



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF WHITE v. SWEDEN

(Application no. 42435/02)

JUDGMENT

STRASBOURG

19 September 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of White v. Sweden,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 29 August 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 42435/02) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr Anthony White (“the applicant”), on 29 November 2002.

2. The applicant was represented by Mr E. Kalman, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agent, Ms I. Kalmerborn, Ministry for Foreign Affairs.

3. On 11 January 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the right to respect for private and family life to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant lives in Beira, Mozambique.

5. On 29 and 30 September and 1 October 1996, the two main evening newspapers in Sweden, *Expressen* and *Aftonbladet*, published a series of articles in which various criminal offences were ascribed to the applicant, including an assertion that he had murdered Olof Palme, the Swedish Prime Minister, in 1986. As part of the publication of this information, the

newspapers also reported statements of individuals who rejected the allegations made against the applicant. Moreover, on 1 October, *Expressen* published an interview with the applicant, in which he denied any involvement in the alleged offences.

6. On 23 September 1998 the applicant brought a private prosecution against the newspapers through their legally responsible editors (*ansvariga utgivare*). He claimed that the editors were responsible for gross defamation, or alternatively defamation of a normal degree, under chapter 7, section 4, subsection 14 of the Freedom of the Press Act (*Tryckfrihetsförordningen*), and chapter 5, section 2 (or section 1) of the Criminal Code (*Brottsbalken*). He also joined an action for damages to the private prosecution and sought compensation for mental suffering and pecuniary damage.

7. The District Court (*tingsrätten*) of Stockholm held an oral preparation of the case on 1 February 1999 and an oral hearing on 27-28 January and 1-3 February 2000. It heard several witnesses. In accordance with the normal procedure in cases concerning criminal liability under the Freedom of the Press Act, the court sat with three professional judges and a jury of nine members.

8. The District Court put to the jury 66 questions relating to the articles published in *Expressen* and 76 questions relating to the articles published in *Aftonbladet*. Each question referred to one or more statements or pictures published in the various articles, and the jury had to answer whether the publication of the statements or pictures constituted gross defamation or defamation of a normal degree. The jury answered all but six questions in the negative. In accordance with the applicable rules, the jury's finding of "no guilt" was final. As regards the remaining six questions, however, the jury found that certain published statements or pictures amounted to defamation of a normal degree. The court then had to make a re-assessment of liability. The contravening statements or pictures were the following:

1. The heading on the front page stating "He is pointed out as PALME'S MURDERER" [*Han pekats ut som PALMES MÖRDARE*] together with a picture of the applicant. [*Expressen*, 30 September 1996]

2. The text on page 6 reporting a statement made by an unnamed source within the South African intelligence service: "He is the type of person that you do not cheat unpunished. He kills without a second's hesitation." [*Han är den typen av person som man inte lurar ostraffat. Han dödar utan en sekunds tvekan.*] [*Aftonbladet*, 29 September 1996]

3. The text on page 6: "In addition to Long reach, Williamson and White had several companies together, some with links to the Mafia.

Among others, the GMR Group in the Seychelles which was used for laundering money from illegal activities. When Long reach was wound up, White is supposed to have started a sawmill in Beira in Mozambique. A perfect cover for other activities. Weapons and drugs are two products that have been mentioned.” [“*Vid sidan av Long reach hade Williamson och White flera andra företag ihop, en del med kopplingar till maffian. Bland annat GMR Group på Seychellerna som användes för att tvätta pengar från illegal verksamhet. När Long reach avvecklades ska White ha startat ett sågverk i Beira i Mocambique. En perfekt täckmantel för annan verksamhet. Vapen och droger är två produkter som nämnts.*”] [Aftonbladet, 29 September 1996]

4. The text on page 6: “White has been dealing with most things. – He is one of southern Africa’s biggest poachers, tells a source. It is to a large degree his fault that the elephants in Mozambique are all but extinct. Together with Williamson, Anthony White appropriated the ivory.” [“*White har sysslat med det mesta. – Han är en av södra Afrikas största tjuvskyttar, berättar en källa. Det är till stor del hans skuld att elefanterna i Mocambique är så gott som utrotade. Anthony White tog tillsammans med Williamson hand om elfenbenen.*”] [Aftonbladet, 29 September 1996]

5. The subheading on page 6 “... but earns more on smuggling and poaching” [“... *men tjänar mest på smuggling och tjuvjakt*”] together with the ensuing text stating “But according to several statements, the main part of his income derives from smuggling and poaching.” [“*Men enligt flera uppgifter kommer största delen av hans inkomster från smuggling och tjuvjakt.*”] [Aftonbladet, 30 September 1996]

