Neutral Citation Number: [2011] EWHC 2077 (QB)

Claim No: HQ10D02334
Claim No: HQ10D02228

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday 29th July 2011

Before :
THE HONOURABLE MRS JUSTICE SHARP

- -

Between :

FARID EL DIWANY **Claimant**

-and-

(1) ROY HANSEN (2) TORILL SORTE

HQ10D02334
Defendants

-and-

THE MINISTRY OF JUSTICE AND THE POLICE, NORWAY

HQ10D02228
Defendant

- -
- -

Farid El Diwany in person
David Hirst (instructed by **Charles Russell**) for
Torill Sorte and The Ministry of Justice and the Police, Norway ,
Roy Hansen did not appear and was not represented
Hearing date: 16 March 2011

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MRS JUSTICE SHARP

The Honourable Mrs Justice Sharp :

1. There are a number of applications made by the Defendants in two related libel actions. The parties to the actions are as follows. The Claimant in both actions is Mr Farid El Diwany, a British solicitor resident in this jurisdiction. The two defendants to the first action (which I shall call the Sorte action) are Mr Roy Hansen, the First Defendant - a Norwegian journalist living in Norway, who runs his own press service and Ms Torill Sorte – the Second Defendant, a Norwegian police officer – who also lives in Norway. The Defendant to the second action is the Ministry of Justice and the Police, of the Kingdom of Norway (the MOJP), a department of state in Norway. I shall refer to this second action as the MOJP action.

2. The Claimant appears in person. Mr David Hirst appears on behalf of both Ms Sorte and the MOJP. Mr Hansen did not appear before me, and has taken no part in the proceedings to date.

3. In the Sorte action, the Claimant claims damages for libel in relation to an article published by Mr Hansen on a local Norwegian press agency website run by him called www.pressetjeneste.no,[1] and against Ms Sorte for statements said to have been made by her to Mr Hansen, which were then published as part of the article.

4. There are three applications made: two by Ms Sorte, and one by the MOJP. Ms Sorte, applies to set aside judgment obtained against her in default of acknowledgement of service, in the Sorte action pursuant to CPR rule 13.2 alternatively CPR rule 13.3. She also applies to strike out the Sorte action pursuant to CPR rule 3.4(a), (b) and (c).

5. These applications are supported by two witness statements of Ms Sorte, a witness statement from Mr James Quartermaine, a solicitor at Charles Russell, solicitors, instructed on behalf of Ms Sorte and the MOJP, and by a witness statement of Christian Reusch an Attorney for the MOJP. There are also two witness statements from the Claimant.

6. In the MOJP action, the Claimant claims damages for libel against the MOJP in respect of the article complained of in the Sorte action on the ground that the MOJP is vicariously liable for Ms Sorte's conduct in contributing to it as it is the ultimate employer of Norwegian police officers. If the claim against Ms Sorte is struck out it would follow that the claim against the MOJP would fail as well. But there is also a separate and discrete application by the MOJP. It applies to set aside the Order of Master Eastman made on 16 July 2010 permitting service out of the jurisdiction in the MOJP action. The application is made on the ground that the Claimant failed to satisfy the court (as he should have done) that there is a good arguable case that the principle of state immunity does not apply. It is further said that in any event, state immunity does apply to the claim and therefore the claim should either be stayed or struck out.

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[1] Its name in English is "Roy's Press Service".

7. The background to the events with which these actions are concerned is conveniently summarised by Ms Sorte in her witness statement made in the MOJP action, and relied on in support of her applications in the Sorte action:

> "I have been aware of the Claimant, Mr El Diwany, since approximately April 1996 when I became involved in a police investigation concerning him. The details of the case were as follows. In the early 1980s, a Norwegian woman called Heidi Schøne worked in the United Kingdom as an au pair where she met Mr El Diwany. They became friends. Heidi Schøne and Mr El Diwany corresponded, for some years amicably, after she had left England and returned to Norway. Mr El Diwany visited Norway to see Ms Schøne. As far as I recall, in approximately 1996 Ms Schøne presented herself at Neder Eiker police station to lodge formal complaints of harassment against Mr El Diwany, complaints which Mr El Diwany has always denied."
>
> The harassment Ms Schøne alleged took the form of unwanted telephone calls, letters, postcards and approaches to neighbours and family. I was responsible for investigating the complaints against Mr El Diwany. Letters sent to Ms Schøne by Mr El Diwany were redirected through the police station and her telephone number and address were changed. Ms Schøne would also be telephoned regularly by Mr El Diwany and members of her family and neighbours would receive postcards making grossly offensive allegations against her, usually with a focus on sex. These were referred to the police, as part of the investigation.
>
> I had frequent telephone contact with Mr El Diwany in the course of my investigation in the mid and late 1990s, in which he repeated his allegations about Ms Schøne's lack of morality, her impropriety and how she was incapable of looking after her child. Mr El Diwany recorded some of these conversations and has published transcription of some of them on his website.
>
> At around this time the Claimant commenced a civil claim for defamation against Heidi Schøne in the Norwegian courts. The claims were brought by Mr El Diwany because Ms Schøne had made statements to two newspapers in the late 1990s about Mr El Diwany's harassment of her, although he was not named in the printed articles. On 11 February 2002 the Drammen District Court dismissed Mr El Diwany's claim and ordered him to pay the costs of the case.
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> The Claimant appealed. On 14 November 2003, the appeal was dismissed by the Borgarting Court of Appeal and the lower

court's decision on costs affirmed. The Borgating Court of Appeal, whose judgment is attached to this statement as Exhibit TS1 considered Mr El Diwany's claims to be vexatious and observed in their judgment:

> "The court action as a whole appears to be an abuse of the judicial system. The Court has considered imposing a fine for contempt of court under section 202 of the Courts of Justice Act but has refrained from doing so since there it is doubtful whether there are subjective conditions for imposing a penalty."

I was involved as a witness for Heidi Schøne in these civil proceedings.

I attach to this witness statement as Exhibit TS2 a copy of the judgment of the Eiker Modum and Sigdal District Court dated 2 November 2001 which confirms the criminal conviction of Farid El Diwany for violation of section 390a of the Norwegian Penal Code – violation of privacy – for harassment of Heidi Schøne for a number of years until 1998. The judgment sets out in full the grounds of that conviction. The sentence was set down as a fine of NOK 10,000 (or alternatively 25 days in prison).

In 2003 Mr El Diwany was convicted again for further criminal harassment of Ms Schøne and sentenced to a further fine and an eight month prison sentence which was suspended subject to the claimant agreeing not to further contact or harass Ms Schøne and the removal of his website from the internet. The Claimant has not complied with these conditions. I attach the judgment of the Eiker Modum and Sigdal District Court dated 17 October 2003 as Exhibit TS3.

I was also called to give evidence in Mr El Diwany's unsuccessful civil action against Heidi Schøne. My involvement in the investigation has led to a campaign of harassment and vilification against me also, conducted by Mr El Diwany, primarily over the internet and by fax and telephone.

As a consequence of my investigation of Mr El Diwany in my capacity as a police officer in the Heidi Schøne case I have been subjected to persistent harassment and attacks by Mr El Diwany. These have taken the form of verbal abuse in telephone calls and in statements on websites of Norwegian

> newspapers or websites controlled by Mr El Diwany. I have frequently been described as corrupt and a liar by Mr El Diwany on his website and in faxes sent en masse to local businesses and individuals in Norway. As a result of this continuing harassment in 2008 I made my own formal complaint to the police authority about Mr El Diwany's harassment of me and interference with my role as a police officer.
>
> Although Mr El Diwany's pestering telephone calls appeared to abate for a few years between 2004 and 2006 on the occasion that I commenced a new job in Autumn 2006 at the National Police Union, Mr El Diwany telephoned my manager Ame Johannessen and told him that I should not be working as a police officer because I was a liar. A year later it appears that Mr El Diwany discovered my mobile telephone number on a police website and rang me regularly. He also telephoned me on my home telephone, and even spoke to my teenage son who at one stage was afraid to be at home alone because of Mr El Diwany's persistent phone calls which would often take place late at night or early in the morning. I have had to have my mobile number changed and my home telephone number disconnected as a result of the volume and unpleasant nature of calls received from Mr El Diwany. The impact of Mr El Diwany's campaign against me has had a considerable and harmful effect on my family life.
>
> I believe the bringing of this libel claim in the United Kingdom to be a continuation of this vendetta, and that these proceedings have been deliberately brought to cause me ongoing emotional and financial stress and inconvenience. Mr El Diwany has also reported me to the Special Police Investigation Commission in Norway and to the Norwegian Bureau for the Investigation of Police Affairs. These cases complaints have all been rejected. I attach as Exhibit TS4 a copy of a letter dated 19 June 2007 from the Norwegian Bureau for the Investigation of Police Affairs informing the Claimant of its decision not to pursue his complaint against me and the publisher of various Norwegian newspapers. The decision relates in part to the article that is the subject of Mr El Diwany's complaint in this libel action.

8. The Claimant's website to which Ms Sorte refers is www.norwayuncovered.com/norway/. Though, as Ms Sorte says, the Claimant's prison sentence following his second conviction for harassment was suspended on conditions which included he stop harassing Ms Schone and remove offensive material about her from his website, it is plain on the evidence before me that he has not complied with the latter requirement since highly offensive material about her remains on it. It is to be noted,

in addition, that the Claimant has posted the article complained of on his own website, albeit with his name removed.

9. In addition to the two criminal and two civil proceedings to which Ms Sorte refers, the Claimant made two further appeals against the rejection of his civil claim: first to the Norwegian Supreme Court and then to the European Court of Human Rights. Both were rejected.

10. Set out as an Appendix at the end of this judgment are extracts in their certified English translation, from the various judgments handed down by the criminal courts and civil courts and from the letter of the 19 June 2007 from the Norwegian prosecuting authorities to which Ms Sorte refers.

