

EUROPEAN COURT OF HUMAN RIGHTS

279
20.5.1999

Press release issued by the Registrar

JUDGMENT IN THE CASE OF BLADET TROMSØ and STENSAAS v. NORWAY

In a judgment delivered at Strasbourg on 20 May 1999 in the case of *Bladet Tromsø and Stensaas v. Norway* (application no. 21980/93), the European Court of Human Rights held by thirteen votes to four that there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights. Under Article 41 of the Convention, the Court awarded the applicants specified sums for pecuniary damage and for legal costs and expenses.

1. Principal facts

The case concerns an application brought by two applicants. The first applicant is a limited liability company *Bladet Tromsø A/S*, which publishes the newspaper *Bladet Tromsø* in the town Tromsø in the northern part of Norway. At the relevant time it had a circulation of about 9,000 copies. The second applicant, Mr Pål Stensaas, was its editor. He is a Norwegian national, born in 1952, and lives at Nesbrua near Oslo.

In March and April 1988 a Mr Lindberg served as a seal hunting inspector, appointed by the Ministry of Fisheries, on board of the vessel *M/S Harmoni*. In his report of 30 June 1988 he alleged a series of violations of the seal hunting regulations and made allegations against five named crew members. The report claimed among other things that seals had been flayed alive. The Ministry of Fisheries subsequently decided that the report should not be published, relying on a provision of the Act on Public Access to Official Documents 1970 according to which reports containing allegations of statutory offences should not be made accessible to the public.

On 15 July 1988 *Bladet Tromsø* published an article by Mr Lindberg reproducing some of the allegations made in his report, which it had received from him. *Bladet Tromsø* published part of the report on 19 July 1988 and, on 20 July, the remainder of the report. The names of the five crew members concerned were deleted.

In May 1991 the crew members of *Harmoni* brought defamation proceedings against the applicants. By judgment of 4 March 1992 the Nord-Troms District Court found that two statements published by *Bladet Tromsø* on 15 July 1988 and four statements published on 20 July were defamatory, "unlawful" and not proven to be true. One statement - "Seals skinned alive" - was deemed to mean that the seal hunters had committed acts of cruelty to the animals. Another was understood to imply that seal hunters had committed criminal assault on and threat against the seal hunting inspector. The remaining statements were taken to suggest that some (unnamed) seal hunters had killed four harp seals, the hunting of which was illegal in 1988. The District Court declared the statements null and void (*døde og maktesløse*) and, considering that the newspaper had acted negligently, ordered the

newspaper and the editor to pay respectively NOK 10,000 and NOK 1,000 to each of the seventeen plaintiffs and their costs. The applicants were refused leave to appeal to the Supreme Court.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 10 December 1992.

Having found the application admissible, the Commission adopted a report on 9 July 1998 in which it expressed the opinion that there had been a violation of Article 10 (twenty-four votes to seven).

It referred the case to the Court on 24 September 1998. The Norwegian Government also brought the case before the Court.

Under the transitional provisions of Protocol No. 11 to the Convention, the case was transmitted to the Grand Chamber of the new European Court of Human Rights on the entry into force of the Protocol, on 1 November 1998. Judgment was given by a Grand Chamber composed of seventeen judges as follows:

Luzius **Wildhaber** (Swiss), *President*,
Elisabeth **Palm** (Swedish),
Antonio **Pastor Ridruejo** (Spanish),
Giovanni **Bonello** (Maltese),
Jerzy **Makarczyk** (Polish),
Riza **Türmen** (Turkish),
Jean-Paul **Costa** (French),
Françoise **Tulkens** (Belgian),
Viera **Strážnická** (Slovakian),
Willi **Fuhrmann** (Austrian),
Marc **Fischbach** (Luxemburger),
Volodymyr **Butkevych** (Ukrainian),
Josep **Casadevall** (Andorran),
Hanne Sophie **Greve** (Norwegian),
András **Baka** (Hungarian),
Rait **Maruste** (Estonian),
Snejana **Botoucharova** (Bulgarian), *Judges*,

and also Maud **de Boer-Buquicchio**, *Deputy Registrar*.

