[NO] Determination of Jurisdiction for Defamatory Statements in TV Broadcasting

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A broadcasting company, Sveriges Television AB, domiciled in Sweden, broadcast from Sweden on Swedish television a documentary produced by a journalist who was also domiciled in Sweden. The documentary was made with the intention of showing the restrictions on freedom of speech in Norway. The documentary contained accusations about Norwegian seal hunters violating Norwegian hunting regulations. The documentary was to a great extent based on a Norwegian film, which a Norwegian court had prevented from being shown to the public. The programme was broadcast twice and could be received by 630,000 people through the Norwegian cable-TV network, and also by a number of recipients in some southern parts of Norway without such a connection. The plaintiffs, Norwegian seal hunters domiciled in Norway, claimed that the accusations were defamatory.

The Norwegian Supreme Court was unanimous in its decision that the Norwegian courts were competent to adjudicate the matter according to Article 5(3) of the Lugano Convention.

Firstly, the Court examined the Norwegian law incorporating the Lugano Convention into domestic Norwegian law: Law No. 21 of 8 January 1993. According to Article 5(3) of the Norwegian-language version of the Convention, a person domiciled in a Member State can be sued in the courts of the place where the harmful event occurred. In the Norwegian text, this place is distinctively defined by way of parenthesis. It states that the place where the harmful event occurred is the place where the harmful damage occurred or the place of the event giving rise to that damage.

Secondly, the Court presented the legal issues: whether Article 5(3) justifies the attribution of jurisdiction to the Norwegian courts and whether the alleged damage occurred in Norway.

Thirdly, the Court stated that the Norwegian version of the Convention is equally as authentic as the other authentic languages in which the Convention is drawn up. Further, the Court stated that the Lugano Convention must be interpreted in the same way as in the ECJ case, G.J. Bier BV v. Mines de Potasse d'Alsace (Case

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21/76). The ECJ ruled on that occasion that the expression, "place where the harmful event ocurred", must be understood as being intended to cover both the place where the event happened, which may give rise to liability, and the place where that event results in damage, whenever those places are not identical.

Fourthly, the Court stated that the ECJ case, Fiona Shevill v. Presse Alliance SA (Case C-68/93), was of special interest. The Court stated that newspapers differ from broadcasting as media, but that the ruling was relevant and would be of guidance for the Court's reasoning. Applied to the legal issue in question in this case, the Shevill case argues in favour of justifying the attribution of jurisdiction to the Norwegian courts since the alleged defamatory statements broadcast in Sweden caused harmful effects in Norway.

The Court rejected the view that the protection of freedom of speech for Swedish television according to Article 10 of the European Convention on Human Rights could hinder the attribution of jurisdiction to the Norwegian courts. Even though this question was not posed in the Shevill case, the Court stated that this would not hinder the ECJ in its attribution of jurisdiction. Further, the Court incorporated into its judgment a statement made at para. 31 of the Shevill case: "In accordance with the requirement of the sound administration of justice, the basis of the rule of special jurisdiction in Article 5(3), the courts of each Contracting State in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation are territorially the best placed to assess the libel committed in that State and to determine the extent of the corresponding damage". The Court also argued on the basis of the ECJ's reasoning that this statement could not favour a restrictive interpretation of the part of the Convention concerning broadcasting. This statement would not have any less relevance for broadcasting than for newspapers.

Rt 2000 s 799, Norsk Höyesterett (kjennelse), 17 October 2001

Rt 2000 s 799, Judgment of the Norwegian Supreme Court of 17 October 2001

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