(2) The Government

43. The Government disputed the applicant's complaint under Article 6 § 2 of the Convention. They submitted that the outcome of the defamation proceedings before the Norwegian courts did not attract the application of Article 6 § 2 of its own and invited the Court to declare the complaint inadmissible as being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

44. In this regard, the Government argued that the right to the presumption of innocence embodied in Article 6 § 2 was a vertical provision protecting a person charged with a criminal offence vis-à-vis the national authorities. Between private parties, an accusation of criminal guilt could raise a legal issue of defamation but not a legal issue under Article 6 § 2. As the Court had stated in *Allenet de Ribemont v. France* (10 February 1995, § 36, Series A no. 308), the presumption of innocence guarantee was

reserved for accusation of criminal guilt stemming from "public authorities". The Government found no basis for the existence of a positive obligation under Article 6 § 2 engaging the responsibility of public authorities for the newspaper's activities.

45. Moreover, as was clear from the newspaper articles, the police did not at the time consider the applicant to be a suspect, but merely a witness. The police had not yet taken any such steps against him during the investigation phase or otherwise made any such indications of incriminating evidence against him as would suffice to consider the applicant as "charged" with a criminal offence within the meaning of Article 6 § 2 (see, inter alia, *Serves v. France*, 20 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI).

B. The Court's assessment

46. The Court observes that no public authority had "charged [the applicant] with a criminal offence", in the Banehia case, within the meaning of Article 6 § 2 of the Convention (cf. *Allenet de Ribemont*, cited above, §§ 34-37; *Kyriakides v. Cyprus*, no. 39058/05, § 35, 16 October 2008). While the information concerning the applicant in relation to the investigation in the Baneheia case had in part been provided by the police, it was the coverage by *Fædrelandsvennen* on 24 and 25 May 2000, not the statements by the police, which was at the heart of the matter before the national courts. In any event, the disputed newspaper publications did not amount to an affirmation that he was guilty of the crimes in question. In the Court's view, Article 6 § 2 was inapplicable to the matters complained of. Accordingly, this part of the application must be declared inadmissible as being incompatible *ratione materiae* under Article 35 §§ 3 and 4 with the provisions of the Convention.

47. However, the conclusion above does not prevent the Court from taking into account the interests sought to be protected by Article 6 § 2 in the balancing exercise carried out below (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 65).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

48. With reference to the same facts as his complaint under Article 6 § 2 of the Convention, the applicant complained of a violation of his right to protection of reputation under Article 8 of the Convention. This article reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

49. The Government disputed the applicant's complaint and requested the Court to declare it inadmissible as being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

A. Admissibility

50. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

51. The applicant stressed that, according to established case-law, the safeguard afforded by Article 10 to journalists was subject to the proviso that they were acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 102, ECHR 2004-XI). Special grounds were required in order to free the media from their general obligation in this respect. Whilst no such grounds existed in the present instance, the newspaper had offered no evidence suggesting that the applicant was guilty and had made no efforts to investigate the matter of its own. The newspaper had erred grossly: A was innocent. Thus the majority of the Supreme Court had failed to apply the correct test.

52. Moreover, the Supreme Court majority had deemed it acceptable that the newspaper invade the applicant's privacy by publicising information about such details as the name of his work place, by publishing a photograph of him, taken from the side, while entering a bus on his way to work and another photo, taken from behind, depicting him walking home at a location close to his home.

53. For the applicant, the consequences of the newspaper report had been enormous. He could not continue in his job and had to move and live in a tent elsewhere, isolated and scared away from society. Whilst there obviously was a pressing social need to protect the applicant's interests the Supreme Court failed to provide such protection and had failed to strike a

proper balance between his right to protection of reputation under Article 8 of the Convention and *Fædrelandsvennen*'s freedom of speech under Article 10.

54. The newspaper should obviously have handled the applicant more carefully in its news reporting, considering that he in any event could most probably not have been the perpetrator. The Supreme Court's majority had wrongly applied the Article 10 safeguard in favour of the newspaper in this case.