3. Summary of the judgment¹

Complaints

The applicants complained that the District Court's judgment of 4 March 1992 constituted an unjustified interference with their right to freedom of expression under Article 10 of the Convention, which provision had therefore been violated.

¹ This summary by the registry does not bind the Court

Decision of the Court

Article 10 of the Convention

The Court took account of the overall background against which the statements in question had been made, notably the controversy that seal hunting represented at the time in Norway and in Tromsø and the public interest in these matters

In the Court's view, the manner of reporting in question should not be considered solely by reference to the disputed articles in *Bladet Tromsø* on 15 and 20 July 1988 but in the wider context of the newspaper's coverage of the seal hunting issue. During the period from 15 to 23 July 1988 it published almost on a daily basis the different points of views including the newspaper's own comments, those of the Ministry of Fisheries, the Norwegian Sailors' Federation, *Greenpeace* and, above all, the seal hunters. There was a high degree of proximity in time, giving an overall picture of balanced news reporting. It appeared that the thrust of the impugned articles was not primarily to accuse certain individuals of committing offences against the seal hunting regulations or of cruelty to animals.

However, Article 10 did not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. The Court examined whether there were any special grounds in the present case for dispensing the newspaper from its ordinary obligation to verify factual statements that were defamatory of private individuals.

This depended, in particular on the nature and degree of the defamation at hand. While some of the accusations were relatively serious, the potential adverse effect of the impugned statements on each individual seal hunter's reputation or rights was significantly attenuated by several factors. In particular, the criticism was not an attack against all the crew members or any specific crew member.

It also depended on the extent to which the *Bladet Tromsø* could reasonably regard the Lindberg report as reliable with respect to the allegations in question, in the light of the situation as it presented itself to the newspaper at the material time. The report had been drawn up by Mr Lindberg in an official capacity as an inspector appointed by the Ministry of Fisheries to monitor the seal hunt performed by the crew of *Harmoni* during the 1988 season. In the view of the Court, the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research. Otherwise, the vital public-watchdog role of the press could be undermined.

Admittedly, the newspaper was already aware from the reactions to Mr Lindberg's statements in April 1988 that the crew disputed his competence and the truth of any allegations of "bestly killing methods".

However, far more material was the fact that that, prior to the contested publication on 15 July 1988, the Ministry had not publicly expressed a doubt as to the possible truth of the criticism or questioned Mr Lindberg's competence. Nor did the attitude expressed by the Ministry before 20 July 1988 suggest that it was unreasonable for the newspaper to regard as

reliable the information contained in the report. It had not been suggested that the newspaper was acting in breach of the law on confidentiality.

Having regard to the various factors limiting the likely harm to the individual seal hunters' reputation and to the situation as it presented itself to *Bladet Tromsø* at the relevant time, the Court considered that the paper could reasonably rely on the official Lindberg report, without being required to carry out its own research into the accuracy of the facts reported. It saw no reason to doubt that the newspaper had acted in good faith in this respect.

In short, the reasons relied on by the respondent State, although relevant, were not sufficient to show that the interference complained of was "necessary in a democratic society". There was no reasonable relationship of proportionality between the restrictions placed on the applicants' right to freedom of expression and the legitimate aim of protecting the seal hunters' "reputation or rights". Accordingly, the Court held that there had been a violation of Article 10 of the Convention.

Application of Article 41 of the Convention

The applicants claimed compensation for the economic loss suffered as a result of the District Court's judgment, ordering them to pay the plaintiffs NOK 187,000 in damages and NOK 136,342 for their costs. The Court awarded these sums in their entirety.

The applicants also sought the reimbursement of NOK 652,229 in respect of costs and expenses in the domestic and the Strasbourg proceedings, of which the Court awarded them NOK 370,199.

The applicants in addition claimed NOK 515,337 in interest and were awarded NOK 65,000 under this heading.

Judges Palm, Baka and Fuhrmann and Greve expressed separate opinions.

The Court's judgments are accessible on its Internet site (www.dhcour.coe.fr) on the day of delivery.

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

Registry of the European Court of Human Rights
F – 67075 Strasbourg Cedex
Contact: Roderick Liddell
Telephone: (0)3 88 41 24 92; fax: (0)3 88 41 27 91