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

CASE OF *BLADET TROMSØ* AND STENSAAS v. NORWAY

(Application no. 21980/93)

JUDGMENT

STRASBOURG

20 May 1999

In the case of *Bladet Tromsø* and Stensaas v. Norway,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr A. PASTOR RIDRUEJO,
Mr G. BONELLO,
Mr J. MAKARCZYK,
Mr R. TÜRMEN,
Mr J.-P. COSTA,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr W. FUHRMANN,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mrs S. BOTOUCHAROVA,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 27 and 28 January and on 21 April 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention[3], by the European Commission of Human Rights ("the Commission") on 24 September 1998 and by the Norwegian Government ("the Government") on 29 October 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 21980/93) against the Kingdom of Norway lodged with the Commission under former Article 25 by a limited liability company established under Norwegian law, Bladet Tromsø A/S,

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Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

which publishes the newspaper *Bladet Tromsø*, and its former editor, Mr Pål Stensaas, who is a Norwegian national, on 10 December 1992.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Norway recognised the compulsory jurisdiction of the Court (former Article 46); the Government's application referred to former Articles 44 and 48. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 10 of the Convention.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of former Rules of Court B[1], the applicants designated the lawyers who would represent them (former Rule 31).

3. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mrs H.S. Greve, the judge elected in respect of Norway (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr A. Pastor Ridruejo, Mr G. Bonello, Mr J. Makarczyk, Mr P. Kūris, Mr R. Türmen, Mrs F. Tulkens, Mrs V. Strážnická, Mr V. Butkevych, Mr J. Casadevall, Mr A.B. Baka, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4). Subsequently, Mr W. Fuhrmann, substitute judge, replaced Mr Kūris, who was unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

4. Mr Wildhaber, acting through the Deputy Registrar, consulted the Agent of the Government, the applicants' lawyers and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicants' memorial and the Government's memorial on 5 January 1999. On 15 January 1999 the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

On various dates between 29 January and 17 March 1999 the Government and the applicants submitted additional observations under Article 41 of the Convention.

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1. *Note by the Registry*. Rules of Court B, which came into force on 2 October 1994, applied until 31 October 1998 to all cases concerning States bound by Protocol No. 9.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 January 1999.

There appeared before the Court:

(a) *for the Government*
Mr F. ELGESEM, Attorney, Attorney-General's Office
(Civil Matters), *Agent*,
Mr T. STABELL, Assistant Attorney-General (Civil Matters),
Mr K. KALLERUD, Senior Public Prosecutor,
Office of the Director of Public Prosecutions, *Advisers*;

(b) *for the applicants*
Mr K. BOYLE, Barrister-at-Law,
Mr S. WOLLAND, *Advokat*, *Counsel*;

(c) *for the Commission*
Mr A.S. ARABADJIEV, *Delegate*.

The Court heard addresses by Mr Arabadjiev, Mr Wolland, Mr Boyle, Mr Elgesem and Mr Stabell.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

6. The first applicant is a limited liability company, Bladet Tromsø A/S, which publishes the daily newspaper *Bladet Tromsø* in the town of Tromsø. The second applicant, Mr Pål Stensaas, was its editor. He was born in 1952 and lives at Nesbrua, near Oslo.

Tromsø is a regional capital of the northern part of Norway. It is the centre of the Norwegian seal hunting industry and has a university which includes an international polar research centre.

At the relevant time *Bladet Tromsø* had a circulation of about 9,000 copies. Like other local newspapers in Norway, it was used as a regular source by the Norwegian News Agency ("NTB").

7. Mr Odd F. Lindberg had been on board the seal hunting vessel *M/S Harmoni* ("the *Harmoni*") during the 1987 season as a freelance journalist, author and photographer. Several of his articles pertaining to that season had been published by *Bladet Tromsø*. These had not been hostile to seal hunting. On 3 March 1988 Mr Lindberg applied to the Ministry of Fisheries to be appointed seal hunting inspector for the 1988 season on board the *Harmoni*. Following his appointment on 9 March 1988 he served on board the *Harmoni* from 12 March to 11 April 1988, when the vessel returned to its port in Tromsø. Thereafter, and until 20 July 1988, *Bladet Tromsø* published twenty-six articles on Mr Lindberg's inspection.