55. The Government's submission with reference to paragraphs 76, 81 and 83 (quoted at paragraph 32 above) of the Supreme Court's judgment that the latter had relied on the public interest in the publication as a "special grounds" was shallow. It in reality meant that a person who was trampled down or who was most in need of protection by the rule of presumption of innocence should enjoy no effective protection. As pointed out above; when the police had no reason for issuing a warning against the applicant and simply treated him as a witness, it was certainly not for the press to play the role of police.

56. More importantly, the Supreme Court should have considered that the newspaper did not handle adequately the information in the autopsy report which pointed away from the applicant. Whilst having referred to "monstrous sexual offences" in paragraph 82 of its judgment (quoted at paragraph 32 above), the Supreme Court had failed to consider that the applicant had never been involved in such crimes. The newspaper had clearly been negligent. The newspaper's actions and the assessment made thereof by the Supreme Court thereof could not be regarded as complying with journalistic ethical standards laid down in the European Court's case-law.

57. It was incorrect as stated by the Supreme Court in paragraph 83 of its judgment that the newspaper articles had been "balanced". While it was true that the 24 May 2000 issue had quoted the applicant on top of the front page saying "I am completely innocent", by publishing this peculiar interview, covering almost the upper half of the front page, the newspaper had actually made things worse. It had contributed to arise more suspicion against the applicant, not less. By describing him in the ensuing text on the front page as the "most interesting" person interviewed by the police, the newspaper in reality did not create a "balance" but rather imbalance to the applicant's detriment. Also, on this point he shared the view held by the Supreme Court minority (in paragraph 95 of the judgment quoted at paragraph 33 above) that the so-called balancing had not improved matters, agreeing with the High Court's findings that the coverage had made the suspicion against him stronger, not weaker.

(b) The Government

58. The Government did not dispute that Article 8 was applicable in the present case but maintained that it had not been violated. In their view, the Supreme Court had struck a fair balance when protecting the two values guaranteed by the Convention which could come into conflict with each other in this type of cases, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to protection of reputation under Article 8. The Government thus concurred with the Supreme Court's finding that the articles in *Fædrelandsvennen* had not been unlawful for the purposes of Articles 246 and 247 of the Criminal Code and that the applicant's claim for non-pecuniary damages under section 3-6 of the Damage Compensation Act had accordingly been unfounded.

59. The Government further pointed out that in its reasoning dealing with the issue under the Convention, the Supreme Court had rejected the applicant's argument that a shift had taken place in recent Strasbourg case-law, suggesting that the Court had attached greater importance to the protection of reputation in the assessment of whether an interference with freedom of speech was necessary for the purposes of Article 10 § 2 of the Convention. In the Government's opinion, nothing to this effect was to be found in recent jurisprudence. For example, in *Pfeifer v. Austria* (no. 12556/03, § 37, ECHR 2007-...), the Court had emphasised that in striking a fair balance between the competing interests, the national authorities enjoyed a certain margin of appreciation.

60. In its application of the principles in the Court's case-law to the concrete circumstances of the case, the Supreme Court held that the impugned newspaper articles had concerned untrue, defamatory statements of fact, as they had left the ordinary reader with the impression that the applicant could be suspected of having committed the murders. On the facts, the Supreme Court noted the great public interest in the investigation of the rapes and murders of the two young girls and that it was clearly a matter of public interest for the readers of a local newspaper such as *Fædrelandsvennen* that a previously convicted killer, who had been the subject of security measures and who lived in the area, had been summoned by the police for questioning. The Supreme Court, having regard to the various factors stated in paragraphs 81 to 83 of its judgment, was satisfied that the impugned coverage had been presented in good faith with the requisite care and precautionary qualifications and was protected by Article 10 of the Convention.

61. Moreover, the Government, drawing attention to the outcome of a parallel case brought by the applicant against *TV2* in respect of its television coverage of the same matter, clearly illustrated that possible suspects in criminal cases with heavy media coverage were not “free game”, but that they - according to circumstances - could attract the protection of Article 8 even in cases of great public interest, where the general public may have a

legitimate need for information. The distinction made by the national courts had been based on a thorough and careful review of the facts of each case.

62. In the Government's view, the difference of opinion between the majority and the minority of the Supreme Court in the present instance was one that clearly fell within the national margin of appreciation.

