European Court of Human Rights: Nordisk Film & TV A/S v. Denmark

IRIS 2006-3:1/3

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

In August 2002, by a judgment of the *Højesteret* (Danish Supreme Court), the applicant company, Nordisk Film, was compelled to hand over limited specified unedited footage and notes of a broadcast television programme investigating paedophilia in Denmark. In order to make the programme, a journalist went undercover. He participated in meetings of “The Paedophile Association” and, with a hidden camera, interviewed two members of the association who made incriminating statements regarding the realities of paedophilia in both Denmark and India, including advice on how to induce a child to chat over the internet and how easy it was to procure children in India. In the documentary, broadcast on national television, false names were used and all persons' faces and voices were blurred. The day after the programme was broadcast, one of the interviewed persons, called “Mogens”, was arrested and charged with sexual offences. For further investigation, the Copenhagen Police requested that the unshown portions of the recordings made by the journalist be disclosed. The journalist and the editor of the applicant company's documentary unit refused to comply with the request. The Copenhagen City Court and the High Court also refused to grant the requested court order having regard to the need of the media to be able to protect their sources. The Supreme Court, however, found against the applicant company, the latter was therefore compelled to hand over some parts of the unedited footage which solely related to “Mogens”. The court order explicitly exempted the recordings and notes that would entail a risk of revealing the identity of some persons (a victim, a police officer and the mother of a hotel manager), who where interviewed with the promise by the journalist that they could participate without the possibility of being identified. In November 2002, Nordisk Film complained in Strasbourg that the Supreme Court's judgment breached its rights under Article 10 of the Convention, referring to the European Court's case law affording a high level of protection to journalistic sources.

In its decision of 8 December 2005, the Strasbourg Court has come to the conclusion that the judgment of the Danish Supreme Court did not violate Article 10 of the Convention. The Strasbourg Court is of the opinion that the applicant company was not ordered to disclose its journalistic sources of information, rather, it was ordered to hand over part of its own research material. The Court is not convinced that the degree of protection applied in this case can reach the same level as that afforded to journalists when it concerns their right to keep their

© European Audiovisual Observatory (Council of Europe) 2026

sources confidential under Article 10 of the Convention. The Court is also of the opinion that it is the State's duty to take measures designed to ensure that individuals within their jurisdiction are not subjected to inhuman or degrading treatment, including such ill-treatment administered by private individuals. These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment or sexual abuse of which the authorities had or ought to have knowledge. The European Court supports the opinion of the Danish Supreme Court that the non-edited recordings and the notes made by the journalist could assist the investigation and production of evidence in the case against “Mogens” and that it concerned the investigation of alleged serious criminal offences.

It is important to note that the Supreme Court's judgment explicitly guaranteed that material which entailed the risk of revealing the identity of the journalist's sources was exempted from the court order and that the order only concerned the handover of a limited part of the unedited footage as opposed to more drastic measures such as, for example, a search of the journalist's home and workplace. In these circumstances, the Strasbourg Court is satisfied that the order was not disproportionate to the legitimate aim pursued and that the reasons given by the Danish Supreme Court in justification of those measures were relevant and sufficient. Hence, Article 10 of the Convention has not been violated. The application is manifestly ill-founded and is declared inadmissible.

The decision of the European Court makes it clear that the Danish Supreme Court's order to compel the applicant to hand over the unedited footage is to be considered as an interference in the applicant's freedom of expression within the meaning of Article 10 § 1 of the Convention. *In casu,* the interference however meets all the conditions of Article 10 § 2, including the justification as being “necessary in a democratic society”. The Strasbourg Court is also of the opinion that the Danish Supreme Court and legislation (Art. 172 and 804-805 of the Administration of Justice Act) clearly acknowledge that an interference with the protection of journalistic sources cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement of public interest. It thereby reflects the approach developed in the Strasbourg Court's jurisprudence in the cases of Goodwin v. UK (1996), Roemen and Schmit v. Luxembourg (2003) and Ernst and others v. Belgium (2003).

Decision by the European Court of Human Rights (First Section), case of Nordisk Film & TV A/S v. Denmark, Application no. 40485/02 of 8 December 2005

https://hudoc.echr.coe.int/eng?i=001-71885

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026