

# HØJESTERETS DOM

## afsagt mandag den 4. marts 2019

**Sag 137/2018**

(2. afdeling)

Anklagemyndigheden

mod

T

(advokat Morten Bjerregaard Nielsen, beskikket)

I tidligere instanser er afsagt dom af Retten på Frederiksberg den 28. marts 2017 og af Østre Landsrets 16. afdeling den 11. oktober 2017.

I pådømmelsen har deltaget fem dommere: Lene Pagter Kristensen, Vibeke Rønne, Kurt Rasmussen, Jens Kruse Mikkelsen og Anne Louise Bormann.

### **Påstande**

Dommen er anket af T med påstand om frifindelse, subsidiært strafbortfald, mere subsidiært formildelse.

Anklagemyndigheden har påstået stadfæstelse.

### **Anbringender**

T har anført bl.a., at uanset at hans Facebook-opslag var i strid med forbuddet mod at gengive navnet på A, der var sigtet for drabsforsøg på B, vil det være i strid med Den Europæiske Menneskerettighedskonventions artikel 10, hvis han straffes herfor.

Allerede i begyndelsen af 2016, da han offentliggjorde sine første Facebook-opslag, var der en stærk mistanke om, at A efter sin løsladelse i Tyrkiet i 2014 var draget til Syrien for at slutte sig Islamisk Stat. Denne mistanke blev yderligere underbygget i november 2016 ved det

amerikanske udenrigsministeriums erklæring herom. Når As formodede drabsforsøg ses i dette lys, er der tale om en meget alvorlig forbrydelse af særlig offentlig interesse. Det kræver derfor meget tungtvejende grunde at gøre indgreb i adgangen til at ytre sig herom, og sådanne grunde foreligger ikke.

Baggrunden for, at der overhovedet blev nedlagt navneforbud, var, at A blev varetægtsfængslet in absentia, og dermed ikke havde haft lejlighed til at udtale sig i sagen. Efter As anholdelse – og senere løsladelse – i Tyrkiet i 2014 havde han imidlertid mulighed for at udtale sig i sagen, og den samfundsmæssige interesse i sagens oplysning oversteg i hvert fald fra dette tidspunkt klart hensynet til A. Det forhold, at retten fandt, at der var grundlag for varetægtsfængsling in absentia, understøtter formodningen for As skyld, hvilket yderligere taler for, at hensynet til ham må være begrænset.

Da han offentliggjorde sine Facebook-opslag var oplysningerne om, at A var mistænkt for drabsforsøget på B, allerede offentlig kendt, bl.a. gennem Bs bog "[...]", en række internetmedier, samt artikler og anmeldelser i Berlingske, Jyllands-Posten, Lokalavisen Frederiksberg og The Economist. Det vil derfor være i strid med Menneskerettighedskonventionens artikel 10, hvis han straffes for overtrædelse af navneforbuddet, da dette – i lyset af at navnet var offentligt kendt – ikke var nødvendigt.

Menneskerettighedskonventionens artikel 10 giver i øvrigt en videre beskyttelse af mediernes ytringsfrihed. Samfundsudviklingen har betydet, at mediernes rolle som "public watchdog" i dag ikke alene varetages af de traditionelle medier som radio, tv og aviser, men også af debattører, der anvender digitale medier som f.eks. Facebook. Den særlige beskyttelse, der tilkommer medier, må derfor også tilkomme sådanne debattører. Det vil på den baggrund være uproportionalt at straffe ham. Det skal i den forbindelse tillægges betydning, at han alene har offentliggjort As navn på Facebook, og at opslagene – uanset at de har været offentligt tilgængelige – reelt alene har haft en meget begrænset udbredelse og gennemslagskraft.

Hvis Højesteret mod forventning måtte finde, at der er grundlag for at straffe ham for overtrædelse af navneforbuddet, skal straffen på grund af sagens særlige omstændigheder bortfalde, jf. straffelovens § 83.

Anklagemyndigheden har anført bl.a., at T har overtrådt retsplejelovens § 32 b, stk. 2, jf. § 31, stk. 1, ved – i strid med et nedlagt navneforbud – på sin Facebook-profil at have gengivet navnet på A, der er sigtet for drabsforsøg på B.

Idømmelse af straf for Ts overtrædelse af navneforbuddet er ikke i strid med Den Europæiske Menneskerettighedskonventions artikel 10. Navneforbuddet udgør en indskrænkning i yttringsfriheden, men denne er nødvendig i et demokratisk samfund, jf. konventionens artikel 10, stk. 2. Hensynet til yttringsfriheden må efter Menneskerettighedsdomstolens praksis i en sag som den foreliggende afvejes over for retten til privatliv i konventionens artikel 8, og uskyldsformodningen i konventionens artikel 6. Ved denne afvejning skal der bl.a. lægges vægt på den sigtedes person, herunder om denne er offentligt kendt, straffesagens karakter, samt om sagen vedrører et emne af offentlig interesse.

A var ikke en offentligt kendt person. Drabsforsøget på B var nok et emne af offentlig interesse, men oplysningen om, hvem der var sigtet for drabsforsøget, var ikke af en sådan samfundsmæssig relevans, at hensynet til yttringsfriheden vejede tungere end hensynet til den sigtede. Den debat, som T søgte at rejse ved sine opslag på Facebook, angik i øvrigt navnlig det rimelige i, at der kunne nedlægges navneforbud i en sag af den pågældende karakter, og det må antages, at en sådan debat kunne rejses, uden at det var nødvendigt at afsløre navnet på den sigtede.

Det forhold, at de amerikanske myndigheder er af den opfattelse, at A er eller har været tilsluttet Islamisk Stat i Syrien, jf. herved det amerikanske udenrigsministeriums erklæring af 22. november 2016, og at der muligvis også forud for denne erklæring verserede rygter om, at A skulle have tilsluttet sig Islamisk Stat, er uden betydning for den proportionalitets- og nødvendighedsvurdering, der skal foretages efter konventionens artikel 10, idet A i sagen om drabsforsøget på B ikke var – og fortsat ikke er – sigtet for terrorisme, men derimod alene for drabsforsøg. Ved proportionalitets- og nødvendighedsvurderingen må det derimod indgå, at der er tale om en sag, hvor den sigtede endnu ikke har været afhørt af dansk politi, og hvor der således ikke er taget stilling til, om der er grundlag for at rejse tiltale mod ham for drabsforsøg.

Det forhold, at As navn allerede var offentliggjort, da T overtrådte navneforbuddet, indebærer ikke, at der foreligger sådanne informationsretlige hensyn, at straf for overtrædelse af navneforbuddet er i strid med Menneskerettighedskonventionens artikel 10. Det skal i den forbindelse tillægges betydning, at der alene er tale om et meget begrænset indgreb i ytringsfriheden, som ikke har medført hindringer i adgangen til at omtale sagen, og at myndighederne effektivt har håndhævet det pågældende navneforbud i denne og andre sager.

Det er korrekt, at medier efter Menneskerettighedsdomstolens praksis nyder en særlig beskyttelse efter konventionens artikel 10, men T er ikke omfattet af denne særlige beskyttelse, da han har overtrådt navneforbuddet som privatperson. Selv hvis han var omfattet af den særlige beskyttelse, der gælder for medier, ville dette ikke betyde, at hans overtrædelse af navneforbuddet var straffri.