2. Assessment by the Court

(a) General principles

63. The case raises essentially an issue of protection of honour and reputation as part of the right to respect for private life under Article 8 of the Convention. This provision, unlike Article 12 of the 1948 Universal Declaration of Human Rights and Article 17 of the 1966 International Covenant on Civil and Political Rights of the United Nations, does not expressly provide for a right to protection against attacks on a person's "honour and reputation". However, as the Court has stated on previous occasions, the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological or moral integrity of a person (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 11, § 22; *Raninen v. Finland*, judgment of 16 December 1997, *Reports of judgments and Decisions* 1997-VIII, § 63) and can sometimes embrace aspects of an individual's physical and social identity (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I; for a more detailed summary of the case-law, see *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III, § 61).

64. In more recent cases decided under Article 8 of the Convention, the Court has recognised reputation (see *White v. Sweden*, no. 42435/02, § 26, 19 September 2006; and *Pfeifer v. Austria*, no. 12556/03, § 35, ECHR 2007-...) and also honour (see *Sanchez Cardenas v. Norway*, no. 12148/03, § 38, 4 October 2007) as part of the right to respect for private life. In *Pfeifer* (cited above, § 35), the Court held that a person's reputation, even if that person was criticised in the context of a public debate, formed part of his or her personal identity and psychological integrity and therefore also fell within the scope of his or her "private life". The same considerations must also apply to personal honour. In order for Article 8 to come into play, the attack on personal honour and reputation must attain a certain level of gravity and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII).

65. The question is whether the State has achieved a fair balance between the applicant's "right to respect for his private life" under Article 8 and the newspaper's right to freedom of expression guaranteed by Article 10 of the Convention (see *Pfeifer*, cited above, § 44; see also *Von Hannover v. Germany*, no. 59320/00, § 57, ECHR 2004-VI, with further references). In

examining this question, the Court will have regard to the State's positive obligations under Article 8 of the Convention to protect the privacy of persons targeted in ongoing criminal proceedings (see Principle 8 in the Appendix to Recommendation Rec(2003)13 of the Committee of Ministers to member States on the provision of information trough media in relation to criminal proceedings, quoted at paragraph 37 above). It will also have regard to the principles established in its case-law concerning the freedom of the press to impart information on a matter of public concern, including on ongoing criminal proceedings, and the right of the public to receive such information (see, amongst other authorities, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, §§ 68-71, ECHR 2004-XI).

66. Against this background, bearing in mind the particular nature of the conflicting interests and the importance of the interests at stake, the Court considers that the competent authorities in the respondent State should be accorded a wide margin of appreciation in assessing the need to protect the applicant's private life under Article 8 as opposed to that of safeguarding the newspaper's freedom of expression under Article 10.

(b) Application of these principles

67. From the outset it is to be noted that the applicability of Article 8 to the case was undisputed and the Court sees no reason to hold otherwise. The issue is whether the respondent State had failed to fulfil its positive obligation under this provision to protect the applicant's honour and reputation as part of the right to respect for private life.

68. The Court observes that the disputed articles published by *Fædrelandsvennen* on 24 and 25 May 2000 were devoted to providing information about the preliminary police investigation into the murders, and in the latter article, also rape, of two young girls aged eight and ten respectively. In the news coverage under consideration, *Fædrelandsvennen* had stated that the applicant was "probably the most interesting of several convicted persons whose movements the police were now checking". For the respondent newspaper, journalist and editor neither this statement nor any other elements in the news coverage contained an affirmation of suspicion against the applicant. However, the Supreme Court, agreeing with the High Court, found that the focusing on the applicant as a previously convicted knife killer, his presence in Baneheia when the criminal acts had been committed and the investigation of the applicant, must for an ordinary reader have been perceived as if he could be suspected of having committed the murders in question.

69. The Court sees no reason to disagree with the national courts' finding that, for an ordinary reader, this must have been perceived as if the applicant could be a suspect in the case and their finding that the coverage was defamatory of him. In this connection the Court has taken note of the fact that inside the 24 May 2000 issue, a Chief Constable had been quoted as

saying that there had been no suspects in the case and that all of the persons who had been summoned for questioning had had formal status as witnesses. Also, both on the front page and inside, it had rendered the applicant's claim of innocence stated in an interview with the newspaper.

