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NORWEGIAN SUPREME COURT: WAR ON TERROR AND JOURNALISTIC SOURCES

On the 20th of November 2015 the Norwegian Supreme Court issued a seminal 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.

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The Supreme Court invalidated the seizure based on the “comprehensive protection of unpublished material which may expose unidentified journalistic sources”, as established by Article 10 of the European Convention on Human Rights (ECHR) and the practice of the European Court.

“The decision is extremely important to the press, as it assures our potential sources that they can rely fully on our promises of confidentiality”, says Ms. Kjersti Løken Stavrum, General Secretary of The Norwegian Press Association.

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.

In citing the practice of the European Court relating to ECHR Article 10, the Supreme Court confirmed unequivocally that, inter alia:

- The applicable scope of Article 10 correlates to the potential “chilling effect” on journalists’ access to sources,
- The decisive issue is not necessarily whether the seized material identifies a source, when the search warrant is widely construed so as to potentially expose journalistic sources,
- Protection of journalistic privileges under Article 10 extends to unpublished material, i.e. raw footage – in principle even if it does not identify a specific source,
- Interference with protection of journalistic sources cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest, i.e. violations related to terrorism such as in this case.

The Supreme Court found unanimously that there were strong grounds for protecting journalistic privileges in this case, reasoning that 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.

Mr. Vidar Strømme, from the law firm Schjødt, representing the Association of Norwegian Editors before the Supreme Court, considers the decision to very important, as it is based on a thorough understanding of the need for a free press, even in times of crisis. This is contrary to an international tendency of scarifying the protection of sources in the war on terror.

An English translation of the Supreme Court decision is attached.



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