8. On 12 April 1988 *Bladet Tromsø* printed an interview with Mr Lindberg in which he stated, *inter alia*, that certain seal hunters on the *Harmoni* had violated the 1972 Seal Hunting Regulations (*forskrifter for utøvelse av selfangst*) – as amended in 1980 – issued by the Ministry of Fisheries. The headline of the article read (all quotes below are translations from Norwegian):

> "Research reveals crude hunting methods in the West Ice
>
> Deplorable violations of the regulations"

The introduction to the article quoted Mr Lindberg as follows (in bigger print):

> " 'If seal hunting is to be permitted to continue, certain sealers have to stop killing the seals in the way they do. During the last two winters, which I have spent in the Arctic Ocean, I have uncovered a great deal which is clearly inconsistent with acceptable seal hunting methods. However, I should like to emphasise: Only a few of the hunters are guilty of [such behaviour] and those few do the [seal hunting] industry a disservice and provide Greenpeace with good arguments. It is really regrettable and completely unnecessary!' "

The interview continued, *inter alia*, as follows:

> " 'If seal hunting is to be permitted to continue – and I am of the opinion that it should – there ought to be an inspector on every vessel. One that makes sure that the animals are killed in a proper manner and are not subjected to unnecessary suffering.
>
> ... But let me emphasise: I am in favour of seal hunting, though it has to be carried out in an exemplary manner.'
>
> ...
>
> Mr Lindberg states that he has been threatened by hunters to remain silent about his observations and experiences during the seal hunting on the West Ice. He does not wish to go into details ...

'That will be covered in the report I am going to write ...' "

The article did not mention any seal hunter by name or provide any details of the allegedly illegal hunting methods.

9. In order to defend themselves against the accusations contained in the above article of 12 April 1988 the skipper on the *Harmoni* and three of its crew members gave interviews which *Bladet Tromsø* published on 13 April. The introduction to the main interview stated (in bigger print), *inter alia*:

"The crew on ... the *Harmoni* is really furious. The allegations made by 'researcher' Mr Lindberg regarding ... seal hunters' beastly killing methods are too much to swallow. 'Mr Lindberg is expressing a blatant lie. He pretends to be a researcher but has no clue of what he is talking about', says Mr Kvernmo [crew member]. "

A separate interview with Mr Kvernmo entitled "They feel themselves blackened" quoted him (in an introduction reproduced in bigger print) as follows:

" 'I do not know what Mr Lindberg is trying to achieve with his accusations of bestial killing of seals. But we feel ourselves blackened and do not want to have this hanging over us.' "

Later in the interview Mr Kvernmo was quoted as saying:

" '... Mr Lindberg describes us as blood-thirsty murderers but we follow the rules and are humane ...' "

10. Mr Lindberg's official report on the hunting expedition was completed on 30 June 1988, two and a half months after the expedition. This was significantly later than the normal time allotted to the preparation of such reports and after the Ministry of Fisheries had enquired about it. The Ministry received it on 11 July 1988 and, because of the holiday period, did not review it immediately.

In his report, Mr Lindberg alleged a series of violations of the seal hunting regulations and made allegations against five named crew members. He stated, *inter alia*:

"I have also noticed that [seals] which have been shot in such a manner that they appear to be dead have 'awakened' during the flaying ... I experienced several times that animals which were being flayed 'alive' showed signs that their brains' electric activity had not been terminated."

Mr Lindberg recommended that there should be a seal hunting inspector on every vessel and that compulsory training should be organised for all first-time hunters. Their knowledge of the regulations should also be tested. Finally, Mr Lindberg recommended an amendment to the regulations as regards the killing of mature seals in self-defence.

B. Order of non-disclosure of the report

11. The Ministry of Fisheries decided temporarily (see paragraph 14 below) to exempt Mr Lindberg's report from public disclosure relying on section 6, item 5, of a 1970 Act relating to Access of the Public to Documents in the Sphere of the Public Administration (*lov om offentlighet i forvaltningen*, Law no. 69 of 19 June 1970). Under this provision, the Ministry was empowered to order that the report not be made accessible to the public, on the ground that it contained allegations of statutory offences.

