



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF TØNSBERGS BLAD AS AND HAUKOM v. NORWAY

(Application no. 510/04)

JUDGMENT

STRASBOURG

1 March 2007

FINAL

01/06/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tønsbergs Blad AS and Haukom v. Norway,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 8 February 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 510/04) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a limited liability company established under Norwegian law, Tønsbergs Blad A/S, which publishes the newspaper *Tønsbergs Blad*, and its former editor, Mrs Marit Haukom, who is a Norwegian national ("the applicants"), on 23 December 2003.

2. The applicants were represented before the Court by Mr P.W. Lorentzen, a lawyer practising in Bergen. The respondent Government were represented, as Agent, by Mr Erlend Haaskjold, Attorney General's Office (Civil Matters).

3. The applicants alleged a violation of Article 10 of the Convention on account of the unfavourable outcome of defamation proceedings brought against them by a person who had been portrayed in a news item published by the newspaper on 8 June 2000.

4. On 3 May 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 5 October 2006 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr E. HAASKJOLD, Attorney, Attorney-General's Office (Civil Matters),	<i>Agent,</i>
Ms A.C. HAUG, Attorney, Attorney-General's Office (Civil Matters),	<i>Adviser;</i>

(b) *for the applicants*

Mr P.W. LORENTZEN, <i>Advokat,</i>	
Mr T. HATLAND, <i>Advokat,</i>	<i>Counsel.</i>

The Court heard addresses by Mr Lorentzen, Mr Hatland and Mr Haaskjold.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant, Tønsbergs Blad A/S, is the publisher of the newspaper *Tønsbergs Blad*. The second applicant, Mrs Marit Haukom, is its former editor-in-chief. She is a Norwegian national who was born in 1952 and lives in the city of Tønsberg in southern Norway.

A. Background to the case

7. *Tønsbergs Blad* is a regional newspaper covering primarily the city of Tønsberg and eight surrounding municipalities in the County of Vestfold. The newspaper is 100% owned by Orkla Media A/S. It is published six days a week. In 2002 it had a daily average circulation of 33,314, corresponding to a 60% household coverage within its primary circulation area.

8. In a meeting held on 21 September 1999 the Standing Committee on Development and Environmental Affairs (a politically appointed body attached to the Municipal Council) of the Tjøme Municipality asked the municipal administration to provide a survey of properties whose owners were suspected of breaching permanent residence requirements. Under section 5(3) of the Concession Act (*Lov om konsesjon ved erverv av fast eiendom*) of 31 May 1974 (no. 19), such requirements applied to the extent that it was deemed necessary to prevent private properties intended for permanent residential use from being transformed into holiday homes. Provisions to this effect were further contained in Regulation (*forskrift*)

no. 2089 of 14 December 1984, issued under the above-mentioned Act in respect of the Tjøme Municipality, one of the few municipalities in Norway which applied permanent residence requirements for all-year residences. The purpose was to fend off pressures exerted on the local community by the exceptionally high demand for holiday homes in the Tjøme area, an attractive holiday destination for a large number of people residing notably in the Oslo region. There was also a concern that too many residences were unoccupied during off-season periods.

9. On 11 October 1999 the municipal administration drew up a list which was entitled “Properties which should be verified in relation to the residence requirements. (Not public)”. It was a tip-off list based on information from inhabitants and local politicians in the Municipality and was presented to the Standing Committee at a meeting open to the public held the following day. The list included the name of Mr Tom Vidar Rygh, who at the time was the Executive Vice-President, the Head of Financial Investments and a member of the Executive Board of Orkla ASA, one of Norway's largest industrial companies.

10. The property in question had been acquired in 1987 and Mr Rygh's wife held title to it (a fact that was not deemed significant in the defamation proceedings summarised below). An all-year residence had been erected on the property in 1988 and the Rygh family had used it as their main residence for 10 years until 1998, when they had moved to Oslo because of Mr Rygh's professional situation. Before that, they had been given legal advice that using the property solely for holiday purposes would not conflict with the residence requirements under the relevant national law.

11. Mr Terje Wilhelmsen, a journalist, became aware of the process initiated by the Tjøme Municipality and received a copy of the above-mentioned list. He had a close network of contacts within the Municipality. From autumn 1999 he made a number of enquiries to the Municipality on the subject. On 7 June 2000 the journalist interviewed the director of the Municipality's Planning and Building Department (*leder for plan- og bygningssaker*), Mr Dag Dreyer Sæter.

B. The contested publication of 8 June 2000, subsequent exchanges between those concerned and other publications

12. On 8 June 2000 the newspaper published as its main story an article written by Mr Wilhelmsen, which gave rise to the defamation proceedings brought against the applicants by Mr Rygh. On the front page there appeared an introduction to the article under the headline (all quotations below are translations from Norwegian):

“May be forced to sell”

and the sub-heading

“[H.K.] and Tom Vidar Rygh will have to explain themselves on permanent residence requirements”

The introduction read:

“Permanent residence requirements: In the worst-case scenario [H.K.] may be forced to sell her property at Hvasser [an island next to Tjøme]. The same applies to Orkla director Tom Vidar Rygh. According to the understanding of *Tønsbergs Blad*, their properties are on a list which the Tjøme Municipality will submit to the County Governor [*Fylkesmannen*] in the very near future. The list includes properties whose use is thought not to be in conformity with the permanent residence requirements.

Taking action: The Tjøme Municipality will now take a firm line towards house owners within the Municipality who do not comply with the permanent residence requirements. For a long time there has been a zero limit on concessions at Tjøme. This means that all-year residences must be inhabited all year. Those who breach this requirement may be forced to rent out or to sell their property. This is confirmed by the director of the Planning and Building Department, Mr Dag Dreyer Sæter.”

The front page also contained photographs of Mrs H.K. (a famous singer) and of Mr Rygh.

13. The article continued inside the paper on page 3 with the following headlines:

“Tjøme hunts for permanent residence sinners

[H.K.] and Tom Vidar Rygh may be forced to sell”

and an introduction:

“TJØME: Both singer [H.K.] and Orkla director Tom Vidar Rygh may be forced to sell their properties in Tjøme. The reason is that, according to the Tjøme Municipality, they do not comply with the permanent residence requirements applicable to their properties.”

14. At the top of page 3 the paper published photographs of Mrs Rygh's and Mrs H.K.'s respective properties. Under the former photograph, to the left, there was a caption:

“RESIDENCE REQUIREMENTS: Tom Vidar Rygh owns this property in Sandøsund at Hvasser. The Tjøme Municipality considers that the residence requirements are not satisfied.”

Between the two above-mentioned photographs there was a small photo of Mr Rygh with this caption:

“MUST PROVIDE AN EXPLANATION: - It must be due to a misunderstanding, says Tom Vidar Rygh”

15. The article stated:

“The Tjøme Municipality is now in the process of tightening up the obligation to comply with the residence requirement in the municipality. A zero concession limit

has long since been introduced. This means that year-round properties must be lived in all year.

Confrontation

In the near future the technical services department of the Tjøme Municipality will approach the County Governor in order to report its suspicion that the residence requirement is not being fulfilled for a number of properties. It is then up to the County Governor to confront the owners of these properties.

The director of the Planning and Building Department, Mr Dag Dreyer Sæter, does not wish to comment to *Tønsbergs Blad* as to which properties are on the list they are sending to the County Governor. But from what *Tønsbergs Blad* has been given to understand, the property of Tom Vidar Rygh at Sandøsund on Hvasser island is on the list. The same applies to H.K.'s property, which is at Nes on Hvasser.

Clearing up

'I cannot comment on individual properties at the present time. First we must write to the County Governor. This will occur in the near future.'

'But will the Tjøme Municipality now tighten up the obligation to comply with the residence requirement?'

'Yes, indeed. This is an issue that has been discussed at both the administrative and the political levels for some time. Now we want to do something about it. We know that the residence requirements are not being complied with for several properties in the municipality. This is why we are now taking this initiative *vis-à-vis* the County Governor. Now we want to get this cleared up.'

Can be rented out

'What are the owners of these properties risking?'

'To begin with, they will have to explain themselves to the County Governor. I would emphasise that it is not a requirement that the owners themselves live in the properties. It is enough for them to be rented out on a year-round basis. If this is not done, there may be a question of enforced sale,' says the director of the Planning and Building Department Dag Dreyer Sæter to *Tønsbergs Blad*.

'Misunderstanding'

H.K. owns the property on Hvasser together with her husband ... He does not wish to comment on the matter to *Tønsbergs Blad*, in view of the fact that he has heard from neither the Municipality nor the County Governor.

Tom Vidar Rygh told *Tønsbergs Blad* that if his property on Hvasser was on the Municipality's list of properties where the residence requirements are not being fulfilled, this had to be due to a misunderstanding. Beyond that he did not wish to comment."

16. Below, on the same page, *Tønsbergs Blad* published another article based on interviews with local politicians:

“Residence requirements are a two-edged sword

TJØME: May-Sylvi Hansen, who is the leader of the Conservatives on Tjøme Municipal Council, thinks that the time is ripe for a new and thorough political debate on the question of residence requirements.

Anne Vestad

'The whole question of residence requirements is a two-edged sword', she says.