Landsrettens fastsættelse af straffen til en bøde på 25.000 kr. er proportional og i overensstemmelse med praksis.

### **Retsgrundlag**

Den Europæiske Menneskerettighedsdomstol har i en række afgørelser taget stilling til, hvordan retten til ytringsfrihed i Menneskerettighedskonventionens artikel 10 skal afvejes over for retten til privatliv i artikel 8 og uskyldsformodningen i artikel 6 i sager om offentliggørelse af identiteten på personer, som er mistænkt eller tiltalt for et strafbart forhold.

Menneskerettighedsdomstolens dom af 11. januar 2000 i sagen News Verlags mod Østrig (nr. 31457/96) angik et nyhedsmagasin, der i en artikel om en række brevbomber, som var blevet sendt til østrigske politikere og andre fremtrædende personer, havde omtalt og vist billeder af en person, der var mistænkt for angrebene. De østrigske domstole pålagde nyhedsmagasinet at betale godtgørelse til den mistænkte, idet offentliggørelsen var i strid med uskyldsformodningen. Menneskerettighedsdomstolen fandt, at dette var i strid med Menneskerettighedskonventionens artikel 10. Herom hedder det i dommen bl.a.:

”I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

...

D. Whether the interference was ”necessary in a democratic society”

...

52. The Court recalls its well-established case-law that the adjective "necessary", with- in the meaning of Article 10 § 2 implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision embracing both the law and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10.

In exercising its supervisory jurisdiction, the Court cannot confine itself to considering the impugned court decisions in isolation; it must look at them in the light of the case as a whole, including the articles held against the applicant company and the context in which they were written. The Court must determine whether the interference at issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national courts to justify it are "relevant and sufficient" (see for instance the *Sunday Times* (no. 1) judgment cited above, p. 38, § 62; the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, pp. 29-30, § 59; and the recapitulation in *Sürek v. Turkey (no. 1)*, [GC], no. 26682/95, § 58, ECHR 1999-IV).

...

54. The articles which gave rise to the injunction proceedings were written against the background of a spectacular series of letter bombs which had been sent to politicians and other persons in the public eye in Austria and had severely injured several victims. The attacks, thus, were a news item of major public concern. The applicant company's articles dealt with the activities of the extreme right and in particular with B., who had been arrested as the main suspect. Being a right-wing extremist, he had entered the public scene well before the series of letter-bomb attacks. Moreover, it has to be borne in mind that the offences he was suspected of, namely offences under the Prohibition Act and aiding and abetting assault through letter bombs, were offences with a political background directed against the foundations of a democratic society. It may be added that the photographs of B., with the possible exception of one wedding picture, did not disclose any details of his private life. Thus, the Court cannot subscribe to the Govern- ment's argument that the publications at issue encroached upon B.'s right to respect for his private life.

These circumstances have to be taken into account when assessing whether the reasons adduced by the Austrian courts for justifying the injunctions were "relevant" and "suffi- cient" and whether the injunctions were "proportionate to the legitimate aims pursued".

55. Another factor of particular importance for the Court's determination in the present case is the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others or of the proper administration of justice, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III).

56. This duty extends to the reporting and commenting on court proceedings which, provided that they do not overstep the bounds set out above, contribute to their publicity and are thus perfectly consonant with the requirement under Article 6 § 1 of the Con- vention that hearings be public. Not only do the media have the task of imparting such

information and ideas: the public has a right to receive them (see the Worm judgment cited above, pp. 1551-52, § 50). This is all the more so where, as in the present case, a person is involved who has laid himself open to public scrutiny by expressing extremist views (see, *mutatis mutandis*, the Worm judgment, *ibid.*). However, the limits of permissible comment on pending criminal proceedings may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of justice (*ibid.*). Thus, the fact that B. had a right under Article 6 § 2 of the Convention to be presumed innocent until proved guilty is also of relevance for the balancing of competing interests which the Court must carry out (see *Bladet Tromsø and Stensaas* cited above, § 65).

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58. The Court acknowledges that there may be good reasons for prohibiting the publication of a suspect's picture in itself, depending on the nature of the offence at issue and the particular circumstances of the case. A similar line of argument was followed by the Supreme Court, which stated that even the publication of a picture accompanied by a correct statement of fact could infringe the legitimate interests of the person concerned. However, no reasons to that effect were adduced by the Vienna Court of Appeal. Nor did it, contrary to the Vienna Commercial Court, carry out a weighing of B.'s interest in the protection of his picture against the public interest in its publication which, as the Government pointed out, is required under section 78 of the Copyright Act. This is all the more surprising as the publication of a suspect's picture is not generally prohibited under section 7a of the Austrian Media Act unless the suspect is a juvenile or the offences are only of a minor nature, but depends precisely on a weighing of the respective interests. In sum the reasons adduced by the Vienna Court of Appeal, though "relevant", are not "sufficient".

59. It is true, as the Government pointed out, that the injunctions did not in any way restrict the applicant company's right to publish comments on the criminal proceedings against B. However, they restricted the applicant company's choice as to the presentation of its reports, while it was undisputed that other media were free to continue to publish B.'s picture throughout the criminal proceedings against him. Having regard to these circumstances and to the domestic courts' finding that it was not the pictures used by the applicant company but only their combination with the text that interfered with B.'s rights, the Court finds that the absolute prohibition on the publication of B.'s picture went further than was necessary to protect B. against defamation or against violation of the presumption of innocence. Thus, there is no reasonable relationship of proportionality between the injunctions as formulated by the Vienna Court of Appeal and the legitimate aims pursued.

60. It follows from these considerations that the interference with the applicant company's right to freedom of expression was not "necessary in a democratic society". Accordingly, there has been a violation of Article 10 of the Convention."

Menneskerettighedsdomstolen afviste ved afgørelse af 14. november 2002 i sagen

"Wirtschafts-Trend" Zeitschriften-Verlagsgesellschaft mod Østrig (nr. 62746/00) at behandle en sag, idet domstolen anså klagen for åbenbart grundløs. I den sag var et nyhedsmagasin ble-

vet pålagt at betale godtgørelse til en politibetjent, hvis navn var blevet nævnt i forbindelse med magasinets omtale af en sag, hvor en asylansøger var død i politiets varetægt, og hvor omstændighederne ved dødsfaldet var under efterforskning. I afgørelsen hedder det bl.a.:

”The Court notes that the subject-matter of the present article was an issue of public concern and was part of a political debate on the lawfulness of deportation practices in Austria. However, the report also contained information on criminal proceedings against the police officers, which were pending at an early stage. The Court observes that the applicant company was not prevented from reporting about all details concerning the issue except for the full name of the police officer.

As regards the reasons given by the Regional Court and the Court of Appeal, the Court notes that they took into consideration the public interest in the disclosure of the incident of the deceased deportee on his deportation flight and the alleged abusive exercise of authority of the accompanying officers. The domestic courts weighed these public interests against private interests of the aliens’ police officer concerned, against whom criminal investigation proceedings were pending at an early stage. Both courts found that the disclosure of his identity had negatively affected his private and social life and had therefore infringed his legitimate interests. The Court considers that the Austrian courts gave relevant reasons, having regard to the early stage of the criminal proceedings against Mr K. when particular care had to be taken to protect him against a ”trial by the media” and to give effect to the presumption of innocence under Article 6 § 2 of the Convention.

