EUROPEAN COURT OF HUMAN RIGHTS APPLICATION

under Article 34 of the European Convention of Human Rights and Rules 45 and 47 of the Rules of Court[1].

I. THE PARTIES

A. THE APPLICANT

THE APPLICANT

1. *Name*: Klein
2. *First name*: Dan
3. *Nationality*: Faroese
4. *Occupation*: Editor and journalist
5. *Date and place of birth*: Born 8 October 1950 in Klaksvik, Norderö.
6. *Permanent address*: Lýðarsvegur 19, 100 Tórshavn, Faroe Islands
7. *Tel.*: +314411; +314255. Mobile: +267686.
8. *Present address*: Same

REPRESENTATIVE

9. *Name of representative*: Ragnar Aðalsteinsson
10. *Occupation of representative*: Advocate to the Supreme Court
11. *Address of representative*: Klapparstígur 25-27, 101 Reykjavík, Iceland
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B. THE HIGH CONTRACTING PARTY

13. Denmark

II. STATEMENT OF THE FACTS

14.
Summary

The application relates to a violation of the applicant's right to freedom of expression and right to a fair trial arising from the judgement of the Danish Appeal Court (Östre Landsret) dated 17

[1] Please note that where possible English text has been provided in this application. On few occasions Danish quotes remain in the application. Furthermore, many of the accompanying documents to this application are in Danish. Documents in Faroese language have however been translated into English.

March 2011 in case No. B-930-10. The applicant considers himself to be personally and directly the victim of the breach of the above fundamental rights by Denmark. The applicant has suffered a significant disadvantage both financially, personally and professionally as a journalist and editor. He has been judged to pay considerable sums of money as a fine and legal costs. On personal basis the applicant has had to suffer the hardships defending himself in lengthy court proceedings against him in attempt to protect his freedom of expression and right to fair trial. The case complained of can result in a serious decrease of public discussion regarding matter of public interest and concern in the Faroe Islands. It might even lead to the independent and critical medium in questions being terminated.

The applicant is the editor of the newspaper *Oyggjartíðindi* published by P/F Oyggjartíðindi (a limited liability company). The newspaper was published both on paper and on the internet at the relevant time, but currently it is published on the internet only. The applicant published in early 2009 a news report on certain circumstances in a public school in the local community Fuglafjörður on the island Eysturoy in the Faroe Islands. The inhabitants of the town are approximately 1500. The town's economy is based on the processing of fish and fish flour.

In the town of Fuglafjörður there is a public state run school where the employees including the principal and the vice principal are civil servants, *i.e.* state employees. There are approximately 350 pupils in the school at the age of seven years to 17 years.

In Oyggjartíðindi dated 29 January 2009 the applicant reported that the former principal of Fuglafjörður School, a man named Súni i Hjöllum, had been dismissed from his post as principal of the school for the reasons that he had found himself forced to interfere in regards to a sexual relationship in the school between the vice principal and one of the teachers, a married woman. The vice principal's name was identified in the report, but not the name of the woman. The report revealed that the principal's interference in the behaviour of the vice principal and the female teacher not only resulted in his dismissal, but also in considerable costs for the public authorities. It was reported that the costs would in the end result in the payment of approximately Danish kroner 3.500.000 as the dismissal was unjustified and therefore the principal was entitled to extensive payments for the next decades on grounds of the dismissal. In this connection it is also reported that the vice principal was politically active and second vice president of the local Social Democratic Party.

In the news report it is stated that under normal circumstances the affair would not be of public interest, but in this case the circumstances were not normal and it was of public interest that a public school was the stage for the sexual performances of the two public servants in question. It is reported that the cleaning staff and teachers had run into the couple having sexual intercourse in the darkest corners of the school. It was also reported that these on goings were so embarrassing for teachers, the school and the local community as a whole that something had to be done. By referring to the embarrassment of the local community as a whole it is clearly indicated that the affair within the school was common knowledge.

