

European Court of Human Rights: Two Recent Judgements on the Freedom of Expression and Information

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*Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy*

1. *Bladet Tromsø and Stensaas v. Norway*: defamatory allegations, the publication of a secret document and article 10 of the European Convention for the Protection of Human Rights In 1992, the newspaper company *Bladet Tromsø* and its editor, *Pal Stensaas*, were convicted by a Norway District Court for defamation. The newspaper had published several articles on seal hunting as well as an official - but secret - report that referred to a series of violations of the seal-hunting regulations (the *Lindberg report*). The article and the report more specifically made allegations against five crew members of the seal-hunting vessel *M/S Harmoni* who were held responsible for using illegal methods of killing seals. Although the names of the persons concerned were deleted, the crew members of the *M/S Harmoni* brought defamation proceedings against the newspaper and its editor. The District Court was of the opinion that some of the contested statements in the article and the report as a matter of fact were "null and void", and the newspaper and its editor were ordered to pay damages to the plaintiffs.

The European Court of Human Rights, however, reached the conclusion that the conviction by the Norwegian district court was in breach of Article 10 of the European 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 the public interest in these matters. The Court also underlined that the manner of reporting in question should not be considered solely by reference to the disputed articles but in the wider context of the newspaper's coverage of the seal hunting issue. According to the Court "the impugned articles were part of an ongoing debate of evident concern to the local, national and international public, in which the views of a wide selection of interested actors were reported". The Court emphasized that Article 10 of the Convention does not guarantee an unrestricted freedom of expression even with respect to media coverage of matters of public concern, as the crew members can rely on their right to protection of their honour and reputation or their right to be presumed innocent of any criminal offence until proven guilty. According to the Court some allegations in the newspaper's articles were relatively serious, but 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 Court was of the opinion that "the

criticism was not an attack against all the crew members or any specific crew member". On the other hand, the Court underlined that 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, because otherwise, the "vital public-watchdog role" of the press might be undermined. The Court reached the following conclusion: "Having regard to the various factors limiting the likely harm to the individual seal hunter's reputation and to the situation as it presented itself to Bladet Tromso at the relevant time, the Court considers 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 sees no reason to doubt that the newspaper acted in good faith in this respect.". It should be mentioned that 4 of the 17 judges dissented manifestly with the majority. In the dissenting opinions, annexed to the judgement, it is argued why the articles are to be considered as defamatory towards private individuals. According to the minority, the Court had not given sufficient weight to the reputation of the seal hunters. The minority opinion also disagrees with the publication of the secret report and the fact that the newspapers took the allegations formulated in the report for granted: "How could it have been "reasonable" to rely on this report when the newspaper was fully aware that the Ministry had ordered that the report not be made public immediately because it had contained possibly libellous comments concerning private individuals?". In an unusually sharp conclusion, the minority held that the Court sends the wrong signal to the press in Europe and that the judgement undermines respect for the ethical principles which the media voluntarily adhere to. Their final conclusion was: "Article 10 may protect the right for the press to exaggerate and provoke but not to trample over the reputation of private individuals".

However, let there be no misunderstanding: the judgement of 20 May 1999 in the case of *Bladet Tromso v.*

Norway has far reaching implications for the interpretation of the balance between journalistic freedom and the protection of the rights or reputation of individuals. It is obvious that a clear majority of the Court argues in favour of the public watchdog-function of the media and the critical reporting of matters of public concern. And albeit that this freedom is not wholly unrestricted, according to the actual jurisprudence of the Court, the freedom with respect to press coverage of matters of serious public concern is very wide.

2. *Rekvényi v. Hungary*: politics, police and freedom of expression This case concerns the constitutional ban in Hungary on political activities by police officers and members of the armed forces. According to Mr. Rekvényi, a police officer living in Budapest, the ban not only violates his freedom of assembly and association (article 11), but also his freedom of (political) expression (article 10). Although the Court agreed that the curtailing of the applicant's involvement in

political activities interfered with the exercise of his right of freedom of expression, the Court was of the opinion that this interference is in accordance with the second paragraph of article 10. As a matter of fact, the Court held that the interference is prescribed by law, has a legitimate aim (the protection of national security and public safety and the prevention of disorder) and is necessary in a democratic society. The Court recognized that it is a legitimate aim in any democratic society to have a politically neutral police force. On the other hand, the Court stated that the ban on political activities by policemen is not an absolute one and that in fact police officers remain entitled to undertake some activities enabling them to articulate their political opinions and preferences, e.g., policemen may promote candidates, participate in peaceful assemblies, make statements to the press, appear on radio and television or publish works on politics. The Court unanimously reached the conclusion that there had been no violation of article 10 or of article 11 of the Convention.

