Significant Legal Ruling Award Speech

Columbia Global Freedom of Expression Prizes 2015

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It is a great pleasure for me to support and to introduce the Columbia University Global Freedom of Expression Award for Significant Legal Ruling 2015. The Award this year goes to the Supreme Court of Norway, for the ruling in the case of Rolfsen and Association of Norwegian Editors v. the Norwegian Prosecution Authority

On the 20th of November 2015 the Norwegian Supreme Court issued a well-motivated and inspiring decision regarding the protection of journalistic sources. The dispute concerned the legality of a seizure by the Norwegian Police Security Service («PST») of documentary footage from filmmaker **Ulrik Imtiaz Rolfsen.** The Association of Norwegian Editors intervened as a third party to the proceedings in support of Mr. Rolfsen. The Supreme Court of Norway found **unanimously** for broad protection against exposure of journalistic sources **even in the context of a government anti-terror investigation.** In contrast to the widespread international tendency to sacrifice freedom of expression in times of crisis, this ruling recognizes the crucial importance of a free press **and investigative journalism**, relying on confidential sources. By robustly guaranteeing the protection of journalistic sources it build on the case law the **European Court of Human Rights** elaborated over a period of 20 years.

I can see **five reasons** why this ruling by the Norwegian Supreme Court deserves attention in order to **inspire** police, public prosecutors, security and intelligence services, judicial authorities and legislators **in the whole world** how to uphold basic principles relating to freedom of expression and journalism, applied in this case on the protection of journalistic sources.

Before briefly explaining these five reasons, I give the essence of the **case in a nutshell.** In June 2015, the Oslo District Court granted PST's petition to maintain **the seizure** of the recording of a documentary on Islamist extremism, a documentary that particularly reported on the recruitment of foreign fighters by the Islamic State (IS).

The seizure of the footages was later affirmed by the Court of Appeal on the ground that **the public interest in national security**, created an **exception** from the protection of sources as guaranteed by Section 125 of the Criminal Code of Procedure. The Supreme Court of Norway, however, set aside the seizure order. It found that the content of the film recording did not amount to an exception under Section 125 because it was **not of "vital significance"** to the ongoing investigation against the terror suspect. The Supreme Court found that Rolfsen's documentary was "at the heart of investigative journalism," and that effective protection of his sources was vital in creating the film. On the other hand, the Court found that **PST had other investigative methods** at its disposal.

As I mentioned, there are **five pertinent reasons** why this ruling deserves international attention and **genuine appreciation by the global community of legal experts advocating freedom of expression and media freedom**.

First the Norwegian Supreme Court applies a **broad definition of journalistic sources**, including unedited material and footages of a documentary that could help to reveal the identity of persons a journalist has been in contact with during his news gathering activities and filming. Such a broad application is necessary in order to protect especially **investigative journalism,** which is already a format of journalism under threat in the actual landscape of media working in highly competitive markets. This crucial format of journalism for a **democracy and transparency on public affairs is** by all legal means to be protected, instead of prosecuted, intimidated or harassed.

Second, the judgment applies in a correct and inspiring way the criteria of **proportionality and subsidiarity** that need to be taken into account when evaluating whether an interference with a journalist's sources responds to an "**overriding requirement in the public interest**". The Court clarifies that it is not enough that the investigation is related to a case of major crime and public interest for society. It is also a condition that the material of the journalist is **crucial** in order to help to prevent, monitor or sanction major crime.

Third, the judgment shows the importance of the control by **independent courts** over the legality and necessity of seizures and other **investigative measures by police and security services. In too many countries security and intelligence**

agencies are working under the radar of democratic control and with lack of scrutiny by the judiciary. It might not have been the case in the recent **TV-series Occupied** where Norway was under Russian occupation, but happily the reality in Norway is different from this horrifying fiction story. The case of Rolfsen gives evidence that in Norway there is an **effective scrutiny by the judiciary** over the activities of **security and intelligence agencies.** This is also the approach of the ECtHR as e.g. in *Youth Initiative for Human Rights v. Serbia, Bucur and Toma v. Romania* and *Roman Zakharov v. Russia*.

Fourth, the Norwegian judgment is a good example on how to apply and implement the **case law of the ECtHR** together with the CoE Recommendation of 2000 on the protection of journalistic sources. The judgment demonstrates a thorough knowledge and an accurate application of the case law of the European Court. Since the landmark judgment in the case of *Goodwin v. the United Kingdom* in 1996, the European Court hung several wagons on this locomotive judgment of source protection. In a period of 20 years the Court found 13 violations on the rights of journalists to protect their sources, violations found in the UK, France, the Netherlands, Luxembourg, Belgium, Latvia and most recently also in a Turkish case, the case of *Görmüş a.o. v. Turkey* of 19 January 2016.

Fifth and foremost the judgment is a perfect example **of the direct application by domestic authorities of the European Convention of Human Rights**. Applicants indeed should no longer have to bring this type of cases to the Strasbourg Court: it is in the first place up to the national authorities to secure that the Convention is applied and respected. This is also fully in line with the 2012 Brighton Conference Declaration on the future of the European Convention and of the 2015 Brussels Declaration of the Committee of Ministers. The latter Declaration recalls the primary responsibility of the Contracting Parties for ensuring the application and effective implementation of the Convention in order to ensure **the long-term viability and credibility of the European Human Rights Convention system.**

The final ambition is that the Award winning judgment of the Norwegian Supreme Court **will have an educational mission** towards **all other judicial authorities** dealing with interferences with press freedom and protection of journalistic sources.