The Austrian courts concluded that Mr K.’s legitimate private interests prevailed over the public interest in the disclosure of his identity. The Court of Appeal noted in its judgment of 26 April 2000 that reporting on the modalities of deportation practices and criticism thereon could be done without disclosing the identity of a concerned police officer. The disclosure of his full name did not add anything of public interest to the information already given in the article that could have outweighed the interests of the person concerned in non-disclosure of his identity. The Court considers these reasons sufficient for the imposition of the relatively modest fine on the applicant company. Therefore, it finds that the domestic courts did not overstep their margin of appreciation and that the interference cannot be regarded as disproportionate in the circumstances of the case.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.”

Menneskerettighedsdomstolens dom af 10. februar 2009 i sagen Eerikäinen m.fl. mod Finland (nr. 3514/02) angik et magasin, der havde bragt en artikel om en kvinde, som var mistænkt for bl.a. socialt bedrageri. Kvindens navn var ikke nævnt i artiklen, men i artiklen var gengivet en ældre, urelateret artikel, som indeholdt kvindens fulde navn og to billeder af hende. Den finske højesteret fandt, at magasinet herved havde tilsidesat kvindens ret til privatliv. Menneske-

rettighedsdomstolen fandt, at denne afgørelse var i strid med Menneskerettighedskonventionens artikel 10. I dommen hedder det bl.a.:

”I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

...

B. The Court’s assessment

...

3. Whether the interference was necessary in a democratic society

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66. The Court can accept that the purpose of the 1997 article was to contribute to a public discussion. The criminal case brought against X was selected as an example illustrating the problems involved. While it is perfectly legitimate to use individual cases to highlight a more general problem, the question is whether the applicants went too far when they communicated X’s identity to the public. It is plain that X was not a public figure or a politician but an ordinary person who was the subject of criminal proceedings (see *Schwabe v. Austria*, 28 August 1992, § 32, Series A no. 242-B). The fact that she ran a relatively small cleaning firm and had given an interview eight years previously to a magazine, which had come about in circumstances apparently not discussed during the domestic proceedings or at any length before the Court, does not mean that she had knowingly entered the public arena (see, *mutatis mutandis*, *Fayed v. the United Kingdom*, 21 September 1994, § 75, Series A no. 294-B). X’s status as an ordinary person enlarges the zone of interaction which may fall within the scope of private life. The fact that she was the subject of criminal proceedings cannot remove from her the protection of Article 8 (see *Sciacca v. Italy*, no. 50774/99, § 28-29, ECHR 2005-I).

67. In order to assess whether the ”necessity” of the restriction of the exercise of the freedom of expression has been established convincingly, the Court must examine the issue essentially from the standpoint of the relevancy and sufficiency of the reasons given by the Supreme Court for requiring the applicants to pay compensation to X. The Court must determine whether the applicants’ liability in damages struck a fair balance between the public interest involved and X’s interests and whether the standards applied were in conformity with the principles embodied in Article 10 (see *Nikula v. Finland*, cited above, § 44).

68. The Court considers that the general subject matter which was at the heart of the article concerned – namely, the abuse of public funds – was a matter of legitimate public interest, having regard in particular to the considerable scale of the abuse. From the point of view of the general public’s right to receive information about matters of public interest, and thus from the standpoint of the press, there were justified grounds supporting the need to encourage public discussion of the matter in general.

69. The Court observes that it is not evident that the Supreme Court in its analysis as to whether the applicant’s privacy had been invaded attached any importance to the fact that the information given was based on a bill of indictment prepared by the public prosecutor and that the article clearly stated that the applicant had merely been charged.

70. Nor is it apparent what significance the Supreme Court attached to the publication of X’s photographs together with her name. The publication of a photograph must, in

the Court's view, in general be considered a more substantial interference with the right to respect for private life than the mere communication of the person's name. As the Court has held, although freedom of expression also extends to the publication of photos, this is an area in which the protection of the rights and reputation of others takes on particular importance (see *Von Hannover*, no. 59320/00, §§ 50-53 and 59, ECHR 2004-VI). Nor did the Supreme Court analyse the significance of the fact that the photographs had been taken with the applicant's consent and with the intention of their being published, albeit in connection with an earlier article and a different context.

71. Having regard to the foregoing the Court concludes that the grounds relied on, although relevant, were not sufficient to justify the interference with the applicants' right to freedom of expression, in terms of a "pressing social need".

72. There has therefore been a violation of Article 10 of the Convention."

Menneskerettighedsdomstolens dom af 10. januar 2012 i sagen Standard Verlags mod Østrig (nr. 34702/07) angik en avis, der havde bragt en artikel om en igangværende efterforskning vedrørende nogle store tab, som en bank havde lidt. En højtstående medarbejder i banken blev i artiklen nævnt som havende forbindelse til de indtrådte tab. De østrigske domstole pålagde avisen at betale godtgørelse til medarbejderen herfor. Menneskerettighedsdomstolen fandt, at denne afgørelse var i strid med konventionens artikel 10. I dommen hedder det bl.a.:

"I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

...

B. Merits

...

2. The Court's assessment

...

(b) Application of these principles to the present case

...

36. The Court agrees with the domestic courts that the case concerned a balancing of the applicant company's right to freedom of expression under Article 10 against the claimant's right to protection of his identity. In this connection the Court reiterates that the concept of "private life" protected by Article 8 of the Convention includes aspects relating to personal identity, such as a person's name or picture (see *Von Hannover v. Germany*, no. 59320/00, § 50, ECHR 2004-VI with further references).

37. In cases in which the Court has had to balance the protection of private life against freedom of expression, one factor it has taken into account is the position of the person concerned by the publication: whether or not he or she was a "public figure" or had otherwise "entered the public scene" (see, for instance, the following cases in the specific context of criminal proceedings: *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 54, ECHR 2000-I, relating to the publication of pictures of the suspect of a high-profile crime; *Verlagsgruppe News GmbH v. Austria (no. 2)*, no. 10520/02, §

36, 14 December 2006, relating to the publication of a picture of a leading business man in the context of proceedings against him for tax evasion; *Egeland and Hanseid v. Norway*, no. 34438/04, § 60, 16 April 2009, relating to the publication of pictures of a person convicted of murder in a high-profile case; *Flinkkilä and Others*, cited above, § 83, relating to the publication of the name and picture of the female friend of a senior public figure, a married man, who had both been involved in a public disturbance which gave rise to their conviction; and *Eerikäinen and Others*, cited above, § 66, concerning the disclosure of the identity and pictures of the suspect of proceedings relating to social security fraud).

38. In the present case, both the Vienna Regional Criminal Court and the Vienna Court of Appeal found that the claimant, as a senior employee of the bank in issue, was not a "public figure", nor did the fact that his father had been a politician make him a public figure. The Court agrees with this assessment. It does not consider either that the claimant can be considered to have entered the public scene. However, the Court observes that the question whether or not a person, whose interests have been violated by reporting in the media, is a public figure is only one element among others to be taken into account (see the case of *Eerikäinen and Others*, cited above, §§ 66-72, in which the publication concerned an ordinary individual but where the court nevertheless found that the order to pay damages for publishing her name and picture in the context of a report on an issue of general interest had not been "necessary" within the meaning of Article 10 § 2 of the Convention).