11. As can be seen from the judgments of the court, they set out extracts from postcards and letters sent by the Claimant to Ms Schone, and from so-called "Reports" written by him about her, and widely circulated as the various judgments record.

12. Thus, it is Ms Sorte's case, supported by the MOJP, that the Claimant has transferred his harassing behaviour from Ms Schone to Ms Sorte (including by bringing these proceedings), but by other means as well, including abusive and unpleasant telephone calls made to her at her home. In the course of the hearing before me, a selection of recordings of telephone calls made by the Claimant to Ms Sorte in 2007-2008 were played to the court. The Claimant's explanation for these was that he was angry. A transcript of 5 of those messages, all of which were left by the Claimant on Ms Sorte's answering machine after an automated message in Norwegian at beginning of each message, is as follows:

FED	You cowardly bitch, answer the phone. The only excuse you'll have is if you're in a mental hospital. Your mother's probably visiting you now. Anyway how does it feel to be on the front page of a website you piece of trash. Inbred, Norwegian trash that's all you are. Now I'll keep on until you resign or are sacked you piece of trash.
FED	Come on coward just pick up the phone. Come on cheat pick up the phone you piece of trash. You liar, abuser, crooked policewoman, pick up the phone you piece of shit, you bloody coward, god damn you, you dishonest trash.
FED	If I can't speak to you let me speak to the psychiatrist who is taking care of you in the mental hospital. At least he should have the honour to tell me what your condition is apart from being a lying pervert that is. And well protected by Judge Neilson weren't you. You're all trash, you lying bitch, come on answer the phone. You ruin lives you do, you cheap little shit.

FED	Come on, come to the phone you piece of shit. Come to the phone you piece of damn little shit, come. You pervert, you sickening pervert if only we could get you into court in England, you piece of fucking shit. What's it like being an abuser, a liar and a cheat, a corrupt policewoman – eh? Nothing you can do about it now because you've made the big fatal error so just resign. I'm going to have to do something, I'm going to have to speak to the judge or the court because you, you must be dismissed. You utter piece of trash.
FED	Come on you wretched pervert, answer the phone, you disgusting piece of trash, a liar, and there's nothing you can do, nothing you can do to help yourself because you're a perverted lying pig who perverts the course of justice and is protected by your trash judge. You know you've lied, I know you've lied in such an extreme stinking way that this will follow you for the rest of your life, you Norwegian piece of inbred trash.

The article complained of and the Claimant's pleaded case

13. In 2005/6 Mr Hansen conducted an interview with Ms Sorte in Norway in Norwegian in connection with an article he was writing about the harassment of Ms Schone. This article was then published in a Norwegian local newspaper, *Eiker Bladet* on 11 January 2006. It was republished a few days later (again in Norwegian) on Mr Hansen's website, www.pressetjeneste.no, where it has been available ever since. There is no link or facility either on the webpage published by Mr Hansen on the www.pressetjeneste.no website, or on his website generally to translate the article into English.

14. The version of the article actually complained of by the Claimant is in English. The English version has been created by the use of a Google-based web translation service, as the Claimant himself pleads in his Particulars of Claim. The Google translation service is an on demand translation service provided by Google for items listed by its search engine. Its use has resulted in an apparently garbled translation of the article; and a professionally translated version of the article has also therefore been provided by Ms Sorte and the MOJP and put in evidence. Where necessary I shall refer to the article in Norwegian as the original article, and the Google translated version, as the Google article when it is material to distinguish between them.

15. There is, in addition, a variation between the words complained of and the Google article exhibited to the witness statement of Mr Quartermaine. It appears that the Google translation service does not produce the same translated version each time it is used. The copy of the Google article exhibited by Mr Quartermaine says as follows:

"CONTINUED HARASSMENT OF POLICEWOMAN"

By Roy Hansen 01/11/2006

Englishman Farid El Diwany continuing harassment of Norwegian women. After harassed Heidi Schone from Solbergeiva for years, he now attacked the police chief of Lower Tori Black[2] Spokes sheriff's office.

Through a series of "posts" in Drammen Tidende's web site has recently Englishman continued his safety against the police chief of Lower Tori Black Spokes sheriff's office. This happens partly because he puts a link to a website he is ordered to remove from the net, as late as 17 October 2003. Now laws DTS webmaster, Lars Stock Espevalen that they will monitor the site's better to delete unwanted posts as soon as possible.

The man has bothered Schone Heidi and her family since 1982, and it has proven to be very difficult to stop him, "says Tori Black. In 2003 she was chief investigator in the case that ended up with a sentence of two years suspended sentence and fined for gross harassment in the spokes, Modum and Sigdal District Court. Since then the Muslim man also added police investigator for the hatred.

Sent Faxes

A number of government agencies, newspapers and other media, and private businesses have received faxes from her husband about her involvement in the case, and it is unflattering what he writes about her. - I can handle this and know that I have not done anything wrong in the matter. While not an internal investigation has revealed nothing wrong, "said Black.

She still takes persecution through the DTS website serious because they are readily available and because of the fact that the man is ordered to remove pages from the web. Furthermore, harassment is a growing problem in society, where lower spokes is no exception.

Difficult issues

- Harassment cases are difficult cases because it takes a lot for us to travel a prosecution. As usually happens persecution by divorce, and even if we can impose fines helps rare, "she said. Lower Spokes sheriff's office handles an average of 25 to 30 such cases each year, but few are so serious that the case against the Englishman.

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[2] The English translation of 'Sorte' is 'Black'.

> - There are several forms of harassment, and if, for example, a scorned husband who send text messages to his ex, stopping the rare although it imposed fines. However, there is talk of defamation and nuisance behaviour involving several people is a bit easier to get sentenced to a sanction, "said Tori Black.
>
> **Taking up the issue**
>
> She will now take harassment case against himself up with the leadership of the Southern Buskerud Police District. Last summer, the Englishman had been sent by fax to the police directorate, and this was forwarded through official channels to her for comment. Although she says that it does not bother her personally, Torill Sorte that this matter should not be allowed to develop. It is also for what we know of an initiative to the Justice Ministry to amend the legislation in this area.
>
> - The man is clearly mentally unstable and have to spend so much time and effort, not to mention money, to harass Schone Heidi and me, along with some other women we know. Unfortunately, the laws so that we can not covet him extradited for further prosecution, "said Black.
>
> (Published in Spokes magazine 01/11/2006)"

16. The Claimant has selected some of the words (albeit with slight variations) from that article for complaint. Paragraph 4 of the Particulars of Claim sets out those selected words and is as follows:

> "From a date unknown but before 1st July 2009 the First Defendant published and/or caused to be published in English on www.pressetjeneste.no the following defamatory words about the Claimant including those spoken and otherwise sourced from the Second Defendant (whose surname Sorte means and is translated, in one instance, as "Black" in English) which continues to be published online:
>
> "a) English man Farid El Diwany continuing [sic] harassment of Norwegian women. Having harassed Heidi Schone from Solbergelva for years. He has now loose [sic] on the police chief Torill Sorte at Lower Eike sheriff's office;"
>
> b) The man has bothered …Heide and her family since 1982…
>
> c) Since then, the Muslim man has also added [sic] police detective for hatred…

> d) The man is clearly mentally unstable and must use an incredible amount of time and effort, not to mention money, to harass Heidi Schone and the undersigned in addition to any [sic] other women we know…said Black [sic]"

17. In paragraph 5 it is alleged those words bear the following natural and ordinary meaning in the context in which they were published:

> "that the Claimant harasses several Norwegian woman, including and in particular Heidi Schone and also police chief Torill Sorte and that the Claimant is mentally ill and that his being a Muslim has a connection to the behaviour complained of. "

18. In paragraph 3 of the Particulars of Claim, the Claimant pleads his case against Ms Sorte in this way:

> "The Second Defendant is a serving Norwegian police officer for the Nedre Eiker district in Norway and was interviewed and quoted by the First Defendant regarding an article on the Claimant published and/or caused to be published by the First Defendant on www.pressetjeneste. The said article is part of *Roy's Press Service* which appears on the website and the article is a Google facilitated English translation of a Norwegian language article which was first published in Norwegian in a local Norwegian newspaper called *Eiker Bladet* on 11 January 2006 under the heading *Fortsetter trakassering av politikvinne (Continuing the harassment of policewoman)*, written by the First Defendant."

19. The Claimant does not therefore contend expressly that Ms Sorte published the article itself, but that she was responsible for the words spoken by her to Mr Hansen.

20. The Claimant goes on to plead in paragraph 6 that when he enters his full name on the Google search engines (both google.co.uk and google.com) there regularly appears at the top of the resulting list of entries a hyperlink to www.pressetjeneste.no for the article containing the words both in Norwegian and English; that his full name appears on that hyperlink, and that pending disclosure or suitable admissions, the Claimant invites the inference from the prominence of the article on the list of entries that it has been published to a "sufficient but unquantifiable number of readers in respect of which paragraph 3 is repeated"; and that "The readers will include in all likelihood, clients and prospective clients of the Claimant, a solicitor."

Procedural History

21. The Claimant issued proceedings in the MOJP action on 14 June 2010, and in the Sorte action on 21 June 2010. On 16 July 2010 Master Eastman gave permission to the Claimant pursuant to his application in the MOJP action, for him to serve out of

the jurisdiction "in accordance with the State Immunity Act 1978". In the Sorte action, service was effected under Article 5 of the Hague Convention 1965 through the Foreign Process Section of the Royal Courts of Justice, by a request made by the High Court on 27 July 2010. On 25 August 2010 the claim in the Sorte action was served on Ms Sorte by the Eiker Modum and Sigdal District Court, Norway.

