

**Freedom of Expression and Information in Norway – recent cases
and development**

**JUSTICE FOR FREE EXPRESSION IN 2015
COLUMBIA UNIVERSITY, 4 AND 5 APRIL 2016**

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1. INTRODUCTION

Thank you for the invitation – to say a few words about recent cases and the development of Freedom of Speech in Norway.

I am a lawyer working in Oslo, and the rest of Norway, in the Lawfirm Schjødt. Freedom of Speech has been a cornerstone in our firm for many decades, and we work with most of the Norwegian media. In addition to many other subjects – which is useful because Freedom of Speech cases usually concern some kind of subject, in addition to freedom of speech.

One of the cases I will say something about is the "Rolfesen case", where the Norwegian Supreme Court won one of the prizes this year, a case that I litigated.

In order to explain the Norwegian situation, I would first like to mention a couple of points as a background.

2. BACKGROUND 1 – IMPACT OF NORWEGIAN CASES IN ECHR, AND DIRECT INCORPORATION OF THE EUROPEAN CONVENTION

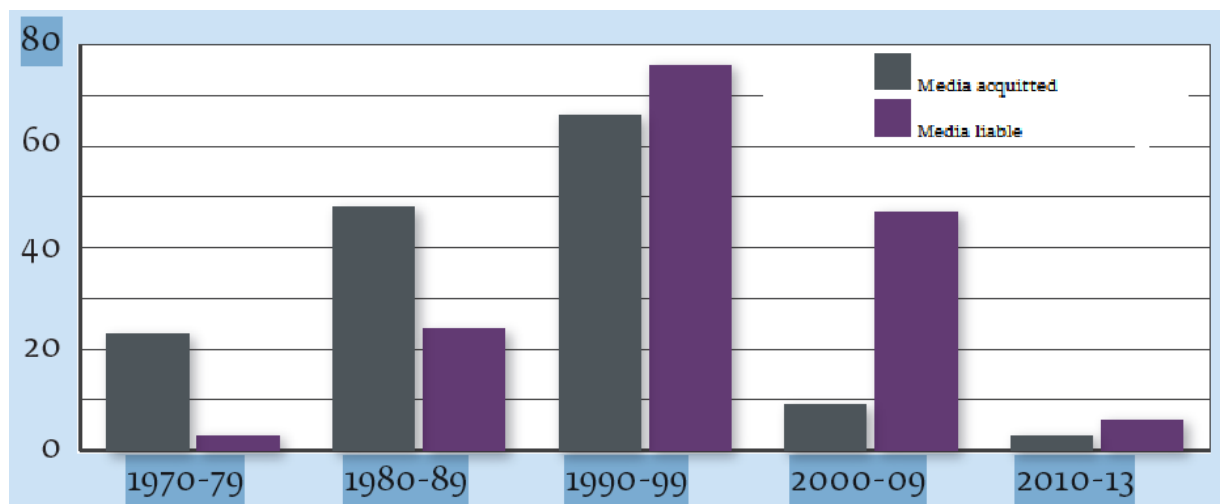
Until 2000, Article 10 of the European Convention (ECHR) was applied in Norwegian cases, even if the Convention was not incorporated. Everybody believed that Norwegian law and Article 10 were in full harmony.

Then, between May 1999 and May 2000, several events took place:

During this year, Norway lost 3 cases on defamation in the European Court on Human Rights (ECtHR) (*Bladet Tromsø and Stensaas v. Norway*, 20/05/1999. *Nilsen and Johnsen v. Norway*, 25/11/1999. *Bergens Tidende and others v. Norway*, 02/05/2000).

In 2000, the ECHR was also directly incorporated into the Norwegian legal system.

These events should in principle not have any impact on the legal reasoning, but the actual effects were great and the Courts' attitude changed as the statistics show.



3. BACKGROUND 2 – CHANGES IN DEFAMATION AND PRIVACY LEGISLATION IN 2015

In 2015, the Norwegian Penal Code was amended. The Parliament followed advice from various experts on decriminalization of defamation, and defamation is now only subject to torts in civil cases. This civil rule ([skadeserstatningsloven § 3-6 a](#)) is more or less a reference to Article 10, in order to keep up with ECtHR's dynamic interpretation.

Violation of *privacy*, on the other hand, is still criminalized with a theoretical maximum of one year in prison.

4. **NORWEGIAN SUPREME COURT ON TERROR AND SOURCE PROTECTION –
"ROLFSEN CASE". ROLFSEN AND NORWEGIAN ASSOCIATION OF EDITORS V.
PUBLIC PROSECUTION AUTHORITY, 20/11/2015**

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 aim of Mr. Rolfsen's documentary was to identify the motives of Norwegian citizens who become foreign fighters in Syria, and to provide further insights into the terrorist organization ISIL. The purpose of the police seizure on the other hand was to hinder several persons from joining the terrorist organization.