39. Another important factor which the court has frequently stressed when it comes to weighing conflicting interests under Article 10 on the one hand and Article 8 on the other hand, is the contribution made by articles or photos in the press to a debate of general interest (see, in the context of criminal proceedings, *News Verlags GmbH & Co.KG*, cited above, § 54; *Verlagsgruppe News GmbH (no. 2)*, cited above, § 37; *Flinkkilä and Others*, cited above, § 76; and *Eerikäinen and Others*, cited above, § 66).

40. It is not in dispute in the present case that the article reported on an issue of public interest. It concerned a banking scandal which led to enormous losses by a bank, 45% of which was owned by the *Land* of Carinthia. Against this background, the article dealt with the fact that politics and banking were intertwined on the one hand and reported on the opening of an investigation by the public prosecutor on the other hand. In this connection the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

41. Moreover, it is not in dispute that the facts reported in the article were correct. As head of the bank's treasury, the claimant held a position in the management of the bank at the material time, in which he was responsible for authorising foreign currency transactions and answerable only to the executive board. The fact that his father was a former member of the regional government was not in dispute either, nor the fact – not mentioned in the article but established by the domestic courts in the course of the proceedings – that he had been a member of the bank's supervisory board at the time when the losses were incurred and the claimant was head of its treasury.

42. The Vienna Court of Appeal relied heavily on the aspect that the article reported on the opening of criminal proceedings and, by indicating the claimant's name, presented

him as a suspect in the embezzlement of a huge sum of money. The Government, arguing that the impugned judgment had served to protect the claimant's right to be presumed innocent, appear to rely on a similar line of argument. The Court refers to the particular duties incumbent on the media in relation to providing information on criminal proceedings (see, in paragraph 19 above, the Council of Ministers Recommendation Rec(2003)13). It accepts the Vienna Court of Appeal's finding that the disclosure of a suspect's identity may be particularly problematic at the early stage of criminal proceedings.

43. However, when assessing the necessity of an interference, the Court must have regard to the article as a whole. It observes that the article at issue is not a typical example of court reporting but focuses mainly on the political dimension of the banking scandal at hand. This is already made clear by its title "Haider's Hypo now also facing criminal investigation", which refers to Mr Haider, the then Regional Governor of Carinthia, and by the introductory text in which Mr Haider is said to have accused the authorities of being "overzealous and politically motivated". Apart from reporting the fact that the public prosecutor had opened an investigation into the bank's senior management on suspicion of embezzlement, the article does not deal with the conduct or contents of the investigation as such.

44. The article's focus is instead on the extent to which politics and banking are intertwined and on the political and economic responsibility for the bank's enormous losses. It mentions that Mr Haider, who himself also represented the *Land* as a shareholder and performed a supervisory function at the bank, and Mr Kulterer from the bank's executive board, were trying to put the blame on the claimant and in this context refers to his father, member of the Socialist Party and former member of the regional government, thus hinting at motives of party politics. Names, persons and personal relationships are clearly of considerable importance in this sphere. It is difficult to see how the applicant company could have reported on these issues in a meaningful manner without mentioning the names of all those involved, including the claimant (see, *mutatis mutandis*, *Flinkkilä and Others*, cited above, § 85, where the Court also considered that the disclosure of the identity of the person concerned had a direct bearing on matters of public interest). That distinguishes the present case from a case in which the Court declared inadmissible the complaint by the publisher of an Austrian news magazine, which had been ordered to pay compensation for having disclosed the name of a police officer at an early stage of criminal proceedings against him. The Court found in that case that the disclosure of the police officer's name did not add anything to the information already given in the article (*Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft mbH v. Austria* (no. 2) (dec.), no. 62746/00, ECHR 2002-X).

45. Furthermore, the Court observes that the Vienna Court of Appeal referred to the Regional Court's finding that the disclosure of Mr Rauscher's identity had been detrimental to him, namely to his professional advancement. However, it did not counter the Regional Court's argument that his name and position at Hypo Alpe-Adria must have been well known in business circles before the publication of the article at issue.

46. In sum, the Court finds that the reasons adduced by the Vienna Court of Appeal, though being "relevant" were not "sufficient". The Court therefore considers that the domestic courts have overstepped the narrow margin of appreciation afforded to them with regard to restrictions on debates of public interest. It follows that the interference

with the applicant company's right to freedom of expression was not "necessary in a democratic society".

47. Consequently, there has been a violation of Article 10 of the Convention."

Menneskerettighedsdomstolens dom af 17. januar 2012 i sagen Lahtonen mod Finland (nr. 29576/09) angik en politibetjent, der var sigtet for bl.a. biltyveri. Betjenten havde mod betaling deltaget i et interview om sagen med en anden avis end den, sagen ved Menneskerettighedsdomstolen angik. Hans navn fremgik ikke af interviewet, men det gjorde et profilbillede. Det var endvidere oplyst, at han var i psykiatrisk behandling. Betjenten havde ligeledes forsøgt at sælge et interview til den avis, som sagen ved Menneskerettighedsdomstolen vedrørte. Denne avis bragte efterfølgende en artikel om betjenten. Artiklen indeholdt bl.a. betjentes navn, fødeår og baggrundsinformation om ham. Herudover var det oplyst, at retten havde bestemt, at der skulle foretages psykiatriske undersøgelser af ham. Betjenten blev senere fundet skyldig i forbrydelserne, men straffen bortfaldt på grund af hans psykiske tilstand. Betjenten klagede efterfølgende over, at avisen havde bragt hans navn og oplysninger om, at han skulle undergå psykiatriske undersøgelser. De finske domstole pålagde avisen at betale godtgørelse til betjenten. Menneskerettighedsdomstolen fandt, at denne afgørelse var i strid med konventionens artikel 10. I dommen hedder det bl.a.:

"I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

...

B. Merits

...

2. The Court's assessment

...

3. Whether the interference was necessary in a democratic society

...

72. The Court observes at the outset that the impugned article described the details of the incident of 29 July 2003 and it included J.'s name, year of birth, some background information about him and his current place of work. The information in the article was based on the public court documents acquired by the applicant from the District Court after the hearing on 3 February 2004. It also stated that J. had wished to undergo a psychiatric assessment before the court's decision was made and that he had been ordered to do so by the court.

73. The Court notes that these facts were presented in an objective manner. There is no evidence, or indeed any allegation, of factual misrepresentation or bad faith on the part of the applicant. Nor is there any suggestion that details about J. were obtained by subterfuge or other illicit means (compare *Von Hannover v. Germany*, cited above, § 68).

The facts set out in the articles in issue were not in dispute even before the domestic courts.

74. It is clear that J. was an experienced police officer whose duties involved the exercise of public power. The offences were not committed in office but in J.'s free time. However, he had used the authority of his public function to commit the offences. Criminal charges were preferred against him and he was later convicted as charged but the sentence was waived due to his mental illness. The Court notes that even though the offences committed as such might appear ordinary, it was very rare for such offences to be committed by a police officer.

