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FLASH REPORT

Country:	Estonia
Title:	Perpetrator attempts silencing his ex-wife
Date:	14 May 2020
Expert:	Anu Laas
<u>Context</u>	
Issue at stake:	Survivor's right to tell the story v. perpetrator's honour and dignity
Grounds of discrimination:	Gender, Other ground
Field of application:	Other field
Source:	National court decision
Applicable law:	Article 1046, 1047, 1055 of the Law of Obligations Act; Article 4 of the Data Protection Act; Article 121(2)(2) of the Penal Code; Istanbul Convention

Content

Case: In 2018, the applicant of the case in question, claimed compensation from his ex-wife, claiming that she had disclosed false information about him and that this amounted to defamation. If the court finds that an applicant has indeed been the victim of defamation, the victim may demand that the person who disclosed such information retract their remarks, or publish a correction at their own expense, regardless of whether the disclosure of the information was unlawful or not.

In its Judgment No. 2-16-18973 of 7 April 2020, the Pärnu County Court found that the defendant had told the truth with respect to the applicant's abusive behaviour towards her, that her story was of significant public interest, and that she had the right to tell it.

Decision of the court: Pärnu County Court found in favour of Haini Tammeoks, a survivor of domestic violence, holding that she was not guilty of defamation or of causing her ex-husband's loss of honour and dignity. The Pärnu County Court acknowledged that Mr. Ilonen had engaged in abusive behavior towards his ex-wife, who was his wife at the time. The County court found that the defendant had told the truth, and due to the significant public interest, she had right to tell the story. The decision has been appealed.

Key points of analysis: The context of this case was that the ex-husband had used violence against his wife for years, before they eventually divorced. Following the divorce, the ex-couple went to court several times concerning child custody, and a few court decisions were issued in this respect (in favour of the mother). In the summer of 2018, ex-husband and ex-offender Mr. Ilonen went to court to try to force his ex-wife's silence on the issue of his previous violence, as well as demanding a public apology. Mr. Ilonen claimed that the statements made by his ex-wife contained untrue factual allegations against him. The claimant stated that he had not been violent towards the defendant or their children. Secondly, the claimant alleged that these statements violated his privacy and that of his children. Thirdly, the applicant claimed that his ex-wife's allegations insulted

his honour, by creating a false image of him as a person who consistently used mental, physical and sexual violence against his children and his children's mother (Haini Ilonen) over the years. The applicant stated that these allegations should be considered as defamatory, because they allowed his person to be 'valued' negatively. The claimant stated that any information disseminated that contains or allows derogatory assessments is detrimental to his honour and reputation.¹

The applicant (Mr. Ilonen) asked the court to rule in his favour, and to order his ex-wife (the defendant) to retract the inaccurate factual allegations she made about him (referring to media coverage in several channels) and to retract her comments which put him in an unjustifiably negative light and deprived him of his privacy. He also requested to be granted compensation for non-pecuniary damages for the unauthorised disclosure of the defamatory information.

The applicable legal acts were Articles 1046(1), 1047(1,2, 4), 1055(1) and 127(6) of the Law of Obligations Act (LOA), as well as Article 4 of the Personal Data Protection Act. Article 1047 of the LOA is about the unlawfulness of disclosure of incorrect information. Article 4 of the Personal Data Protection Act stipulates that personal data may be processed and disclosed in the media for journalistic purposes without the consent of the data subject, in particular disclosed in the media, if the matter is of public interest and this is in accordance with the principles of the ethics of journalism. Disclosure of personal data must not cause excessive damage to the rights of any data subjects.² Article 26 of the Constitution of the Republic of Estonia provides that everyone has the right to non-interference with their right to privacy and family life.

Internet link source: Karnel, K. (2020), 'Ma seisan selle eest, mis on õige. Ja õige on sellest rääkida' (*'I stand for what is right. And it's right to talk about it'*). Available in Estonian at:

<https://parnu.postimees.ee/6945565/ma-seisan-selle-eest-mis-on-oige-ja-oige-on-sellest-raakida>;

Võlaõigusseadus (Law of Obligations Act), RT I, 08.01.2020, 10, <https://www.riigiteataja.ee/en/eli/515012020004/consolide>.

¹ Supreme Court of Estonia, Judgment of the Civil Law Chamber, No. 3-2-1-83-10 of 26 November 2010, para 12. Available in Estonian at: <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=206099372>.

² <https://www.riigiteataja.ee/en/eli/523012019001/consolide>.