Following the publication of this news report Petur Páll Mikkelsen, the vice principal of the school, in a summons dated 4 February 2009 summoned the applicant to appear before the Faroese Court (Retten på Færöerne). The claims made by Mikkelsen were that the applicant

should be found guilty of a breach of article 264d of the Criminal Code and he be sentenced to suffer the maximum punishment allowed by the law and to pay compensation and court costs. The claims in the summons are not based on the news report referred to not being true facts, but on the details in the report being exceptionally personal details about the plaintiff discussed in an obscene and demeaning manner. It is also maintained in the summons that the source of the information on the personal details is the above mentioned principal, Suni á Hjöllum. This both the applicant and Suni á Hjöllum have denied as false.

On 16 February Marta á Lakjuni, the teacher referred to in the newspaper without providing her name, also issued summons against the applicant making the identical claims as Mr. Mikkelsen had, based on identical arguments and law. It is maintained the matters written about in Oyggjartíðindi are of exceptionally private nature about matters protected by the Penal Code article 264d. It is neither argued in the summons that the news report on the sexual relationship of the two plaintiffs is untrue nor that their sexual behaviour within the school is not common knowledge inside the school and in the local community. Generally speaking the plaintiffs seem to have accepted the facts of the reports as true.

In Oyggjartíðindi dated 13 March 2009 it is reported that Marta á Lakjuni had identified herself as the teacher referred to in the newspaper dated 28 February 2009 and had instituted court proceedings against the applicant claiming punishment and damages. In the report it is said that the paper wanted to protect the woman's name as she was married and had children. She had chosen to identify herself by instituting court proceedings based on her and Mr. Mikkelsen behaviour being a private matter that did not concern any other persons. In this issue of the paper it is stated that the relationship was not healthy for the interest of the children in the school.

In Oyggjartíðindi dated 27 March 2009 it is reported that the principal Súni á Hjöllum confronted the two plaintiffs because of the "sex-scandal".

In the case before the Faroese Court the applicant claimed acquittal of all the claims of the plaintiffs in adition to court costs. The claims of the two plaintiffs were handled in one case by the Faroese Court. The applicant represented himself before the Faroese Court as he could not afford to engage a lawyer.

The applicant intended to have the Minister of Culture an Education and the chairman of the governing body of the Fuglafjörður School appear as witnesses before the court as, in his opinion, their witness statements would prove that the reports by the applicant of the dismissal of Súni á Hjöllum as principal of the school were correct and that he had been dismissed as principal because of his interference with the sexual relationship of the plaintiffs within the school. Furthermore these witnesses would also have confirmed that the public authorities had to pay a considerable compensation to Súni á Hjöllum for the unjustifiable dismissal. The applicant was refused leave by the Faroese Court to have these two witnesses appear before the court to give witness statements after the plaintiffs had objected to it. Among the documents filed with this application there is a letter from the Ministry of Culture terminating the services of Súni á Hjöllum as principal of the school without giving any concrete details of the reasons for the dismissal (see document A). The letter sets out the payments to be made to the principal because

of the dismissal. These payments seem to confirm that the principal was dismissed without just cause.

On the other hand the Faroese Court allowed the applicant to have Súni á Hjöllum appear as witness as the applicant bases his defence *i.a.* on the argument that the publication of the disputed news reports were justifiable for reasons of public interest. The court claims that it could not be excluded that the witness statement of Súni á Hjöllum could be important for the case of the applicant. The plaintiffs did not appear before the court to make statements for the record as requested by the applicant.

A judgement was passed on the 16 March 2010 according to which the applicant was sentenced to pay Danish kroner (DKK) 10.000 as fine and subsidiarity 20 days in prison, if the fine was not paid. Additionally the applicant was to pay the plaintiffs as compensation DKK 50.000 and DKK 20.000 as their court costs, the total amount being DKK 80.000.