The Tjøme Conservatives have the maintenance of the residence requirements in their manifesto, but at the same time the party feels a need to have a broad political debate on the question. May-Sylvi Hansen, who in addition to being the leader of the Conservatives on Tjøme Municipal Council also sits on the Planning and Environment Committee, tells *Tønsbergs Blad* that at any rate she sees no reason for a tightening-up of the obligation to fulfil the residence requirements now.

'The residence requirements issue is under discussion in the Tjøme Conservative Party, and the question is whether we should perhaps be a little more liberal in the time to come. But this is a two-edged sword. On the one hand we don't want to see year-round residences made into summer homes, but on the other hand we have had considerable migration to Tjøme in recent years – the population is growing fast,' says May-Sylvi Hansen.

Not a problem any more

'In the seventies and eighties the residence requirements were entirely necessary in this municipality. But in my opinion, after the big migration to the municipality began, empty houses in the winter are no longer a problem. We should therefore undertake a serious review of the whole issue of residence requirements and ask whether, when all's said and done, it's just an old bogeyman,' says Hansen.

Arne Fjellberg of 'The Tjøme List' independents, who chairs the Planning and Environment Committee, does not agree with May-Sylvi Hansen that the occupation provisions should be liberalised.

'Must tighten up'

'I fully support the director of the Planning and Building Department's view that it is necessary to tighten up the obligation that the residence requirements be fulfilled. With the mobility and flexibility that many now have in relation to their work, it shouldn't be a problem to live in Tjøme even if you work somewhere else. We want people to live in the houses of Tjøme, make no mistake about that,' says Fjellberg.

'So you don't support May-Sylvi Hansen in her view that it is time for a general rethink of the residence requirements?'

'The Tjøme List wants to retain the residence requirements, but I'm willing to be a part of a discussion of the residence requirement in general. It could surely be useful,' says Arne Fjellberg."

17. On 9 June 2000 *Aftenposten*, one of Norway's largest daily newspapers, published a brief item on the matter, stating, *inter alia*, that an Orkla director and a famous singer might be forced to sell their properties, without specifying their names.

18. On 12 June 2000 Mr Rygh addressed a letter to the Tjøme Municipality. Its Chief Executive Officer (*Rådmannen*), Mr Gunnar A. Hansø, replied by a letter of 22 June 2000, which stated *inter alia*:

"The Tjøme Municipality is working on a survey of the status of the permanent residence requirements which have been implemented at Tjøme under section 5(3) of the Concession Act. Part of the reason why this work has started now are the enquiries from a number of local residents. These are neighbours to properties which are used, or should be used, for permanent residence but which, according to these enquiries, are not being used for this purpose. The list of properties that must be 'checked out' has now become quite extensive. A number of the enquiries result from the lack of knowledge about the contents of the regulations and the circumstances pertaining to the relevant users. Consequently, these properties are being checked out, which is an ongoing process. ...

Your wife's property has been reviewed in the same way, and I can confirm that the property, on legal grounds, has now been removed from the list."

19. On contacting the Tjøme Municipality on 29 June 2000, the journalist Mr Wilhelmsen was informed that the Chief Executive Officer had replied to Mr Rygh and that Mrs Rygh's property had been removed from the list. Mr Wilhelmsen received a copy of the above-mentioned letter of 22 June 2000.

20. On 30 June 2000 *Tønsbergs Blad* published an article entitled

"No restrictions on new cottages

Tjøme Chief Executive Officer points to major loopholes in the Concession Act"

with the following introduction:

"Escape: Singer [H.K.] and Orkla director Tom Vidar Rygh escape the permanent residence requirements in the Tjøme Municipality. They were included on the Municipality's list of properties that were subject to residence requirements, but have now been taken off. The reason is that they have built on their land themselves. Thus, the residence requirements do not apply.

Major loopholes: Chief Executive Officer Gunnar Hansø (picture) at Tjøme asserts that the Concession Act is filled with holes the size of a barn door. He warns that the Municipality will take up the issue with the Ministry of Agriculture. By exploiting loopholes in the Concession Act, it is easy to get hold of an entirely new holiday home at Tjøme. All you need to do is to acquire a plot and build an all-year residence on it. Then no one can require permanent residence."

21. The article continued on page 5, with the following headlines and introduction:

“Residence requirements do not apply to new houses

[H.K.] and Tom Vidar Rygh do not have to move to Hvasser.”

“TJØME: Singer [H.K.] and Orkla director Tom Vidar Rygh do not have to take up permanent residence in the Tjøme Municipality. The reason: they have built on their properties themselves. Thus the Concession Act does not apply. This means that they do not have to reside here.”

22. In addition the coverage contained photographs of Mr Rygh and Mrs. H.K., with captions stating that they had “escaped” the residence requirements with regard to their properties. There were also photographs of the properties, with captions stating “No residence requirement” and adding that the properties, which had previously been on the Municipality's list of properties not complying with the residence requirements, had now been taken off the list.

23. The article reproduced an interview with the Municipality's Chief Executive Officer, Mr Hansø, who was reported to have said that he had absolutely no wish to comment on individual cases, but confirmed that some had been cleared and removed from the list: “We did this for legal reasons.” He had further stated, *inter alia*, that it was unfortunate that the Concession Act, which had loopholes the size of a barn door, did not apply to the purchase of undeveloped sites, but only to properties with buildings on. In practice, that meant that anyone building a year-round residence in the Tjøme Municipality did not have to live in the house at all and could not be forced to move in. They could use it as a summer holiday cabin if they wished. It was not until the residence had been used for a period as a year-round home that the residence requirement would apply, but then only in the event of resale of the property. It could not be fair that residence requirements applied to some properties but not to others. To change this he would raise the matter with the Ministry of Agriculture.

24. On 5 July 2000 *Tønsbergs Blad* published an article containing, *inter alia*, an interview with a former Minister of Agriculture, who stated that the loopholes in the Concession Act that had been detected in *Tønsbergs Blad*'s articles were “completely unreasonable” and should be amended.

25. On 5 and 6 July 2000 Mr Rygh conveyed to the newspaper orally and in writing his dissatisfaction with its 8 June 2000 coverage, including the fact that his name had been mentioned. The newspaper responded, orally and in writing. By a letter of 18 July 2000, Mr Rygh's lawyer demanded that *Tønsbergs Blad* publish a rectification and an apology. The newspaper replied that it had acted in accordance with the ethics of journalism and that, immediately after becoming aware that Mr Rygh's property had been removed from the list, it had accordingly published an article on the front

page and had offered him space for his own viewpoints, an offer it had maintained for a period thereafter. An interview with Mr Rygh had not been published, as the newspaper had respected his decision that this was not desirable.

26. In a further article published on 8 August 2000, entitled “*Tønsbergs Blad* clarifies”, the paper stated that the properties belonging to Mrs H.K. and Mrs Rygh had been removed from the list in question, that the requirements at issue did not apply to their properties and that, accordingly, there had been no breach of the permanent residence requirements with regard to these properties.

C. The defamation proceedings brought by Mr Rygh

27. On 15 September 2000 Mr Rygh instituted private criminal proceedings (*privat straffesak*) before the Tønsberg City Court (*byrett*). He requested that both the introduction on the front page and the article on page 3 be declared null and void under Article 253 of the Penal Code, that *Tønsbergs Blad* and its editor-in-chief (at the time of publication Mrs Marit Haukom) be punished under Articles 247 and 431 respectively of the Penal Code and that the newspaper and its editor-in-chief be ordered to pay compensation for non-pecuniary damage under section 3-6 of the Damage Compensation Act 1969.

28. By a judgment of 13 September 2001 the City Court acquitted the applicants and ordered Mr Rygh to pay 183,387 Norwegian kroner (NOK) in respect of their costs. It found that a defamatory allegation had been made but, with reference to Article 10 of the Convention, attached special importance to the public interest of the permanent residence issue and to the freedom of the press in respect of presentation and form.

29. On 26 September 2001 Mr Rygh appealed against the judgment to the Agder High Court (*lagmannsrett*).

30. By a judgment of 21 May 2002 the High Court upheld Mr Rygh's claims in part.

31. As to the first issue, whether the impugned statements amounted to defamation for the purposes of Article 247 of the Penal Code, the High Court observed that it agreed with the City Court that, when considering the 8 June 2000 article in isolation and as a whole, the allegations in question must be understood to mean that the Municipality, after having made a specific assessment of the relevant properties, had taken the stance that a breach of the residence requirements had occurred with regard to Mr Rygh's property, among others, and that his name had therefore been entered on a list which the Municipality had decided to transmit to the County Governor for further processing. The report should therefore be perceived by the ordinary reader as an allegation that Mr Rygh had breached the obligation of residence.

32. As to the question whether this amounted to a defamatory accusation, the High Court held that a breach of the residence requirements did not constitute a criminal offence but that, in a place like Tjøme, many people would regard it as being immoral and an affront to the public interest. The High Court agreed with the City Court that the accusations were not of the most defamatory kind but, not least in view of the strong personal angle of the report, the High Court found that it was capable of damaging Mr Rygh's good name and reputation. An examination of whether it was capable of causing a loss of the reputation required for the exercise of his profession was not necessary.

