

European Court of Human Rights: Case of Tønsberg Blad AS and Marit Haukom v. Norway

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In 2000, the Norwegian newspaper Tønsberg Blad published an article about a list drafted by the Municipal Council of Tjøme. The list identified property owners suspected of breaching permanent residence requirements applying to certain properties. The article referred to a well-known singer and a well-known businessman (Mr. Rygh) stating that they might be “forced to sell their properties at Tjøme”. The article included a small photo of Mr. Rygh with the caption: “it must be due to a misunderstanding, says Tom Vidar Rygh”. A few weeks later, after being informed that the Rygh family’s property had been removed from the list, the newspaper published an additional article, which noted that Mr. Vidar Rygh and the singer had “got off” the list. The newspaper criticised the fact there were “major loopholes” in the system, in that the regulations did not apply to houses that had been built by the owners. In a further article, entitled “Tønsberg Blad clarifies”, the paper stated that the properties belonging to the singer and the Rygh family had been removed from the list in question, as the regulations did not apply to their properties.

Mr. Rygh brought private criminal proceedings against the newspaper and its editor-in-chief, Mrs. Haukom. Under Article 253 of the Penal Code (defamation), *Lagmannsrett* (the High Court) declared the impugned statements to be null and void and ordered the publishing firm and the editor-in-chief to pay Mr. Rygh NOK 50,000 in compensation for non-pecuniary damage. The Court was of the opinion that there had not been sufficient evidence for the allegations against Mr. Rygh. The Supreme Court upheld the conviction and ordered Tønsberg Blad and Haukom to pay Mr Rygh NOK 673,879 for costs.

In their case taken before the European Court of Human Rights, *Tønsberg Blad* and Haukom complained, under Article 10 of the Convention, that the Norwegian Courts’ decisions had entailed an interference with their right to freedom of expression that could not be regarded as necessary in a democratic society.

The ECHR, in the first place, found that the purpose of the article was to illustrate a problem about which the public had an interest in being informed. Indeed, a possible failure of a public figure to observe laws and regulations aimed at protecting serious public interests, even in the private sphere, might in certain circumstances constitute a matter of legitimate public interest. The Court recalled

that protection of the right of journalists to impart information on issues of general interest required that they act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism. Even though the news item had been presented in a somewhat sensationalist style, the overall impression given by the newspaper report was that, rather than inviting the reader to reach any foregone conclusion about any failure on Mr. Rygh’s part, it had raised question marks with respect to both whether he had breached the requirements in question, and whether those requirements should be maintained, modified or repealed. The ECHR was of the opinion that the overall news coverage by *Tønsberg Blad* on that matter was presented in a balanced way and that the disputed allegations were presented with precautionary qualifications. The Court does not find that the impugned accusation was capable of causing such injury to personal reputation as could weigh heavily in the balancing exercise to be carried out under the necessity test in Article 10 § 2 of the Convention.

As to the question of whether the applicants had acted in good faith and complied with the ordinary journalistic obligation to verify a factual allegation, the European Court found substantial evidence to corroborate the newspaper’s contention that the Municipality at the time held the view that Mr. Rygh was in breach of the relevant residence requirements. The journalist could not in the Court’s opinion be blamed for not having ascertained for himself, whether the residence requirements were applicable to Mr. Rygh’s property. On the contrary, in view of the relatively minor nature and limited degree of the defamation at issue and the important public interests involved, the Court was satisfied that the newspaper had taken sufficient steps to verify the truth of the disputed allegation and acted in good faith.

However, the applicants had had to face judicial defamation proceedings pursued at three levels. These proceedings had led to their statements being declared null and void and to their being ordered to pay the plaintiff NOK 50,000 in compensation for non-pecuniary damage and to reimburse him NOK 673,829 for his legal expenses, in addition to bearing their own costs. In the circumstances, the proceedings had resulted in an excessive and disproportionate burden being placed on the applicants, which was capable of having a chilling effect on press freedom in the relevant State.

The ECHR came to the conclusion that the reasons relied on by the Norwegian authorities, although relevant, were not sufficient to show that the interference complained of had been “necessary in a democratic society”. The Court considered that there had been no reasonable relationship of proportionality between the restrictions placed by the measures applied by the Supreme Court on the applicants’ right to freedom of expression and the legitimate aim pursued. Accordingly, there has been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (First Section), case of Tønsberg Blad AS and Marit Haukom v. Norway, Application no. 510/04 of 1 March 2007

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