The applicant himself appealed the judgement to the Danish High Court, Eastern Division (Östre Landsret) on the 17 March 2010. The appeal summons signed by the applicant was received by the High Court on 23 March 2010. On the 16 September 2010 there was a hearing in the case of which the applicant had no knowledge as the parties were not summoned to the hearing. At the hearing the High Court appointed a Danish lawyer to represent the applicant in the case before the court. The reasons provided by the court were that the case was complicated and could not be dealt with in a justifiable way without the applicant being assisted by a lawyer.

In the pleadings before the High Court the court-appointed lawyer of the applicant claimed an acquittal and costs on behalf of the applicant.

The High Court came to the same conclusion as the Faroese Court and decided that the applicant should pay DKK 15.000 to the other side as court costs. The applicant applied for leave from the "Procesbevillingsnævnet" to appeal the judgement of the High Court to the Supreme Court. In the application the applicant brought *i.a.* it to the attention o the committee that the High Court had not seen the summons of the two plaintiffs dated 4 and 16 February 2009, which the applicant meant was basis the for the proceedings against hum. The committee refused to grant leave to appeal as the case did not according to the committee fulfil the requirement of the Faroese procedural act of being a case of principle.

In a hearing of the High Court on 23 March 2010 of which the applicant had no knowledge as he was not notified of the hearing the High Court ruled that the applicant was to pay DKK 33.287 to the Treasury as costs of his Danish court appointed lawyer. The costs to the applicant had now risen to DKK128.287 besides his personal costs, such as travel costs

III. Statement of alleged violation(s) of the Convention and/or Protocols and of relevant arguments

15.

A. Violation of Article 10 of the European Convention on Human Rights

a) The relevant domestic law

The Danish Constitution provides in section 77 as follows on freedom of expression:

> Any person shall be entitled to publish his thoughts in printing, in writing, and in speech, provided that he may be held answerable in a court of justice. Censorship and other preventive measures shall never again be introduced.

On protection of privacy the following under the heading "Inviolability of the House" is provided in section 72 of the Danish Constitution:

> The dwelling shall be inviolable. House searching, seizure, and examination of letters and other papers as well as any breach of the secrecy to be observed in postal, telegraph, and telephone matters shall take place only under a judicial order unless particular exception is warranted by Statute.

Private life is protected by criminal sanction in article 264 of the Danish Penal Code of 1939 applicable in the Faroe Islands. The plaintiffs based their case before the Faroese Court on the provision of article 264d of the Penal Code, which reads as follows:

> Med bøde eller fængsel indtil 6 måneder straffes den, der uberettiget videregiver meddelelser eller billeder vedrørende en andens private forhold eller i øvrigt billeder af den pågældende under omstændigheder, der åbenbart kan forlanges unddraget offentligheden. Bestemmelsen finder også anvendelse, hvor meddelelsen eller billedet vedrører en afdød person.

b) Article 10 of the European Human Rights Convention

Article 10 of the Convention reads as follows:

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 the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

c) Jurisprudence of the Court

In the case *Thorgeir Thorgeirson v. Iceland (Application no. 13778/88)* the Court dealt with freedom of expression and specifically with the freedom of the press. The Court states:

63. The Court recalls that freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10 (art. 10-2), it 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.** Freedom of expression, as enshrined in Article 10 (art. 10), is subject to a number of exceptions which, however, must be **narrowly interpreted** and the **necessity for any restrictions must be convincingly established** (see the Observer and Guardian v. the United Kingdom judgment of 26 November 1991, Series A no. 216, pp. 29-30, para. 59).

In the present case, the applicant expressed his views by having them published in a newspaper. Regard must therefore be had to **the pre-eminent role of the press in a State governed by the rule of law** (see the Castells v. Spain judgment of 23 April 1992, Series A no. 236, p. 23, para. 43). Whilst the press must not overstep the bounds set, inter alia, for "the protection of the reputation of ... others", it is nevertheless **incumbent on it to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog"** (see the above-mentioned Observer and Guardian judgment, pp. 29-30, para. 59).

In the case of *Erla Hlynsdóttir v. Iceland* (Application no. 43380/10) the Court stated:

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).