33. The High Court did not find that the applicants had adduced sufficient proof of the defamatory accusation under Article 249 § 1 of the Penal Code to avoid liability for defamation under Article 247. In this connection it observed:

“It is correct that Tom Vidar Rygh's name was mentioned on a list drawn up in October 1999 by the administration of the Tjøme Municipality for its Standing Committee on Development and Environmental Affairs. The heading of the list reads: 'Properties which should be verified in relation to the residence requirements'. Further, it was noted that the list was not public. Had the *Tønsbergs Blad* limited itself to stating this, it would have made an accusation that was true. ... Mr Rygh's name was put on the preliminary 'tip-off' list, based on tip-offs from inhabitants, local politicians and others. The High Court has no doubt that a number of local inhabitants could have believed that the residence requirements were breached in so far as Rygh's property was concerned, given the fact that it concerned an all-year residence which had been vacated and used as a holiday home. The mayor of the municipality has explained that he was of the opinion that the permanent residence requirements were breached, as has Mr Sæter, the director of the Planning and Building Department. However, Mr Sæter explained in the proceedings before the High Court that, at that time, he had not conducted a further investigation of the property. His view that the property was subject to the permanent residence requirements had been based on his belief that it had been converted from an older residence. He was fully aware that permanent residence requirements did not apply where a person had acquired an open plot of land and then built a house on it. Mr Sæter also explained that, when he had told the journalist Mr Wilhelmsen that a list would shortly be submitted to the County Governor, he was aware that the list would have to be examined first. According to the High Court's understanding of Mr Sæter, there had been no further elaboration of the preliminary tip-off list since autumn 1999. ... Since Mr Sæter was well aware of the exception to the residence requirements for new buildings on open plots of land, he would have quickly discovered that no obligation of residence applied here. ... The High Court further notes that to date none of the names that were on the provisional tip-off list from the autumn of 1999 have been transmitted to the County Governor because the Municipality believed that there was a breach of the residence requirements.

The allegations made by *Tønsbergs Blad* on 8 June 2000 were therefore demonstrably inaccurate.”

34. The High Court was divided as to the question whether the accusations were unlawful (*rettstridige*). A majority of four members found

that that was the case, whereas a minority of three members agreed with the City Court.

35. However, a qualified majority of minimum five votes was required for finding liability under Article 247 of the Penal Code. Mr Rygh's claim that he had been the victim of unlawful defamation under Articles 247 and 431 by the newspaper and its editor-in-chief, respectively, was therefore rejected.

36. On the other hand, under Article 253 of the Penal Code, which required only a simple majority, the High Court declared the following two statements, published respectively on the front page and on page 3 of the 8 June 2000 issue (see paragraphs 12 and 13 above), null and void:

“Permanent residence requirements: In the worst-case scenario [H.K.] may be forced to sell her property at Hvasser [an island next to Tjøme]. The same applies to Orkla director Tom Vidar Rygh. According to the understanding of *Tønsbergs Blad*, their properties are on a list which the Tjøme Municipality will submit to the County Governor in the very near future. The list includes properties whose use is thought not to be in conformity with the permanent residence requirements.”

“...Tom Vidar Rygh may be forced to sell their properties at Tjøme. The reason is that, according to the Tjøme Municipality, they do not comply with the permanent residence requirements applicable to their properties.”

The High Court further decided that the applicants were jointly and severally liable, under section 3-6 of the Damage Compensation Act 1969, to pay Mr Rygh NOK 50,000 in compensation for non-pecuniary damage. The High Court in addition decided that no costs should be awarded with respect to the proceedings either before the City Court or the High Court.

37. The applicants appealed to the Supreme Court against the procedure followed by the High Court (*saksbehandlingen*), namely the fact that the issue of nullification had been determined by a simple majority, and against its application of the law (*rettsanvendelsen*). On 4 September 2002 the Appeals Leave Committee of the Supreme Court granted leave to appeal in so far as the latter ground was concerned but refused such leave with respect to the former ground.

38. By a decision of 1 July 2003 the Supreme Court dismissed the applicants' appeal and ordered them to pay Mr Rygh NOK 673,879 for his legal costs. When deciding on the question whether to declare parts of the newspaper article null and void, the Supreme Court applied Article 2 § 3 of the Code of Criminal Procedure. This limited the scope of the Supreme Court's review of the facts of the case (see further on this below). As far as the question of non-pecuniary damage was concerned, the appeal only referred to the application of the law. Therefore, even though the Code of Civil Procedure was to be applied in this regard, in accordance with Article 435 of the Code of Criminal Procedure, the Supreme Court had to base its examination on the same facts as the High Court in this connection too.

39. In his opinion, to which three other members subscribed, Mr Justice Støle held, *inter alia*:

“(33) I shall first look at how the statements must be understood. It follows from case-law that the interpretation is part of the application of the law It is the statements whose nullification is requested which are to be interpreted. The question is how these must be assumed to have been understood by the readers of the newspaper. Taking the wording as our point of departure, we must then look at what perceptions the statements create in the ordinary newspaper reader. In my opinion there is no conflict between the case-law of the European Court of Human Rights and that of the Supreme Court as regards the subject matter of the interpretation; see the references to 'the ordinary reader' in the decisions of the European Court of Human Rights.

(34) The statements to be interpreted are included in the newspaper's first story of 8 June 2000. In the usual way the statements must be interpreted in context with the rest of the news report, with its typography and use of pictures. Like the High Court, however, I find it clear that the subsequent articles, carried on 30 June and 8 August 2000, are not of significance for this purpose. I shall return to the significance of the follow-up reportage in another context. Here it is sufficient to show that these are not suitable for shedding light on the meaning of the statements whose nullification is being requested. ... The statements in the story of 30 June 2000 are more of the nature of a description of a subsequent development, namely that Mr Rygh has been 'cleared' in the case. I would add – not that my standpoint depends on it – that the distance in time to the article to which the nullification claim applies is also materially greater than in *Norsk Retstidende* ('Rt') 2002-764.

(35) The unanimous High Court has summarised its interpretation as follows:

'When one accordingly considers the article of 8 June 2000 in isolation, the High Court agrees with the City Court that the statements, seen in isolation and as a whole, must be perceived by the ordinary reader as saying that the Municipality, after considering the relevant properties, has taken the position that there has been a breach of the residence requirements for, *inter alia*, A's property, and that his name has therefore been written down on a list that the Municipality has decided to refer to the County Governor for further action. The story must appear to the ordinary newspaper reader as a statement that Mr Rygh has breached the residence requirements.'

(36) This by and large coincides with my own view. The core of the accusation was that Mr Rygh found himself on a list that the Tjøme Municipality had prepared, and which contained the names of persons whom the Municipality considered to have breached the residence requirements. I do not, however, concur with the majority of the High Court that the story 'must appear to the ordinary newspaper reader as a statement that Mr Rygh has breached his residence requirements'. It is clearly apparent from the article that it is the Municipality's opinion that is being reported, and that the list is to be sent to the County Governor for decision.

(37) I agree with the High Court that the statements, as interpreted, contain a defamatory accusation; see Article 247 of the Penal Code. It is the first alternative in that provision that is relevant, and the allegation that the Municipality considered that the residence requirements had been breached was liable to damage his 'good name and reputation'. An accusation of a breach of the law of this nature must be regarded as defamatory. It is the public's moral judgment of the act that is decisive, and it is not

a requirement that actual damage be demonstrated or substantiated. The High Court found that no evidence of the truth of the accusation was presented, and this conclusion is binding on the Supreme Court.

...

(40) In the specific weighing of factors in our case, the point of departure must be that *Tønsbergs Blad* has published a defamatory accusation about factual matters, namely that the Municipality had considered Mr Rygh's property under the rules on residence requirements and was of the opinion that Mr Rygh had breached the residence requirements. In this connection I do not accord any independent weight to the fact that he was not the holder of title to the property. The Supreme Court must find that the accusation was untrue – that applies both to the Municipality's alleged perception that the residence requirements had been breached, and the allegation that Mr Rygh's name was entered on a list that the Municipality, on the basis of such a perception, had prepared of owners of properties in respect of which the residence requirements were supposed to have been breached. As regards the facts, a unanimous High Court has found that this was a provisional 'tip-off list' based on tips from inhabitants and local politicians in the Municipality. It had been drawn up by the municipal administration in October 1999, and bore the title 'Properties which should be verified in relation to the residence requirements. (Not public)'. The High Court also noted that the Municipality, at the time the newspaper published the article on 8 June 2000, had not 'undertaken any further processing of the provisional tip-off list from the autumn of 1999'. The Supreme Court is bound by this assessment of the evidence.

(41) The main rule in both Norwegian defamation law and Article 10 of the European Convention on Human Rights is that non-proven defamatory allegations of fact are not protected by freedom of expression. As regards the European Court's case-law, I refer to the judgment of 20 May 1999 in *Bladet Tromsø and Stensaas v. Norway* (no. 21980/93), § 66, and to the judgment of 7 May 2002 in *McVicar v. United Kingdom* (no. 46311/99), §§ 84 and 87; there must be special grounds for departing from this main rule.