75. The Court further observes that the impugned article focused on explaining the course of the events as they had been recounted by J. during the pre-trial investigation. This information was public. No details of J.'s private life were mentioned, except his name and the fact that he had wished to undergo a psychiatric assessment before the court's decision was made and that he had been ordered to do so by the court. Practically the same information was given by J. in the course of an interview given to another magazine.

76. Moreover, it is to be noted that the disclosure of J.'s identity in the reporting had a direct bearing on matters of public interest, namely his conduct and his ability to continue in his post as a police officer. As J. was a police officer, it is difficult to see how his acts, even if committed during his free time, were not a matter of public interest. Therefore, the Court considers that there was a continuing element of public interest involved in the reporting.

77. The Court further notes that the emphasis in the article in question was clearly on J.'s account of the course of events. There was hardly any comment made by the applicant in the article. Even though the article was written and published before J.'s conviction, the reporting and commenting on his court proceedings were objective and irreproachable from the point of view of Article 6 § 2 of the Convention.

78. Finally, the Court has taken into account the severity of the sanctions imposed on the applicant, including the issue of civil liability which has meanwhile become final (see paragraph 27 above). The applicant was convicted under criminal law and was ordered to pay thirty day-fines, amounting to EUR 1,170. In addition, he was, together with the publishing company, ordered to pay damages to J. in a total amount of EUR 5,000 plus interest and his legal fees amounting to EUR 2,140. Moreover, the applicant alone was ordered to pay J. costs and expenses in the amount of EUR 4,000 and EUR 4,200. The amounts of compensation must be regarded as substantial, given that the maximum compensation afforded to victims of serious violence was approximately FIM 100,000 (EUR 17,000) at the time (see paragraph 40 above).

79. The Court would observe in this connection that recourse to criminal sanctions in order to punish media professionals who publish newspaper reports which are found to invade an individual's privacy is not, as such, incompatible with Article 10 of the Convention. However, it is only in exceptional circumstances that such sanctions can be justified (see *Saaristo and Others v. Finland*, no. 184/06, § 69, 12 October 2010; and *Yleisradio Oy and Others v. Finland* (dec.), no. 30881/09, 8 February 2011; as regards defamation and insult, see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §

115, ECHR 2004-XI; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 59, ECHR 2007-IV; and *Długotęcki v. Poland*, no. 23806/03, § 47, 24 February 2009). No such exceptional circumstances exist in the present case.

80. The Court considers that such severe consequences, viewed against the background of the circumstances resulting in the interference with J.'s right to respect for his private life, were disproportionate having regard to the competing interest of freedom of expression.

81. In conclusion, in the Court's opinion the reasons relied on by the domestic courts, although relevant, were not sufficient to show that the interference complained of was "necessary in a democratic society". Moreover, the totality of the sanctions imposed was disproportionate. Having regard to all the foregoing factors, and notwithstanding the margin of appreciation afforded to the State in this area, the Court considers that the domestic courts failed to strike a fair balance between the competing interests at stake.

82. There has therefore been a violation of Article 10 of the Convention."

Også i andre sager for Menneskerettighedsdomstolen er det indgået i vurderingen af, om en restriktion af ytringsfriheden er i strid med artikel 10, om den information, hvis videregivelse myndighederne vil forhindre, i forvejen er offentligt tilgængelig. Det gælder f.eks. dom af 9. februar 1995 i *Vereniging Weekblad Bluf! mod Holland* (nr. 16616/90), som angik de hollandske myndigheders fogedforbud mod og beslaglæggelse af en udgave af ugemagasinet *Bluf!*, der indeholdt en beskrivelse af den hollandske efterretningstjenestes aktiviteter. Medarbejderne på ugemagasinet genoptrykte samme nat – uden myndighedernes viden – den pågældende udgave af ugemagasinet, og solgte dagen efter, der var national fredag, et større antal eksemplarer i Amsterdams gader. Ugebladet anmodede efterfølgende om, at de beslaglagte eksemplarer blev udleveret, hvilket blev afvist af de hollandske myndigheder. Ca. et år senere traf de hollandske domstole afgørelse om, at den pågældende udgave af ugemagasinet skulle tilbagekaldes. Menneskerettighedsdomstolen fandt, at denne afgørelse var i strid med konventionens artikel 10. Herom hedder det i dommen bl.a.:

"I. ALLEGED VIOLATION OF ARTICLE 10 (art. 10) OF THE CONVENTION

...

B. Justification for the interferences

...

3. "Necessary in a democratic society"

...

38. The Government maintained that as the seizure complied with the requirements of Article 10 para. 2 (art. 10-2), the same was true of its prolongation and of the subsequent withdrawal from circulation, since these were designed to prevent the report

from falling into the hands of unauthorised persons. The information should have remained confidential. It was for the State to decide whether it was necessary to impose and preserve such confidentiality. The State was also in the best position to assess the use that might be made of the information by subversive elements to the detriment of national security. Against that background, it should be allowed a wide margin of appreciation.

The Netherlands authorities had refrained from preventing distribution of the reprint solely for fear of causing serious public disorder in view of the vast crowds on the streets of Amsterdam on 30 April 1987, the Queen's birthday. The withdrawal from circulation remained in force after that date because the journal had been distributed only locally and in limited quantities. The figure of 2,500 copies sold, advanced by the applicant association, was exaggerated. Moreover, to hold that the measures were no longer effective following distribution of the periodical would be tantamount to accepting that "crime pays".

Lastly, the instant case differed from the cases of *Weber v. Switzerland* (judgment of 22 May 1990, Series A no. 177, p. 23, para. 51), *The Sunday Times v. the United Kingdom* (no. 2) (judgment of 26 November 1991, Series A no. 217, p. 30, para. 54) and *Open Door and Dublin Well Woman v. Ireland* (judgment of 29 October 1992, Series A no. 246-A, p. 31, para. 76). In this instance, unlike the situation in the first of those cases, the Netherlands authorities had brought proceedings to prevent publication; and, unlike the situation in the other two cases, the information in the report could not be obtained by other means.

...

43. The withdrawal from circulation, on the other hand, must be considered in the light of the events as a whole. After the newspaper had been seized, the publishers reprinted a large number of copies and sold them in the streets of Amsterdam, which were very crowded (see paragraphs 11 and 38 above).

Consequently, the information in question had already been widely distributed when the journal was withdrawn from circulation. Admittedly, the figure of 2,500 copies advanced by the applicant association was disputed by the Government. Nevertheless, the Court sees no reason to doubt that, at all events, a large number were sold and that the BVD's report was made widely known.

44. In this latter connection, the Court points out that it has already held that it was unnecessary to prevent the disclosure of certain information seeing that it had already been made public (see the *Weber* judgment previously cited, pp. 22-23, para. 49) or had ceased to be confidential (see the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, pp. 33-35, paras. 66-70, and the *Sunday Times* (no. 2) judgment previously cited, pp. 30-31, paras. 52-56).

45. Admittedly, in the instant case the extent of publicity was different. However, the information in question was made accessible to a large number of people, who were able in their turn to communicate it to others. Furthermore, the events were commented on by the media. That being so, the protection of the information as a State secret was no longer justified and the withdrawal of issue no. 267 of *Bluf!* no longer appeared nec-

essary to achieve the legitimate aim pursued. It would have been quite possible, however, to prosecute the offenders.