In the case of *Björk Eiðsdóttir v. Iceland (Application no. 46443/09)*the Court states:

65. A central factor for the Court's determination in the present case is **the essential function the press fulfils in a democratic society.** Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need

to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – **information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them**. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to **a degree of exaggeration, or even provocation**. In cases such as the present one the national margin of appreciation is circumscribed by the interest of democratic society in enabling the press to exercise its vital role of "public watchdog" in imparting information of serious public concern (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III; *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 82, 1 March 2007, with further references).

67. As to the further question whether those reasons were sufficient for the purposes of Article 10, the Court must take into account the overall background against which the statements were published. The Court is not persuaded by the Government's argument that the applicant's portrayal of Mr Y in her article "was clearly not a necessary contribution to the said public debate". Whether or not a publication concerns an issue of public concern should **depend on a broader assessment of the subject matter and the context of the publication** (*Tønsbergs Blad A.S. and Haukom*, cited above, § 87).

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

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

d) Was the measure interference with the right to freedom of expression under Article 10.

The applicant in publishing the reports, on the dismissal of the school principal and payment of compensation for unjustified dismissal and the interconnection of the dismissal and the sexual relationship of the two plaintiffs, in first instance relied on his freedom of expression and the

freedom of the press to impart information, even though these might offend, shock and disturb. He considered the information to be of public interest and that the public had a right to receive the information. The elements of the reports all had to do with matters of public concern. The school in question was a public school and the persons involved were public servants. When the principal of the school found that the behavior of the vice principal and the female teacher had overstepped all boundaries for their behavior within the walls of the school he decided to interfere. His witness statement before the Faroese Court is of major importance for evaluating the public interest in reporting on the events at the school. The statement of the principal as set out in the judgment of the Faroese Court is therefore quoted below in its entirety (in Danish):

> Súni i Hjöllum har forklaret, at han på det pågeldende tidspunkt var skoleinspektör for Fuglefjord skole. På et tidspunkt omkring efteråret 2007 begyndte der at være en underlig stemning på skolen. Der blev hvisket, og der kom spörgsml fra folk i bygden om sagsögeme, og om sagsögeme havde et forhold. Vidnet spurgte sagsögeme derom, men de afviste det. Vidnet anså det heller ikke for sandsynligt. Marta á Lakjuni var gift.
>
> I 2008 blev der snakket endnu mere i bygden. Vidnet blev direkte spurgt, om han kunne tillade det, der foregik. Det var tydeligt, at sagsögeme havde et forhold, Det skabte uro på skolen. Sagsögeme flirtede åbenlyst. Der blev talt om, at rengöringskoneme havde overrasket sagsogeme sammen på skolen, og han har hört historier om, at andre lærerere havde overrasket sagsögeme i trommerummet på skolen. Selv har han kun overværet, at sagsögeme har flirtet med hinanden. Der har i den forbindelse været akavede situationer.
>
> I maj 2008 havde han en samtale med sagsögeme, hvor han på ny spurgte til deres forhold. Umiddelbarl derefter begyndte det at være ubehageligt for ham på skolen. Han blev pludselig modarbejdet af læreme. Marta á Lakjuni indkaldte læreme, og der var en underskriftindsamling mod vidnet. Vidnet er ikke længere skoledirektör.
>
> Folkeskolen skal sörge for, at bömene får en kristen opdragelse. Lærerne må vere gode forbilleder. Han mente ikke, at sagsögeme var det. Det er ikke vidnet, som har givet sagsögte historien.

According to this statement of the former principal, the objectivity and truth of which cannot be doubted, the relationship of the two plaintiffs, including sexual encounters in the school, was common knowledge within and outside the school in the local community. The witness said that not only the cleaning ladies but also the other teachers in the school ran into the couple within the school under embarrassing circumstances. This, he stated, created disturbances in the school which is run according to Christian principles. He said that the teachers were to be good role models. He said the plaintiffs were not. He also explained how one of the plaintiffs started an action against him such as a by collecting of signatures under a petition against him.