(42) There is also a distinction between transmission of other people's untrue accusations and the media's own presentation of non-proven defamatory allegations. Freedom of expression stretches further to cover transmission, depending, *inter alia*, on who has made the allegation that is transmitted. If it is a report from a public authority, as in the *Bladet Tromsø* case, freedom of expression enjoys stronger protection.

(43) In our case it cannot be found that the newspaper has transmitted a defamatory accusation that was made by others. The article gives no source for the accusation, and the Supreme Court cannot depart from the High Court's (the majority's) assessment of evidence with regard to the newspaper's having based itself on an anonymous source in relation to the information that Mr Rygh was on the list that was to be sent to the County Governor and that his property was 'thus to be looked into with regard to a breach of the residence requirements'. The reliance on anonymous sources otherwise prevents the courts from testing whether the journalist displayed due care by employing that source; see Rt 1987-764, p. 771, and the European Court of Human Rights' judgment in *McVicar*, § 86. Referring to anonymous sources should therefore in this connection be equated with accusations made by the newspaper

without giving sources. I will return later to the question of what grounds the newspaper had at the time of publication for the truth of the accusation.

(44) The decision in *Rt-2002-764* and the case-law of the European Court of Human Rights shows that the specific weighing of factors must take into consideration several criteria. Of these I would emphasise the degree of public interest, the nature of the accusation, including whether the accusation is classified as a 'value judgment' or a 'factual statement', whether it is directed against a public person or a private individual, and the degree of care, including the extent to which the media at the time of publication had factual support for considering the allegation to be true. In general, the protection of the expression will be stronger if it concerns matters of public interest, value judgments, imparting of information, a public person, and if there are strong reasons for holding the allegation to be true. Contrariwise: if the case concerns limited public interest, factual statements, the media's own presentation, private persons and weak grounds for holding the allegation to be true, the protection of the expression will be weaker.

(45) That the expression containing the accusation is of public interest is in my view a fundamental criterion for regarding the media's own presentation of untrue defamatory allegations against private individuals about factual matters as being protected by freedom of expression.

(46) It is immediately clear that the question of enforcement of the residence requirements for year-round residences in a coastal municipality like Tjøme is of public interest. For *Tønsbergs Blad* as the local newspaper in the region, this was naturally a topic for critical coverage. The fact that there existed a list of properties that there was a question of referring to the County Governor must also be regarded as being of interest for the residents of the region and the newspaper's readership. Which properties or owners were on the list, on the other hand, must in my opinion be regarded as of limited public interest. If any of the individuals who were entered on the 'tip-off list' – for example owing to their function, position of trust or participation in the public debate – had had a special connection to the issue of residence requirements, it might have been different. It may well be the case that the modern news industry makes considerable use of known persons to arouse the interest of the readers. But I agree with the High Court that the fact that Mr Rygh was a relatively famous person as the executive VP of Orkla does not mean that he can automatically be regarded as a public person in relation to the rules on residence requirements. The majority's emphasis on his not having involved himself in the public debate on this topic appears very consonant with the European Court of Human Rights' reasoning in its judgment of 25 November 1999 in *Nilsen and Johnsen v. Norway* (no. 23118/93), § 52, first sub-paragraph, with its emphasis on Bratholm's 'participation in public debate' as the central theme.

(47) I would then return to the question of the journalist's due care in the publication, and view this in the context of the use of an anonymous source and of what factual grounds he had at the time of publication for considering the allegation true. I would first remark that there did not exist any written documentation from the municipality's processing of the matter that could support the allegation, over and above what the unanimous High Court has characterised as 'the provisional tip-off list'. As mentioned, the Supreme Court must in my opinion base its decision on what the High Court has found with regard to the use of an anonymous source. I cannot therefore see that it can be found that the newspaper had other sources or other grounds for its allegation that Mr Rygh's name was on a list that the Municipality

should 'in the near future refer to the County Governor'. This was the basis for the accusation that the Municipality considered that Mr Rygh had breached the residence requirements. Even if use of anonymous sources is a recognised tool of modern journalism, such use of sources will imply a stricter requirement of due care. Moreover, in such a situation, it must to a considerable degree be the newspaper's risk that the factual information conveyed may turn out to be untrue.

(48) It is true that the same day the newspaper carried an interview with the director of the Municipality's Planning and Building Department, in which it was confirmed that the Municipality would in the near future be sending a list to the County Governor. But in my opinion the interview does not allow the conclusion to be drawn that the Municipality's processing was concluded and that a definitive list therefore existed. In this connection I would not lay any particular emphasis on the fact that representatives of the Municipality may – before consideration of the tip-off list – have considered that the residence requirement applied to the Rygh family's property. Nor did the journalist claim to have based his story on information from these people. Otherwise, in my view, there are generally grounds for emphasising the big difference between being on a so-called tip-off list that has not been considered by the Municipality and being on a list that the Municipality has decided, after processing and consideration, to refer to the County Governor, who is the central government's supervisory and administrative authority.

(49) When Mr Rygh was contacted by the journalist immediately prior to the newspaper's running the story on 8 June 2000, his reaction was that the whole thing had to rest on a misunderstanding. Even if it is understandable that the newspaper may have wanted a broader statement from Mr Rygh, I cannot see that he can be blamed for his behaviour here. Without it having any importance for my view on the question I am discussing here, I would like to mention that it was subsequently discovered that Mr Rygh had obtained legal advice on the residence requirements in connection with his family's move to Oslo in 1998 in consequence of his work situation in Orkla. As the situation must have appeared to him, when he was contacted by the journalist immediately before the newspaper ran the story on 8 June 2000, his reaction was in my opinion understandable. The circumstance that I have mentioned here cannot in any event mean that the journalist may be regarded as having acted with due care.

(50) The articles that *Tønsbergs Blad* carried on 30 June and 8 August 2000 are of negligible significance for the questions I have now discussed. The stories came a relatively long time after the initial article. And under Article 253 § 2 of the Penal Code, claims for nullification must be rejected when the person making the accusation 'withdraws it before the main hearing in a manner that the court finds satisfactory to the aggrieved person'. *Tønsbergs Blad* has not, however, requested the case to be dismissed from the courts, and I have no occasion to enter into any discussion of this question. I would, however, remark that Norwegian defamation law is based on the notion that a withdrawal of an allegation has significance in relation to the sanctions, and not the assessment of unlawfulness (*rettstridsvurderingen*).

(51) As the case now stands, I cannot agree with *Tønsbergs Blad* that the newspaper's follow-up report means that there is on the whole a balanced presentation suggesting that the statements in the story of 8 June 2000 cannot be deemed unlawful. The story of 30 June 2000 was in particular angled in such a way as to make it less appropriate as a modification of the original statement's defamatory character; see the use of the expression that Mr Rygh 'is escaping' the residence requirements. In the discussion of 8 August 2000, under the headline '*Tønsbergs Blad* clarifies', there is a

more neutral correction, but it is not stated here either that Mr Rygh has not been on any list that has been considered by the Municipality.

(52) By way of conclusion I see good reason to emphasise: as will be apparent from what I have reproduced from the first voting judge in Rt. 2002-764, in considering specific statements the press's role as a central practitioner of freedom of expression must be weighed against the interests of privacy, including the reputation of the individual. When the expression concerns a case of public interest, the role of the press as a 'public watchdog' means that interference with freedom of expression requires a weighty justification. In our case it is the protection of Mr Rygh's reputation that calls for the interference. The only way I can see the situation is that *Tønsbergs Blad* could have highlighted the residence requirements issue critically, as it did in the reportage of 8 June 2000, without the strong focus on Mr Rygh personally – a focus that rested on a deficient factual basis.

(53) In the light of this I have concluded that the statements of which nullification is requested are not protected by Article 10 of the Convention and that the request must be granted. Since the special arguments regarding the compensation claim for non-pecuniary damage have not been maintained, it follows that this part of the judgment is also upheld.”

40. The dissenting judge, Mr Justice Rieber-Mohn, stated:

“(56) ... I concur that in its news coverage of 8 June 2000 *Tønsbergs Blad* published a defamatory statement – an accusation of a factual character – for which there was no factual basis. I also agree with the first voting judge that the core of the accusation is that Mr Rygh found himself on a list that the Tjøme Municipality had drawn up, which contained the names of individuals whom the Municipality considered to have breached the residence requirements. This would, however – assuming it was correct – not have been a final declaration that there had been a breach of the residence requirements. For this reason, among others, I agree with the minority of the High Court and the City Court that the accusation lies in the lower stratum of what can be covered by Article 247 of the Penal Code. I also have the impression that the High Court's majority by and large agree with this.

(57) When an untrue defamatory statement is made, the point of departure is also clear under the European Court of Human Rights' case-law concerning Article 10 of the European Convention: the accusation is not protected by freedom of expression. But exceptions to this may be contemplated. If the accusation is to enjoy protection under freedom of expression, it must at the least be demanded that the news coverage in which it is contained is of public interest and additionally that the necessary care was taken by the newspaper. I consider that these criteria were met in this case.