46. In short, as the measure was not necessary in a democratic society, there has been a breach of Article 10 (art. 10).”

### **Højesterets begrundelse og resultat**

T er fundet skyldig i fra januar til maj 2016 i 10 opslag på Facebook i strid med et navneforbud at have gengivet navnet på en sigtet i en straffesag. Navneforbuddet blev nedlagt i april 2014, idet byretten vurderede, at offentlig gengivelse af navn, stilling eller bopæl på sigtede, som var varetægtsfængslet in absentia som sigtet for forsøg på manddrab, ville udsætte denne for en unødvendig krænkelse, jf. retsplejelovens § 31, stk. 1, nr. 2. Navneforbuddet blev opretholdt ved kendelser i oktober 2014 og januar 2016, som blev stadfæstet af landsretten. Navneforbuddet blev ophævet i november 2016, bl.a. fordi retten på dette tidspunkt vurderede, at det beroede på sigtedes egne forhold, at han endnu ikke var afhørt af dansk politi, og at betingelserne for navneforbud derfor ikke længere var opfyldt.

Denne sag angår i første række, om håndhævelse af navneforbuddet er i strid med Ts ret til ytringsfrihed efter Den Europæiske Menneskerettighedskonventions artikel 10.

Efter Den Europæiske Menneskerettighedsdomstols praksis skal der ved afgørelsen af, om et forbud mod at offentliggøre identiteten på en sigtet i en straffesag er foreneligt med artikel 10, foretages en afvejning af hensynet til ytringsfriheden over for hensynet til den sigtedes privatliv, jf. artikel 8, og hensynet til uskyldsformodningen, jf. artikel 6.

I denne afvejning indgår bl.a. alvoren af den forbrydelse, som sigtelsen angår, om sagen angår et spørgsmål af særlig offentlig interesse, og om sigtede i forvejen er offentlig kendt, jf. bl.a. Menneskerettighedsdomstolens dom af 11. januar 2000 i sagen News Verlag mod Østrig (nr. 31457/96), præmis 54 og 56, og dom af 10. februar 2009 i sagen Eerikäinen m.fl. mod Finland (nr. 3514/02), præmis 66 og 68. Hvis efterforskningen er på et tidligt stadium, følger det af praksis, at der er en videre adgang til at forbyde offentliggørelse af sigtedes identitet, og det indgår i vurderingen, om der kan redegøres for de spørgsmål af offentlig interesse, som sagen rejser, på fyldestgørende vis uden at offentliggøre navnet på sigtede, jf. afgørelse af 14. november 2002 i sagen ”Wirtschafts-Trend” Zeitschriften-Verlagsgesellschaft mod Østrig (nr. 62746/00) og dom af 10. januar 2012 i sagen Standard Verlags mod Østrig (nr. 34702/07),

præmis 44. Endelig indgår det i vurderingen, hvilken sanktion der pålægges den, der har offentliggjort oplysninger om sigtedes identitet, jf. dom af 17. januar 2012 i sagen Lahtonen mod Finland (nr. 29576/09), præmis 78.

I sager om indgreb i ytringsfriheden lægger Menneskerettighedsdomstolen generelt vægt på, om de oplysninger, der videregives, i forvejen er offentligt tilgængelige, navnlig hvis dette skyldes, *at* myndighederne har undladt at gribe ind over for en ulovlig videregivelse af fortrolige oplysninger, jf. dom af 9. februar 1995 i sagen Vereniging Weekblad Bluf! mod Holland (nr. 16616/90), præmis 38 og 43, *at* oplysningerne stammer fra et offentligt retsmøde, eller *at* den, oplysningerne angår, selv har udtalt sig til pressen, jf. dom af 17. januar 2012 i sagen Lahtonen mod Finland (nr. 29576/09), præmis 75.

Det navneforbud, som T har overtrådt, angår en person, som er sigtet for forsøg på manddrab under omstændigheder, der gør, at sagen er af betydelig offentlig interesse, og Højesteret finder, at disse omstændigheder talte imod et navneforbud.

På den anden side finder Højesteret, at hensynet til sigtede, som ikke i forvejen var kendt i offentligheden, og som var varetægtsfængslet in absentia, idet han opholdt sig i udlandet og endnu ikke var afhørt af dansk politi, på dette tidlige stadium af efterforskningen talte for et navneforbud.

Højesteret finder endvidere, at det ved afvejningen af hensynet til sigtede over for hensynet til ytringsfriheden må tillægges betydelig vægt, at omtale af såvel sagen om drabsforsøg som den debat om berettigelsen af navneforbuddet, som Ts opslag på Facebook var en del af, kunne ske på fyldestgørende vis uden at nævne navnet på den sigtede.

Byret og landsret har flere gange taget stilling til, om navneforbuddet skulle opretholdes, og i november 2016 vurderede byretten, at hensynet til sigtede ikke længere kunne begrunde, at forbuddet blev opretholdt.

Højesteret finder på den anførte baggrund, at det indgreb, som navneforbuddet gjorde i Ts ytringsfrihed, var foreneligt med Menneskerettighedskonventionens artikel 10.

Det kan ikke føre til et andet resultat, at navnet på den sigtede, da T overtrådte navneforbudet, i et vist omfang var offentliggjort, herunder i en bog, i interviews med bogens forfatter og efter det oplyste også i flere netmedier og udenlandske medier. Højesteret har herved navnlig lagt vægt på, at overtrædelser af navneforbuddet også er håndhævet over for andre end T, og at den sigtede, som var omfattet af navneforbuddet, ikke selv har udtalt sig til medierne.

Højesteret tiltræder på den anførte baggrund, at T er fundet skyldig i den rejste tiltale.

Af de grunde, som landsretten har anført, tiltræder Højesteret, at der ikke er grundlag for strafbortfald, og at straffen er fastsat til en bøde på 25.000 kr., hvilket ikke kan anses for en uproportional sanktion.

Højesteret stadfæster herefter dommen.

### **Thi kendes for ret:**

Landsrettens dom stadfæstes.

T skal betale sagens omkostninger for Højesteret.

## DOM

Afsagt den 11. oktober 2017 af Østre Landsrets 16. afdeling  
(landsdommerne Dorthe Wiisbye, Katja Høegh og Agnete Ergarth Skouv (kst.)).

16. afd. nr. S-1126-17:

Anklagemyndigheden

mod

T

(cpr.nr. ...)

(advokat Carsten Bo Nielsen, besk.)

Frederiksberg Rets dom af 28. marts 2017 (9771/2016) er anket af T med påstand om frifindelse, subsidiært formildelse.

Anklagemyndigheden har påstået skærkelse.

Tiltalte, som ikke har givet møde til hovedforhandlingen, har ved sin forsvarer erklæret, at han ønsker, at sagen behandles i hans fravær. Tiltalte har i den forbindelse tilkendegivet, at han ikke bestrider at have offentliggjort navnet på en sigtet, som der var nedlagt navneforbud om, således som beskrevet i tiltalen. Hans bevisanke drejer sig således alene om, hvorvidt der i tilfælde som det foreliggende kan straffes for overtrædelse af navneforbud, eller om dette må anses for at være i strid med Den Europæiske Menneskerettighedskonventions artikel 10, subsidiært om han skal anses som straffri som følge af en uegentlig retsvildfarelse.