An article published by *Bladet Tromsø* on 15 July 1988 contained the following observations on the Ministry's decision:

> " 'The report is of such a nature that we have exempted it from public disclosure', says [a counsellor in the Ministry]. 'So far we have merely read through it. When we have had time to study it closely, it will be sent to the Fishing Inspectorate and to the Seal Hunting Council. But first we shall examine all the information provided by inspector Mr Lindberg, in particular as regards any incidents that might be relevant to the Penal Code. Everyone who is personally mentioned in the report will be given an opportunity to explain and defend himself.' "

C. The impugned articles published on 15 and 20 July 1988

12. In the above-mentioned article of 15 July 1988 *Bladet Tromsø*, having received a copy of the report which Mr Lindberg had transmitted to the Ministry of Fisheries, reproduced some of his statements concerning the alleged breaches of the seal hunting regulations by members of crew of the *Harmoni*. The headlines on the front page read:

> "Shock report"
>
> " 'Seals skinned alive' "

The text on the front page stated:

> "Seal hunting inspector Mr Lindberg is criticising Norwegian seal hunters in a shock report on the last ... season. [He] refers to illegal methods of killing, drunken crew members and the illegal start of the hunt before the opening of the hunting season. Not least the report includes an account of his being beaten up by furious hunters, who also threatened to hit him on the head with a gaff [*hakapik*] if he did not keep quiet. 'The report is of such a character that we have exempted it from public disclosure', said a spokesperson for the Ministry of Fisheries."

13. On 19 and 20 July 1988 *Bladet Tromsø* published the entire report in two parts. The introduction to the first part stated:

> "... During the last days [Mr Lindberg's report] has created considerable turbulence within the seal hunting [profession]. Most consider it a particularly severe attack on a profession which has already met with opposition, both nationally and

internationally. In several responses to *Bladet Tromsø* it is clearly alleged that Mr Lindberg is an agent of Greenpeace.

Mr Lindberg has given us access to his notes from the [expedition]. The report has since been treated as confidential by the Ministry, given, *inter alia*, that various persons have been named and associated with breaches of the regulations. We have deleted the names ...

The report ... does not contain one-sided criticism ... Mr Lindberg also compliments a number of crew members ... [He] in addition writes that he is a sympathiser of seal hunting. But not with the manner in which it was conducted on the West Ice this year."

The second part of Mr Lindberg's report, which was published by *Bladet Tromsø* on 20 July 1988, contained the following statements (while deleting with black ink the names of the crew members referred to in square brackets below):

"At 11.45 [a crew member] beat to death a female harp seal which was protecting her pup."

"At 14.40 [a crew member] beat to death a female harp seal which was protecting her pup."

"At 15.00 [a crew member] beat to death a female harp seal."

"The same day [I] pointed out to the skipper that [a crew member] did not kill cubs in accordance with the regulations (i.e. he ... hit it with the spike [of the gaff] and then dragged the cub after him)."

"At 15.00 [a crew member] beat to death a female harp seal which was protecting her pup."

"At 19.00 [a crew member] killed a female [harp seal] which was protecting her pup."

The hunting of harp seals had been legal in 1987.

D. Related publications by Bladet Tromsø during the period from 15 to 20 July 1988

14. In a commentary of 15 July 1988 *Bladet Tromsø* stated:

"Poor working conditions?

Are the authorities in proper control of seal hunting as conducted at present? Do the ... inspectors of the Ministry ... enjoy working conditions enabling them to deliver unbiased reports about seal hunting or do they become too dependent on having a good relationship with the seal hunters? In other words, are the sealing inspectors sufficiently independent in their supervision on board the sealing vessels?

> These are questions which *Bladet Tromsø* has received from persons who know the industry well but, for various reasons, do not wish to come forward in public. The background to these questions is the report which Mr Lindberg has transmitted to his employer, the Ministry of Fisheries. Mr Lindberg was assigned as seal hunting inspector on board the Tromsø-registered vessel *Harmoni* ... during the 1988 season. The report is so critical that the Ministry has decided to keep it 'confidential' for the time being. ..., a counsellor in the Ministry ... admits that he has never before received a report from a seal hunting inspector which was 'so unkind as this one'. "

15. On 18 July 1988 *Bladet Tromsø* published a further interview with crew member Mr Kvernmo, entitled "Severe criticism against the seal hunting inspector: The accusations are totally unfounded". The caption under a photograph on the front page stated:

> "Sheer lies. 'Judging from what has transpired in the media regarding [Mr Lindberg's] report, I would characterise his statements as sheer lies', says Mr Kvernmo. [He] ... demands that the report be handed over immediately [to the crew]. In this he is supported by two colleagues, Mr [S.] and Mr [M.] …"

The interview with Mr Kvernmo continued inside the newspaper and bore the headline " 'Mr Lindberg is lying' ".

