European Court of Human Rights: Lillo-Stenberg and Sæther v. Norway

IRIS 2014-3:1/1

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The applicants in this case are Lars Lillo-Stenberg and Andrine Sæther, respectively a well-known musician and an actress in Norway, who complained about press invasion of their privacy during their wedding on 20 August 2005. The wedding took place outdoors on an islet in the Oslo fjord that was accessible to the public. Without the couple's consent, the weekly magazine Se og Hør subsequently published a two-page article about the wedding accompanied by six photographs. The pictures were obtained by hiding and using a strong telephoto lens from a distance of approximately 250 metres. The pictures showed the bride, her father and bridesmaids arriving at the islet in a small rowing boat, the bride being brought to the groom by her father and the bride and groom returning to the mainland on foot by crossing the lake on stepping stones. The couple brought compensation proceedings against the magazine and won at the first two instances, but finally the Supreme Court found against the couple, by three votes to two. It considered that they had married in a place that was accessible to the public, easily visible and at a popular holiday location. Furthermore the article was neither offensive nor negative. Relying on Article 8 (right to respect for private and family life), Lars Lillo-Stenberg and Andrine Sæther complained that their right to respect for private life had been breached by the Supreme Court's judgment.

The European Court starts from the premise that the present case requires an examination of the fair balance that has to be struck between the applicants' right to the protection of their private life under Article 8 of the Convention and the publisher's right to freedom of expression as guaranteed by Article 10. The Court confirms "that a person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development. It mainly presupposes the individual's right to control the use of that image, including the right to refuse publication thereof" and that "even where a person is known to the general public, he or she may rely on a "legitimate expectation" of protection of and respect for his or her private life". The Court again applies a number of criteria it considers relevant where the right of freedom of expression is being balanced against the right to respect for private life. The relevant criteria are: (i) contribution to a debate of general interest; (ii) how well known is the person concerned and what is the subject of the report?; (iii) prior conduct of the person

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concerned; (iv) method of obtaining the information and its veracity/circumstances in which the photographs were taken; and (v) content, form and consequences of the publication. In the opinion of the European Court, both the majority and the minority of the Norwegian Supreme Court had carefully balanced the right of freedom of expression with the right to respect for private life, and had explicitly taken into account the criteria set out in the Court's case law that existed at the relevant time (notably Von Hannover (no. 2) and Axel Springer AG, see IRIS 2012-3/1). The Court considered that there was an element of general interest in the article about the applicants' wedding and that the article did not contain any elements that could damage their reputations. Since the wedding took place in an area that was accessible to the public, easily visible, and a popular holiday location, it was likely to attract the attention of third parties. Being well-known public figures in Norway, these circumstances certainly lowered their legitimate expectation of privacy, while on the other hand no pictures were published of the private marriage ceremony itself. Although the Court considers that "opinions may differ on the outcome of a judgment", it sees no sufficient, strong reasons to substitute its view for that of the majority of the Norwegian Supreme Court. Having regard to the margin of appreciation enjoyed by the national courts when balancing competing interests, the Court concludes that the Supreme Court did not fail to comply with its obligations under Article 8 of the Convention. The interference with the right of privacy of the applicants was sufficiently justified by the right to freedom of expression of the magazine Se og Hør.

Judgment by the European Court of Human Rights (First Section), case of Lillo-Stenberg and Sæther v. Norway, Appl. No. 13258/09 of 16 January 2014

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