22. In her witness statement served in support of the application to set judgment in default aside, Ms Sorte says that she first became aware of the proceedings when they were served on her on 25 August 2010. She promptly consulted the Norwegian lawyer, Mr Johansen, advising her in relation to a complaint she has made about the Claimant to the Norwegian domestic authorities. With his help, she filled in the Acknowledgement of Service indicating she wished to defend the whole proceedings, and contested the court's jurisdiction; and returned it to the High Court on 7 September 2010 by registered delivery. She did not keep a copy of the Acknowledgement of Service, but exhibits a copy of the post room log at Nedre Eiker police station which confirms an item was sent from there to the Royal Courts of Justice, at the correct address, on that date.

23. On 21 September 2010 Mr Johansen wrote to the High Court on Ms Sorte's behalf, setting out the grounds on which she intended to defend the claim and contesting jurisdiction.

24. On 23 September 2010 the Claim Form and Particulars of Claim in the MOJP action were served on the MOJP through the Ministry of Foreign Affairs of Norway. On 18 October 2010 the High Court sent a written request to Ms Sorte asking for a United Kingdom address. On 3 November 2010 Mr Johansen responded saying there was no United Kingdom address and continued to contest jurisdiction.

25. On 18 November 2010 the Claimant obtained judgment in default of acknowledgement of service in the Sorte action. On 26 November 2010 the judgment order was served on Ms Sorte. On 22 December 2010 the MOJP issued an application to set aside the Order of Master Eastman made on 16 July 2010. On 3 February 2011 an application by the Claimant to compel the attendance of a MOJP lawyer for cross-examination was dismissed by Master Leslie. On the same day, Ms Sorte and the MOJP issued the applications now before the court.

The first application: setting aside judgment in default

26. It is acknowledged by Mr Quartermaine that Ms Sorte's response to the claim through her Norwegian lawyers was not in accordance with the CPR because an Acknowledgement of Service must include an address for service within the United Kingdom (see CPR 10.5 and CPR 6.23); and though no copy of the Acknowledgement of Service is before the court, it is clear from the correspondence that Ms Sorte's Norwegian lawyers did not provide such an address. Nonetheless Mr Hirst submits first, that Ms Sorte did return an Acknowledgement of Service to the Court within the permissible time limit (albeit it was defective). Second, Ms Sorte's default, such as it was, was understandable and excusable in the circumstances, such that the court should set aside the judgment obtained in default. Third, that the Court can be satisfied she has a real prospect of defending the claim.

27. The Claimant submits that by not providing an address for service in the United Kingdom, Ms Sorte's lawyers deliberately chose not to comply with the CPR; and that she has not provided any evidence that the Acknowledgement of Service she says she posted has actually been filed by the court. The Claimant also submits (and indeed this is his principal submission overall) that Ms Sorte's application to set aside judgment in default should be refused on the ground that she did not have a defence with any real prospect of success.

28. As to the merits, the Claimant says that Ms Sorte had not mentioned in the *Eiker Bladet* article that the Claimant had received "many loving letters from Heidi Schone from the time I first met her in 1982" (he exhibits a letter post stamped 22 August 1984, a letter written possibly in the Spring of 1984, and another postcard, sent on 9 April 1985). He says he could not possibly have bothered Ms Schone and her family therefore "since 1982" as alleged by Ms Sorte. He further says her letters contradict Ms Schone's later claims of his "alleged year in year out sex-terror and obscene abuse **from the time** she returned to Norway in June 1982" [his emphasis].

29. The Claimant also says no defence or substantiation is offered for the "clearly mentally unstable" libel, which he says must be read in the light of earlier remarks made by Ms Sorte in *Dagbladet* newspaper three weeks earlier (that is, in December 2005) that the Claimant had spent "two years in a mental hospital in the UK" where he was committed by his mother. This is an allegation he strongly denies; and he exhibits a letter from his family doctor dated 22 April 2003, in which his doctor states he can find no evidence in the Claimant's medical records that the Claimant has ever been committed as an inpatient at any psychiatric hospital.

30. The Claimant submits the words "harassment" used in the original article give no clue to the fact that the harassment was in fact an "information campaign of my own in response to vast newspaper provocation" in accordance with his article 10 rights to freedom of expression and his right to reply. In this context he describes his website as initiated "in order to combat vile mental, sexualised and religious abuse instigated by a registered mental patient Heidi Schone, a duplicitous police officer – Torill Sorte and a bigoted third-rate press…Likewise for the two malicious prosecutions and convictions obtained against me …for this leaflet 'harassment' and website 'harassment' ". He also says that he has incontrovertible evidence from a conversation with Ms Sorte that Ms Schone wanted to drop the case against him in 1996.

31. The Claimant says that Heidi Schone herself had been a patient at a psychiatric clinic in Norway and her psychiatric history makes her allegations both in the newspapers and in court in 2001, 2002 and 2003, highly unreliable.

32. He also says Ms Sorte is an obvious liar and that he has not made pestering nuisance calls to her.

33. I can deal with this application shortly. It is unnecessary for me to consider whether this is a case falling within CPR rule 13.2 (i.e. one in which the court must set aside judgment in default) since I am quite satisfied this is a case in which I should exercise my discretion to set the judgment aside pursuant to CPR r 13.3(1) (a) and (b). I am satisfied that Ms Sorte has a real prospect of successfully defending the claim for the

reasons developed below. In addition, in my view there is a good reason why the judgment should be set aside or varied. As Mr Quartermaine points out, no attempt was made by the Claimant to comply with the pre-action protocol for defamation claims in relation to this claim: indeed Ms Sorte had no prior notice of the claim whatever (relating as it did to an interview she did in 2005/6 and an article published for the first time in January 2006) before she was served "out of the blue" with the Claim form and Particulars of Claim on 25 August 2010. She did not then ignore the proceedings but took immediate steps to try and defend the proceedings both by returning the Acknowledgement of Service, as I accept on the evidence she did, and through her Norwegian lawyers shortly thereafter. It appears on the evidence of Mr Quartermaine that the steps that she took were sufficient to defend the claim in her domestic legal system, that is, under Norwegian procedural law. If there was a default therefore, in my view it was an excusable one.

34. In those circumstances, the default judgment entered against Ms Sorte on 18 November 2010 by Master Leslie will be set aside; and I can turn to the second application made on her behalf.

The second application: the claim against the Second Defendant should be struck out pursuant to CPR 3.4(a)(b) and/or (c)

35. This application is made on a number of different grounds.

36. It is submitted by Mr Hirst that the only claim against Ms Sorte is a slander claim in respect of the statements she made to the journalist (Mr Hansen) who wrote the article. That claim is not properly particularised or pleaded and is unsustainable on the facts and as a matter of the law. It also follows that the claim is statute barred as it relates to oral statements made by Ms Sorte to Mr Hansen in late 2005/early 2006. The Claimant has made no application to the court to disapply the limitation period for libel and slander claims, nor Mr Hirst submits, would any such application succeed even if it were made. Moreover, the court does not have jurisdiction to hear the claim, as Ms Sorte's oral statements to Mr Hansen in 2006 (which form the basis of the claim against her) were not acts which took place within England and Wales but in Norway.

37. Mr Hirst further submits that no claim is made that Ms Sorte caused or authorised the publication of the article (in any language) or that she should be fixed with responsibility for its publication. Alternatively, and in any event, the Claimant has not pleaded a proper case on publication in his Particulars of Claim, and discharged the burden resting on claimants in libel actions, of pleading facts, from which it would be reasonable for a jury to infer there had been publication of the article in the jurisdiction.

38. Further, the claim is a deliberate attempt to reopen before an English court a variety of issues which were decided in Norwegian civil and criminal courts almost a decade ago and consequently, constitutes an abuse of process. The charge complained of that the Claimant is guilty of harassment is res judicata in Norway, he is estopped from inviting the court to reopen the issue and/or there is no reasonable prospect that Ms

Sorte would be unable to justify the charge as true, based on the Claimant's criminal convictions in Norway in 2001 and 2003.

39. In any event, the staleness of the claim is such that it is a disproportionate interference with Ms Sorte's right to freedom of expression which is not outweighed in the circumstances of the case by the Claimant's right to pursue his claim.

40. The Claimant raises a considerable number of arguments in addition to the merits based arguments to which I have already referred, including the following.

41. He says that Ms Sorte made comments about him reported in the Norwegian press, and which were coupled with references to him as "a Muslim" led to a vicious hate email campaign resulting in a complaint by the Claimant to the police in this country. He complains that to date, Ms Sorte is still perpetuating what he describes as "the mental illness myth". He says that he has incontrovertible evidence from a conversation with Ms Sorte that Ms Schone wanted to drop the case against him in 1996.

42. He denies that his defamation proceedings in Norway were an abuse of the process as the Norwegian Court of Appeal has held (he originally disputed that the court had come to that conclusion, but he now accepts that he was wrong in that respect); and says the Court of Appeal was perverse in so holding. He says his contemporaneous record of the proceedings before the Court of Appeal, showing omissions by the judge and other basic mistakes, formed the basis for his appeal to the Norwegian Supreme Court which that court was wrong to reject. He complains further that his appeal to the Supreme Court was dismissed on 17 March 2004 with no reasons given and about the process in the first instance court in the defamation proceedings. He says the judge erred procedurally in not allowing him properly to cross-examine Ms Schone who was allowed to give what he describes as "so freely her ever –changing, highly sexualised, evidence." He complains the hearing was a sham, and that he was arrested at the court door for the harassment via his website of Ms Schone. He complains the ECHR was biased against him.

43. He complains his first conviction was obtained against him in absentia and says that recognition of foreign convictions obtained under duress and against natural justice is against UK public policy (as per Rule 44 of the *Renvoi* principles). So far as his second prosecution is concerned, he says he pleaded guilty under duress.