The newspaper in addition published a letter on the same topic from Mr Kvernmo to the editor. According to Mr Kvernmo, Mr Lindberg's presence on board the *Harmoni* in 1987 had not been appreciated. When he turned up at the departure of the 1988 expedition, this was after having made a number of unsuccessful requests to the shipowner and the crew. As a last resort, he had bluffed the Ministry into believing that he was to go with the *Harmoni* to the West Ice and that he could take on, on a voluntary basis, the task of inspector. Without further ado, the Ministry had appointed him inspector because he had offered to do the job free of charge. Consequently, the Ministry sent an inspector whose knowledge about seal hunting and hunting regulations was extremely weak and who was psychologically unsuited for the job. He had carried out his tasks in an utterly strange and poor manner.

16. In an editorial, also published on 18 July 1988, the newspaper stated:

> "Some people are of the view that Norwegian seal hunting will again suffer from severe criticism from nature activists after the seal hunting inspector has revealed a number of objectionable circumstances in connection with an expedition. We believe this report will strengthen [Norway's reputation] as a serious seal hunting nation, provided that the contents of the report are used in a constructive manner. In all professions there are certain persons who will abuse the confidence which society has placed in them and who will operate on the edge of the law. The fisheries authorities must react strongly against all abuse. The authorities now have a unique opportunity to

clarify the purpose of Norwegian seal hunting and how it should be conducted in an internationally acceptable manner.

...

What is revealed by the fresh report ... has to be perceived as a single, regrettable episode warranting ... a closer scrutiny of the manner in which Norwegian seal hunting should be carried out in the years to come ...”

17. On 19 July 1988 *Bladet Tromsø* published an article entitled:

“The Sailors’ Federation is furious and brands the seal report as:

‘A work commissioned by Greenpeace!’ ”

Two representatives of the Norwegian Sailors’ Federation were quoted, *inter alia*, as follows:

“ ‘We know our seal hunters and also have a certain knowledge of ... inspector Mr Lindberg. In the light of this we dare to say: We do not believe a word of what is stated in [his] report! Nor do we doubt for a second that [he] was placed on board the *Harmoni* by Greenpeace. We will therefore demand that the Ministry provide all the information surrounding [his] appointment ...

... We are also greatly surprised that the writer of *Bladet Tromsø*’s editorial [of 18 July 1988] really dares to take a stand in this matter without having any better knowledge of seal hunting. We consider that frightening ...’ ”

18. On the same date *Bladet Tromsø* published an interview with Mr Lindberg, in which he stressed that his report had included positive statements concerning ten crew members, whom he named.

19. In an interview published by *Bladet Tromsø* on 20 July 1988 a representative of Greenpeace denied that it had been involved in any way in producing Mr Lindberg’s report.

E. Other related publications, contemporaneous with or post-dating the impugned publications

1. Press release issued by the Ministry of Fisheries

20. In a press release dated 20 July 1988, the Ministry of Fisheries stated that because of its peculiar contents and form, the Lindberg report had been exempted from public disclosure until further notice. According to veterinary expertise, it was practically impossible to flay a seal alive, whilst it was usual that reflex movements in the animal’s muscles occur during slaughter. As regards the appointment of Mr Lindberg as an inspector, the Ministry stated that he had referred in his application to the fact that he had attended the seal hunt in 1987 in order to study all aspects of the hunt and to

carry out research for the University of Oslo. He intended to attend also the 1988 season. The purpose of his research was to write a book on seal hunting and to carry out scientific work. In addition he had indicated that, since at all events he was to go with the *Harmoni* during the 1988 season, he was prepared to carry out the inspection without remuneration. The Ministry had had several telephone conversations with Mr Lindberg, during which he said that he had studied biology and was affiliated to several scientific associations, particularly in the area of polar research. In view of the fact that Mr Lindberg was willing to do the job free of charge and, especially, his research background, the Ministry decided to appoint him. While seeking to attend the hunting expedition, he had offered his services to the Institute of Biology at the University of Oslo. As a result, during the expedition, he had collected for the University certain parts of seal bodies. Later investigations had revealed that the inspector had no formal higher education and no competence as a researcher, nor any experience with the killing of animals. His strong reactions and comments on the killing of the animals were characterised by the fact that he did not have the required background for being an inspector. His report could not be regarded as a serious and adequate inspection report.