6. The caption on page 7 “TODAY – SMUGGLER IN MOZAMBIQUE” [“*I DAG – SMUGGLARE I MOCAMBIQUE*”] under a picture of the applicant. [Aftonbladet, 30 September 1996]

9. By a judgment of 24 February 2000, the District Court acquitted the editors in all respects and rejected the applicant’s claims for damages. It found that all six passages in issue depicted the applicant as a criminal or a person with a reprehensible lifestyle. However, given, *inter alia*, the great general interest in these statements in Sweden, the court found that it had been justifiable to publish the relevant statements and pictures. It further considered that the newspapers had had a reasonable basis for the published information. In the latter respect, the court had regard to how and from whom the information had been obtained and to the fact that, due to the nature of the information in question and the constraints of a fast news

service, the possibility of checking the veracity of the statements had been limited.

10. The applicant appealed to the Svea Court of Appeal (*Svea hovrätt*). The appellate court held an oral hearing and heard essentially the same witnesses as the District Court.

11. On 21 February 2002 the Court of Appeal upheld the District Court's judgment. It gave the following reasoning:

“The Court of Appeal finds, like the District Court, that the relevant information in *Expressen* and *Aftonbladet* depicts Anthony White as a criminal and as having a reprehensible lifestyle. The information has been liable to expose him to the contempt of others and consequently, as such, constitutes defamation.

The question then is whether there are grounds for excluding liability. Pursuant to chapter 7, section 4, subsection 14 of the Freedom of the Press Act, and chapter 5, section 1, subsection 2 of the Criminal Code, liability for defamation by means of printed matter is excluded if two conditions are met: 1) it would be justifiable to communicate the information, and 2) the information should be correct or the communicator should have had a reasonable basis for the assertion.

If the information is correct it may as a rule be communicated even if it is deprecatory, if this is justifiable with reference to the public news interest. However, there is no general right always to speak the truth if the statements are offensive. A balance has to be struck between the protection against offensive statements and the demands of freedom of speech. In certain situations the interest of protecting someone against offensive statements has to yield to the public interest.

Expressen has claimed that, on account of the public interest – the murder of the country's prime minister –, it was *justifiable* to name and show a photograph of Anthony White in the newspaper. *Aftonbladet*, for its part, has asserted that, in the circumstances, it was justifiable to describe Anthony White's personality and conduct.

The question of who killed Olof Palme attracted at the relevant time and still attracts considerable public interest. As regards the question of whether in the circumstances it was justifiable to communicate the information, the Court of Appeal agrees with the District Court's assessment that it was obviously legitimate to write about the so-called “South Africa trail” and to present information in this regard. However, the question is whether it was justified to identify the plaintiff by name and picture in the manner employed and to publish statements to the effect that he was supposed to be guilty of large scale, serious criminality.

[The responsible editors] have asserted that the publications in question were not remarkable in view of the fact that it was commonly known who Anthony White was and of which crimes he was guilty. It emerges from the information that has come to hand in the case that, within certain groups in southern Africa and Europe, it was known that Anthony White had engaged in the alleged activities. It has also been shown that books have been published in which Anthony White has been named and his service as an elite soldier in the army unit Selous Scouts, which has a dubious reputation, has been described. The information in the case reveals that Anthony White has been much better known than he has wished to admit in southern Africa and among representatives of various organisations for the protection of animals and the conservation of nature in southern Africa as well as in Europe. Anthony White does not therefore appear as an ordinary private person with regard to whom there is a particular interest of protection.

In view of the above, and for the reasons given by the District Court in this respect, the Court of Appeal finds that it was justifiable in the circumstances to publish Anthony White's name and picture in *Expressen* and to publish information about the person Anthony White in *Aftonbladet*. In so finding, the Court of Appeal has also taken into account that Anthony White had declined to comment on information presented by the journalists of *Aftonbladet*.

With respect to the question of whether the information is *correct*, it is word against word. Anthony White has asserted that he is innocent of all the accusations, that the information given about him was based on pure invention, that it is unverified or given by untrustworthy persons and that it was based on third or fourth generation hearsay, while [the responsible editors] appear still to assert that it cannot be excluded that Anthony White could be the person who murdered Olof Palme. The Court of Appeal concludes, however, that [the responsible editors], who have the burden of proof for their claims, have not shown that the disseminated information was correct.

As regards the question of whether there has been a *reasonable basis* for the assertions, the Court of Appeal takes account of the following considerations.

In defence of the publications in question, [the responsible editors] have asserted, among other things, that Anthony White's name and picture have been published in international news media and on Swedish television.