Under disse omstændigheder har landsretten tilladt, at bevisanken behandles i tiltaltes fravær.

Der er af forsvareren fremlagt forskellige artikler mv., hvori den sigtedes navn er nævnt i den periode, hvori navneforbuddet var nedlagt, herunder blandt andet artikler på netmediet Syriensblog, netavisen Uriasposten, artikler på Trykkefrihed.dk, to anmeldelser i henholdsvis Berlingske og Trykkefrihed.dk, interview på Youtube med B, interview med B i Jyllandsposten, Lokalavisen Frederiksberg, nyhedstelegrammer på Reuters World Service med blandt andet kommentar fra daværende udenrigsminister Martin Lidegaard, The Economist og den engelsksprogede netudgave af den tyrkiske avis Hürriyet.

B har i samme periode udgivet bogen "[...]", hvori den sigtedes navn ligeledes er nævnt mange gange. B er ved Østre Landsrets dom af 14. september 2016 (trykt i U.2017.181Ø) straffet med bøde på 10.000 kr. for fire overtrædelser af navneforbuddet, herunder ved offentliggørelsen af navnet i den nævnte bog.

Tiltalte har også for landsretten gjort gældende, at han ikke kan straffes for overtrædelse af navneforbuddet, da straf vil være i strid mod Den Europæiske Menneskerettighedskonventions artikel 10. Han har subsidiært anført, at han har lidt af en uegentlig retsvildfarelse om, hvorvidt der var et lovligt navneforbud, og at vildfarelsen gør, at han skal anses som straffri.

Anklagemyndigheden har gjort gældende, at der ikke er grundlag for at antage, at det vil være i strid med Den Europæiske Menneskerettighedskonvention at straffe tiltalte, eller for i øvrigt at anse ham som straffri.

### **Landsrettens begrundelse og resultat**

Der blev ved Retten på Frederiksbergs kendelse af 30. april 2014 nedlagt forbud mod offentligt at gengive navnet på den mand, som var sigtet for drabsforsøget på B. Forbuddet er opretholdt ved byrettens kendelser af 30. oktober 2014 og 27. januar 2016, som stadfæstet af Østre Landsret den 24. november 2014 og 15. februar 2016. Det indgik ved den seneste opretholdelse af navneforbuddet som del af grundlaget for både byretten og landsretten, at den sigtedes navn var offentliggjort "flere steder"/"tusindvis af steder", efter at navneforbuddet var nedlagt.

Tiltalte har for byretten og i landsretten ved sin forsvarer erkendt, at han har lagt de offentligt tilgængelige opslag, som tiltalen angår, på Facebook. Navnet på den sigtede, hvis navn der var nedlagt forbud mod at nævne, er dermed ubestridt offentliggjort.

Navneforbuddet er nedlagt i medfør af retsplejelovens § 31, stk. 1, nr. 2, idet hensyn som nævnt i bestemmelsens stk. 3 ikke er anset for at være til hinder herfor. Der kan efter retsplejelovens § 32 b, stk. 2, jf. § 31, pålægges personer, som overtræder navneforbud, bødestraf.

Landsretten finder, at der ikke er grundlag for at antage, at navneforbuddet i den periode, hvori det har været nedlagt og opretholdt, ikke har været begrundet i hensyn som nævnt i retsplejelovens § 31, stk. 1, nr. 2, jf. stk. 3. Der er heller ikke grundlag for at antage, at den herved skete begrænsning af tiltaltes ytringsfrihed ikke har været nødvendig for at varetage hensyn som nævnt i Den Europæiske Menneskerettighedskonventions artikel 10, stk. 2. Det bemærkes, at navneforbuddet blev ophævet ved kendelse af 30. november 2016, som blev stadfæstet af Østre Landsret den 14. december 2016, da byretten og landsretten fandt, at hensynet til den sigtede ikke efter de på dette tidspunkt foreliggende oplysninger længere kunne begrunde et fortsat navneforbud. Det må endvidere anses for begrundet i hensyn som nævnt i konventionens artikel 10, stk. 2, og nødvendigt, at der kan pålægges personer, som krænker navneforbud som det, der er nedlagt, straf, jf. retsplejelovens § 32 b, stk. 2, jf. § 31.

Den omstændighed, at B og tilsyneladende også en række netmedier m.fl. har handlet i strid med navneforbuddet ved at offentliggøre den sigtedes navn, kan ikke antages at medføre, at tiltalte dermed – i medfør af i Den Europæiske Menneskerettighedskonventions artikel 10 – har opnået adgang til straffrit at krænke navneforbuddet.

Herefter og da der som anført af byretten ikke er grundlag for at antage, at tiltalte befandt sig i en uegentlig retsvildfarelse, som medfører, at han ikke kan straffes, tiltræder landsretten, at tiltalte er fundet skyldig efter anklageskriftet.

Landsretten er enig i det, som byretten har anført om strafudmålingen. Af de grunde, som er anført vedrørende tiltaltes anbringender om Den Europæiske Menneskerettighedskonvention, er der ikke grundlag for at lade straffen for de begåede overtrædelser bortfalde eller at nedsætte den.

Landsretten stadfæster herefter byrettens dom.

#### T h i k e n d e s f o r r e t :

Byrettens dom i sagen mod T stadfæstes.

Tiltalte skal betale sagens omkostninger for landsretten.

# Retten på Frederiksberg

## DOM

afsagt den 28. marts 2017

Retten nr. 9771/2016

Politiets nr. APK 0100-84120-00020-16

Anklagemyndigheden

mod

T

cpr-nummer ...

pt. Ukendt adresse

### Sagens baggrund og parternes påstande.

Anklageskrift er modtaget den 24. november 2016

T er tiltalt for

1.

#### **overtrædelse af retsplejelovens § 32 b, stk. 2, jf. § 31, stk. 1,**

ved i perioden fra den 16. januar 2016 til den 30. marts 2016 fra ukendt sted via sin profil på Facebook otte gange at have gengivet navnet på en sigtet i en straffesag i strid med et af Retten på Frederiksberg af 30. april 2014 nedlagt navneforbud, hvorefter der ikke måtte ske offentlig gengivelse af navn, stilling og bopæl for den pågældende sigtede, ligesom den pågældendes identitet ikke på anden måde måtte offentliggøres.

2.

#### **overtrædelse af retsplejelovens § 32 b, stk. 2, jf. § 31, stk. 1,**

ved den 4. maj 2016 fra ukendt sted via sin profil på Facebook at have gengivet navnet på en sigtet i en straffesag i strid med et af Retten på Frederiksberg af 30. april 2014 nedlagt navneforbud, hvorefter der ikke måtte ske offentlig gengivelse af navn, stilling og bopæl for den pågældende sigtede, ligesom den pågældendes identitet ikke på anden måde måtte offentliggøres.

3.

#### **overtrædelse af retsplejelovens § 32 b, stk. 2, jf. § 31, stk. 1,**

ved den 18. maj 2016 fra ukendt sted via sin profil på Facebook flere gange at have gengivet navnet på en sigtet i en straffesag i strid med et af Retten på Frederiksberg af 30. april 2014 nedlagt navneforbud, hvorefter der ikke måtte ske offentlig gengivelse af navn, stilling og bopæl for den pågældende sigtede, ligesom den pågældendes identitet ikke på anden måde måtte offentliggøres.