44. The Claimant says he is not re-litigating decided issues since his litigation in Norway related to one 1998 article in the *Drammens Tidende*, newspaper. His claim against them was declared null and void by the Court of Appeal on the ground that he had promised two years earlier not to sue if the Norwegian Press Complaints bureau (the PFU) looked into his case (he says he was tricked by the PFU in this respect). He says the most serious allegation (that he is clearly mentally unstable) has not been declared as true by any court of law in Norway.

45. He says he discovered the article after doing a Google search on his name, making this the proper jurisdiction for the hearing of his claim in the United Kingdom. He says the English version of the offending *Eiker Bladet* article is published each day on

the internet and is seen in the UK where he lives and works as a solicitor, and has a reputation to defend. He says the article is accessible in this jurisdiction, and therefore is published here. He says as long as he can access the article via a Google based search under his name, so can third parties. He says that it is only since he discovered the article was available in English on the internet that he has been able to sue in the UK courts; and that the gist of it can be clearly understood even in the Google translation. He says that Google is a facilitator, not a publisher. Mr Hansen would know that but for the existence of his online article in Norwegian, it would never have been translated into English; and that the English version is a reasonably foreseeable consequence of Mr Hansen's placement of the Norwegian article on his website.

46. The article is not stale, as it has been published every day in Norwegian and English. He accepts he himself has published the article on his own website, but says he has redacted his name from it – this he says makes all the difference since nowhere on the website is his name mentioned.

47. His campaigns against Ms Schone were all true, his reaction was a proportionate response, and his website has been praised by enlightened Norwegians.

Discussion

48. Apart from matters relied on in support of the claim to aggravated/exemplary damages, the extent of the pleaded case against Ms Sorte is that she was "interviewed and quoted by the First Defendant [Mr Hansen] regarding an article on the Claimant published and/or caused to be published by the First Defendant [emphasis added] on www.pressetjeneste.no" ; and that "the First Defendant published and/or caused to be published in English on www.pressetjeneste.no …defamatory words about the Claimant including those spoken and otherwise sourced from the Second Defendant [Ms Sorte]."

49. It is not suggested Ms Sorte caused the publication of the words attributed to her to the newspaper itself, or on Mr Hansen's website. Indeed, it is to be noted that there is no obvious case on publication pleaded against her at all. This is consistent with the pre-action approach adopted by the Claimant: his letter before claim dated 10 March 2010, which was addressed only to Mr Hansen, laid responsibility firmly at Mr Hansen's door, and asked him (but not Ms Sorte) to take down the article from the website.

50. Thus, it seems to me on the face of the Particulars of Claim as pleaded, the Claimant's claim against Ms Sorte is confined at most, to one of slander in respect of the words spoken by her to Mr Hansen and in my view this gives rise to a fundamental problem with the Sorte claim against her.

51. The Lugano Convention, which governs jurisdictional issues arising between member states of the European Union, Switzerland, Iceland and Norway provides that a person domiciled in a state bound by the Convention may, in another state bound by the Convention, be sued in the place of the defendant's domicile, or, in matters relating to tort, in the courts for the place where the harmful event occurred. In this case, since

the cause of action is one in slander in relation to words spoken by Ms Sorte to Mr Hansen at a face to face interview in Norway, she can only be sued in Norway, which is both the place of her domicile, and the place where the relevant "act" giving rise to the claim occurred. This court therefore has no jurisdiction over the claim.

52. There is an additional potential limitation problem. The relevant conversation between Mr Hansen and Ms Sorte must have occurred by the 11 January 2006 at the latest, since the original article in which Ms Sorte was quoted appeared in *Eiker Bladet* on that date. It follows by virtue of the Limitation Act 1980 section 4A that the limitation period expired (at the latest) in respect of any claim in slander, on 11 January 2007. The Claimant certainly knew of the original article by the 19 February 2006, and what Ms Sorte had said in it: he sent a detailed letter to Knut Storberget of the Ministry of Justice in Oslo, on that date complaining about it, saying he had "been accused by Torill Sorte of the usual falsehoods. She has clearly lied again." Even if therefore, this court did have jurisdiction in respect of a claim in slander, the claim against Ms Sorte would be time barred; and I do not consider an application to disapply the limitation period pursuant to section 32A of the Limitation Act 1980 could conceivably succeed (see *Apsion v Butler* [2011] EWHC 844 (QB) (23 February 2011 at paras 60-71 for a discussion of that section and the relevant considerations which arise).

53. Were the Claimant to attempt to pursue a case in slander against Ms Sorte, a further problem would arise. As is apparent, part of the Claimant's complaint is that the words used bore the meaning that he is mentally unwell. This would not be a meaning he could complain of in a claim in slander absent proof of special damage, since it does not fall into any of the categories of allegation which are actionable without such proof by virtue of section 2 of Defamation Act 1952.

54. What if however the Claimant were to attempt to pursue a claim in libel against Ms Sorte on the ground for example, that as the source, in speaking to a journalist for publication, she caused the publication of the article (or at least the part of it in which she was quoted) in this jurisdiction, on ordinary grounds of foreseeability: see for example, *McManus v Beckham* [2002] 1 WLR 2982 and *Richardson v Schwarzenegger* [2004] EWHC 2422 (QB)?

55. There may be evidential difficulties in establishing causation since Ms Sorte says in evidence that she deliberately refrained from using the Claimant's name in interview (a matter not disputed by the Claimant).

56. Putting that difficulty to one side however, in my view, there is no sustainable case in libel here either. In order to give rise to a cause of action in libel, a claimant must either prove publication to one or more third parties in the jurisdiction or facts from which it could safely be inferred that such a publication had taken place. At the hearing, the Claimant mentioned that there were 22 monthly hits on his name, and after the hearing he sent to the court a Google Adwords page, which he says, evidences that claim. There is no evidence as to how it does so. But in any event, in my view, there is no pleaded platform of facts (as it was described by Gray J in *Al Moudi v Brisard* [2006] 3 All ER 294 at [33]) from which the court could properly or safely infer that any actionable publication has taken place within the jurisdiction in

the year before proceedings were issued i.e. from 14 or 21 June 2009 (any earlier publications would of course be statute barred).

57. The mere fact of course that an article is available on the internet does not give rise to a presumption that publication has taken place. As Tugendhat J said in *Trumm v Norman* [2008] EWHC 116 (QB):

> "There is no presumption in law that a claimant on an Internet libel is able to rely on to prove publication. See Al Amoudi **v** Brisard [2006] EWHC 1062, [2007] 1 WLR 11 at 37. Whether the court is able or willing to infer that such publication has occurred will depend on all the circumstances."

58. Here in my judgment, there is nothing in the circumstances which supports any inference that there has been a "sufficient but unquantifiable number of readers" of the publication, and there is nothing in the Claimant's pleaded case which supports any proper or safe inference that it has either.

59. In my view, it cannot properly or safely be inferred from the prominence of the article on the list of entries when a search is done as the Claimant pleads, that it has been published to a "sufficient but unquantifiable number of readers". As Mr Hirst points out, and as is demonstrable, a Google search using the Claimant's full name, may produce the hyperlink to the original article as fourth in the ranking, but it produces only four relevant links in any event (a matter which is not surprising since it is not suggested that the Claimant is a household name). In those circumstances it cannot safely be inferred there is a relationship between the position of the link in the rankings and publication at all. Moreover, if the same search term is entered using two other search engines (bing (Microsoft's search engine) and Yahoo, the link is even further down the rankings.

60. As for the circumstances, as I have already indicated, the Claimant is not a household name. The press service is a local Norwegian domestic press service published only in Norwegian, including on the web. There is no facility on the website itself to translate its pages into English. The article itself is archived within the website. In my view it would be wholly unreasonable to infer that the article, buried within a Norwegian language media site, has been accessed in this jurisdiction by a casual browser, in the relevant period, let alone one who happened to speak Norwegian (where the total Norwegian population itself is less than 5 million).

61. The Claimant's real complaint of course is said to be about the Google article, and not the original article. But I do not consider there is anything which fixes the Defendants, either Ms Sorte or Mr Hansen for that matter, with liability for the publication of the Google article on the internet. The "[translate this page]" facility, is a service provided by Google, and not by the Defendants. Further, contrary to the Claimant's assertion the hyperlink itself does not provide a direct link to the article in English. As Mr Hirst has also demonstrated, there is nothing which would indicate to a person, in one jurisdiction that the service is automatically provided if the article is accessed from abroad. Even if there were however, the use of the facility produces an article parts of it which are simply gibberish and unintelligible; and it doesn't even do

that consistently. As the several versions of the Google article which have been produced in evidence demonstrate, the use of the service at different times, produces a different combination of words even though the general sense of what is published may remain the same. In my judgment it would not be rational, reasonable or just to ascribe tortious liability for the Google article to either Defendant in such circumstances.

62. I turn then to the further argument raised by Mr Hirst, that these actions are an abuse of the process.

63. Mr Hirst has referred me to a number of authorities on abuse of the process, including *Bradford v Bingley Society v Seddon* [1999] 1 WLR 1482; *Johnson v Gore Wood & Co* [2002] 2 AC 1; *Dexter Ltd v Vlieland-Boddy* [2003] EWCA Civ 14*; Schellenberg v BBC* [2000] EMLR 296; *Pedder v News Group Newspapers Ltd* [2003] EWHC 2442 QB; *Wallis v Valentine* [2003] EMLR 175; *Jameel v Dow Jones* [2005] 2 WLR 1614 and *Kaschke v Osler* [2010] EWHC 1075 (QB). The Claimant has referred me to *Mardas v New York Times Co* [2008] EWHC 3135 (QB).

64. It is clear that when determining whether an action is an abuse of the process, the court should consider all the circumstances and adopt a broad merits based approach. The circumstances in which abuse of the process can arise can vary considerably. The jurisdiction to strike out an action as an abuse of the process derives as Lord Diplock said in *Hunter v CC West Midlands Police* [1982] AC 529 at 536 from:

> "[An] inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of the process can arise are very varied; …"

65. Mere re-litigation in circumstances not giving rise to cause of action estoppel or issue estoppel does not necessarily give rise to abuse of the process. Some additional element is required such as collateral attack on a previous decision, or unjust harassment or oppression of the other party.