The lower Courts had accepted the seizure. The Supreme Court, however, invalidated the seizure based on the "comprehensive protection of unpublished material which may expose unidentified journalistic sources", as established by Article 10 of ECHR and the practice of ECtHR.

The Supreme Court thus based the decision on a wide "source" concept, as the role of the persons was limited to their appearance on the film. In doing this, the Supreme Court departed from earlier internal law that limited the source protection to *the identity* of the provider of *information* given to the media.

The Court based this reasoning on the view that the *actual impact* on Freedom of Expression should be considered, rather than a formalistic approach to classification of journalistic sources in internal legislation.

The Court then observed that the measure in question would have a considerable "chilling effect". A weak source protection will in general have such an effect, and this will be even greater in terror related matters, as potential sources might fear grave consequences if their involvement becomes known.

The Court stated that the work of the police was of very high importance. On the other hand, it was difficult to see that the evidence in question was of crucial value. Understanding "foreign fighters" and terror is complex. A deeper understanding of these problems cannot rely only on police investigations, documentaries such as Mr. Rolfsen's and similar projects are also of high importance.

Mr. Rolfsen's project addresses a pressing social issue where the public as well as the government has a particular need for knowledge and insight. The investigative journalism was made possible by way of the trust Mr. Rolfsen enjoyed in an otherwise closed islamist environment. Effective source protection was decisive for the realization of the documentary.

English translation of ruling and press statement attached:

<http://www.osce.org/fom/207201?download=true>

https://globalfreedomofexpression.columbia.edu/wp/wp-content/uploads/2015/12/Journalistic-privileges_dec2015.pdf?5da84f

5. NORWEGIAN SUPREME COURT ON RIGHT TO INFORMATION; NORWEGIAN BROADCASTING CORPORATION V. PUBLIC PROSECUTION AUTHORITY, 18/11/2015

The case concerned media's access to a film from a surveillance camera in a clinic, that was a part of police investigation documents subject to secrecy in internal law.

The background was an incident where a possible psychotic person was transported to the clinic by two female police officers and an ambulance driver. In the entrance area, the person had tried to free himself and the police officers had problems controlling him. For this reason, the ambulance driver intervened. He managed to lay the person on the floor and held a grip around his neck for 30 seconds before handcuffs were put on.

The person died, and the case was investigated by a special branch of the police. After considering the possible causes and responsibilities, the case was dismissed and no charges brought against any of the involved.

The Norwegian Broadcasting Corporation demanded access to the film from the surveillance camera that had captured the event. It was argued that the public had an interest in this, in particular because there would be no public trial since the case was dismissed.

This was denied, with consent from the lower Courts.

The Supreme Court, on the other hand, came to the conclusion that the broadcaster and the public had a legitimate right of information, and ordered the police to hand the film out.

The ruling was based on the right to information according to the ECHR Article 10 and ECtHR's case law (Tarasag v. Hungary, Shapalova v. Ukraine, Weber v. Germany, Guseva v. Bulgaria, and others).

Emphasis was given to the particular high degree of public interest, that there would not be a public hearing, that the person's relatives had consented, that the persons' faces would be covered, and that the film was "ready and available".

The ruling is not translated, the Norwegian version is attached.

<https://lovdata.no/dokument/HRSTR/avgjorelse/hr-2015-2536-a?q=nrk%20wessel%20aas>

6. GENERAL MONITORING PROJECT ON FREEDOM OF SPEECH 2015 - SOCIAL AND CULTURAL PRECONDITIONS

I would also like to, briefly, mention a thorough Norwegian project on the *actual* Freedom of Speech, with contributions from major authors, journalists and institutions.

According to the report, it targets three overall change processes: an increasingly multicultural and multireligious society, the impact of digitalization on the participation of citizens, on established media structures and on the capacity of states and private actors to surveil and make use of private data, and finally cultural changes within working life.

Progress is found in the legal affirmation of the freedom of the press, and opening up for participation in public debate by large groups of the population.

Negative tendencies are found in expansions of law enforcement and intelligence authorities' powers to conduct surveillance, and also in the possibility to discuss working life issues in the public and for whistleblowers. Also social processes within unedited public debate might lead to occurrence of self-limitations among groups, such as women, ethnic minorities and people holding some political views.

The report in Norwegian, with introduction and summary in English:

[http://www.statusytringsfrihet.no/userfiles/Ytringsfrihet%20Hovedrapport%20DIG2%20\(2\)11.12.14.pdf](http://www.statusytringsfrihet.no/userfiles/Ytringsfrihet%20Hovedrapport%20DIG2%20(2)11.12.14.pdf)