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Recent Freedom of Expression Developments in Scandinavia

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In Europe Scandinavia is a region known for very high standards when it comes to freedom of expression. This article will give an insight into some recent important freedom of expression cases from Scandinavia by analyzing the content and discussing the issues at stake. As it will be seen, a dominant issue in the past year has been hate speech and freedom of expression on the internet. This is a field where Scandinavia and Europe differs quite a bit from the United States where there are very few restrictions on freedom of expression. In Scandinavia the Courts have recently had to deal with the issue of hateful expressions on social media targeting specific groups. As it will be shown in the following, such expressions are sanctioned quite severely. Even private individuals who may not be aware of the criminal nature of their statements have been fined for posts in open forums online. On one hand this can be seen as a positive trend aiming to bring an end to the hateful outbursts towards, for example, Muslims and immigrants all over Scandinavia. On the other hand, some judgments are indeed restricting freedom of expression to an extent where it can be discussed whether there is still sufficient room for public debate about cultural differences and religion.

Denmark

2016 saw the delivery of a judgment in what has been described as the biggest media scandal in Danish history.ⁱ A Danish gossip magazine, *Se og Hør* (Look and Listen), had used a source who unlawfully provided information about the whereabouts and purchases of famous people based on their credit card information. The publishing house was given a fine of 10,000,000 DKR (70,000,000\$) while the source was sentenced to 1.5 years in prison. Seven other people working at the magazine were convicted. One of them, a former editor in chief, was handed a three months prison sentence combined with a one year prison sentence which was suspended on condition of performing community service.ⁱⁱ This judgment was seen as setting an important standard for responsibility for editors and showed that the Danish courts are willing to go quite far when sanctioning offences that concern the right to privacy. The fact that a responsible editor in chief got a three months prison sentence shows that there are clear limits to how far the media can go.

In another case concerning hate speech, Danish politician and member of the right wing party Dansk Folkeparti (Danish People's Party), Mr. Mogens Camre was convicted by the Danish Court of Appeals for writing a tweet in which he compared Muslims to Hitler. He was fined 8,000 DKR for violating Article 266b, para. 1 of the Danish Penal Code. Referring to the situation of Jews in Europe, he tweeted as followsⁱⁱⁱ: "*The Muslims continue where Hitler ended. Only the same treatment as Hitler got will change the situation*". Article 266b, para. 1 of the Danish penal code states that "any person who publicly or with the intention of dissemination to a wide circle of people makes a statement or imparts other information threatening, insulting or degrading a group of persons on account of their race, color, national or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years". The Court of Appeals agreed with the lower court that Mr. Camre had breached Article 266b as interpreted in the light of Article 10 and Article 17 of the European Convention on Human Rights. Regarding the size of the fine the Court emphasized that, apart from the grave allegations, Mr. Camre was a well-known politician and the statements were made on Twitter, meaning that he should have realized that the controversial statements would be spread to the public. Another Dane, Flemming Nielsen, was fined a total of 1,600 DKR^{iv} for a Facebook post where he stated that: "*The ideology of Islam is every bit as loathsome, nauseating, oppressive and dehumanizing as Nazism*".^v Mr. Nielsen argued that he had not referred to the religion of Islam but merely the ideology. The prosecutor did not find that there was a clear distinction between the two. The amount of the fine was below the minimum required to allow Mr. Nielsen to appeal the case.^{vi} The first case appears to be a classic example of hate speech by a far right wing politician. It is therefore not surprising that the politician was fined for his statements. The second case, however, concerned an individual who was probably not aware that his statements could amount to a criminal offence. Social media is making it even harder to draw the line on what can be said and in which context. It has thus become harder to foresee when a statement may be unlawful.

