European Court of Human Rights: Case of A. v. Norway

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The European Court in a recent judgment clarified the relation of the freedom of the press (Art. 10) vis à vis the right of privacy (Art. 8) and the presumption of innocence (Art. 6 para. 2) in a case of crime-reporting in the media. The applicant, A, is a Norwegian national with a criminal past. The case concerns A's complaint about the unfavourable outcome of a defamation suit he brought against the Fœdrelandsvennen newspaper, following its publication of two articles concerning the preliminary investigation into a murder case which implicated him. A had been questioned as a possible witness about the murder of two young women, but was released after 10 hours. The police's interest in A attracted considerable media attention. Fœdrelandsvennen disclosed details of A's criminal convictions and stated that he had allegedly been seen by witnesses in the very same area and at the same time as the girls were killed. A television station, TV2, also reported in a news broadcast on the case and presented A as a murderer.

A brought defamation proceedings against the Fœdrelandsvennen newspaper and TV2, as further investigation and proceedings made it clear that he had nothing to do with the murder case. The Norwegian courts found in his favour and awarded him compensation as regards the TV2 report. In respect of the newspaper articles, however, the domestic courts agreed that the publications had been defamatory, in as much as they were capable of giving the ordinary reader the impression that the applicant was regarded as the most probable perpetrator of the murders, yet concluded that, on balance, the newspaper had been right to publish the articles, as it had acted in the interest of the general public, which had the right to be informed of the developments in the investigation and the pursuit of the perpetrators. Relying on Article 6§2 (presumption of innocence) and Article 8 (right to respect for private and family life), A complained in Strasbourg that the domestic courts' findings - to the extent that the Fœdrelandsvennen newspaper was found to have a right to publish defamatory material about him - had negatively affected his right to be presumed innocent until proven otherwise, as well as his private life.

The Court dismissed A's allegations under Article 6 para. 2, as it found that Article not applicable to the matters at hand, given in particular that no public authority had charged A with a criminal offence and that the disputed newspaper publications did not amount to an affirmation that he was guilty of the crimes in question. The Court, however, was of the opinion that the articles had been defamatory in nature, as they had given the impression that the applicant had

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been a prime suspect in the murder case of the two girls. While it is undisputed that the press have the right to deliver information to the public and the public have the right to receive such information, these considerations did not justify the defamatory allegations against A and the consequent harm done to him. Indeed, the applicant had been persecuted by journalists seeking to obtain pictures and interviews from him, this being during a period in his life when he had been undergoing rehabilitation and reintegration into society. As a result of the journalistic reports, he found himself unable to continue his work, had to leave his home and was driven to social exclusion. In the Court's view there was no reasonable relationship of proportionality between the interests relied on by the domestic courts in safeguarding Fædrelandsvennen' freedom of expression and those of the applicant in having his honour, reputation and privacy protected. The Court was therefore not satisfied that the national courts struck a fair balance between the newspaper's freedom of expression under Article 10 and the applicant's right to respect for his private life under Article 8, notwithstanding the wide margin of appreciation available to the national authorities. The Court concluded that the publications in question had gravely damaged A’s reputation and honour and had been especially harmful to his moral and psychological integrity and to his private life, in violation of Article 8.

Judgment by the European Court of Human Rights (First Section), case of A. v. Norway, Application no. 28070/06 of 9 April 2009

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