

February 2013

Neij and Sunde Kolmisoppi v. Sweden (dec.) - 40397/12

Decision 19.2.2013 [Section V]

Article 10

Article 10-1

Freedom to impart information

Freedom to receive information

Conviction and order to pay damages for operating website allowing third parties to share files in breach of copyright: *inadmissible*

Facts – During 2005 and 2006 the two applicants were involved in different aspects of one of the world's largest file sharing services on the Internet, the website "The Pirate Bay" (TPB). The service provided by TPB made it possible for users to contact each other through torrent files and exchange digital material through file-sharing outside TPB's computers. In 2008 they and others were charged with complicity to commit crimes in violation of the Copyright Act on the grounds that they had furthered the infringement by the website's users of copyright in music, films and computer games. The applicants were convicted. On appeal the first applicant was sentenced to ten months' imprisonment and the second applicant to eight months. They were also held jointly liable with the other defendants in damages of approximately EUR 3,300,000.

Law – Article 10: The applicants had put in place the means for others to impart and receive information within the meaning of Article 10. Their actions were afforded protection under that provision and, consequently, their convictions had interfered with their right to freedom of expression. Since they were convicted only in respect of material which was protected by copyright in accordance with the Copyright Act, the interference was "prescribed by law". It had pursued the legitimate aims of protecting the rights of others and preventing crime.

As to whether the interference had been necessary in a democratic society, the Court was called upon to weigh the applicants' interest in facilitating the sharing of the information against the interest in protecting the rights of the copyright-holders. As intellectual property, copyright was entitled to protection under Article 1 of Protocol No. 1 to the Convention. Accordingly, since it had to balance two competing interests which were both protected by the Convention, the respondent State had enjoyed a wide margin of appreciation. Indeed, that margin was particularly wide in the instant case as the type of material in respect of which the applicants were convicted was not entitled to the same level of protection as that afforded to political expression and debate. Further, since the Swedish authorities were under an obligation to protect the plaintiffs' property rights in accordance with the Copyright Act and the Convention, there were weighty reasons for the restriction of the applicants' freedom of expression. The Swedish courts had advanced relevant and sufficient reasons for finding that the applicants' activities within the commercially run TPB amounted to criminal conduct. Lastly, the prison sentence and award of damages could not be regarded as disproportionate in view in particular of the applicants' failure to take any

action to remove the impugned torrent files, despite being urged to do so, and of their indifference to the fact that copyright-protected works had been the subject of file-sharing activities via TPB.

In conclusion, regard being had in particular to the nature of the information shared and the weighty reasons given, the interference with the applicants' freedom of expression had been necessary in a democratic society.

Conclusion: inadmissible (manifestly ill-founded).

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