The applicant had through his journalistic activities come across information concerning what was going on in the school and its effects on the local community and not least the unjustified dismissal of the principal with the subsequent costs to the central authorities and essentially the citizens of the country which in the end would finance the costs through taxations. His conclusion was that the events were of public interest not only in Fuglafjörður, but also in the islands as a whole.

The applicant was in good faith as to the truth of his reports as these were based on many sources the names of which could not be disclosed due to the sensitivity of the story in Fuglafjörður and elsewhere in the Faroe Islands. The applicant found it to be his duty to report the events as being of public interest and he also thought that the public had a right to know about these events because of their public interest. The story involved what the applicant thought to be immoral acts in the premises of a public institution where children were to be educated in sound morals. The story also involved possible misuse of power by the central authorities by the dismissal of the principal without cause resulting in heavy costs for the taxpayers.

The applicant maintains, having the above in mind, that there was an interference with his right to freedom of expression by public authorities. The judgment by the Faroese Court and its confirmation by the Danish High Court are apt to seriously hamper the contribution of the press in Faroe Islands to discussions of matters of public interest.

e) **Was the interference prescribed by law**

The case in question was not instituted by the public prosecution, but by private parties maintaining that the reports published by the applicant related to their private affairs and were not justifiable. Therefore the plaintiffs maintained that the publication was in breach of art. 264d of the Penal Code. The plaintiffs did not maintain that the reports published by the applicants were not true and they did not base their case on the report being a violation of their reputation. The case was solely based on the applicant being guilty of disclosing their private affairs and that the disclosure was not justifiable. In a sense the measure was prescribed by law provided however that the plaintiffs could prove that the publication was not justifiable. The case was a criminal case instituted by private parties in accordance with article 275 of the Penal Code which provides that the violations prescribed in chapter 27 of the Penal Code are subject to private prosecution. The plaintiffs carried the burden of proof as to the requirements of article 264d of the Penal Code be met. Especially they had to convince the Faroese Court and the High Court that the publication was not justifiable for reasons of public interest.

f) **Did the interference pursue a legitimate aim?**

Article 10.2 of the Convention provides certain limitation to the freedom of expression, but such limitations must be "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 the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." None of the limitations seem to apply to the reports of the applicant. Private affairs are not mentioned, only protection of reputation. The case before the

Faroese and Danish courts did not deal with the reputation of the plaintiffs, only with whether it was unjustifiable to publish the report for reasons of the privacy of the affair of the plaintiffs. Therefore the interference did not pursue a legitimate aim listed in article 10.2 of the Convention.

g) Was the interference "necessary in a democratic society"?

The freedom of expression constitutes an essential foundation for democratic society. It applies not only to inoffensive information, but also to information that offends, shocks or disturbs. The exception in article 10.2 of the Convention must be narrowly interpreted and the necessity for any restrictions must be convincingly established. The applicant published his reports in a newspaper and therefore regard must be had to the pre-eminent role of the press in a state governed by the rule of law. It is the role of newspapers to impart information of public interest and the public has a right to receive such information. Otherwise the press would not be able to play its vital role of public watchdog.

The reports by the applicant do not lack factual an objective basis and that was never contested by the plaintiffs. The information which the applicant was given by his sources about the situation at the school were similar and numerous and could not be disregarded as being untrue. The applicant could not be required to establish in the strict meaning of the concept, the truth of his statements in the paper. He would then have been faced with an unreasonable task, if not impossible. The applicant's reports bore on a matter of serious public concern and the facts reported were not disputed. The reaction by the Faroese and Danish courts by conviction the applicant were and still are capable of discouraging public and open discussion of matters of public interest and concern.

Even though the interference is considered to pursue a legitimate aim the interference complained of was not proportionate to the possibly legitimate aim pursued. The interference was therefore not necessary in a democratic society.