66. Plainly, it is not the case that the determination of the issues raised in these Norwegian proceedings gives rise to *res judicata* either by way of cause of action estoppel, or issue estoppel, since the parties in this action and in the proceedings in Norway are different. It must also be borne in mind that a claimant libelled in different contracting states bound by the Lugano convention, may be able to pursue a claim in each of the Contracting states in which the publication was distributed in respect of the harm caused in each of those states: see *Shevill and ors v Presse Alliance SA* (C68/93) [1995] 2 A.C. 18 ECJ, even though the court recognised at [32] that "there are admittedly disadvantages to having different courts ruling on various aspects of the same dispute."

67. Nonetheless in my view, it is difficult to characterise the actions here as anything other than an abuse of the process for a variety of reasons which must be considered "in the round". This is a case where the Claimant now wishes to pursue proceedings in this jurisdiction, against a Norwegian policewoman in respect of words spoken by her to journalist in Norway more than 5 years ago; and in respect of an article which he continues to publish on his own website, albeit without including his name. Some of the events with which it was concerned dated back to the 1990s. At best, there has been an extremely modest publication of the article complained of in this jurisdiction, even if, contrary to my view, there is any publication for which Ms Sorte can be held to be responsible.

68. The allegation that the Claimant is guilty of harassment has been investigated, including by Ms Sorte over a substantial period of time. The Claimant has brought unsuccessful proceedings against Ms Schone for libel, in which the issue of his harassment of Ms Schone over many years, and allegations as to his mental health were specifically considered. The Claimant has been convicted twice now, of Ms Schone's harassment. There have been a series of adverse findings against him in reasoned judgments in Norway, in both the criminal proceedings against the Claimant and in his civil proceedings for defamation against Ms Schone. Those judgments set out not just the conclusions reached, but the evidence – a good deal of which emanates from the Claimant himself – on which those conclusions are based. Further, in the second set of criminal proceedings the District Court recorded in its judgment that the Claimant had 'acknowledged guilt' in court and "has made an unreserved confession.' The Judge also observed that 'the defendant [the Claimant] now appears to understand that this matter has been a burden for Schøne, and has assured that he will not act in this way in future".

69. The Claimant's appeals following his unsuccessful defamation claim to both the Supreme Court of Norway and to the ECHR have been unsuccessful. He has moreover also pursued, again without success, two complaints about Ms Sorte to the Norwegian prosecuting authorities in which his complaints of perjury about what she has said about his mental instability have been considered and rejected.

70. It is true that Claimant's conviction by a foreign court is not conclusive evidence in these defamation proceedings that he committed the offence (since section 13 of the of the Civil Evidence Act 1968 applies only to convictions before a court in the United Kingdom). Nonetheless, the Claimant has had an opportunity to contest the issues, on the merits, and in my judgment the court in this jurisdiction is entitled to have regard to the fact of the convictions, in particular in the light of the admission of the Claimant made of his guilt, as I have indicated, as well as to the evidence set out in the judgments, both civil and criminal, much of which, as I have said, consists of a factual recitation of the Claimant's own words and conduct when determining whether <u>these</u> proceedings, are an abuse.

71. Whilst the Claimant has his own interpretation of events, and his reasons for circulating (and continuing to circulate) information of a highly personal nature about Ms Schone, and latterly, allegations against Ms Sorte on his own website, in my judgment, the evidence that he has in fact harassed Ms Schone, as recorded in the judgments to which I have referred, is overwhelming, and is set out for all to see.

72. It is my view too that the Claimant is harassing Ms Sorte as well, as the selection of telephone messages played to the court demonstrate. As set out above, in his evidence to the court, the Claimant called Ms Sorte "an obvious liar" and claimed that he had not made pestering nuisance calls to her when there can be no doubt that he had.

73. The evidence relied on by the Claimant and indeed his submissions to the court have focused to a considerable extent on the merits of the issues already considered by the Norwegian courts; and it is plain from what the Claimant has said that these proceedings are also an attempt to undermine the judgments of the Norwegian courts and demonstrate that they are wrong.

74. In all the circumstances, I am not satisfied that these proceedings are pursued in order to vindicate the Claimant's reputation or to obtain injunctive relief. Standing back and looking at the matter realistically, in my judgment, these proceedings are a further aspect of the Claimant's harassment of Ms Sorte.

75. For all these reasons in my judgment, the Claimant's action against Ms Sorte must be struck out. It inevitably follows from my determination of the applications in favour of Ms Sorte, that the Claimant's claim against the MOJP must fail as well, based as it is on the MOJP's vicarious liability for her conduct. Although Mr Hansen has made no application before me, it is a necessary consequence of the conclusions I have reached that the claim against him is ill-founded. Accordingly, both the Sorte claim and the MOJP claim must be struck out.

76. However, I should say something, albeit briefly about the MOJP's position. It has relied on same arguments as Ms Sorte, but on a discrete application as well relating to the principle of international law of restrictive immunity, and to the application of the State Immunity Act 1978 (the SIA). As section 1(2) of the SIA and CPR 6.37.24 make clear, when an application is made for permission to serve out of the jurisdiction on a defendant which is a foreign state, a claimant is obliged to demonstrate at the time the application is made that the foreign state is not immune from suit. If the reasons provided are not proper ones, or no evidence is adduced on the issue of state immunity, these are likely to be grounds in themselves for setting service aside: see *Republic of Argentina v NML Capital Ltd* [2010] EWCA Civ 41.

77. It is conceded by the Claimant that he failed to comply with those requirements; in particular, no evidence was placed before the court to assist on the issue of state immunity at all; it was simply said that the claim had a reasonable prospect of success, and the Claimant concedes that this was insufficient.

78. Nonetheless, the Claimant resists the MOJP's alternative ground for setting aside the Order of 16 July 2010 which is made on the ground that the claim was brought against Ms Sorte for things done by her as an officer of state in the execution of her public duty and therefore, that the general rule of state immunity should apply.

79. Mr Hirst submits that the Claimant's contention that Ms Sorte was engaged in an illegitimate act of a private nature when speaking to Mr Hansen is contradicted by his own pleaded case at paragraph 1 of the Particulars of Claim, that she had authority to communicate with others on behalf of the Ministry. I agree. Further, Mr Reusch, the

MOJP's Attorney, says in his witness statement that police communications with the media are not prohibited, but are recognised to promote better understanding of police work. Ms Sorte's evidence is that when she talked to Mr Hansen she had already been contacted by a number of journalists about her role as a police officer with responsibility for the Heidi Schone case, that her statements to him were consistent with the public record of the Claimant's convictions and the judgments in the civil claims made by him and that the Claimant had used the websites of various Norwegian newspapers, and his own website to attack Ms Sorte in her public role (the front page of his website describes her as "Norway's shamed abuser-in-chief").

80. The Claimant submits that in speaking to Mr Hansen, Ms Sorte was engaged in a private transaction of her own. Alternatively, it is said one of the exceptions from immunity specified in section 1(1) of the SIA apply, namely that the proceedings in this case relate to commercial transactions (see section 3 of the SIA). The Claimant's argument is that in supplying information to newspapers which are then sold – or in speaking to the newspaper as part of her job for which she herself was paid, Ms Sorte was thereby engaging in a commercial transaction.

81. In my view both those arguments are misconceived: the proceedings do not relate to a commercial transaction or contract at all, but to a claim in libel: see for example, the opinion of Lord Millet in *Holland v Lampen-Wolfe* [2000] 1 WLR 1573 at 1587.

82. As it is however, for the reasons given above, the Claimant's actions are struck out, and there will be judgment for the Defendants in both actions.

APPENDIX

(I) 2 NOVEMBER 2001: THE CONVICTION OF THE CLAIMANT BY THE EIKER, MODUM AND SIGDAL DISTRICT COURT:

SENTENCE:

…

The basis for the indictment or for being an accessory thereto is the following:

Over a number of years and until August 1998 he telephoned on several occasions and wrote from England over 200 letters and cards to Heidi Schøne (formerly Overaa) and/or to various private individuals, and to public and private firms and institutions, in which he said/wrote inter alia that Heidi Schøne had had abortions, and that a person with whom she had later had

a child had injected heroin at the time they had sexual relations, and in which he also named the child and the father of the child. He also said/wrote that Schøne and the child's father were tested for Aids after the child was born, that the child's father was detained in custody, that Schøne had tried to commit suicide by taking an overdose, and that she was subsequently admitted to a psychiatric clinic in Lier. Furthermore he said/wrote that Schøne's mother had died of alcohol and drug abuse, and that Schøne's father had shortly before tried to have Schøne sent to a children's home etc. He has also repeated in essence the above accusations in notice of proceedings dated 13 January 2000 (private prosecution) issued in the person of his advocate, Stig Lunde…

…

The letters presented to the Court show a very unpleasant tone towards the complainant. The defendant is clearly indignant over what he believes are her poor morals. Themes repeated over again in the letters are her sex life, abortions, suicide attempts and her partner's drug abuse. The defendant's reaction to abortion was expressed, for example, in March 1995, when he sent her a copy of a crime article from an English magazine in which he drew parallels between the complainant and the woman described in the article. The woman had killed two of her children. The spring of 1995 appears to represent a peak with regard to the unpleasant communications by letter.

In a card postmarked 7 April 1995, he writes:

"Heidi, in Norway it may be normal for a slut like you to sleep with tens of men (even taking heroin!) – 'for company' as you told someone but I have been scared by your sick behaviour. Your step mother called you 'a whore' after your second abortion. She was so right and she also told me you were … [incomprehensible text]. The fact that you were in demand for sex doesn't mean you fuck like an unpaid whore. Your unborn children you put in the dustbin – the reality is even garbage like your lovers want someone better than you, Christian pervert!"