(58) There can be no doubt that the general subject with which the newspaper was concerned, and with which the news coverage of 8 June 2000 really dealt, namely compliance with the rules on residence requirements, was and is of great public interest. The question is whether it is in the public interest to publicise a possible breach of the residence requirements on the part of Mr Rygh. I would first mention that in modern journalism it is a common and recognised method of popular education to illustrate general and usually difficult questions by means of the roles and fates of individuals, when they are considered especially relevant. When individuals are unwillingly brought forward, and are subjected to accusations of crime and so forth, a mass medium must have good reasons for this, for example if the person concerned has sought out the light of publicity in this area, or is a prominent person in society

who must accept that special demands are made of his integrity and sense of responsibility to society. At the time in question Mr Rygh belonged to the top management of one of the country's biggest industrial conglomerates, and his name was not unfamiliar in the news. In my opinion individuals who have sought prominent positions in society, which require a special degree of trust from the public, must to some extent accept that the media will follow them with the eyes of Argus, not just in their professional activities but also when, in the more private sphere, they challenge laws and other regulations that are particularly meant to safeguard the interests of society. It is therefore possible to conceive of violations of the law by these individuals that in the circumstances will be of public interest, even if the breach carries no criminal responsibility or the penalties are minor. In this case the newspaper thought that Mr Rygh had broken the rules on residence requirements, which in public opinion was and is of major social importance, even if such a contravention is not a criminal offence. I have difficulty seeing that it was not a matter of public interest if such a very prominent person as Mr Rygh had not complied with the residence requirements with regard to his property in the Tjøme Municipality.

(59) The question then becomes whether the newspaper has acted with the requisite care. It must be noted that the journalist used an anonymous source when he wrote that Mr Rygh was on the Municipality's list of those who were considered to have breached the residence requirements. It is undisputed that for a long while *Tønsbergs Blad* had been working on this topic, and that the journalist – who lived at Tjøme – had been in contact with several representatives of the Municipality. It must also be noted that the journalist, on application to the Municipality, received confirmation that there existed a list that the Municipality had drawn up, but the mistake was that this was a list of individuals who, according to external tip-offs, had breached the obligation, and not a list of individuals whom the Municipality had already found to have breached it. The newspaper thus confused the tip-off list, which contained Mr Rygh's name, with the list that the Municipality was indeed to refer to the County Governor for a decision on whether the residence requirements had been complied with.

(60) I cannot see that the newspaper is much to be blamed for this confusion. The journalist had reason to believe that a municipal assessment had been carried out at that point. In the story of 8 June 2000 the director of the Planning and Building Department confirmed that technical services would 'in the very near future' write to the County Governor regarding individuals whom the Municipality suspected of breaching the residence requirements. The director also stated: 'We know that the residence requirements are not being complied with for several properties in the Municipality'. And the director did not wish to say 'which properties are on the list we are referring to the County Governor'. This last statement gave the clear impression that the list which the Municipality had assessed already existed. In addition, prominent representatives of the Tjøme Municipality – such as the mayor and the director of the Planning and Building Department – subsequently stated that, at the time when the newspaper had carried the controversial reportage, they had been of the opinion that Mr Rygh was in breach of the residence requirements. This is clearly apparent from the High Court's judgment, both the minority and majority remarks. *Tønsbergs Blad* was therefore close to the truth in its story of 8 June 2000. I would also mention that, according to the story, the newspaper had approached Mr Rygh for his view of the matter, but he did not want to comment beyond stating that the fact that his name was on the list must have been due to a misunderstanding."

II. RELEVANT DOMESTIC LAW AND PRACTICE

41. Under Norwegian defamation law, there are three kinds of response to unlawful defamation, namely the imposition of a penalty under the provisions in Articles 246 and 247 of the Penal Code, an order under Article 253 of the Code declaring the defamatory allegation null and void (*mortifikasjon*) and an order under the Damage Compensation Act 1969 to pay compensation to the aggrieved party. Only the latter two were at issue in the present case.

42. Under Article 253 of the Penal Code, a defamatory statement which is unlawful and has not been proved true may be declared null and void by a court. In so far as relevant this provision reads:

“1. When evidence of the truth of an allegation is admissible and such evidence has not been produced, the aggrieved person may demand that the allegation be declared null and void unless otherwise provided by statute.”

43. Such a declaration is applicable only with regard to factual statements, the truth of value judgments not being susceptible of proof.

44. Although the provisions on orders declaring a statement null and void are contained in the Penal Code, such an order is not considered a criminal sanction but a judicial finding that the defendant has failed to prove its truth and is thus viewed as a civil-law remedy.

45. Section 3-6 of the Damage Compensation Act reads:

“A person who has injured the honour or infringed the privacy of another person shall, if he has displayed negligence or if the conditions for imposing a penalty are fulfilled, pay compensation for the damage sustained and such compensation for loss of future earnings as the court deems reasonable, having regard to the degree of negligence and other circumstances. He may also be ordered to pay such compensation for non-pecuniary damage as the court deems reasonable.

If the infringement has occurred in the form of printed matter, and the person who has acted in the service of the owner or the publisher thereof is responsible under the first subsection, the owner and publisher are also liable to pay compensation. The same applies to any redress imposed under the first subsection unless the court finds that there are special grounds for dispensation...”

46. Conditions for holding a defendant liable for defamation are further set out in Chapter 23 of the Penal Code, Article 247 of which provides:

“Any person who, by word or deed, behaves in a manner that is likely to harm another person's good name and reputation or to expose him to hatred, contempt, or loss of the confidence necessary for his position or business, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding one year. If the defamation is committed in print or in broadcasting or otherwise under especially aggravating circumstances, imprisonment for a term not exceeding two years may be imposed.”

A limitation to the applicability of Article 247 follows from the requirement that the expression must be “unlawful” (*rettsstridig*). While

this is expressly stated in Article 246, Article 247 has been interpreted by the Supreme Court to include such a requirement.

47. Further limitations to the application of Article 247 are contained in Article 249, which, in so far as is relevant, reads:

“1. Punishment may not be imposed under Articles 246 and 247 if evidence proving the truth of the accusations is adduced.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

48. The applicants complained under Article 10 of the Convention that the Supreme Court's decision of 1 July 2003 had entailed an interference with their right to freedom of expression that could not be regarded as necessary in a democratic society. Article 10 reads:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

49. The Government contested that argument.

A. Admissibility

50. The Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Preliminary issue regarding the scope of the case

51. The Government pointed out that the Court was bound to rely on the facts as established by the national courts and should accordingly base its assessment and scrutiny on the same facts as established by the Supreme Court, which were the same as those found by the majority of the High Court. This related to the fact that the article had given no source for the accusation, and therefore the newspaper could not claim to have transmitted a defamatory accusation which had been made by others.

52. The applicants contested the Government's contention, which in their view was aimed at excluding evidence demonstrating that the newspaper's coverage had, in essence, been accurate. The applicants referred here to certain new evidence which they had unsuccessfully sought to adduce before the Supreme Court: notably declarations by the journalist, Mr Wilhelmsen, the director of the Tjøme Municipality's Planning and Building Department, Mr Sæter, and the mayor, Mr Tandberg, dated 28 January, 8 May and 13 May 2003 respectively, about the identity of the journalist's source(s) and the contents of the information provided by the source(s), plus an additional declaration made by Mr Sæter on an unintelligible date in 2003. On account of the national rules, the appeal to the Supreme Court had been examined in accordance with the rules of the Code of Criminal Procedure, with the result that the Supreme Court was bound to base its decision on the same facts as the High Court.

53. The Court emphasises that a complaint is characterised by the facts alleged in it, not merely by the legal grounds or arguments relied on (see *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p.13, § 29). Within the scope of the case, as delimited by the decision on the admissibility of the application, the Court has full jurisdiction, which encompasses any issue of fact or law that arises during the proceedings before it (see *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 223, §§ 43 and 44).

54. However, the new evidence in question comprised statements by sources who were anonymous during the proceedings before the High Court but who thereafter waived their anonymity and gave written statements for submission to the Supreme Court. Under the relevant national procedural rules the Supreme Court was prevented from relying on new evidence, unlike the City Court and the High Court, which had full jurisdiction to assess the evidence. This limitation on the Supreme Court's jurisdiction must have been foreseeable for the applicants. Moreover, the new evidence significantly altered the substance of their complaint under Article 10 of the Convention. As a result the national courts were not given a proper opportunity to review from the angle of Article 10 of the Convention the subject matter of the applicants' complaint as altered by this new evidence,

which is the purpose of the requirement of exhaustion of domestic remedies in Article 35 § 1 of the Convention. This provision also requires that the complaints intended to be made subsequently at Strasbourg must first be made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention must be used (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34; and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 66). Therefore, the Court considers that the witness statements in question fall outside the scope of its review and will accordingly not rely on them. If the Court were to accept such new evidence, it could lead to the unreasonable consequences of making it a forum for reopening of national proceedings. Such a function would not be consistent with its subsidiary role in the Convention protection system.

C. Merits

55. The Court considers that the impugned measure constituted an “interference by [a] public authority” with the applicants' right to freedom of expression as guaranteed under the first paragraph of Article 10, but that the interference was “prescribed by law”, namely Articles 247, 431 and 253 of the Penal Code and section 3-6 of the Damage Compensation Act 1969 (see paragraphs 41 to 47 above), and pursued the legitimate aim of protecting “the reputation or rights of others”. It thus fulfilled two of the three conditions of justification envisaged by the second paragraph of Article 10.