On 8 June 2016 the Danish Court of Appeals delivered a judgment in a controversial case concerning financial support to the Kurdish terrorist organization PKK. Ten individuals were accused of financially supporting the PKK through their fundraising for the Kurdish station ROJ TV.^{vii} In 2014 the Danish Supreme Court had agreed with the lower courts that the TV station could no longer broadcast from Denmark as it was connected to the PKK. When ROJ TV was

still active, the ten defendants were actively involved in raising funds for the private TV station (from 2006 to 2007 and again from 2009 to 2012).^{viii} Despite heavy surveillance of the defendants and witness statements from Denmark and abroad, the Copenhagen City Court did not find it proven that the ten men were aware or should have been aware that the 140 million DKR they collected constituted indirect support to the PKK. The judge underlined that the acquittal was not connected to the fact that Danish military was actively supporting the PKK in the fight against IS in Iraq. The prosecutor appealed, and the Court of Appeals found two of the ten men were guilty of supporting the PKK. It emphasized that the two had such close ties to the PKK that they should have known that money collected for ROJ TV would benefit it. The ties to the PKK were proven based on documents found in the home of one of the accused and the fact that the other had previously paid a visit to a high-level PKK officer.^{ix} The ruling seems problematic for several reasons. Firstly, the money was collected at a time when the TV station was completely legal. The ruling thus shows that there is a risk of conviction in Denmark for supporting free media, if a court later finds that the outlet is linked to an illegal organization. It seems highly unlikely that the convicted men would have been able to foresee that the collection of money earmarked for a legal TV station would result in them being convicted for supporting terrorists.

On 20 December 2016, two women were acquitted by the Copenhagen City Court for yelling “fascist” at the Minister for Immigration and Integration after they spotted her sitting in a café in Copenhagen. The Court emphasized that the word had been uttered spontaneously and that it was directed at the Minister in connection with her political function and not as a private person.^x The prosecutor requested a fine considering that the women had disturbed public order. Taking into consideration the extensive case law of the European Court of Human Rights, it is quite surprising that a case like this would even be brought before a national court as the outcome seems clear.

In 2016 the Danish Ombudsman criticized the Danish head of military for threatening military employees with dismissal if they would criticize the military on social media.^{xi} The Ombudsman stated that military employees enjoy the same right to freedom of expression as other civil servants. He therefore found the statements of the head of military highly problematic as they could have a chilling effect by misleading military employees about their rights to criticize their

workplace. As a consequence of the Ombudsman's criticism, the head of military apologized for his statements.

Norway

In Norway a man was convicted for a racist post on the “open” Facebook profile of a famous female singer, writer and journalist. The post read “Congratulations, you have managed to sleep your way into permanent leave to stay in the country. Why can't you take your family with you and move back to Africa? Why can't you show such minimal respect (as) there is no war where you are coming from. You indecent, disgusting half-ape. Get out of the country. Damn nigger.” It referred to the fact that the woman was pregnant by a former cabinet minister. Though the victim did not want to press charges, the offender was prosecuted by the Hate Crimes Unit of Oslo Police. The Oslo District Court found that the message constituted the offence of uttering hate speech based on skin colour and/or national or ethnic background under Section 185 of the Norwegian Penal Code. In the Court's view, the words and phrases used in the Facebook post were not of a nature that deserved the protection of the constitutional right to freedom of expression. The Court emphasized that hate speech offenses on social media had a particularly damaging potential due to their capacity to reach a large number of people. Under normal circumstances, the Court would have considered a suspended sentence; however, in the present case the defendant was also found in possession of marijuana and was therefore sentenced to thirty days' unconditional imprisonment.^{xii} In another case concerning a statement on Facebook, a 49-year old man was fined 15,000 NKR in accordance with Article 185 of the Penal Code for a hateful comment on an open page.^{xiii} In a debate concerning Syrian refugees who had refused to leave a bus at a temporary asylum centre in Sweden, the 49-year old had posted the comment “blow up the bus” followed by symbols of a laughing face, six bombs and four beer mugs. Subsequently, the police found a number of weapons in the home of the man.