…

The Court finds it difficult to date exactly when the defendant's unpleasant communications to Schøne began. This is also to do with the fact that Schøne has destroyed many of the letters. However, the Court finds it proven that the period in question stretched over many years and until August 1998. The Court refers to the letters presented in court and to the complainant's own testimony, which is also supported by the testimony of her ex-husband, Rumar Schøne.

The Court is in no doubt that both the nature and, at times, the intensity of the defendant's communications were annoying and inconsiderate. The Court also finds it proven that the defendant's conduct violated the complainant's right to be left in peace within the meaning of Straffeloven, section 390(a). Here, the Court refers to the fact that Schøne felt so harassed that she did not dare collect her mail, that she had to move to a secret address and obtain an unlisted telephone number, and that during certain periods she was afraid to go out. She has also told the Court that it has been very difficult for her that so many people in her immediate environment have received the "report" from the defendant and thus become aware of

circumstances that are of a highly personal nature. The fact that parts of the "report" are true has made it even more painful and difficult to protect herself against the accusations, she told the Court…

On the basis of the facts described above, the Court finds it proven beyond all reasonable doubt that the defendant has behaved as described in the charge, and that he acted wilfully. Both the actus reus and mens rea elements of a crime are deemed present. The defendant will be sentenced as charged.

(II) 11 FEBRUARY 2002: DISMISSAL BY THE DRAMMEN DISTRICT COURT OF THE CLAIMANT'S DEFAMATION CLAIM AGAINST MS SCHØNE

JUDGMENT

…

The main hearing was held on the 15, 16, 17 and 18 January 2002. Diwany and Schøne appeared with their counsels and made their statements. Five witnesses were examined, and documents produced as shown in the court records.

…

In 1989, after her move to the Drammen area, Diwany engaged a private detective to trace her. He was successful, and contacted her by telephone at the hotel where she worked. However, she refused to meet him…

In February 1990, Schøne was visiting her sister in Bergen. Diwany learned of this, and went to Bergen from the Drammen area, where he had gone to meet her. Schøne refused to meet him and called the police, who arrested him. After two days' police custody, he voluntarily left Norway. The last time Diwany and Schøne met was in August 1990.

In April 1995, Runar Schøne (who had married Schøne in 1994) reported Diwany to the police on his own and his wife's behalf.

Diwany has written a considerable number of letters to Schøne, and a number of letters and cards from early in 1995 have been produced in court. Earlier correspondence has not been kept. He has also telephoned her.

In a postcard dated 27 February 1995, Diwany writes, inter alia:

"Dear Heidi + Runar, Congratulations on your marriage!! A long time to wait Heidi – 31 is a bit late; hope you enjoyed your wedding night (I should be so lucky!!). Well, Runar (translate for him Heidi) – Heidi always liked a big prick – I guess you're no different; obviously you've reached your turn in the queue – what number were you – 50?"

In a postcard franked 7 April 1995, Diwany writes, inter alia:

"The birth of a child a joy? No, a horror – abort – abort. "Yes" Peter of course, of love. Pregnant with twins a bless? Not really, a real drag says Gudmund so I'll screw her best mate; oh she lost 'em + tries to kill herself, c'est la vie"

In a postcard franked 7 April 1995, Diwany writes, inter alia:

"In Norway it may be normal for a slut like you to sleep with tens of men (even taking heroin) – "for company" as you told someone but I have been scared by your sick behaviour. Your stepmother called you "a whore" after your second abortion. She was so right and she also told me you were a liar. The fact that you were in demand of sex doesn't mean you fuck like an unpaid whore. Your unborn children you put in the dustbin: - The reality is even garbage like your lovers want someone better than you, Christian pervert!"

In another postcard franked 8 April 1995, Diwany writes, inter alia:

"Talking like a whore again last night? Trying to annoy me with your filthy talk when you know I'm still single?How can I be proud to marry you – after the disgusting things you've done to me. Stick to the fanatic moron you've got. He's on your level. I just can't understand why he hasn't gone for a younger woman - he must be desperate. Just why I tried to make you decent and I truly once cared for you, you think I still do after what you've done. The reason I hate you so much is because you destroy lives. No one manage to stop you in your quest to sleep with as many men as possible."

In a third postcard franked 8 April 1995, Diwany writes, inter alia:

"You were so busy screwing on the beach in Rhodes screwing your lifetakers – your "loving" boyfriends – there was never an opportunity to get to know you. You hated God + his values."

Around 1990, Diwany sent a tape and some letters to consultant psychiatrist Petter Broch at the Psychiatry Department of the former Buskerud Central Hospital, where Schøne was receiving treatment. Tapes/letters are assumed to have corresponding content to a "report" that Diwany sent to Schøne's family, friends and neighbours in spring 1995 both in Bergen and in the Drammen area. How many copies he sent is somewhat uncertain, but it may have been as many as approximately 35. We cite the report as follows:

<u>Heidi Overaa</u>

"We can now submit a report concerning your query. Miss Heidi Overaa was born on 20 August 1963, and now resides with her husband, Runar Schøne at Sollikroken 7, 3058 Solbergmoen. In 1981, Miss Overaa went from Bergen to England to work as an au pair, and stayed in St Albans in Hertfordshire. She left Norway in order to get over the second abortion. Both abortions (artificially induced) were undergone at the request of the father–to-be, who is known only under the name Peter. Miss Overaa had hoped that her boyfriend, Peter, would still be fond of her if she underwent the abortions. However, the relationship came to an end, and we understand that Miss Overaa had sex with two different men on the beach while she was on holiday in Rhodes in 1982.

In 1983, Miss Overaa met a gentleman called Gudmund Johannesson from Asane, Bergen, who by 1984 had made her pregnant, and she was expecting twins. Miss Overaa aborted the twins when she found out that Mr Johannesson was sleeping with her best friend. In summer 1984, Miss Overaa attempted suicide by taking an overdose. She later shared a flat with a 17-year-old ex-prostitute, Irene.

In 1985, Miss Overaa was once again expecting a child with Mr Johannesson and, on the 1 April 1986, their son, Daniel Sebastian Overraa[sic], was born. While they were engaged in sexual intercourse, Mr Johannesson injected himself with heroin, and he also had sex with other girls of which Miss Overaa was fully aware. Both of them were actually tested for Aids twice after their son was born, with a negative result.

It has come to our attention that Mr Johannesson was imprisoned for criminal acts he committed while in the army – he sat in custody for six months during the 1980s.

In 1988, Miss Overaa was once more dumped by Mr Johannesson, and she attempted suicide by taking an overdose. Miss Overaa then left Bergen to live with her sister, Elizabeth, in Drammen, but was shortly after admitted to the psychiatric clinic at Buskerud Central Hospital in Lier, where she stayed for two months.

Miss Overaa's mother was divorced when Heidi was at the beginning of her teens, and unfortunately died when Heidi was 16 years old, as we understand, of causes associated with alcohol and drug abuse. Shortly before this, Miss Overaa's father attempted to have her admitted to a home for difficult children, but this came to nothing.

In our view, Miss Overaa has a reputation for lying, and we understand that she had a number of sexual partners before she was married in spring 1994.

Early in the 1980s (date unknown) Miss Overaa reported to the police an alleged attempted rape committed by a shopkeeper in Bergen and, in December 1986, she reported another attempted rape which was later found to be fabrication in order to discredit the man concerned, who had exposed her behaviour to her parents and also to Mr Johannesson's parents. Later, in 1990 Mr Johannesson beat Miss Overaa badly, and she reported him to the police.

In 1993, Mr Johannesson married [...], and they have one child."

This report came to the knowledge of the newspaper Bergens Tidende without Schøne's help, and she was contacted by a journalist and an interview with her was published in the newspaper on 24 May 1995. Only a few days later, Verdens Gang and Drammens Tidend/ Buserud Blad also published interviews after contacting Schøne.

Diwany's name is not mentioned by any of the newspapers. He is described as English of Arab/German origin, lawyer, Muslim, mentally ill. Professor of psychiatry Nils Retterstøl was interviewed, and suggested that the man might be suffering from "erotic paranoia".

The newspaper articles provoked a reaction from Diwany. During the ensuing period, he sent out a considerable number of copies of a new "report", probably as many as 3000. The report

was sent to quite random addresses, partly drawn from telephone directories, to private individuals, companies and various types of public and private institution. In the following, we cite the new report, which is made to appear to be a response to a *query* from three named newspapers (which is not correct):

"Heidi Overaa:

Bergens Tidende, Drammens Tidende and Verdens Gang

We can now submit a report concerning your query. Miss Heidi Overaa was born on 20 August 1963, and now resides with her husband, Runar Schøne at Sollikroken 7, 3058 Solbergmoen. In 1981, Miss Overaa went from Bergen to England to work as an au pair, and stayed in St Albans in Hertfordshire. She left Norway in order to get over the second abortion. Both abortions (artificially induced) were undergone at the request of the father to be, who is know only under the name Peter. Miss Overaa had hoped that her boyfriend, Peter, would still be fond of her if she underwent the abortions. However, the relationship came to an end, and we understand that Miss Overaa had sex with two different men on the beach while she was on holiday in Rhodes in 1982.

In 1983, Miss Overaa met a gentleman called Gudmund Johannesson at Naustvegen 32, 5088 Mjolkerden, Bergen, who by 1984 had made her pregnant, and she was expecting twins, Miss Overaa aborted the twins when she found out that Mr Johannesson was sleeping with her best friend.

In Summer 1984, Miss Overaa attempted suicide by taking an overdose. She later shared a flat with a 17-year-old ex-prostitute, Irene.