The dispute in the present case relates to the third condition – whether the interference was “necessary in a democratic society”.

1. Arguments of those appearing before the Court

(a) The applicants

56. The applicants disputed the necessity of the measures ordered by the High Court and upheld on appeal by the Supreme Court, which in their view violated Article 10 of the Convention.

57. Firstly, they submitted that no allegation had been adopted by *Tønsbergs Blad*. In the article they had emphasised that the presentation was “[a]ccording to the understanding of *Tønsbergs Blad*”. It was apparent from the article that the information provided emanated from officials within the Municipality. For the most part, the newspaper was quoting from or directly referring to interviews with named officials.

58. Secondly, the statements contained in the article had not been presented as undisputable facts. On the contrary, the newspaper had expressed numerous reservations, after which no conclusion had been drawn in respect of the Rygh family's compliance with the permanent residence requirements. The Supreme Court had failed to take this into account. In essence, the impugned statements implied that Mr Rygh was under suspicion for potentially not complying with the permanent residence requirements, a wording used in the article.

59. The national courts, however, had derived another interpretation, which from the applicants' point of view was stricter. The Supreme Court had established that Mr Rygh had “found himself on a list that the Tjøme Municipality had prepared, and which contained the names of persons who the Municipality considered to have breached the residence requirements” (see paragraph 36 of the Supreme Court's judgment, quoted in paragraph 39 above). Subsequently, the Supreme Court had “tightened up” its interpretation by attributing to the applicants a more detailed knowledge of the form of procedure followed by the Municipality, as it stated:

“... the interview does not allow the conclusion to be drawn that the Municipality's processing was concluded and that a definitive list therefore existed.” (see paragraph 48 of the Supreme Court's judgment quoted in paragraph 39 above)

60. The Supreme Court had then made a distinction between being on a tip-off list and being on a list “that the Municipality has decided, after processing and consideration, to refer to the County Governor” (see paragraph 48 of the Supreme Court's judgment quoted in paragraph 39 above). Hence, the Supreme Court had found that the applicants had anticipated the form of procedure followed by the Municipality and thereby reinforced the allegation against Mr Rygh. This assessment endorsed the Supreme Court's standpoint that “[a]n accusation of a contravention of the law of this nature must be regarded as defamatory” (see paragraph 37 of the Supreme Court's judgment in paragraph 39 above). In essence, according to the Supreme Court, the applicants had accused Mr Rygh of breaking the law. This meaning had been derived by the Supreme Court, however, not from the express terms but from the general tenor of the article. This interpretation had been in contradiction to the numerous reservations expressed in the article.

61. Moreover, the applicants argued, the impugned statements should be read in conjunction with the articles of 30 June and 8 August 2000, with the result that all suspicions against Mr Rygh should be eliminated.

62. In the applicants' opinion, the ordinary reader would expect a follow-up to the article of 8 June 2000, particularly in the light of the information provided that Mr Rygh would have to come forward with an explanation. This was, in itself, a valid argument for extending the period of time against which the impugned statements should be assessed. As the article of 30 June

2000 was a natural and predictable follow-up to the first article, this should also be taken into consideration in terms of interpretation.

63. Furthermore, the article of 8 June 2000 had been entirely accurate in its presentation of the case. While it had been evident to the City Court that the article in question had been based on interviews with director of the Planning and Building Department and other officials within the Municipality, the High Court, however, had attached particular importance to the fact that no “further investigation” of the Rygh property had been conducted by the Municipality. However, the journalist had not been informed of this at the crucial time. The Supreme Court had based itself heavily upon the High Court's assessment and had pointed out that no source for the impugned allegation had been presented in the article itself.

64. Should the Court take the Supreme Court's interpretation as the point of departure, the applicants still contended that *Tønsbergs Blad's* coverage was, in essence, correct. Should the Court instead fully endorse the Supreme Court's interpretation, the applicants contended that the inaccuracies in the newspaper article were, at the most, marginal. In this connection they relied on Mr Justice Rieber-Mohn's dissenting opinion (see paragraph 60 of the Supreme Court's judgment, quoted in paragraph 40 above): “*Tønsbergs Blad* was therefore close to the truth in its story of 8 June 2000.”

65. When the story had been published, it was based on information from the director of the Planning and Building Department that the list was due for dispatch. The director of the Building Department had not clarified in the interview of 7 June 2000 that the list had gone without being processed since October 1999, or that the Ryghs' property had not been specifically examined. No one had questioned that the mayor and the director of the Tjøme Municipality's Planning and Building Department were reliable witnesses. In the applicants' opinion, it was therefore not relevant for the majority of the Supreme Court to have elaborated on the reliability of anonymous and potentially unreliable sources (see paragraph 47 of the Supreme Court's judgment, quoted in paragraph 38 above).

66. The applicants stressed that, in the present case, the interference did not correspond to a pressing social need. The allegation had not been a particularly defamatory one and had, in fact, been dispelled in the following articles. No one could even suspect Mr Rygh, on the basis of *Tønsbergs Blad's* article of 8 June 2000, of any reprehensible conduct in this regard. He could easily and immediately have corrected the conception formed by the Municipality simply by providing information on the matter, for example by submitting the legal opinion he had obtained.

67. The articles had indeed focused on a matter of great public interest, after which public debate had been reinforced, resulting in a public discussion of the loopholes in the permanent residence requirements and the need for an amendment of the Concession Act.

68. The applicants acknowledged that the protection of a person's reputation was a legitimate aim to pursue. However, given that there had been minimal, if any, effect on Mr Rygh's reputation in the present case, the interference with the applicants' rights was disproportionate. By declaring the impugned statements null and void, the Supreme Court had significantly worsened the operating conditions of local newspapers by extensively limiting the use of reliable anonymous sources and the use of examples to illustrate matters of public interest.

69. Denying the press any latitude in daily news coverage would in itself have a chilling effect. In addition to declaring the impugned statements null and void, the Supreme Court had ordered the applicants to pay Mr Rygh compensation for non-pecuniary damage in the amount of NOK 50,000 and to reimburse his expenses in the amount of NOK 673,829. This part of the interference was under no circumstances proportionate to the aim pursued.

70. In the applicants' opinion, by omitting to take into account a number of significant arguments in its consideration of the case, the Supreme Court had failed to strike a proper balance and to adequately assess the necessity of the interference with their freedom of expression as protected by Article 10 of the Convention.

(b) The Government

71. The Government maintained that the interference complained of clearly corresponded to a pressing social need. While the freedom of expression was a fundamental right in a democratic society, it was necessary to interfere with the exercise of that freedom where, as in the present case, it was abused by directing false and harmful accusations against a private individual. The national authorities had, *inter alia* under Article 12 of the Universal Declaration of Human Rights and Article 17 of the UN Covenant on Civil and Political Rights, an obligation to protect private individuals against unlawful attacks on their reputation. This obligation must be given priority when the interference, as in the present case, had no chilling effect on political debate.

72. The Government emphasised that the Supreme Court's judgment had been based on a correct interpretation of the allegations in question, in conformity with the principles established by the European Court in its case-law. The Supreme Court had correctly concluded that the allegations had had an adverse effect on Mr Rygh's reputation, as described in the High Court's judgment, and were defamatory. Since the national courts were better equipped than the European Court to assess the perceived meaning and effects of certain statements, these were issues that should be left to the assessment of the national courts. There was no reason for the Court to re-examine the Norwegian courts' findings on this point.

73. Nor was it for the Court to carry out a review of the High Court's finding, made on the basis of the immediate evidence presented to it in open

court, that it was proven that the allegations were demonstrably incorrect. The Court should take as a premise that the Tjøme Municipality had never processed the list and that the statements made in the article were therefore incorrect.

74. As found by the Supreme Court, the allegations in question had been based on an anonymous source. No other sources supported the conclusion that Mr Rygh's name had been mentioned on a list that in the immediate future was to be sent to the County Governor for decision. The Supreme Court had correctly drawn a parallel to situations where allegations were put forward without any source.

75. Moreover, the applicants had taken no precautions before publishing the article. The Supreme Court had correctly concluded that the applicants had failed to act in good faith when publishing the article. As followed directly from the Concession Act, persons in Mr Rygh's situation were exempted from the permanent residence requirements. Any possible misunderstanding in this respect could easily have been avoided by simply reading the Act. Despite having not worked under any time constraints, the newspaper had failed to take sufficient steps to fulfil its obligation to verify the truth of the factual allegation in question. The fact that Mr Rygh, on being contacted by the newspaper before publishing the article, had stated that the allegation must be due to a misunderstanding should have resulted in a stricter duty of care for the newspaper. The journalists' work had failed to meet the relevant standards of journalistic ethics.

76. As the applicants had made clear in their complaint, the implementation of the permanent residence requirements had over the last few years been the subject of great interest in the municipalities of Vestfold, and in other parts of Norway as well. *Tønsbergs Blad* was admittedly, as a regional newspaper, an important forum for discussions of topical subjects such as the present one. However, this had no bearing on the issue here. *Tønsbergs Blad* could perfectly well have attracted the public interest by publishing the article without mentioning Mr Rygh by name and printing his picture. In spite of this, *Tønsbergs Blad* had still, without any factual foundation, exposed him to public contempt as a "residence sinner". The interference in the present case could not in any possible way have had a so-called chilling effect on the public debate on permanent residence regulations.

