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"JUSTICE AND THE MEDIA"

National report

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the delegation of Norway

I. Norwegian legislation on access to information and journalists' access to hearings and court files.

In accordance with inter alia Article 6 of the European Convention of Human Rights (ECHR), freedom of information is the main principle in the Norwegian judicial system. This principle has three elements:

i) First of all, according to the Courts Act section 124, the public has free access to court hearings.
ii) Furthermore, the press, and media in general, are allowed to report from the hearings without restrictions.
iii) The third element is availability to the public of information contained in the courts' decisions, ensured by the Courts Act section 124. The press and the media may publish such decisions.

There are some exceptions:

i) According to the Courts Act section 125, the court may decide that a hearing should be held – wholly or partly - in camera.
ii) The court may also, according to the Courts Act section 129, decide on reporting restrictions on the hearing.
iii) And, finally, according to the Courts Act section 130, the court may also forbid publication – wholly or partly – of a court's decision.

Such decisions are based on the court's discretion, balancing the conflicting interests of - in most cases – the right to information, on the one hand, and protection of privacy or the interest of clarification of the case, on the other.

Some specific restrictions concerning publication of evidence are codified in the Criminal Procedure Act Part III, Chapter 10, and in the Civil Proceedings Act Part II, Chapter 15 on Witnesses. The court may decide on restrictions, both in civil and criminal cases, e.g. concerning:

- Evidence related to the interests of national security or relations with a foreign State
- Evidence that a witness cannot give without breaching a statutory duty of secrecy, or
- Revealing industrial secrets
- The same applies to the editor of a printed publication concerning who is the source of any information contained in an article in the publication.

There are no regulations concerning the right of third parties to acquaint themselves with the procedural materials and the processing of a civil case. The statutory duty of secrecy for any judge or other employee at court, with reference to the Courts Act section 63a, will often prevent third parties from getting any other information than courts decisions and protocols.
The Civil Procedure Commission, presenting a draft version of the Civil Proceedings Act in 2001

- still not approved by the Parliament - suggested that third parties, i.e. the media in particular, should have the right to inspect procedural materials during the course of the preparation of the case. The Ministry of Justice submitted a bill to Parliament on the draft version of the new Civil Proceedings Act in March 2005.

In criminal cases the press has no right to inspect any procedural materials during the preparation of the case, except for the indictment.

When the date and time for a hearing is settled, and due notice of the hearing has been given to the parties involved, the court is obliged to enter the case on a list of court hearings. The list is made public on the National Court Administration web site.

II. The application of Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings.

For statutes concerning the Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings, reference is made to No I above. Neither the existing Freedom of information Act, nor the draft version of a revised act, comprises judiciary authorities, see III below.

In addition notice could be taken of the Code of Ethics of the Norwegian Press, after which each editor and editorial staff should:

- avoid presumption of guilt in crime and court reporting, and make it evident that the question of guilt, whether relating to somebody under suspicion, reported, accused or charged, has not been decided until the sentence has legal efficacy;
- report the final result of court proceedings which have been reported earlier;
- always consider how reports on accidents and crime may affect the victims and next of kin;
- be cautious in the use of names and pictures and other items of definite identification in court and crime reporting;
- show particular consideration when writing about cases still being investigated, and cases involving young offenders;
- refrain from identification unless this is necessary to meet just and fair demands for information.

III. The application of Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents.

Act of 19 June 1970 No. 69 relating to public access to documents in the public administration (the Freedom of Information Act) seems in general to cover - and to some extent broaden - the principles and minimum standards set out in Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents.

The Freedom of Information Act applies to such activities as are conducted by administrative agencies, i.e. any central or local government body and even private legal entities in cases where they make individual decisions or issue regulations on behalf of the government, cf. section 1 of

the Act. The Act does not apply to the judicial sector.

According to section 2, the main provisions of the Act are:

i) Case documents of the public administration are public insofar as no exception is made by or pursuant to statute;
ii) Any person may demand to be appraised by the pertinent administrative agency of the publicly disclosable contents of the documents in a specific case. The same applies to case registers and similar registers and the agenda of meetings of publicly elected municipal and county municipal bodies;
iii) Notwithstanding that a document may be exempted from public disclosure pursuant to the provisions of the Freedom of Information Act, the administrative agency shall consider whether the document should nevertheless wholly or partly be made public.

The case documents of the public administration are documents, which are drawn up by an administrative agency, as well as documents, which have been received by or submitted to such an agency. A logically limited amount of information stored in a medium for subsequent reading, listening, presentation or transfer, shall be regarded as a document. Electronic documents are therefore covered.