In 1985, Miss Overaa was once again expecting a child with Mr Johannesson and, on the 1 April 1986, their son, Daniel Sebastian Overraa[sic], was born. While they were engaged in sexual intercourse, Mr Johannesson injected himself with heroin, and he also had sex with other girls, of which Miss Overaa was fully aware. Both of them were actually tested for Aids twice after their son was born, with a negative result.

It has come to our attention that Mr Johannesson was imprisoned for criminal acts he committed while in the army – he sat in custody for six months during the 1980s.

In 1988, Miss Overaa was once more dumped by Mr Johannesson, and she attempted suicide by taking an overdose. Miss Overaa then left Bergen to live with her sister, Elizabeth, in Drammen, but was shortly after admitted to the psychiatric clinic at Buskerud Central Hospital in Lier, where she stayed for two months.

Miss Overaa's mother was divorced when Heidi was at the beginning of her teens, and unfortunately died when Heidi was 16 years old, as we understand, of causes associated with alcohol and drug abuse. Shortly before this, Miss Overaa's father attempted to have her admitted to a home for difficult children, but this came to nothing.

In our view, Miss Overaa has a reputation for lying, and we understand that she had a number of sexual partners before she was married in spring 1994.

Early in the 1980s (date unknown) Miss Overaa reported to the police an alleged attempted rape committed by a shopkeeper in Bergen and, in December 1986, she reported another attempted rape which was later found to be fabrication in order to discredit the man concerned, who had exposed her behaviour to her parents and also to Mr Johannesson's parents. Later, in 1990, Mr Johannesson beat Miss Overaa badly, and she reported him to the police.

In 1993, Mr Johannesson married […], and they have one child, Miss Nina Engeberg and Gudmund Johannesson at Rollandslia 233, 5095 Ulset, Bergen."

Diwany also sent out a number of reports in English with more or less the same content. Some addressees also received a general article in English (of unknown origin) about mental states, which was entitled "HEIDI SCHØNE – ABNORMAL MENTAL LIFE".

On 17 November 1997 Diwany wrote to Schøne, inter alia:

"You know, I really wish you were dead and buried, you filthy pervert. It's hard to imagine anyone more evil and sick than you. I bet you helped kill your own mother. Even after her death you paid her memory the compliment of two abortions. You are a disgusting piece of dirt.

Fuck off and die and go to hell. I don't know how you sleep at night. You hate Muslims, you hate life and only associate with criminals and odd crazy people. You represent the sickness that is in Norwegian society and for as long as I live I'll make sure you pay for the wickedness you've inflicted on me. Maybe a living death is better for you – as you get older, things will get tougher. I hope Daniel turns against you just as you turned against your mother and me.

I will do all I can to ensure the truth is spread far and wide about you – killer!"

…

On 2 November 2001, Diwany was sentenced by Eiker, Modum and Sigdal District Court for violation of section 390a of the Penal Code to a fine of NOK 10,000, alternatively imprisonment for a term of 25 days.

The judgment was reported by Drammens Tidende and Buskerud Blad 16 November 2001 under the headline *"Fine for sex terror",* and Diwany then responded by sending out a new "report", which we cite as follows

> *In 1995, the Englishman discovered that the woman had reported to the police in Bergen in 1986 that the Englishman had attempted to rape her in April 1985. She waited 20 months before making this (false) accusation, a complaint that she made just two weeks after the Englishman had informed her family of her unsafe sexual habits and suicidal tendencies. The complaint was revenge against the Englishman for telling her family about her past, since her family had been completely ignorant of the sex terror Norwegian citizens had subjected her to.*

...

The Englishman believes that the woman is mentally ill. Far from being an "innocent victim" as is maintained by the xenophobic press, she is on the contrary a cold calculating liar, who pays little or no regard to normal standards for civilised behaviour.

The plaintiff Farid El Diwany has essentially argued as follows:…

-Diwany has not *"pursued", "pestered", "subjected to sexual harassment", "harassed",* or subjected to *"terror" or "death threats";…*

-"*Madman", "mentally ill, "very sick", "mentally ill", "erotic paranoia";*

As opposed to Schøne, Diwany has never been hospitalised or treated for mental disorders, as has been asserted; …

Although it is true that Diwany is the *"Muslim man",* he perceived it as offensive that his religious beliefs were emphasised in the article and were linked with these allegations concerning sexual harassment…

The defendant Heidi Schøne has essentially argued as follows:

Schøne can present proof of the truth of the central facts of the case, namely that she has for many years been pursued by a mentally afflicted/mad/mentally sick man in the popular sense of the words. She can also otherwise present in all essentials proof of the truth without qualitative variation, which is sufficient.

Considerable weight must be placed on Schøne's own perception of the relationship with Diwany. He was in love with her and wanted to marry her. It is correct that they initially had good contact, and Schøne would not in principle have been opposed to continuing such contact. However Diwany's behaviour soon acquired an increasingly marked character of persecution, harassment, pestering and terrorism. He wrote to her, called her on the telephone and sought her out despite the fact that she clearly expressed that she did not wish this type of contact…

In February 1990, she had to call the police because he was pestering her in Bergen. He sent a tape to the psychiatrist Petter Broch (who was treating Schøne), which Broch found "repugnant", and he sent the report about her with private and sensitive contents to approximately 35 addresses in Bergen and the Drammen area. Following publication of the newspaper articles in 1995, he spread thousands of reports. In this context, the fact that Diwany was occasionally pleasant towards her has no relevance; she has wholly satisfactory grounds for her characterisations of his behaviour both towards her and towards her family.

Both Diwany's letters to her and the reports about her have an unhealthy sexual focus, and the description of her is clearly sexual harassment. She still maintains that he raped her, or at

least attempted to do so in Bergen at Easter 1985. On other occasions, she was subjected to unwanted kissing and petting. He sometimes rang and asked her what kind of underwear she had on. It is not she who has stated that he suffers from erotic paranoia.

Stating the fact that Diwany is a Muslim was a journalistic point since there was a clear religious undertone in what he wrote…

Observations of the court:

The court's point of departure is that Diwany has clearly had a very intense and prolonged interest in Schøne, far exceeding that resulting from a normal acquaintance. Despite the fact that Schøne – at any rate from 1985 – rebuffed the form of attention he showed her as time went on, of which he must have been aware, he continued to send her letters, call her by telephone, spy on her and seek her out. There is no doubt that she justifiably perceived this as persecution and harassment. This all culminated in Diwany's reports sent to neighbours, friends and family of Schøne already prior to publication of the newspaper articles in 1995. These reports and the many thousands of similar reports that Diwany sent all over the country following publication of the newspaper articles constitute gross breaches of Schøne's confidence. They fully reveal the unhealthy interest he showed for her and his motive of revenge following her rejection of him. The court therefore does not believe that the motive of revenge that Diwany has admitted was limited to what he perceived as allegations of rape and death threats directed at Schøne's son Daniel.

There can be no doubt that Diwany's highly unusual interest in Schøne was of erotic character. Letters and postcards and, not least, the reports he sent her concern to a great extent her sexual morals and relationships with other men. Sexual harassment is an apt designation of these writings. Schøne cannot be reproached for publicly dissociating herself from extremely personal and sensitive information concerning, inter alia, abortions, sexual matters and suicide attempts, even if the information may to a greater or lesser extent have been correct.

After being called a *"Christian pervert"* (postcard of 7 April 1995), a *"filthy pervert"* who *"hate(s) Muslims"* (letter of 17 November 1997) in addition to other allegations with religious undertones, Schøne cannot be censured for informing that Diwany is a Muslim. This does not show a lack of respect for persons of other faiths. Diwany has referred to himself as *"the Muslim Man"* and emphasised his religious faith and care for fellow believers (in Bosnia). Cf. his undated *"PRESS RELEASE"* (DOK. 48 Bilag IV I).

Following an overall assessment, the court has concluded that the information, opinions and formulations for which Schøne is responsible are essentially true and are not inappropriate. The court concludes likewise that she had a legitimate reason for allowing herself to be interviewed by Drammens Tidende/Buskerud Blad in 1998 (and the three above-mentioned newspapers in 1995). It is very understandable that she wishes to correct the impression of her that Diwany's writings gave to the addressees. Nor did she provide Diwany's name, which is not mentioned in the newspaper articles. His circle of acquaintances in Norway is very limited, and Norwegian newspapers are not read in England. No information has been received that English media have shown any interest in the case.

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(III) 17 OCTOBER 2003: THE SECOND CONVICTION OF THE CLAIMANT BY THE EIKER, MODUM AND SIGDAL DISTRICT COURT:

"The indictment is based on the following circumstances:

a) During the period from 25 February 2002 to 31 August 2003, from England, he sent on a number of occasions telefaxes to various private persons and public and private firms/institutions, in which he wrote, inter alia, that Heidi Schøne had been subjected to mental abuse by her mother, that she had been sexually abused by a family member and that she had sexualised behaviour tendencies, and/or telefaxes where he encouraged the recipient to obtain more information about Heidi Schøne on a website called www.norway-shockers.com, where he wrote that Heidi Schøne had undergone an abortion, that a person with whom she later had a child had injected heroin while they were engaged in sexual intercourse, and he also named the father and the child. He wrote further that Schøne and the child's father had been tested for AIDS following the birth of the child, that the child's father had been remanded in custody, that Schøne had attempted suicide by taking an overdose, and that she had later been admitted to a psychiatric clinic in Lier. He also wrote that Schøne's father had died following abuse of alcohol and drugs, and that, shortly before this, Schøne's father had attempted to have Schøne admitted to a children's home, etc.

b) During the period from 1 September to 16 October 2003, he made the website described in (a) publicly available.

…
…

In court, the defendant has acknowledged guilt, and has made an unreserved confession, which is supported by the remaining information on the case.