The Norwegian police department for internet crime has made a special page with guidelines for legal statements on the internet.^{xiv} It has also set up an online page for notifying the police of racist statements online.^{xv} Recently the Norwegian department of defence has come up with a proposal that the military secret service should be allowed to gather and save all information related to digital communication to and from Norway. The proposal includes the collection of metadata and has been criticized by Amnesty International, which argues that such a measure

would be a violation of the right to privacy. Furthermore, Amnesty notes that the part of the proposal that concerns metadata was a key element in the European Union Data directive which was struck down by the European Court of Justice.^{xvi}

Sweden

A 43-year old Swedish woman from the city of Helsingborg was acquitted after verbally attacking four young women with an Arabic background. She had uttered racist remarks and had hit one of the young women on the arm. The 43-year old admitted to the behavior. However, as she suffered from Tourette syndrome, the Swedish Court accepted that she had not been able to control her actions.^{xvii} In another ruling concerning hate speech, a 74-year old man was convicted for making hateful statements against EU migrants, Muslims and Somalis in an email to a number of newspapers, politicians and the local municipality. He was fined 3,000 SKR for spreading hateful statements against a specific group.

In another ruling concerning statements on the internet, a Swedish man was convicted for a post praising Adolf Hitler on nordfront.se, a right-wing homepage of which he was the responsible editor. The post was published on Hitler's birthday. The Court found the man guilty; however, no actual punishment was imposed, as he was already serving a prison sentence for participating in a violent riot.^{xix} In yet another judgment concerning expression on the internet, a 30-year old man was convicted for writing "negro" in a post. The prosecutor found that this and other statements had been degrading and targeted a group of people. The defendant said that he had only used the specific word because of the general tone in the debate forum. He thought that he was allowed to use whatever language he wished in a debate forum. The Court noted that the defendant's lack of knowledge about the law was not an excuse for his statements.^{xx} An 18-year old woman was convicted for hate speech after she yelled "fucking gypsies, go back to your home country" to a group of Syrian refugees. She later kicked and hit one of the Syrians and spat on his pants. The Court ordered her to pay 5,000 SKR to the victim.^{xxi}

An interesting Swedish judgment from 2016 concerned a journalist who documented the travel of a refugee boy through Europe while at the same time helping him to cross country borders illegally. The Swedish journalist Frederik Örnevall was together with a photographer and an interpreter given a 2 month suspended prison sentence and 75 hours of community service for helping a refugee boy travel from Greece to Sweden.^{xxii} When making a documentary about

nationalism in Europe, the three employees of the Swedish public service station SVT had met the then 15-year old Syrian boy, Abed. They helped him get to Sweden. After the airing of the documentary, they were accused of human trafficking. The defendants pleaded not guilty as they had used the boy's travel as material for their documentary and considered themselves covered by a humanitarian exception. The team had followed Abed's travel all the way through Europe and claimed they were merely observing and documenting. The Court rejected these arguments as it found that the crew had accepted that Abed made use of false papers, they helped him pretend to be a tourist and they spoke on his behalf to conductors as he did not speak English. Furthermore, the humanitarian argument was rejected, as Abed could seek asylum in many other countries before reaching Sweden.^{xxiii} The judgment is quite worrying from a freedom of expression point of view. Recently, Sweden has seen an increasing number of refugees coming to the country and there is indeed a public interest in getting informed about this issue. Though it can be debated whether national legislation leaves room for humanitarian arguments for helping a refugee child, the journalist was also documenting an important and interesting aspect of the refugee crisis. Documenting how a child travels all the way to Sweden gives a unique insight for the viewers into the current situation for refugees. When considering the public interest in the matter it is concerning that the Swedish courts did not acquit the journalist.

Finland

In 2016 Finland, one of the leading countries of freedom of expression in the world, saw a scandal that will likely make the country drop by quite a few points in the international freedom of expression ratings. The case which did not end up in court concerned an attempt by Prime Minister Juha Sipilä, a millionaire and former businessman, to silence a journalist who had criticized him. According to rumors, a company belonging to his family members had been awarded contracts from a state-backed mining company. In connection with these rumors, the Prime Minister had sent several, in his own words "emotional" emails to a journalist working for the state broadcaster YLE, complaining about his coverage of the case and adding: "My respect for YLE is now exactly zero, which of course is no different from yours for me. So now we're even."^{xxiv} At a press conference, the Prime Minister later stated: "I wanted to intervene regarding the issue that I was not given a fair chance to comment on the story. There was not the slightest intention at any stage to limit the freedom of the press or to influence what YLE says or does not say... I admit to having reacted emotionally." According to anonymous government officials,

the Prime Minister had sent 20 emails concerning the issue. After the press conference, YLE stopped several stories about the emails but denied that this was due to pressure from the Prime Minister. However, a TV presenter noted that he had been warned not to discuss the case.^{xxv}

Though the case did not end up in court this incident is a clear example of how the winds might be changing for freedom of expression in Finland. It is indeed worrying that an elected prime minister seeks to influence the free media when criticized for his actions.