There are some limitations in the right of access to official documents, which in general seem to be correspondent with the limitations mentioned in the Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents.

The administrative agency shall, with due regard for the proper conduct of the case, decide how a document is to be disclosed to the person who has requested to examine it, and shall within reasonable limits provide - free of charge - on request, a transcript, print out or copy of the document.

Requests to examine documents shall be decided without undue delay. A person whose request to examine a document has been refused may appeal against the refusal to the administrative agency that is immediately superior to the administrative agency that has made the decision.

There is ongoing revision of the Freedom of Information Act, and a draft version – still not submitted to the Parliament - was presented in 2003. The Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents is one of the sources of law for the draft version.

IV. Relevant national case-law on freedom of expression, protection of privacy and human dignity.

Under Norwegian defamation law, three kinds of remedies exist for unlawful defamation, namely the imposition of a penalty under sections 246 and 247 of the Penal Code, an order under section 253 of that Code declaring the defamatory allegation null and void, and finally an order under the Damage Compensation Act 1969 to pay compensation to the aggrieved party. The texts of these legal provisions are provided in the Norwegian answer from March 2005 to the Questionnaire "Justice and Society".

According to the Penal Code sections 246 and 247, a person who unlawfully defames another person, shall be liable to fines or imprisonment. However, the case-law in this area shows that imprisonment is not used, and fines are rare. The important and practical sanctions are compensation to the aggrieved party in accordance with the Damage Compensation Act, and – to a certain extent – orders declaring a statement null and void.

It follows from case-law and leading legal writers that there are different thresholds for defamation as to whether the alleged aggrieved party is a public figure or not. In discussions relating to the political arena, and current debates on social affairs, freedom of speech will in most cases weigh more heavily than the rules on defamation. Politicians, police officers and chief executive officers are examples of figures for which the threshold according to case law is different. In a decision from 1990 (The Norwegian Legal Gazette, Rt. 1990 page 257), the Supreme Court held that the editor's note in a newspaper had to be viewed in light of the on-going political election campaign, and the fact that the statements concerned a politician. The Court noted that freedom of expression with regard to politics was of great importance.

According to the Norwegian Penal Code section 249.3, no penalty pursuant to sections 246 and 247 shall be imposed on any person who is under a duty or obligation to express his opinion or who has expressed his opinion while legitimately taking care of his own or another's interests if it is established that he has shown proper care in all respects.The last alternative has special significance for securing the freedom of the media to report.

In a case from 2000 (The Norwegian Legal Gazette, Rt. 2000 page 279) a newspaper had printed an article on an administrative decision concerning the suspension of two driving instructors' official licences. The instructors sued for compensation and requested eight statements to be declared null and void. The newspaper did not deny that the article might include defamatory statements and that evidence proving the truth of the allegations had not been adduced. The Supreme Court attached considerable weight to the fact that the case concerned an essentially correct article about an administrative decision. The administrative decision had been passed after an adversarial procedure, and the journalist had gained access to the decision in accordance with the provisions of the Freedom of Information Act. The subject matter was considered to be of public interest, and the appeal from the aggrieved parties was dismissed.

With regard to reporting related to the provisional arrest of a citizen on the basis of a criminal charge, it is considered defamatory should the media's coverage extend to other than a factual and sober report of the status and basis of the case, cf. section 249 of the Penal Code.

The situation to day is that the practice of the European Court of Human Rights is the primary source of law for Norwegian courts when drawing the line between unlawful defamatory statements and freedom of speech.

The courts have a wide discretion with regard to assessing compensation for loss of future income and suffering. In one case the Supreme Court awarded the following compensation to a surgeon who claimed loss of business after several newspaper articles: Loss of income NOK 2.000.000, compensation for damages NOK 200.000, loss of future income NOK 500.000 and the non-pecuniary damage NOK 1.000.000. 1 € equals about NOK 8. The Supreme Court noted that when fixing reparation, regard had been made to the exceptional pressure that the surgeon had endured over a long period of time, due to the articles.

The award mentioned above is exceptional. Recent case-law seems to indicate a normal level of compensation for non-pecuniary damage of NOK 20 000 – 100 000. However, in the last five years very few claims of defamation have been successful as Norwegian courts attach great importance to the freedom of expression. In the last five years, the Supreme Court has held for the aggrieved party in only one of the eight cases heard by the court.

In practice, and as far as the media is concerned, ethical rules and voluntary complaints procedures play a larger part than the courts in the field of protection of privacy. The Press Complaints Commission, composed of members from the press and an equal number of representatives from the public, received 267 complaints last year, exceeding the number of complaints in 2003 by 46 %. When deciding the complaints, the Commission applies the Code of Ethics described under No. 2 above.