European Court of Human Rights: Final Judgment in the Case of Pedersen and Baadsgaard v. Denmark

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In Strasbourg, two journalists of *Danmarks Radio* (Danish National television) complained about their conviction for defamation of a Chief Superintendent. The journalists, Pedersen and Baadsgaard, had produced two programmes about a murder trial in which they had criticised the police's handling of the investigation. At the end of the programmes, the question was raised if it was the Chief Superintendent who had decided that a report should not be included in the case or who concealed a witness's statement from the defence, the judges and the jury. Both journalists were charged with defamation and convicted and sentenced to 20 day-fines of DKK 400, amounting to DKK 8,000 (equivalent to approximately EUR 1,078) and ordered to pay compensation to the estate of the deceased Chief Superintendent of DKK 100,000 (equivalent to approximately EUR 13,469). The domestic courts came to the conclusion that the journalists lacked a sufficient factual basis for the allegation that the named Chief Superintendent had deliberately suppressed a vital piece of evidence in the murder case. In a Chamber judgment of 19 June 2003, the Court held by four votes to three, that there had been no violation of Article 10 (see IRIS 2003-9: 2). On 3 December 2003, the panel of the Grand Chamber accepted a request by the applicants for the case to be referred to the Grand Chamber. The Danish Union of Journalists was given leave to submit written comments. The Grand Chamber of the European Court of Human Rights in its judgment of 17 December 2004 has now also come to the conclusion, by nine votes to eight, that there had been no violation of Article 10. The Court emphasised that the accusation against the named Chief Superintendent was an allegation of fact susceptible of proof, while the applicants never endeavoured to provide any justification for their allegation, and its veracity had never been proven. The applicants also relied on just one witness. The allegation of deliberate interference with evidence, made at peak viewing time on a national TV station, was very serious for the named Chief Superintendent and would have entailed criminal prosecution had it been true. The offence alleged was punishable by up to nine years' imprisonment. It inevitably not only undermined public confidence in him, but also disregarded his right to be presumed innocent until proven guilty according to law. In the Court's view, the finding of a procedural failure in the conduct of the investigation in the murder case as such could not provide a sufficient factual basis for the applicants' accusation that the Chief Superintendent had actively tampered with evidence. The Court reached the conclusion that the interference in the applicants' freedom

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of expression did not violate Article 10 of the Convention, as the conviction was necessary for the protection of the reputation and the rights of others. Eight of the 17 judges of the Grand Chamber Court dissented, emphasizing the vital role of the press as public watchdog in imparting information of serious public concern and the fact that the applicants had conducted a large-scale search for witnesses when preparing their programmes and that they had a sufficient factual basis to believe that a report did not contain the full statement of an important witness. According to the minority of the judges, a chief superintendent of police must accept that his acts and omissions in an important case should be subject to close and indeed rigorous scrutiny.

Judgment by the European Court of Human Rights (Grand Chamber), case of Pedersen and Baadsgaard v. Denmark, Application no. 49017/99 of 17 December 2004

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