

Press release issued by the Registrar

CHAMBER JUDGMENT
TØNSBERGS BLAD AS AND HAUKOM v. NORWAY

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Tønsbergs Blad AS and Haukom v. Norway* (application no. 510/04).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 90,000 euros (EUR) in respect of pecuniary damage, EUR 170,000 for costs and expenses and EUR 20,000 for additional interest. (The judgment is available only in English.)

1. Principal facts

The applicants are Tønsberg Blad AS and Marit Haukom. Tønsberg Blad AS publishes the newspaper *Tønsberg Blad*, a regional newspaper owned by Orkla Media AS, which appears six days a week and had a daily average circulation of 33,314 in 2002. Ms Haukom, the paper's editor-in-chief at the relevant time, is a Norwegian national who was born in 1952 and lives in the City of Tønsberg in Southern Norway.

On 11 October 1999 Tjøme Municipal Council drew up a list identifying property owners suspected of failing to respect the permanent residence requirement applying to certain properties, in breach of local regulations. Regulation (*forskrift*) of 14 December 1984 no. 2089 required that homes bought within the Tjøme Municipality be the owners' permanent residence, in order to control the exceptionally high demand for holiday homes, particularly from people living in and around Oslo. The list, which was discussed by a council committee on 12 October 1999, included a well-known singer and Tom Vidar Rygh, then Executive Vice-President of *Orkla ASA*, one of Norway's largest industrial companies.

The Rygh family had used the house in question as its main residence from 1988, when they had had it built, until they moved to Oslo in 1998.

On 8 June 2000 Tønsberg Blad published articles about the list featuring Mr Vidar Rygh and the singer, stating that they might be "forced to sell their properties at Tjøme" because:

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

“according to Tjøme Municipality, [they] do not comply with the permanent residence requirements applying to their properties”. The articles included a small photo of Mr Rygh with the caption: “it must be due to a misunderstanding, says Tom Vidar Rygh”.

On 30 June 2000, after being informed that the Rygh family’s property had been removed from the list, the newspaper published an additional article which noted that Mr Vidar Rygh and the singer had “got off” and included criticisms of “major loopholes” in the system, in that the regulations did not apply to houses which had been built by the owners.

In a further article, published on 8 August 2000 and entitled “*Tønsbergs Blad* clarifies”, the paper stated that the properties belonging to the singer and the Rygh family had been removed from the list in question, as the regulations did not apply to their properties.

On 15 September 2000 Mr Rygh brought private criminal proceedings against the newspaper and Ms Haukom.

On 13 September 2001 the applicants were acquitted and Mr Rygh was ordered to pay NOK 183,387 for costs. The court found that a defamatory allegation had been made but, with reference to Article 10 (freedom of expression) of the European Convention on Human Rights, attached special importance to the public interest of the permanent residence issue and to the freedom of the press.

Mr. Rygh appealed and, on 21 May 2002, Agder High Court upheld Mr Rygh’s claims in part. Under Article 253 of the Penal Code, the High Court declared the impugned statements null and void and ordered the applicants to pay Mr Rygh NOK 50,000 in compensation for non-pecuniary damage.

The applicants appealed unsuccessfully to the Supreme Court which, on 1 July 2003, ordered them to pay Mr Rygh NOK 673,879 for costs.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 December 2003. A hearing took place in public in the Human Rights Building, Strasbourg, on 5 October 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Loukis **Loucaides** (Cypriot),
Anatoli **Kovler** (Russian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicants complained about the Supreme Court's decision of 1 July 2003, relying on Article 10 of the Convention.

Decision of the Court

Article 10

In considering whether the interference was justified in accordance with the second paragraph of Article 10, the Court found 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.

As to whether those reasons were also "sufficient" as required under the Convention case-law, the Court found that the purpose of the article was to illustrate a problem that the public had an interest in being informed about. The Court further considered that a possible failure of a public figure to observe laws and regulations aimed at protecting serious public interests, even in the private sphere, might in certain circumstances constitute a matter of legitimate public interest.

The Court recalled that protection of the right of journalists to impart information on issues of general interest required that they act in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism. In the present case the impugned assertions had consisted of factual statements, not value judgments. What was alleged was a breach of the residence requirements not a criminal offence; the national courts had found that the accusation had not been of the most defamatory kind, even though locally the alleged conduct was likely to be viewed as reprehensible from a moral and social standpoint. The allegations had moreover been presented with precautionary qualifications. Even though the news item had been presented in a somewhat sensationalist style, the overall impression given by the newspaper report was that, rather than inviting the reader to reach any foregone conclusion about any failure on Mr Rygh's part, it had raised question marks with respect to both whether he had breached the requirements in question and whether those requirements should be maintained, modified or repealed.

Nor did the Court find that the news coverage was presented without proper balance, regard being had to the qualifications and counterbalancing elements contained in the same issue, as well as a subsequent follow-up article.

As to the further question whether the applicants had acted in good faith and complied with the ordinary journalistic obligation to verify a factual allegation, the Court found 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.

The journalist could not in the Court's opinion be blamed for not having ascertained for himself, before reporting on the Municipality's opinion on 8 June 2000, whether the

¹ This summary by the Registry does not bind the Court.

residence requirements were applicable to the property used by Mr Rygh. On the contrary, in view of the relatively minor nature and limited degree of the defamation at issue and the important public interests involved, the Court was satisfied that the newspaper had taken sufficient steps to verify the truth of the disputed allegation and acted in good faith.

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

In short, the reasons relied on by the respondent State, although relevant, had not been sufficient to show that the interference complained of had been “necessary in a democratic society”. There had been no reasonable relationship of proportionality between the restrictions placed by the measures applied by the Supreme Court on the applicants’ right to freedom of expression and the legitimate aim pursued. Accordingly, there had been a violation of Article 10 of the Convention.

The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.