

# Supreme Court

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## KKO:2019:81

### Cease order against the distribution of online posts

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#### *Facts and issue*

The ruling of the Supreme Court concerned the question whether a cease order should be issued against the distribution of online messages (posts) on an internet publication, since their content constituted an obvious infringement of the privacy or honour of A.

According to section 18 of the Media Freedom Act (Act on the Exercise of Freedom of Expression in Mass Media), the court may order that the publisher to cease the distribution of a posted online message, if it is evident on the basis of the contents of the message that making it available to the public is a criminal offence. According to section 1(2) of the Media Freedom Act, the application of the Act may interfere with the activities of the media only in so far as it is unavoidable, taking due note of the importance of the freedom of expression in a democracy subject to the rule of law.

The first post, an article that bore the headline "Internet Snitch Identified Himself", revealed inter alia A's full name and a photograph of him, his hometown, his former employer and some information of his previous and current employment. The main thrust of the article was an allegation that A had sent letters to sexual offenders to inform them about a "defamation campaign" on another website, and to exhort them to take legal action against the administrator of that website. In the post, A had been referred to as "the Internet Snitch" and "Mr Snitch" and there was e.g. speculation on the number of A's paedophile friends. Also a later post had revealed A's name and photograph; reference had been made to him e.g. as a defender of paedophiles.

These posts had given rise to public discussion online; the comments had e.g. alleged that A himself was a paedophile.

A requested that a cease order be issued against the distribution of the posts and the comments, by virtue of the Media Freedom Act.

The Supreme Court held that this was a matter of injunctive relief against the distribution of an unlawful online post; the threshold for issuing such an order was rather high. The Supreme Court first considered whether there was cause to issue the order based on the criminal provision concerning the right to privacy.

Under chapter 24, section 8(1), of the Criminal Code of Finland, a person who unlawfully, through the use of the mass media, disseminates information, an insinuation or an image of the private life of another person, so that the act is conducive to causing that person damage or suffering, or subjecting that person to contempt, shall be convicted of dissemination of information violating personal privacy. Under paragraph (3) of the same section, the presentation of an expression in the consideration of a matter of general importance shall not be considered dissemination of information violating personal privacy if its presentation, taking into consideration its contents, the rights of others and the other circumstances, does not clearly exceed what can be deemed acceptable.

The Supreme Court referred to the protections of privacy, on one hand, and of the freedom of expression, on the other hand, as enshrined in the Constitution of Finland, the European Convention on Human Rights and Fundamental Freedoms, and the Charter of Fundamental Rights of the European Union. In the application of the criminal provision above, the court must strike the just and correct balance between these rights. As criteria for striking this balance, the Supreme Court mentioned the specific privacy interest of a person not known to the public, the manner of publication or distribution of an article or a picture, and the extent of the dissemination. Other significant criteria were the truthfulness of the published informa-

tion, the seriousness of the invasion of privacy and, as regards photographs, whether the person had consented to being photographed or whether the photo was taken in secret or otherwise without permission. Restriction of the freedom of expression was subject to particular reservations where the matter was of a discussion with broader public interest.

The Supreme Court referred to the case-law of the European Human Rights Court (e.g. the cases *Pihl v. Sweden* 7 February 2017, *Tamiz v. the United Kingdom* 19 September 2017, and *Egill Einarsson v. Iceland* 7 November 2017). The Supreme Court held that the method of publication and the technical aspects of mass media do not affect the assessment criteria of the freedom of expression and the right to privacy. That said, it is clear that all expressions should be assessed in context, in which case it is possible to take due note also of online discussions' often discursive mode of exaggeration and aggravation. This, however, is different from the dissemination of information infringing someone's privacy or demeaning insinuations.

#### *Ruling of the Supreme Court*

The Supreme Court noted that in posts containing information on his private life, A had been depicted as the "agent and friend" of criminals convicted of sexual abuse of children, or as a protector of such persons. The publication, without permission, of a secretly taken photo of A had constituted a severe infringement of his privacy. The posts, when considered as a whole, and the references to A in them were contemptuous and demeaning.

The comments pertaining to articles posted online constituted an integral part of an online publication; these had been distributed more extensively than a regular discussion board. Some comments had insinuated that A himself was a sexual offender. This was not merely a matter of coarse writing or of obscure or insignificant insinuations. Sexual abuse of children is one of the most reprehensible types of criminality and also a positive attitude towards sexual offenders can be described as a negative characteristic.

The publication of information on the private life of A had been unlawful in the sense of chapter 24, section 8(1), of the Criminal Code, since he had not himself sought publicity nor consented to the publication of the information.

In view of the subject matter of the posts and their type it was evident that the information on A's private life and the insinuations concerning him had caused suffering to A and subjected him to contempt. A had averred that, owing to the posts, he had been threatened by persons unknown and he had had trouble gaining employment and a livelihood. As a private individual, A had enjoyed strong privacy protection. When assessed as a whole, the contents of the posts had focused on presenting negative and contemptuous insinuations against A, with no justification by any reference to the public interest.

Accordingly, it was evident that the continued dissemination of the posts in question was punishable as dissemination of information violating the privacy of A. The Supreme Court held that a cease order against the distribution of the posts and the comments pertaining to them was necessary in order to protect the privacy of A; and so ordered.

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