B. Violation of Article 6 of the Convention

Article 6 of the Convention reads as follows

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and the facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

a) The right of the applicant to defend himself before the High Court

The applicant wrote certain letters dated 2 July 2009 and 6 September 2009 to the Danish High Court relating to the document file of the case and the translation of the summonses to the first instance court into Danish for the judges of the High Court to understand certain aspects of the case, as they did not understand Faroese language. The applicant needed the document file for preparing the case and present it to the High Court. The High Court responded by holding a hearing on 16 September 2010 to which the applicant was not summoned or made aware of. At the hearing the High Court decided to appoint a lawyer to represent the applicant before the High Court. The decision was only reasoned by vague concepts without explaining to a sufficient degree how that decision was made. It is not explained why the applicant could not defend himself before the court and present the case properly in any other way than by referring to the "character and nature of the case". The applicant was therefore deprived of his right to present himself before the High Court in spite of the provision in Article 6.3.(c), which unequivocally provides for this right. It must be noted that the applicant was unable to pay for the legal services of the lawyer assigned to him without enjoying free legal aid. The right to defend himself in person must not be made illusory by allowing the domestic courts to deprive a defendant of the right to defend himself in person without weighty reasons. It is furthermore faulty that the applicant was not even granted the right to argue why he should be allowed to defend himself before the Court in question. The sanctions for not engaging a lawyer were that pleadings filed by the applicant were bypassed as non-existent. Reference is made to Article259 of Lov for Færöerne om rettes pleje (The Procedural Act for the Faroe Islands, which reads:

> **§ 259.** Enhver kan både som sagsøger og som sagvolder gå i rette for sig selv.
> *Stk. 2.* Retten kan pålægge en part at lade sagen udføre af en advokat, dersom den ikke finder det muligt at behandle sagen på forsvarlig måde, uden at parten har sådan bistand. Pålægget kan ikke indbringes for højere ret.
> *Stk. 3.* Efterkommes et pålæg efter stk. 2 ikke, betragtes processkrifter, der indgives af parten efter pålæggets meddelelse, som ikke indgivne, ligesom parten anses for udeblevet fra de retsmøder, der afholdes efter pålæggets meddelelse. Hvor særlige hensyn taler derfor, kan retten dog beskikke parten en advokat. Om salær og godtgørelse for udlæg til den beskikkede advokat gælder samme regler som i tilfælde, hvor der er meddelt fri proces, jf. kap. 31.

At a hearing on 23 March 2011 the High Court ruled that the applicant should pay the Treasury within 14 days DKK 33.827 relating to the costs of the court-appointed lawyer. This debt was therefore unjustly placed on the shoulders of the applicant without him having any possibility to prevent it.

b) **The right of the applicant to have relevant case documents before the High Court in Danish**

As already indicated the applicant was concerned that the High Court did not have access to the summonses to the Faroese Court translated into Danish. The reasons for his concern was that by not having access to what constitutes the foundation of the case, and therefore probably the most important document in the case, the High Court could not reach a fair conclusion. The basis for the plaintiffs' case was laid in the summonses to the Faroese Court and the applicant was not bound to present a defense to any other points than those raised in the summonses. Subsequent points and claims raised by the plaintiffs could not be dealt with by the courts. The High Court did not avail itself of the summonses in Danish so the applicant's concerns were justified. The applicant was not summoned to the hearing nor given any opportunity to present his points of view in relation to the subject matter of the hearing. In an e-mail from the High Court to the applicant dated 15 March 2012 it is confirmed that the summonses to the Faroese Court are in the Faroese language without translations (document Y). In the summonses there are no details as to which parts of the applicant'r report are the ones he is considered to be criminally liable for. In the summonses there is no reference to the reports of the applicant not being true as to the facts reported. In the judgement of the Faroese Court there is a reference to Article 267 of the Penal Code, which reads as follows:

> Den, som krænker en andens ære ved fornærmelige ord eller handlinger eller ved at fremsætte eller udbrede sigtelser for et forhold, der er egnet til at nedsætte den fornærmede i medborgeres agtelse, straffes med bøde eller fængsel indtil 4 måneder.