ⁱ <http://politiken.dk/kultur/medier/art5715584/Dom-i-Se-og-H%C3%B8r-sagen-Henrik-Qvortrup-id%C3%B8mt-f%C3%A6ngsel>

ⁱⁱ <http://politiken.dk/kultur/medier/art5715584/Dom-i-Se-og-H%C3%B8r-sagen-Henrik-Qvortrup-id%C3%B8mt-f%C3%A6ngsel>

ⁱⁱⁱ Translated from Danish.

^{iv} Violation of the Danish penal code, Article 266b.

^v Translated from Danish.

^{vi} <http://nyheder.tv2.dk/krimi/2016-02-11-raser-over-racismedom-de-begraenser-min-ytringsfrihed>

^{vii} See Article 114b, para. 3, concerning financial support to terrorism.

^{viii} <https://www.information.dk/indland/2014/10/kurdere-frifundet-ulovligt-sympatisere-pkk?rel>

^{ix} <https://www.information.dk/indland/2016/06/kurdere-frifundet-terrorstoette>

^x <http://nyheder.tv2.dk/politik/2016-12-23-frifundet-for-at-kalde-stoejberg-fascist>

^{xi} http://www.ombudsmanden.dk/find/nyheder/alle/forsvarschef_skabte_usikkerhed_om_de_ansattes_ytringsfrihed/udtalelse/, see also <http://jyllands-posten.dk/indland/ECE8805689/ombudsmand-kritiserer-forsvarschef-for-at-true-med-fyring/>

^{xii} <https://globalfreedomofexpression.columbia.edu/cases/norwegian-prosecution-authority-v-x/>;

https://www.nrk.no/kultur/domt-for-hets-mot-haddy-n_jie-1.12933988

^{xiii} <http://www.dagsavisen.no/roganytt/skrev-spreng-bussen-pa-facebook-na-ma-han-svare-for-netthets-1.769803>

^{xiv} <https://www.facebook.com/notes/politiets-nettpatrolje-kripos/ytringsfrihet-og-hatefulle-ytringer/1618121871546713/>

^{xv} <https://tips.kripos.no/cmssite.asp?c=1&s=8&menu=5>

^{xvi} <https://www.amnesty.no/aktuelt/farlig-%C3%A5-la-e-tjenesten-overv%C3%A5ke-alle>

^{xvii} <http://www.hd.se/2016-10-11/frias-fran-hets-mot-folkgrupp-pa-grund-av-tourettes-syndrom>

^{xviii} <http://www.hd.se/2016-11-08/svalovsbo-doms-for-hets-mot-folkgrupp>

^{xix} <http://www.helahelsingland.se/orebro-lan/orebro/nazistsajt-hyllade-hitler-pa-fodelsedagen-atalad-begar-att-jury-avgor-skuldfragan> ; <https://www.lexbase.se/nyheter/tidningen-nordfront-ansvarig-utgivare-falls-for-hets-mot-folkgrupp/1006?s=24ed68613b4c562512f678297fca1dc6>

^{xx} <http://www.friatider.se/skrev-neger-p-flashback-d-ms-till-skyddstillsyn>

^{xxi} <http://www.friatider.se/afrikan-d-ms-f-r-att-ha-kallat-arab-f-r-zigenare>

^{xxii} <http://nyheder.tv2.dk/udland/2017-02-09-svensk-journalist-doemt-for-menneskesmugling-hjalp-syrisk-dreng-til-stockholm>

^{xxiii} <http://politiken.dk/kultur/medier/art5826928/Svensk-tv-hold-d%C3%B8mt-for-menneskeshymugling>

^{xxiv} <https://www.ft.com/content/ab69edbc-b71e-11e6-ba85-95d1533d9a62>

^{xxv} Ibid.