77. The Government further stressed that, for the purposes of the present case, Mr Rygh ought to be regarded as a private individual. Neither before the publication of the article, nor at any other material time, had he participated in any way in the public debate on the subject of permanent residence regulations or exposed himself to public comment or criticism. His public exposure had been limited to his positions as Executive Vice-President, head of financial investments, and a member of the Executive Board of the Norwegian company Orkla ASA. In no way had the allegations

in question been capable of contributing to a debate in a democratic society. The allegations had exclusively concerned Mr Rygh's behaviour as a private person and had no connection whatsoever with his position as a business executive. Mr Rygh should be regarded as a private individual in relation to the statements, to be assessed within the stricter limits of acceptable criticism.

78. The articles published on 30 June and 8 August 2000 were of no particular importance. They had been published a relatively long time after the disputed allegations had been made. The impression created, that the Tjøme Municipality considered Mr Rygh to have breached the permanent residence requirements, had by that time been firmly established. Apparently, the applicants had not tried to correct the false accusations set forth in the first article. On the contrary, the subsequent articles had given the impression that Mr Rygh had deliberately utilised a legal loophole.

79. In the Government's opinion, private individuals like Mr Rygh must be entitled to protection against false accusations of this kind, especially where the accusations had no or only limited public interest. Interference with press freedom as in the present case would have no chilling effect on the public and political debate.

80. In the light of the above, the Government contended that the respective interests of the applicants and the public in imparting and receiving false information regarding Mr Rygh's observance of the permanent residence requirements were not such as to outweigh the considerations relied on by the Supreme Court, which must be considered relevant and sufficient for the purposes of Article 10 § 2. Moreover, in finding the allegations in question defamatory and declaring them null and void, the Norwegian Supreme Court could not be said to have placed an excessive or unreasonable burden on the applicants. Regard should be had to the fact that the interference had solely concerned the particular allegations in question and had had no chilling effect on the public debate on the issue of permanent residence regulations. The Supreme Court had struck a fair balance between the fundamental right of freedom of expression, on the one hand, and the legitimate interests of a democratic State in ensuring that the rights and reputation of others be protected, on the other hand. It follows from this that the interference had been proportionate to the legitimate aim pursued. The disputed interference had therefore been necessary for the purposes of Article 10 § 2 of the Convention.

2. Assessment by the Court

(a) General principles

81. The test of “necessity in a democratic society” requires the Court to determine whether the “interference” complained of corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim

pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see *Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 38, § 62). In assessing whether such a “need” exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10.

82. One factor of particular importance for the Court's determination in the present case is the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, p. 23, § 31; and *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, *Reports* 1997-I, pp. 233-34, § 37). In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38). In cases such as the present one the national margin of appreciation is circumscribed by the interest of democratic society in enabling the press to exercise its vital role of “public watchdog” in imparting information of serious public concern (see *Goodwin v. the United Kingdom*, judgment of 27 March 1996, *Reports* 1996-II, p. 500, § 39).

83. In sum, the Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I).

(b) Application of these principles

84. The Court observes from the outset that the disputed statements consisted of two introductory passages on the front page and on page 3 of the *Tønsbergs Blad*'s issue of 8 June 2000, which the High Court, whose conclusion was upheld by the Supreme Court, declared null and void under Article 253 of the Penal Code (see paragraph 36 above):

“**Permanent residence requirements:** In the worst-case scenario [H.K.] may be forced to sell her property at Hvasser [an island next to Tjøme]. The same applies to Orkla director Tom Vidar Rygh. According to the understanding of *Tønsbergs Blad*, their properties are on a list which the Tjøme Municipality will submit to the County

Governor in the very near future. The list includes properties whose use is thought not to be in conformity with the permanent residence requirements.”

“...Tom Vidar Rygh may be forced to sell their properties at Tjøme. The reason is that, according to the Tjøme Municipality, they do not comply with the permanent residence requirements applicable to their properties.”

85. According to the findings of the Supreme Court, at the heart of the impugned statements there was an allegation that Mr Rygh's name appeared on a list drawn up by the Municipality of persons whom the Municipality considered to have breached the permanent residence requirements. That allegation was false and constituted a public moral condemnation of Mr Rygh's conduct that was defamatory within the meaning of Article 247 of the Penal Code (see paragraphs 36 to 40 of the Supreme Court's judgment, quoted in paragraph 39 above). The Court finds no reason to doubt that the reasons relied on by the Supreme Court were relevant to the legitimate aim of protecting the rights and reputation of Mr Rygh.

86. As to the further question whether those reasons were sufficient for the purposes of Article 10, the Court must take into account the overall background against which the statements were made. In this regard it notes that the purpose of applying permanent residence requirements under section 5(3) of the Concession Act to all-year residences in the Tjøme Municipality was to prevent private property used for permanent residence from being transformed into holiday homes and thus to ease the pressure on the local community. There was also a wish to avoid depopulation of the Municipality during off-season periods (see paragraph 8 above).

87. The Court is not convinced by the Government's argument that the portrayal of Mr Rygh in the article hardly corresponded to a public interest worthy of protection under Article 10 of the Convention. Whether or not a publication concerns an issue of public concern should depend on a broader assessment of the subject matter and the context of the publication. The newspaper article of 8 June 2000 had its background in concerns by local inhabitants and politicians about the failure of certain property owners within the Municipality to comply with applicable residence requirements. There was also a perception that affluent persons had found ways of circumventing or exploiting loopholes in the rules. That had led the applicant newspaper to highlight the coverage by focusing on two prominent and well-known personalities, one, Mr Rygh, from the world of industry and the other, Mrs H.K., from the world of culture. The Court does not find that the article was intended to damage Mr Rygh's reputation (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 63, ECHR 1999-III). Rather, the purpose was to illustrate a problem that the public had an interest in being informed about. His name (like that of Mrs H.K.) had featured on the provisional tip-off list drawn up by the Municipality of names of persons suspected by local inhabitants and politicians of having breached the residence requirements. While it is true

that the information published about Mr Rygh did not directly address his role as an industrial leader, the Court is unable to agree with the Government's suggestion that it related exclusively to his private life. The Court shares the opinion of the dissenting judge of the Supreme Court, Mr Justice Rieber-Mohn (see paragraph 40 above), that a possible failure of a public figure to observe laws and regulations aimed at protecting serious public interests, even in the private sphere, may in certain circumstances constitute a matter of legitimate public interest (see *Fressoz and Roire*, cited above, § 50). It also agrees with the dissenting judge that such circumstances obtained in the present case.

88. The most careful scrutiny on the part of the Court is called for when, as in the present case, the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see *Jersild*, cited above, pp. 25-26, § 35; and *Bergens Tidende and Others v. Norway*, no. 26132/95, § 52, ECHR 2000-IV).

89. The Court observes in this connection that protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism (see, for example, *Goodwin*, cited above, p. 500, § 39; *Fressoz and Roire* cited above, § 54-I; *Bladet Tromsø and Stensaas*, cited above, § 65; and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI). Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it “duties and responsibilities”, which also apply to the media even with respect to matters of serious public concern. These “duties and responsibilities” are significant when there is a question of attacking the reputation of a named individual and infringing the “rights of others”. Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations (see, among other authorities, *McVicar v. the United Kingdom*, no. 46311/99, § 84, ECHR 2002-III; *Bladet Tromsø and Stensaas*, cited above, § 66; and *Pedersen and Baadsgaard*, cited above, § 78).

90. The Court will consider the newspaper report as a whole and have particular regard to the words used in the disputed parts of the report and the context in which they were published, as well as the manner in which it was prepared (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 62, ECHR 1999-IV). The Court must examine whether the applicants acted in good faith and complied with the ordinary journalistic obligation to verify a factual allegation. This obligation required that they should have relied on a

sufficiently accurate and reliable factual basis which could be considered proportionate to the nature and degree of their allegation, given that the more serious the allegation, the more solid the factual basis has to be (see *Pedersen and Baadsgaard*, cited above, § 78).

91. First, the Court observes that the impugned assertions consisted of factual statements, not value judgments, to the effect that Mr Rygh's name was on the Municipality's list of persons whom it considered to be in breach of the residence requirements. This was a bare allegation presented without any criticism and only with a suggestion that Mr Rygh might be forced to sell his property. A breach of the residence requirements was not a criminal offence, only a regulatory matter. Both the City Court and the High Court considered that, locally, the conduct of which Mr Rygh was accused was likely to be viewed by many as being reprehensible from a moral and social point of view but that the accusation had not been of the most defamatory kind.

92. It should further be noted that the disputed allegations were presented with precautionary qualifications (emphasis added here): “*According to the understanding of Tønsbergs Blad*”; “The list includes properties whose use is *thought* not to be in conformity with the permanent residence requirements”; “*may be forced to sell*”. The headline on the front page indicates that Mr Rygh will have to explain himself (see paragraph 12 above). In the article inside the newspaper on page 3 there is a description of the procedure indicating that the Municipality will report to the County Governor properties *suspected* of not complying with the residence requirements and that it will then be for the County Governor to confront the owners. It should, moreover, be noted that the article inside the newspaper highlighted Mr Rygh's own comment that the mention of his name on the list must be due to a “*misunderstanding*” (see paragraph 15 above). In addition, at the bottom of the same page, the newspaper published another article entitled “A two-edged sword”, reproducing comments by local politicians giving diverging views on the public need to maintain residence requirements in the Municipality (see paragraph 16 above). Even though the news item was 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 raised question marks with respect to both whether he had breached the said requirements and whether those requirements should be maintained, modified or repealed.