The court finds it proven that the defendant has behaved as described in the ground for indictment. The court also finds it proven that the defendant acted with intent. It is noted that the website where the information is available probably has no connection with Norway. However, it is partly written in Norwegian, and is intended to have an effect in Norway, cf. section 12, final paragraph, of the Penal Code.

> The defendant has consented to adjudication in the summary trial on full confession. The remaining conditions for such adjudication are also met. The defendant is convicted in accordance with the indictment.
>
> …
>
> In assessing the sentence, the court has attached weight to the fact that this is a gross violation of section 390a of the Penal Code and that the information given concerning Heidi Schøne was of a very private nature. As an aggravating factor, weight must also be attached to the fact that, when information is made available on the Internet, the aggrieve person's private affairs are exposed to almost the entire world. The defendant also has a previous conviction for violation of the same provision against Heidi Schøne in the Eiker Modum and Sigdal District Court's judgment of 2 November 2001. It is now noted that the maximum penalty in the provision has been increased, and that publication of deeply private information on the Internet, in the view of the court, indicates that the sentence should at any rate not lie at the lower end of the penalty range.
>
> It is also noted that the defendant now appears to understand that this matter has been a burden for Schøne, and has assured that he will not act in this way in future.
> …
>
> The judgment was read aloud to the convicted person and thus served. The convicted person declared that he understood the judgment.
>
> The convicted person was informed concerning the right of appeal. He declared that he accepted the judgment and was issued the "Guidance for Convicted Persons" duly filled in. The Public Prosecution Authority accepted the judgment and withdrew its application for remand.

(IV) 14 NOVEMBER 2003: THE DISMISSAL BY THE BOGARTING COURT OF APPEAL OF THE CLAIMANT'S APPEAL AGAINST THE DECISION OF THE DRAMMEN DISTRICT COURT IN HIS DEFAMATION CLAIM AGAINST MS SCHØNE

Redress for pain and suffering, defamation. Section 3-6 of the Damages Act, sections 246, 247 and 249 of the Penal Code.

Farid El Diwany has brought a civil action against Heidi Schøne for redress for allegations in a newspaper article in 1998 that she had been subjected to intense sexual harassment by Farid El Diwany for a number of years. Like the District Court, the Court of Appeal concluded that Heidi Schøne's information and opinions, and the language she used, in the interview with the newspaper were substantially true and not improper. Stated that the court action as a whole appeared to be an abuse of the judicial system. The Court considered imposing a fine for contempt of court on Farid El Diwany but refrained from doing so since it was doubtful whether the subjective conditions for imposing a penalty had been satisfied.

…

The following allegedly defamatory statements are set out in the writ:

i) "Persecuted by a madman for 16 years";

ii) "For 16 years a mentally ill Englishman has pestered and persecuted Heidi Schøne … ";

iii) "Sexually harassed for 16 years";

iv) "For 16 years Heidi Schøne, of X, has been harassed and persecuted by a mentally ill Englishman;

v) "So far this year [police officers] Sorte Kjennäs and her colleagues have taken care of more than 300 letters that the man has sent to Heidi Schøne.";

vi) "The man has previously threatened the lives of neighbours of the family in order to find out where they had moved to.";

vii) "… for 16 years the Englishman has been obsessed by the idea of marrying Heidi Schøne.";

viii) "The harassment became more intense nine years ago, when Heidi Schøne married.";

ix) "Psychiatrists say the Englishman is suffering from an extreme form of erotic paranoia.";

x) "But time after time a mentally ill Englishman has discovered her address and sent her harassing letters."

…

The appellant, Farid El Diwany, has contended to the Court of Appeal in sum that:

…

The appellant has not "persecuted", "pestered", "sexually harassed" or "threatened" Heidi Schøne. Nor has he "terrorised" or "threatened" either Heidi Schøne's family or her neighbours. On the contrary, the parties had had a very good, intimate relationship for a long time, especially up to 1990. However, the relationship was marked by Heidi Schøne's strong mood swings. He has been worried about her way of life and mental health.

Farid El Diwany has never been admitted to a mental hospital or treated for a mental illness. Police Chief Inspector Sorte was lying when she said that in a conversation with the appellant's mother she had been told that the mother had tried to have him admitted to a psychiatric institution.

…

The Court of Appeal has arrived at the same conclusion as the District Court and is in full agreement with the grounds on which it is based. The Court of Appeal also presents the following additional observations and summary of the case:

…

The information, opinions and language for which Heidi Schøne is being made liable are considered to be generally true and not improper. As regards the evidence made available during the appeal hearing the Court of Appeal draws particular attention to the letters and report included in the judgment of the District Court, Heidi Schøne's statement of the facts, and the witnesses' statements, particularly those of D and Dr Peter Broch. It should also be emphasised that by a judgment of the Eiker Modum and Sigdal District Court of 2 November 2001, Farid El Diwany was convicted for violation of section 390a of the Penal Code –

…

Heidi Schøne has been subjected to verbal abuse, sometimes extremely serious verbal abuse, at least as far back as 1984/85, cf for example her complaint to the police in Bergen on 1 December 1988. The presence of such overwhelming written documentation of aggravated harassment, including what can only be characterised as sexual harassment, dating from the beginning of 1995 up to the present, indicates that Heidi Schøne's statement that she has thrown away a large number of correspondingly offensive letters and postcards is true. The fact that she has sometimes tried to deal with the situation by being kind and polite to Farid El Diwany does not alter the picture of constant harassment. Nor can decisive weight be given to the extent to which the "reports" circulated by Farid El Diwany contained true information about Heidi Schøne that she had confided to him.

Heidi Schøne had legitimate reasons for allowing herself to be interviewed by *Drammens-Tidende/Buskerud Blad* in 1998. In 1998 the newspaper was following up a similar article published in 1995, which had been prompted by the fact that the reports circulated by Farid El Diwany had drawn their attention to the case. Thus the objective conditions for punishment under sections 246 and 247 of the Penal Code, cf. section 249, 2, have not been satisfied.

Even if the conditions for punishment under the above mentioned provisions had been met, the question of whether to award Farid El Diwany redress under section 3-6, first paragraph, second sentence, of the Damages Act, depends on whether such a course is considered to be reasonable. Awarding Farid El Diwany redress would constitute a further offence against Heidi Schøne. The court action as a whole appears to be an abuse of the judicial system. The Court has considered imposing a fine for contempt of court under section 202 of the Courts of Justice Act but has refrained from doing so since it is doubtful whether there are subjective conditions for imposing a penalty.

(V) 17 JUNE 2007 REJECTION BY THE NORWEGIAN BUREAU FOR THE INVESTIGATION OF POLICE AFFAIRS, OF THE CLAIMANT'S COMPLAINTS AGAINST MS SORTE FOR HAVING GIVEN FALSE INFORMATION TO THE PRESS:

DECISION ON WHETHER TO PROSECUTE

CASE NO 070188

FARID EL DIWANY (DATE OF BIRTH 23 MAY 1958) HAS REPORTED DAGBLADET AND EIKER BLADET FOR PROMOTING RELIGIOUS HATRED AND POLICE INSPECTOR TORILL SORTE FOR HAVING GIVEN FALSE INFORMATION TO THE PRESS.

In the complaint submitted by Farid El Diwany to the Public Prosecution Authority on 2 March 2007, he reports Police Inspector Torill Sorte for giving false information to the media, and the media for its coverage of him. The Public Prosecution Authority passed on the complaint to the Norwegian Bureau for the Investigation of Police Affairs on 22 March 2007. The Public Prosecution Authority has concluded that pursuant to the third subsection of Section 34-9 of the Norwegian prosecution guidelines, the Norwegian Bureau for the Investigation of Police Affairs should also consider the complaint against Dagbladet and Eiker Bladet.

The complaint
Farid El Diwany accuses Dagbladet and Eiker Bladet of promoting religious hatred. He refers to an article published on Dagbladet.no on 20 December 2005 and to articles in Dagbladet on 21 December 2005 and Eiker Bladet on 11 January 2006. The articles are enclosed with the complaint.

Police Inspector Torill Sorte is accused of giving false information to the press. The articles state that El Diwany was involuntarily committed to a psychiatric institution in 1992. In the article Eiker Bladet, Police Inspector Sorte is quoted as saying that she considers El Diwany to be mentally unstable.

…

Farid El Diwany has previously reported Police Inspector Torill Sorte to the Bureau for perjury at Drammen District Court in 2002.. The case was dropped due to insufficient evidence. El Diwany appealed, but the Public Prosecution Authority upheld the decision. The Public Prosecution Authority has sent us its verdict in the case.

…

The complaint against Police Inspector Torill Sorte

The information that El Diwany's mother helped to have him committed to a psychiatric institution was previously made public at Drammen District Court. In conjunction with that case, the Public Prosecution Authority did not find any reason to prosecute Police Inspector Sorte for perjury. The statements of Police Inspector Sorte were also investigated by the Special Police Investigation Commission (SEFO), who found it proven that no offence had taken place pursuant to Section 121 and sub-section 1 of Section 325 of the Norwegian Penal Code We therefore cannot find any reason to reopen the case in relation to breach of confidentiality. The only question that remains is thus whether the contents of the articles in Dagbladet and Eiker Bladet are grounds to suspect Police Inspector Sorte of gross negligence in the performance of her duties.

…

With respect to the comment to Eiker Bladet that El Diwany is clearly mentally unstable, we consider it neither punishable as negligence nor defamatory. We here refer to the contents of El Diwany's website and the other facts of the case.

The Bureau has decided that on the basis of the above, there do not appear to be any grounds to investigate further whether Police Inspector Sorte has been guilty out [sic] any punishable offence in terms of her statements in the three articles referred to.

Decision
The case against Police Inspector Torill Sorte, Dagbladet and Eiker Bladet will be dropped, as there are no reasonable grounds for investigating whether any punishable offences have been committed; cf. the first subsection of Section 224 of the Criminal Procedure Act.