In response to what has been stated in this respect, the Court of Appeal would point out that each newspaper is responsible for its own publication. Consequently, the fact that the name and picture of the plaintiff had already been published by other news services has not relieved *Expressen* and *Aftonbladet* of the obligation to make their own assessment of the credibility of the information. The fact that the information had already been published by other media shows, however, that these news services might have considered that there was a reasonable basis for the information.

In their defence, [the responsible editors] have also pointed out that, despite time constraints, they had careful checks made which gave an unequivocal picture of Anthony White.

It has been established that the main basis for the assertions in issue in the case was the statements made by [the former senior official of the South African security police] Dirk Coetzee and that the newspapers checked that information mainly by having the journalists who wrote the articles contact journalist colleagues, public servants [and] representatives of various organisations for the protection of animals and the conservation of nature. However, with a few exceptions, the persons contacted have not been named.

The contents of the testimony given by [the six journalist witnesses] before the Court of Appeal show that each of them separately has had high ambitions to find out the degree of truth of Dirk Coetzee's statements and to check with reliable sources who the person Anthony White was. What has come to hand in the case reveals that the witnesses, each one through their own work, have received concordant information. Checks have been made with several informants in different countries and in different capacities. ...

Having regard to the above, in particular the checks made, and to the fact that the informant Dirk Coetzee also here [before the Court of Appeal] has given the impression of being a credible person, the Court of Appeal considers that the communication of the identifying information does not appear unjustified. In the Court of Appeal's view, there has been a reasonable basis for the assertion and the reproduction of the picture in *Expressen*. The Court of Appeal further considers that

Aftonbladet, in the circumstances, must be considered to have performed the checks that were called for. Having regard to this and the reasons given with respect to the publication in *Expressen*, the Court of Appeal finds that there was also a reasonable basis for the assertions in *Aftonbladet*.”

12. On 29 May 2002 the Supreme Court (*Högsta domstolen*) refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

13. In order for an act committed by means of printed matter to constitute a criminal offence it must be punishable under both the Freedom of the Press Act and general criminal law.

Chapter 7, section 4 of the Freedom of Press Act provides:

“With due regard to the purpose of freedom of the press for all, specified in chapter 1, the following acts shall be deemed to be offences against the freedom of the press if committed by means of printed matter and if they are punishable by law: ...

14. defamation, whereby a person designates someone as a criminal or as having a reprehensible lifestyle, or otherwise communicates information liable to expose that person to the contempt of others, and, if the person defamed is deceased, the act causes offence to his survivors, or might otherwise be considered to violate the sanctity of the grave except, however, in cases in which it is justifiable to communicate the information, having regard to the circumstances, and proof is presented that the information was correct or there were reasonable grounds for the assertion; ...”

Chapter 5, section 1 of the Criminal Code reads:

“A person who designates someone as being a criminal or as having a reprehensible lifestyle or otherwise communicates information liable to expose that person to the contempt of others, shall be sentenced for *defamation* to a fine.

If he was duty-bound to make a statement or if, in the circumstances, it was otherwise justifiable to communicate information in the matter, and proof is presented that the information was correct or there were reasonable grounds for the assertion, liability shall be excluded.”

Chapter 5, section 2 of the Criminal Code provides:

“If the offence defined in section 1 is regarded as gross, the person shall be sentenced for *gross defamation* to a fine or to imprisonment of no more than two years.

In assessing whether the offence is gross, particular regard should be had to whether the information, because of its content, the scope of its dissemination or otherwise, was liable to cause serious damage.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

14. The applicant complained that his right to respect for his private and family life under Article 8 of the Convention had been breached as the courts had failed to provide due protection for his name and reputation. Article 8 reads insofar as relevant as follows:

“1. Everyone has the right to respect for his private ... life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others.”

15. The Government contested that argument.

A. Admissibility

16. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

17. The Government submitted that there was no indication that the Swedish courts, in striking the required balance in the present case, had failed to give sufficient weight to the applicant's rights under Article 8. They considered therefore that the case did not disclose a failure on the part of Sweden to secure the applicant's right to respect for his private life under that provision.

18. The applicant did not submit any observations.

19. The Court first finds that the publication of the impugned statements and pictures relating to the applicant falls within the scope of his private life, within the meaning of Article 8 § 1 of the Convention.

20. Noting that the applicant did not complain of an action by the State, but rather the lack of adequate State protection, the Court reiterates that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in the effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations between individuals.

The boundary between the State's positive and negative obligations under this provision does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Von Hannover v. Germany*, no. 59320/00, § 57, ECHR 2004-VI, with further references).

21. In the present case, the protection of private life had to be balanced against the freedom of expression guaranteed by Article 10 of the Convention.

Freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. This freedom under Article 10 is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly. Moreover, a constant thread running through the Court's case-law is the insistence on the essential role of a free press in ensuring the proper functioning of a democratic society. Although the press must not overstep certain bounds, regarding in particular the protection of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Pedersen and Badsgaard v. Denmark* [GC], no. 49017/99, § 71, 17 December 2004, with further references).

However, protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith, on an accurate factual basis, and provide "reliable and precise" information in accordance with the ethics of journalism. Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. Moreover, these "duties and responsibilities" are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations. Also of relevance for the balancing of competing interests which the Court must carry out, is the fact that, under Article 6 § 2 of the Convention, individuals have a right to be presumed

innocent of any criminal offence until proven guilty (ibid., § 78, with further references).

22. Turning to the facts of the present case, the Court first notes that the Court of Appeal found that the information published in *Aftonbladet* and *Expressen*, as such, constituted defamation of the applicant. It is thus important whether the journalists of the two newspapers may be considered to have acted in good faith and complied with the ordinary journalistic obligation to verify factual allegations and, in assessing the responsibility of the Swedish State, whether the courts made a reasonable and sufficient examination in this respect.

23. It is to be noted that the impugned articles mainly contained reports of allegations made by others, in particular Dirk Coetzee, a former senior official of the South African security police. As noted by the Court of Appeal, the journalists who wrote the articles had contacted journalist colleagues, public servants and representatives of various organisations in different countries and capacities in order to verify those allegations. After hearing six journalists as witnesses, the appellate court concluded that “each of them separately has had high ambitions to find out the degree of truth of Dirk Coetzee’s statements and to check with reliable sources who the person Anthony White was”. In this connection, regard should further be had to the fact that the newspapers in question also reported statements of individuals who rejected the allegations against the applicant, that *Expressen* published an interview with the applicant at the relevant time and that *Aftonbladet* had given him an opportunity to comment on the information published.

In view of the above, the Court considers that, in the series of articles, the newspapers endeavoured to present an account of the various allegations made which was as balanced as possible in the particular circumstances. Furthermore, having regard to the persons contacted in order to have the allegations verified, the journalists involved must be considered to have acted in good faith.

24. Moreover, in addition to the evidence given by the journalists, the Court of Appeal also heard Mr Coetzee personally and found him to be a credible person. In these circumstances, the court must be said to have made a thorough examination and had relevant and sufficient reasons to conclude that there was a reasonable basis for the publication of the statements and pictures in question.

25. Nevertheless, the published articles contained strong statements which designated the applicant as a serious criminal. It does not appear that he has been convicted of any of the offences ascribed to him. The statements clearly tarnished his reputation and, moreover, disregarded his right to be presumed innocent until proven guilty according to law.

26. The Court must therefore assess whether the domestic courts struck a fair balance between the two conflicting values guaranteed by the

Convention, namely the protection of the applicant's reputation as part of his right to respect for his private life and the newspapers' freedom of expression. In that respect, it needs to be ascertained whether the courts applied standards which were in conformity with the principles embodied in Articles 8 and 10 of the Convention.

27. To begin with, the Court considers that the domestic standards concerning the exclusion of liability for defamation by means of printed matter, as laid down in the relevant provisions of the Freedom of the Press Act and the Criminal Code are, as such, in conformity with Convention standards. Moreover, the Court of Appeal clearly recognised the conflict between the two opposing interests and applied the domestic legal provisions by weighing the relevant considerations in the case.

28. Regarding the effect which the publication had on the applicant's private life, the Court of Appeal found that the published information had been liable to expose him to the contempt of others and, as such, was defamatory. It further concluded, however, that the evidence in the case showed that the applicant was well known in southern Africa and among representatives of organisations for the protection of animals and the conservation of nature, and that within certain groups it was known that he had engaged in the alleged activities. The appellate court therefore considered that he was not an ordinary private person in respect of whom there was a particular need of protection.

29. The Court of Appeal balanced the applicant's interests against the public interest in the relevant matters, namely the unsolved murder of the former Swedish Prime Minister Olof Palme and, especially, the so-called "South Africa trail" in the criminal investigation. Undoubtedly, both the murder of Mr Palme and that particular avenue of investigation were matters of serious public interest and concern. As such, there was little scope for restricting the communication of information on these subjects.

30. Having regard to what has been stated above, the Court finds that the domestic courts made a thorough examination of the case and balanced the opposing interests involved, in conformity with Convention standards. In the circumstances of the case, they were justified in finding, in their discretion, that the public interest in publishing the information in question outweighed the applicant's right to the protection of his reputation. Consequently, the Court cannot find that there has been a failure on the part of the Swedish State to afford adequate protection of the applicant's rights under Article 8 of the Convention.

There has accordingly been no violation of that Article.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 19 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President