

PERMANENT REPRESENTATION OF DENMARK

Strasbourg

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15-05-2015

Dear Matjaž Gruden,

The Danish Government has received your e-mail of 2 April 2015 in which you inform the Government about an alert regarding Denmark that has been submitted by the partner organisation *Reporters without borders* on behalf of two Danish journalists, Mr Nils Mulvad and Mr Kjeld Hansen.

The case concerns a number of articles published by the two journalists on the webpage www.aabenhedstinget.dk. The purpose of the articles was to spread knowledge about the occurrence of MRSA infections in Danish pig herds and among persons with relation to the herds.

The articles disclosed the identity of two persons who were infected with MRSA. It appeared from one of the articles that the disclosed information came from an anonymous source at the Public Health Medical Officers (*Embedslægeinstitutionen*).

On 22 May 2014, Aarhus District Court convicted Kjeld Hansen – who had written the articles – for a violation of section 152(d)(2) of the Criminal Code, cf. section 10 of the Act on media responsibility, and Nils Mulvad – as editor of the webpage – for a violation of section 152(d)(2) of the Criminal Code, cf. section 13 of the Act on media responsibility.

With permission from the Appeals Permission Board (*Procesbevillingsnævnet*), Nils Mulvad appealed Aarhus District Court's judgment to the High Court of Western Denmark.

On 17 March 2015, the Western High Court upheld the District Court's judgment with the amendment that the sentence was raised from 5 to 10 day fines of 500 DKK each.

Section 152(d)(2) of the Criminal Code is worded as follows (emphasis added):

"The same penalty is imposed on any person who unduly discloses personal details on individuals, see section 28(1) of the Public Administration Act (*forvaltningsloven*), deriving from violation of sections 152-152c without being complicit in the act."

In its judgment, the High Court noted, *inter alia*, that Nils Mulvad could not legally disclose the identity of persons who were infected with MRSA, unless he had a justified interest in acting for the benefit of the general public interest, cf. section 152(e)(2) of the Criminal Code.

In this connection, the High Court stated that the problems with MRSA undoubtedly had a particular public interest. However, there was no basis for assuming that the identity of persons who were infected with MRSA was of relevance to the media's possibility to cover the problem at hand.

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As appears from the above, both journalists were convicted for unduly disclosure of the identity of persons who were infected with MRSA, and not – as seems to appear from the alert – for exposing “a public health scandal”.

It should be noted that Nils Mulvad has requested the Appeals Permission Board for permission to bring the High Court’s judgment before the Danish Supreme Court. However, the board has not yet decided whether to grant permission. Thus, Nils Mulvad has not exhausted national remedies before submitting the alert to the platform, i.e. to the international level.

As regards Kjeld Hansen, it should be noted that he too has not exhausted national remedies before submitting the alert to the platform. Kjeld Hansen had the opportunity to request permission from the Appeals Permission Board to appeal Aarhus District Court’s judgment to the High Court of Western Denmark, which he however did not do.

As none of the journalists have exhausted national remedies, the Government is of the opinion that the platform should refrain from dealing with the alert, especially since the journalists are attempting to use the platform as complaint body parallel to the European Court of Human Rights.

To the Government it is surprising that the platform has decided to communicate the alert.

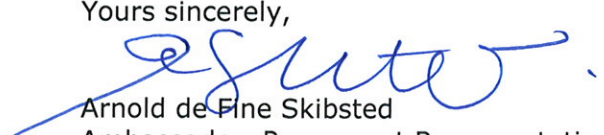
In this connection the Government notes that it follows from the Memorandum of Understanding on the establishment of the platform that its purpose is to record and highlight only *serious concerns* about media freedom and journalist’s rights. Also, it follows from the Council of Europe’s webpage that the platform should deal with factual information “concerning serious physical threats to journalists and other media personnel, threats to the confidentiality of media sources and forms of political or judicial intimidation”.

In the Government’s opinion, the case in hand is clearly different from such cases.

Furthermore, in the Government’s opinion, the present case is an example of a case which – at the European level – should be dealt with by the European Court of Human Rights. The legal basis of the Court would be mainly Article 10 of the European Convention of Human Rights providing for the Court to make a balance between on the one hand, the right of journalists’ to cover subjects of particular public interest and, on the other hand, the right to respect for private life.

The Government is at the disposal of the platform in case of any questions or comments to this letter or the case in hand.

Yours sincerely,



Arnold de Fine Skibsted
Ambassador, Permanent Representative