70. Although the applicant had not been mentioned by name, the photographs and details of his places of work and residence had made it possible for persons who already knew him to identify him as a possible suspect of aggravated crimes of a particularly reprehensible and also sensitive (cf. *White*, cited above) character. While the news report consisted of imparting factual information about the investigation that was largely true, the way it was presented wrongly conveyed the impression that there was a factual basis justifying the view that the applicant could be considered a possible suspect.

71. It is obvious that the crimes in question because of their particular nature and gravity were a matter of utmost concern to the national public generally and to the local public especially, as observed by the national courts (see paragraphs 82 of the Supreme Court's judgment quoted at paragraph 32 above). Not only did the press have the task of imparting such information but the public also had a right to receive it. However, the Court does not consider that the serious public interest in the subject matter could constitute such a special ground as to justify the defamatory allegation against the applicant with the consequent harm done to him.

72. The disputed media coverage was conducted in a manner which directly affected the applicant's enjoyment of his right to respect for private live. As observed by the dissenting member of the Supreme Court, the applicant was persecuted by journalists against whom he found it difficult to protect himself. It appears that, in order to obtain his photographs and comments, the journalists followed the applicant in his footsteps inter alia on his way to his home and to his work place. The publications at issue occurred while the applicant, in a phase of rehabilitation and social reintegration after having finished serving a prison sentence and security measures for other and unrelated crimes committed in 1987, had a fixed abode and pursued gainful employment. After the publications he found himself unable to pursue his job and he had to leave his home and was driven into social exclusion.

73. There can be little doubt that the disputed publication entailed a particularly grievous prejudice to the applicant's honour and reputation that was especially harmful to his moral and psychological integrity and to his private life (see Principle 8 in the Appendix to Recommendation Rec(2003)13 of the Committee of Ministers to member States on the provision of information trough media on relation to criminal proceedings quoted at paragraph 37 above).

74. The Court is mindful of the careful and thorough review carried out by the national courts of the various factors that are relevant under the

Convention. However, there was not in the Court's view a reasonable relationship of proportionality between the interests relied on by the domestic courts in safeguarding *Fædrelandsvennen*' freedom of expression and those of the applicant in having his honour, reputation and privacy protected. The Court is therefore not satisfied that the national courts struck a fair balance between the newspaper's freedom of expression under Article 10 and the applicant's right to respect for his private life under Article 8, notwithstanding the wide margin of appreciation available to the national authorities.

75. Accordingly, there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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. Damage

77. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage, on account of the hardship he had suffered following the news coverage by *Fædrelandsvennen*. It had delayed his reintegration into society and he had still not fully recuperated. He requested the Court to take into account that as a result of the media stir he had lost his job and had started to live in a tent, being scared away from society. Whilst he had not provided documentary evidence for his monetary losses, he requested that such losses have a bearing on the assessment of the size of the award for non-pecuniary damage.

78. The Government were of the opinion that the amount claimed was excessive.

79. The Court, assisted by the size of the award proposed by the dissenting members of the Supreme Court (see paragraph 101 of the dissenting opinion, quoted at paragraph 33 above) and making an assessment on an equitable basis, awards the applicant EUR 19,000 in respect of non-pecuniary damage.

B. Costs and expenses

80. The applicant also claimed (a) NOK 388,471.61 (NOK 1,180,630.12 less the NOK 792,158.51 granted in free legal aid by the national legal aid

authority) for the costs and expenses incurred before the domestic courts. (b) Moreover, he claimed NOK 150,000 (approximately EUR 16,000) (inclusive of value added tax) for legal costs incurred in the Strasbourg proceedings.

81. As to item (a), the Government were of the view that awarding any sums beyond that granted in national legal aid was not warranted in the circumstances. Item (b) appeared excessive in the absence of any further specification.

82. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 12,500 for the proceedings before the Court.

C. Default interest

83. The Court considers it appropriate that the default interest 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 complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 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:
      (i) EUR 19,000 (nineteen thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 12,500 (twelve thousand five hundred euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that these sums are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (c) 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 9 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President