Anklagemyndigheden har nedlagt påstand om bødestraf.

Tiltalte har påstået frifindelse, subsidiært rettens mildeste dom.

### **Forklaringer.**

Der er afgivet forklaring af tiltalte..

Tiltalte har til retsbogen afgivet følgende forklaring:

".....Tiltalte forklarede vedrørende forhold 1, at det er ham, der har skrevet opslagene på Facebook. Det skete i perioden fra den 12. januar 2016 til den 30. marts 2016. På det tidspunkt havde As navn længe været fremme i offentligheden. Han kan sagtens forstå meningen med at nedlægge navneforbud under en sag for ikke at krænke personens ry og rygte, men i dette tilfælde havde A valgt at kæmpe for IS i stedet for at komme til Danmark og forsvare sig under sagen. Han har med opslagene ønsket at deltage i den offentlige debat. Han kender B fra debatter.

Det 1. opslag fra den 12. januar 2016 er udtryk for humor og sarkasme. Han mener, at navneforbudet er illegitimt. Det 2. opslag er et debatopslag. Statsmagten har begrænset ytringsfriheden urimeligt.

Han kan ikke præcis huske, hvilken debat det 3. opslag drejede sig om. Det er skrevet den 20. januar 2016, så måske har det vedrørt den episode som det 4. opslag vedrører, hvor advokat ... smed røret på under et telefoninterview. Opslagene er fra samme dato.

Opslaget fra den 25. januar 2016 blev sat op i forbindelse med en deling af Cs opslag.

Det 6. opslag vedrører en deling af Ds opslag. Han kender godt E. Hun blev sigtet for overtrædelse af navneforbudet, fordi hun under en demonstration ved Retten på Frederiksberg havde en T-shirt på med As navn på. Han mener, at navneforbudet er en krænkelse af EMRK.

Det 7. opslag blev sat op efter, at B fik sin dom.

Det 8. opslag indeholder også en kritik af ..., som han også har kritiseret i andre sammenhænge. Det blev sat op, efter at en person havde skrevet om et nakkeskud til ... . Det var ikke A, der havde skrevet det, men en med samme sympatier.

Tiltalte forklarede vedrørende forhold 2 og 3, at det godt kan passe, at han lagde opslagene ud samme dag, som han blev sigtet for overtrædelse af navneforbudet. Han har skrevet opslagene, fordi han mener, at navneforbudet er illegitimt. Han opfatter sig selv som en frihedskæmper. Når statsmagten går for langt, så er der nogle frihedskæmpere, der må gøre noget. Det så man også under 2. verdenskrig, selv om det ikke kan sammenlignes. Han har mod, evne og vilje til at kæmpe. For ham handler det om den politiske debat. Det var fuldstændig urimeligt at opretholde navneforbudet i flere år. Det var hans borgerpligt at protestere....."

### **Personlige oplysninger.**

Tiltalte er ikke tidligere straffet af betydning for sagen.

### **Procedure.**

Anklagemyndigheden har anført, at der ikke i nogen af opslagene er tvivl om, hvem der bliver talt om. Tiltalte har taget sagen i egen hånd. Tiltalte har bevidst overtrådt navneforbudet, også umiddelbart efter, at han blev sigtet for det. Det forhold, at mange har overtrådt navneforbudet gør det ikke legitimt at overtræde det. Det er skærpende, at forhold 2 og 3 sker efter sigtelsen.

Forsvareren har anført, at A har foretrukket at blive udvekslet med IS fremfor at komme til Danmark og blive renset under en retssag. Det må være udtryk for, at han er skyldig. Navneforbudet er illegitimt. Når navnet er sluppet ud i offentligheden, har det ikke et legitimt formål at straffe for overtrædelse af navneforbudet. Der er så ikke tale om en nødvendig ytringsfrihedsbegrænsning. Det er i strid med artikel 10 i EMRK. Forsvareren har henvist til en række domme fra Den Europæiske Menneskerettighedsdomstol, herunder dommene, Weber mod Schweiz af 22. maj 1990, Sunday Times mod Storbritannien af 26. november 1991, Observer and Guardian mod Storbritannien af samme dato, Vereniging Weekblad Bluf mod Holland af 9. februar 1995.

Tiltalte har ment, at navneforbudet var illegitimt og har derfor befundet sig i en uegentlig retsvildfarelse. Såfremt retten finder, at der er grundlag for at straffe tiltalte, skal der tages hensyn til, at udbredelsen af navnet har været begrænset. I mange opslag er der ikke henvisning til B. Tiltalte har alene ønsket at rejse en debat.

### **Retten begrundelse og afgørelse.**

#### forhold 1-3

Navneforbudet blev nedlagt ved kendelse af 30. april 2014. Det blev opretholdt ved kendelse af 30. oktober 2014, hvilket blev stadfæstet af Østre Landsret den 24. november 2014. En anmodning om ophævelse af navneforbudet blev afslået ved kendelse af 27. januar 2016, hvilket blev stadfæstet af Østre Landsret den 15. februar 2016. Den 30. november 2016 ophævede retten navneforbudet, hvilket blev stadfæstet af Østre Landsret den 14. december 2016.

Tiltalte har erkendt, at der er ham, der har foretaget opslagene på Facebook i alle forhold. Han vidste godt, at der var navneforbud, men han mente, at det var illegitimt.

Retten skal i denne sag ikke tage stilling til, om betingelserne for at nedlægge navneforbud var opfyldt, men til, om tiltalte kan straffes for overtrædelse af dette.

Selv om det lægges til grund, at As navn var tilgængeligt på internettet, da tiltalte via sin profil lagde opslagene ud på Facebook, er der ikke grundlag for at antage, at det vil være i strid med EMRK artikel 10 at straffe tiltalte for overtrædelse af navneforbudet. Det forhold, at tiltalte var af den opfattelse, at navneforbudet var illegitimt, findes at være uden betydning for sagens afgørelse.

Tiltalte findes herefter skyldig i den rejste tiltale og straffen fastsættes til en bøde på 25.000 kr., jf. retsplejelovens § 32 b, stk. 2, jf. § 31. Forvandlingsstraffen er fængsel i 14 dage.

Retten har ved straffastsættelsen lagt vægt på, at Østre Landsret i U.2017.181 Ø har anført, at en bøde for overtrædelse af retsplejelovens § 32, b, stk. 2, jf. § 31, som udgangspunkt bør fastsættes til 5.000 kr. for et forhold i førstegangstilfælde. Der er her tale om 10 overtrædelser af navneforbudet. Retten finder ikke, at der skal foretages en fuldstændig kumulation. Retten

har ved strafudmålingen i skærpende retning lagt vægt på, at forhold 2 og 3 er begået, efter at tiltalte blev sigtet for overtrædelse af navneforbudet. Retten har i formildende retning lagt vægt på, at overtrædelserne af navneforbudet er sket på tiltaltes Facebook profil og må antages at have haft en begrænset udbredelse. Retten har herefter fundet, at bøden bør fastsættes til 25.000 kr.

**Thi kendes for ret:**

Tiltalte T straffes med en bøde på 25.000 kr.

Forvandlingsstraffen er fængsel i 14 dage.

Tiltalte skal betale sagens omkostninger.