It is difficult to understand the reasons for the court to include reference to this provision on personal injuries in the arguments for the conclusion that the applicant was guilty of a violation of Article 264d of the Penal Code, especially as the plaintiffs did not in any way base their case on a possible violation of Article 267. This reference might have confused the High Court which did not have access to the summonses and might have led the High Court to confirm the judgement of the Faroese Court. That applicant maintains that he did not enjoy the right to a fair trial in this respect as the High Court might have come to another conclusion if it had had access to the summonses in Danish. It must be considered necessary in order for a person to get a judgment reassessed by a higher court that the foundations are examined by the named court and that could not be done in the case of the applicant, without the summons being translated and examined by the High Court.

c) **The right of the applicant to adequate judicial reasoning**

The conclusion of the Faroese Court is based on the applicant not having shown that the news report on the plaintiffs having sexual relationship in the school was justifiable. The plaintiffs, the court asserts, did not agree to the report being published. Furthermore the court claims that the

applicant has not shown that there is any public interest in reporting on the events in the school. The court furthermore maintains that the applicant has not proved that he could on any grounds rightly assume that the plaintiffs had sexual relationship in the school. The court completely rejects the witness statement of the principal Súni á Hjöllum without any reasoning.

The court claims that it is not important for the outcome of the case that the plaintiffs did not give statements before the court and therefore did not have to reply to questions from the applicant. The dismissal of Súni á Hjöllum from the school, the court claims, does not justify the news reports published in the Oyggjartíðindi on the sexual behavior of the plaintiffs. Consequently the court found the applicant guilty of violation of Article 264d for disclosing the private affairs of the plaintiffs without being able to justify the publication.

There is a lack of coherence on the judicial reasoning of the Faroese Court. It was of utmost importance that the court adequately reasoned why the statements of Súni á Hjöllum were disregarded. He was the person in the best position to inform the court of the facts regarding the affair at the school and its effects on the school, the teachers, the pupils and the local community. He was also the one who could have revealed how his interference with the plaintiffs' behavior in the school led to his dismissal and heavy costs for the central authorities and thereby to taxpayers. The court also disregards that the plaintiff´s position in the summonses where they did not protest against the truthfulness of the report in the paper. That alone should have led the court to conclude that the reports about the sexual activities at the school were true. On the contrary the court places a heavy burden of proof on the applicant who was the defendant in a criminal case. The court does not deal with the fact that the events reported on are interrelated. The sexual affair led to the dismissal of the principal and the unjustified dismissal without cause led to the liability of the central authority for damages. It was not possible to report on the dismissal and the liability without reporting on the causes which were the sexual activities of the plaintiffs at the school.

The right to adequate judicial reasoning is not only to protect the parties to a case, but also to make the public understand the judgements and the reasoning behind them. As this was a criminal case, even though it was prosecuted by private parties, the court does not seem to have placed the burden of proof as to the fulfillment of objective and subjective requirement for guilt on the plaintiffs. On the contrary the court places the burden of proof of innocence on the applicant. This was even more serious for the reasons that the applicant could not afford the assistance of counsel and represented himself before the Faroese Court.

The applicant holds that he has not enjoyed his right to a fair trial in this respect.

The Court is asked to assess the treatment of the case as a whole and conclude that the applicant did not enjoy a fair hearing.

IV. Statements relative to Article 35 paragraph 1 of the Convention

The High Court, Eastern Division (Östre Landsret) found the applicant guilty and liable for damages and costs in its judgement dated 17 March 2011. The applicant applied for leave to appeal to the Supreme Court on the 21 March 2011, but "Procesbevillingsnævnet" rejected the application on 17 May 2011. Its decision was the final domestic decision

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The Faroese Court (Retten på Færöerne) found the applicant guilty and liable for damages and costs in its judgement dated 16 March 2010.

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No further appeal was available to the applicant, There was no further domestic remedy. This application was originally lodged with the European Court of Human Rights by a letter dated 14 November 2011.