2. Publications by Bladet Tromsø

21. On 21 July 1988 *Bladet Tromsø* published an article entitled "The Ministry of Fisheries rejects Mr Lindberg's report", which quoted a senior official of the Ministry as having said:

> " '[Mr Lindberg's] report cannot be regarded as a serious ... inspection report; it is characterised by the fact that he lacks the professional background which an inspector should have …' "

22. Another article published by *Bladet Tromsø* on the same day quoted Mr Kvernmo as follows:

> " 'We are genuinely pleased that Mr Lindberg's allegations that we violated legal laws and regulations during this year's seal hunting ... have been rejected by the Ministry ... We would never accept allegations that we were, among other things, flaying seals alive ...' "

23. A further article published by *Bladet Tromsø* on 23 July 1988 bore the following headline:

> "The seal hunters are being bullied – The Sailors' Federation wants to involve the police: 'Have the whole seal matter investigated' "

On the same day *Bladet Tromsø* published a further interview with a senior official of the Ministry of Fisheries, quoting the latter as having stated:

> " 'In my view the media have now harassed the seal hunting profession enough. Imagine if you, working in the media, were to be harassed in the same manner. I can

tell you that there are now seal hunters who cannot sleep and who are receiving telephone calls day and night.'

Yesterday [the official] seemed more or less overcome, not least after [the newspaper] *Aftenposten* had published photographs taken by Mr Lindberg during this year's seal hunting showing how seals are being killed with a gaff. [The official] had no compliment to spare for *Bladet Tromsø* either: 'You were the ones who started this craziness!'... "

24. In a further article published by *Bladet Tromsø* on 25 July 1988 two former seal hunting inspectors were quoted as follows:

" 'We cannot claim that Mr Lindberg has not witnessed and experienced what he describes in his report ... But he has drawn completely wrong conclusions. Norwegian [seal hunters in the Arctic Ocean] are diligent and responsible and have much higher morals than regular Norwegian hunters when it comes to killing animals ...' "

3. Other media coverage

25. On 15 July 1988 the Norwegian News Agency issued a news bulletin reiterating some of the information provided by *Bladet Tromsø* on the same date as to Mr Lindberg's allegations (see paragraph 12 above). It stated that the Ministry of Fisheries was of the view that violations of the seal hunting regulations might have occurred. This bulletin was dispatched to its approximately 150 subscribers and various newspapers published articles which were based on it.

26. In a bulletin of 18 July 1988 the Norwegian News Agency – using *Bladet Tromsø* as its source – affirmed, firstly, that the crew had demanded that the report immediately be made accessible to the public ("*straks ... offentliggjort*") and, secondly, that the Association of Fishing Vessel Companies had also called for the report to be made public. The Government submitted that the first statement had been based on *Bladet Tromsø*'s article of 18 July 1988 (see paragraph 15 above), misrepresenting, however, the fact that the crew had only requested that the report be handed over to it. In another news bulletin of the same date, the Agency reported the Ministry as having stated that veterinary experts would consider the controversial Lindberg report; that the Ministry would issue further information on the outcome and possibly also on the circumstances of his recruitment as inspector but would not comment any further until it had collected more information. It further stated that, on that date, both the Association of Fishing Vessel Companies and the crew had requested that the report be made accessible to the public. *Bladet Tromsø* received the bulletin on the same day.

According to a news bulletin of 19 July 1988, the Ministry of Fisheries had stated that, when appointing him inspector, it had relied on information supplied by Mr Lindberg himself to the effect that he was carrying out

research projects. The Agency understood the Ministry to mean that his research and links to the University of Oslo were thought to be far more extensive than they had been in reality.

In a further news bulletin issued later on the same day, the Agency stated that Mr Lindberg had refused to meet with officials of the Ministry to discuss his report.

On 19 July 1988 the newspaper *Adresseavisen*, referring to the news bulletins issued by the Norwegian News Agency, stated that the seal hunters had requested that Mr Lindberg's report be made public.