93. In the light of the above, 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.

94. Nor does the Court find that the news coverage was presented without proper balance. In addition to the above-mentioned qualifications

and counterbalancing elements contained in the 8 June 2000 issue, regard should be had to the fact that, on 30 June 2000, the day after the journalist was informed about the exchange of correspondence between Mr Rygh and the Municipality's Chief Executive Officer, Mr Hansø, the newspaper published a follow-up article based on an interview by the journalist with Mr Hansø. The article made it clear that Mr Rygh's name had been removed from the Municipality's list and stated the reasons why the residence requirements did not apply to the property used by him. This must have considerably reduced any injury to Mr Rygh's reputation caused by the report of 8 June 2000. In the article of 8 August 2000 the newspaper, referring to its previous news reports of 8 and 30 June 2000, further emphasised these clarifications. The Court is unable to share the Supreme Court's view that the reports of 30 June and 8 August 2000, although published some time after the 8 June 2000 issue, were of negligible significance for the newspaper coverage seen as a whole (see paragraph 51 of the Supreme Court's judgment quoted in paragraph 39 above). In this connection, the Court reiterates that news reporting based on interviews constitutes one of the most important means whereby the press is able to play its vital role of "public watchdog". The methods of objective and balanced reporting may vary considerably, depending among other things on the medium in question; it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted by journalists (see *Jersild*, cited above, pp. 23-25, §§ 31 and 34; *Bladet Tromsø and Stensaas*, cited above, § 63; and *Bergens Tidende and Others*, cited above, § 57).

95. As to the further question whether the applicants acted in good faith and complied with the ordinary journalistic obligation to verify a factual allegation, the Court notes that, according to the High Court's assessment of the evidence, on which the Supreme Court relied, the defamatory accusation against Mr Rygh had originated from an anonymous source. The High Court reasoned that, in view of the impossibility for the courts to verify the extent to which the journalist had acted with due care in relying on the anonymous source, the defamatory allegation ought to be regarded as the newspaper's own. Similarly, the Supreme Court proceeded from the premise that in the use of anonymous sources a stricter duty of care applied and that it would largely be the risk of the newspaper if factual information originating from such sources were false (see paragraphs 43 and 47 of the Supreme Court's judgment quoted in paragraph 39 above). The Court accepts this reasoning and finds no special grounds for dispensing the newspaper from its ordinary obligation to verify factual statements that are defamatory of private individuals.

96. In respect of the question whether the journalist had acted in good faith, the following should, however, be noted. The journalist had worked on the item over a considerable period, since the autumn of 1999. He was in

possession of the tip-off list (entitled “Properties which should be verified in relation to the residence requirements. (Not public)”). This was an official document drawn up by the municipal administration on 11 October 1999 and presented the following day to the Municipal Standing Committee at a meeting open to the public. From the autumn of 1999 he made a number of enquiries to the Municipality on the subject and on 7 June 2000 he interviewed the director of the Municipality's Planning and Building Department, Mr Sæter (see paragraphs 9 to 11 above).

97. It does not transpire from the interview with Mr Sæter that Mr Rygh's name was on the list in question and that the Municipality held the opinion that he had breached the residence requirements. However, at the High Court's hearing, both the director of the Municipality's Planning and Building Department and the mayor testified that they, at the time, had been of the view that Mr Rygh was in breach of the residence requirements (see paragraph 33 above). Thus, it was shown that two presumably representative and reliable officials within the Municipality assuming key roles in the handling of the residence matter in substance held the same opinion as that attributed to the Municipality as a whole in the impugned passages when they were published on 8 June 2000.

98. It was an undisputed fact that Mr Rygh did not live permanently on the property at issue. The only question at the time of the publication of the 8 June 2000 issue was whether the residence requirements applied at all to the property used by him. As already mentioned, key figures in the Municipality believed that they did.

99. In the light of the above, the Court finds there was substantial evidence to corroborate the newspaper's contention on 8 June 2000 that the Municipality at the time held the view that Mr Rygh was in breach of the relevant residence requirements. This is an issue that should be determined in the light of the situation as it presented itself to *Tønsberg Blad* then, rather than with the benefit of hindsight (see *Bladet Tromsø and Stensaas*, cited above, § 66), offered by the revelations made subsequently that Mr Rygh's name did not actually appear on any list to be transmitted to the County Governor as described in the interview with the director of the Planning and Building Department. Although the High Court stressed in its judgment that the latter had been aware when talking to the journalist on 7 June 2000 that he had to carry out further checks, there is nothing to indicate that this awareness had been imparted to the journalist or that the latter had knowledge of it from any other source by the time of publication. Thus, whether or not at the time of publication the director of the Planning and Building Department and the mayor held an informed opinion cannot be decisive for the truth of the newspaper's allegation about the substance of the Municipality's opinion at that time.

100. It was only on 29 June 2000, when the journalist was informed about the exchanges between Mr Rygh and the Municipality's Chief

Executive Officer, that the Municipality made the journalist aware of its position as to how the provisions of the Concession Act ought to be interpreted and applied in relation to properties such as that used by Mr Rygh. When contacted by the journalist before publication of the disputed newspaper report, Mr Rygh had not offered any comments beyond stating that there must have been a misunderstanding as to the inclusion of his name on the list to be transmitted to the County Governor (see paragraph 15 above).

101. In these circumstances, the journalist cannot in the Court's view be blamed for not having ascertained for himself, before reporting on the Municipality's opinion on 8 June 2000, whether the residence requirements were applicable to the property used by Mr Rygh. On the contrary, having regard to the relatively minor nature and limited degree of the defamation at issue and the important public interests involved, the Court is satisfied that the newspaper took sufficient steps to verify the truth of the disputed allegation and acted in good faith.

102. Nonetheless, the applicants had to defend their cause in judicial defamation proceedings pursued at three judicial levels. The outcome was that the statements were declared null and void and the applicants were 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 (see paragraphs 36 and 38 above), in addition to bearing their own costs. In the circumstances, the proceedings 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 respondent State.

103. In short, the reasons relied on by the respondent State, although relevant, are not sufficient to show that the interference complained of was "necessary in a democratic society". The Court considers that there was 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

105. The applicants did not seek an award for non-pecuniary damage but requested compensation for the pecuniary damage which they had suffered as a result of the Supreme Court's judgment of 1 July 2003 ordering them to pay to Mr Rygh NOK 50,000 in compensation for non-pecuniary damage and NOK 673,829 for his costs and expenses (corresponding altogether to approximately 90,000 euros (EUR)).

106. The Government did not offer any comment beyond stating that the finding of a violation constituted the primary remedy under the Convention.

107. The Court is satisfied that there is a causal link between the damage claimed and the violation of the Convention it has found, and awards the applicants EUR 90,000 under this head.

B. Costs and expenses

108. The applicants also claimed NOK 1,082,033 (corresponding approximately to EUR 135,000) for the costs and expenses incurred before the domestic courts and NOK 896,928 (approximately EUR 112,000, not inclusive of value-added tax – “VAT”) for those incurred before the Court.

109. The Government did not offer any comments on the above beyond stating that they had no reason to doubt the amounts.

110. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the above criteria and the information in its possession, notably the absence of details as to the number of hours worked and the rate charged per hour, the Court is not convinced that all the costs incurred in the Strasbourg proceedings were necessarily incurred and were reasonable as to quantum. Making an assessment on an equitable basis, the Court awards the applicants EUR 35,000 for the proceedings before it (inclusive of VAT). The claim for costs and expenses in the domestic proceedings should be awarded in its entirety.

C. Interest incurred during the proceedings before the national courts and the Court

111. The applicants in addition claimed various sums totalling NOK 256,115 (corresponding approximately to EUR 32,000) in simple interest, at estimated average rates (4%) applied by domestic commercial banks at the material time, on the sums they had paid in respect of damages and domestic costs and expenses, covering the period until 31 December 2006.

112. The Government did not offer any comments on the above beyond stating that they had no reason to doubt the amounts.

113. The Court finds that some pecuniary loss must have been occasioned by reason of the periods that elapsed from the time when the various sums were paid and the costs incurred until the Court's present award of just satisfaction (see, for example, *Bladet Tromsø and Stensaas*, cited above, § 83; *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 65, ECHR 1999-VIII; and *Bergens Tidende and Others*, cited above, § 70). Making its assessment on an equitable basis, it awards the applicants EUR 20,000 with respect to their claim under this head.

D. Default interest

114. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
- 3 *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums:
 - (i) EUR 90,000 (ninety thousand euros) in compensation for pecuniary damage;
 - (ii) EUR 170,000 (one hundred and seventy thousand euros) in compensation for costs and expenses;
 - (iii) EUR 20,000 (twenty thousand euros) for additional interest;
 - (b) that these sums are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President