V. Statement of the object of the application

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The applicant seeks a declaration from the Court that Articles 6 and 10 of the Convention have been violated, together with just satisfaction under Article 41 (pecuniary and non-pecuniary damages plus legal costs and expenses) of the Convention.

The applicant furthermore seeks the costs of this application including the costs of any domestic proceedings. The applicant will apply for legal aid to the Court at the appropriate time.

VI. Statements concerning other international proceedings

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No such proceedings have been instituted and no such proceedings are contemplated.

VII. List of documents

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LIST OF DOCUMENTS

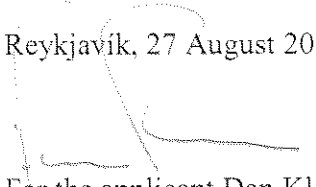
A. 2009, January 12 Termination letter from the Ministry of Culture to Súni Á Hjöllum with an English translation
B. 2009, January 28 Oyggjatíðindi (Excerpts in Danish translation)
C. 2009, February 4 Summons of Petur Páll Mikkelsen in Faroese witht an English translation

D. 2009, February 16 Summons of Marta á Lakjuni in Faroese with an Enngliish translation
E. 2009, March 13 Oyggjatíðindi (Excerpts in Danish Translation)
F. 2009, March 23 Response by the applicant to the Faroe Islands Court with an English translation
G. 2009, March 27 Oyggjartíðindi (Excerpts in Danish translation)
H. 2009, April 27 Response by the applicant to the Faroe Islands Court with an English translation
I. 2009, July 10 List of witnesses from the applicant with an English translation
J. 2009, August 31 Reiteration to the Faroe Islands Court from the applicant on the need to obtain statements from the witnesses on the list of witnesses from 10 July 2009 with an English translation
K. 2009, September 25 The Faroese Court decides to allow the applicant to have Súni í Hjöllum to make a witness statement before the court, but refusing other witnesses.
L. 2010, March 16 Judgement of the Faroe Islands Court (Retten på Færöerne) in the case nos. BS 346/2009 and 498/2009
M. 2010, March 17 Appeal Summons to the Danish High Court, Eastern Division (Östre Landsret) by the applicant
N. 2010, April 27 Response to the Danish High Court (Östre Landsret) by the counsel for Marta á Lakjuni and Petur Páll Mikkelsen
O. 2010, July 2 A letter from the applicant to the High Court re access to documents and translation of the summons into Danish
P. 2010, September 6 A letter from the applicant to the High Court concerning the first instance summons and the extract of the case documents
Q. 2010, September 16 Transcript from the Danish High Court (Östre Landret) concerning the unilateral court appointment of counsel for the applicant
R. 2010, December 1 Pleadings by the court appointed counsel of the applicant to the Danish High Court (Östre Landsret)
S. 2011, March 17 Judgement by the Danish High Court (Östre Landsret)
T. 2011, March 21 Request by the applicant for review of the judgement in Case B-930-10 of the 17 March 2010 by the Danish Supreme Court.
U. 2011, March 23 Decision by the Danish High Court (Östre Landsrset) on the costs of the applicant's court appointed counsel
V. 2011, May 17 The requests for appeal to the Supreme Court denied by „Procesbevillingsnævnet" (The committee for procedural licenses)
W. 2011, November 14 A letter from the applicant to the European Court of Human Rights (the Court)
X. 2012, February 14 A second letter from the applicant to the Court
Y. 2012, March 15 An e-mail from the Danish High Court (Östre Landsret) to the applicant stating that the copies of the summonses in the Court's possession are in Faroease
Z. 2012, April 18 A third letter from the applicant to the Court
AA. 2012 Power of Attorney signed by Dan Klein and accepted by Ragnar Aðalsteinsson, attorney

VIII. Declaration and signature

I hereby declare that to the best of my knowledge and belief, the information I have given in the present application form is correct.

Reykjavík, 27 August 2012



For the applicant Dan Klein

Ragnar Aðalsteinsson, Advocate to the Supreme Court