27. Mr Lindberg's report continued to receive a wide coverage in other media as well. On 29 July and 3 August 1988 extensive excerpts from the report were published in *Fiskaren*, a bi-weekly for fishermen. One of the articles published on 29 July 1988 bore the following headline:

> "Mr Lindberg in the report on seal hunting:
>
> 'It happens that animals are being flayed while their eyes are rolling and they are yelping' "

The introduction to the article read as follows:

> " 'During the last part of the hunting period the animals, once shot, are rarely examined so as to verify that the shots have been lethal ... The animals are thereafter lifted on board, often alive. Animals are therefore often flayed while ... their eyes are rolling and they are yelping.'
>
> These are some of the occurrences which Mr Lindberg claims to have observed while acting as a seal hunting inspector on board the *Harmoni* ... Such ... statements have made the Ministry ... and professionals consider that Mr Lindberg's report is 'not serious' and wish not to make it accessible to the public.
>
> In [his] report Mr Lindberg makes very strong accusations against named hunters. In the excerpts published by *Fiskaren* we have consistently deleted all names."

28. The excerpt published by *Fiskaren* on 3 August 1988 included the observations which Mr Lindberg had made in the report as reproduced by *Bladet Tromsø* on 20 July 1988.

29. Over the following months the debate about Mr Lindberg's report died out until 9 February 1989, when he gave a press conference in Oslo. A film entitled "Seal Mourning" (containing footage shot by Mr Lindberg from the *Harmoni*) showed certain breaches of the seal hunting regulations. Clips from the film were broadcast by the Norwegian Broadcasting Corporation later the same day and the entire film was broadcast by a Swedish television channel on 11 February 1989. During the next days scenes from the film were broadcast by up to twenty broadcasting companies worldwide, including CNN and the British Broadcasting Corporation.

F. The Commission of Inquiry report

30. In view of the various reactions to the film, both within Norway and internationally, the Minister of Fisheries was recalled while on an official journey abroad. Seal hunting was debated in Parliament on 14 February 1989 and, on 24 February 1989, the government announced that it would set up a Commission of Inquiry. The government also banned with immediate effect the killing of baby seals or pups.

31. On 5 September 1990 the Commission of Inquiry submitted an extensive report based on various evidence, including, *inter alia*, Mr Lindberg's inspection report, his footage as well as a book written by him. For the purposes of the inquiry Mr Lindberg had been examined as a witness by the Sarpsborg City Court (*byrett*). The Commission had also heard several of the crew members of the *Harmoni* as well as other seal hunting inspectors.

In its report the Commission of Inquiry found that the truth of most of Mr Lindberg's allegations relating to specifically named individuals had not been proved. It found no basis for the allegation that seals had been skinned alive or that pups had been kicked or flayed alive (p. 8).

On the other hand, the Commission identified several breaches of the hunting regulations (p. 69), which it deemed had been established by the footage presented by Mr Lindberg. For instance, one seal had been killed with the sharp end of a gaff without previously having been hit with its dull end. Another seal had been killed with an axe, whereas a third seal had been lifted on board the *Harmoni* whilst still alive. The Commission published those parts of Mr Lindberg's report which pertained to the *Harmoni*'s hunting expedition, after deleting the crew members' names. The Commission further recommended various amendments to the hunting regulations, to their implementation and to the training of hunters. These recommendations were in line with some of the suggestions Mr Lindberg made in his report, notably as to the training of hunters on killing methods, the dissemination to hunters of information on the applicable rules and obligatory presence of an inspector on board every hunting vessel.

G. Defamation proceedings against Mr Lindberg

32. In March 1989 the crew of the *Harmoni* had instituted defamation proceedings against Mr Lindberg before the Sarpsborg City Court, referring to statements which he had made about them in respect of the 1987 and 1988 hunting seasons. By judgment of 25 August 1990 the City Court declared five statements in his inspection report null and void under

Article 253 § 1 of the Penal Code. Two other statements made by Mr Lindberg in another context were also declared null and void.

Moreover, the City Court prohibited Mr Lindberg from showing in public any of the footage pertaining to the *Harmoni* and ordered him to pay to the crew compensation (10,000 Norwegian kroner (NOK)) under the Damage Compensation Act 1969 and costs. His request for leave to appeal against the judgment was rejected by the Appeals Selection Committee of the Supreme Court (*Høyesteretts Kjæremålsutvalg*) on 16 May 1991.

33. Being resident in Sweden, Mr Lindberg opposed the execution in Sweden of the Sarpsborg City Court's judgment of 25 August 1990, on the ground that it violated his right to freedom of expression under Article 10 of the Convention.

In a decision of 16 December 1998, the Swedish Supreme Court (*Högsta Domstolen*) upheld a decision by the Court of Appeal (*Hovrätten*) of Western Sweden of 25 April 1997, rejecting Mr Lindberg's claim. While noting that it was not its role to carry out a full review of the Norwegian judgment, the Swedish Supreme Court found that the latter did not entail any breach of Mr Lindberg's rights under Article 10. This provision did not, therefore, constitute an obstacle to execution. Nor did the fact that the film in question had been shown in Sweden mean that it would run counter to Swedish public-order interests to execute the Norwegian judgment.

H. Defamation proceedings giving rise to the applicants' complaint under the Convention

34. On 15 May 1991 the crew members of the *Harmoni* also instituted defamation proceedings against the applicants, seeking compensation and requesting that certain statements appearing in Mr Lindberg's report and reproduced by *Bladet Tromsø* on 15 and 20 July 1988 be declared null and void.

35. On 4 March 1992, after having heard the parties to the case and witnesses over a period of three days, the Nord-Troms District Court (*herredsrett*) gave its judgment in which it unanimously found the following statements defamatory under Article 247 of the Penal Code and declared them null and void (*død og maktesløs; mortifisert*) under Article 253 § 1 (the numbering in square brackets below follows that appearing in the Court's reasoning):

(Statements appearing in the part of the Lindberg report published by *Bladet Tromsø* on 20 July 1988)

> [1.1] "At 11.45 [a crew member] beat to death a female harp seal which was protecting her pup."

[1.2] "At 14.40 [a crew member] beat to death a female harp seal which was protecting her pup."

[1.3] "At 15.00 [a crew member] beat to death a female harp seal."

[1.6] "At 19.00 [a crew member] killed a female which was protecting her pup."

(Statements appearing in one of the articles published by *Bladet Tromsø* on 15 July 1988)

[2.1] "Seals skinned alive"

[2.2] "Not least the report includes an account of his (Mr Lindberg) being beaten up by furious hunters, who also threatened to hit him on the head with a gaff if he did not keep quiet."

On the other hand, the District Court rejected the seal hunters' claim with respect to the following statements published on 20 July 1988:

[1.4] "The same day [I] pointed out to the skipper that [a crew member] did not kill cubs in accordance with the regulations (i.e. he ... hit it with the spike [of the gaff] and then dragged the cub after him)."

[1.5] "At 15.00 [a crew member] beat to death a female harp seal which was protecting her pup."

The District Court provided the following reasons:

"As regards the statements concerned, it is a basic condition for declaring these null and void that they be defamatory. This question must be considered in the light of how the statements were perceived by the ordinary newspaper reader. Moreover, the statements must not be interpreted separately. The decisive factor must be how they were understood when the articles were read as a whole. The position is somewhat different, however, as far as justification is concerned. The Court will revert to this matter below. Even though the statements are to be considered on the basis of an overall assessment, it would nevertheless be correct to accord weight to the fact that the matter was splashed across the front page in bold type. The first impression given was thus that something serious had occurred. This impression was not appreciably lessened or altered by the more detailed article inside the newspaper. This factor must be deemed particularly significant.

The Court finds it clear that both statements in question of 15 July 1988 are defamatory. One of them read: 'Seals skinned alive' ('*sel levende flådd*'). This assertion must be understood to mean that the seal hunters committed acts of cruelty to the animals. It goes without saying that skinning an animal alive causes severe pain to it. When read as a whole, the statement must be understood to apply not only to one seal, but to several. It gives the impression that the seal hunters not infrequently skinned seals while they were still alive.

The other statement reads: 'Not least the report includes an account of his being beaten up by furious hunters, who also threatened to hit him on the head with a gaff if he did not keep quiet'. This statement must imply that the seal hunters had assaulted

Mr Lindberg, which, objectively speaking, amounts to a criminal act, cf. Article 228 of the Penal Code. The threat to hit him on the head with their gaffs if he did not keep quiet comes within the objective description of the offence set out in Article 227 of the Penal Code. The allegation must therefore be understood to mean that the seal hunters had committed two offences. Such a statement must clearly be considered defamatory.

As regards the statements concerning female harp seals, it is not disputed that such seal hunting was not permitted in 1988. Reference is made to items 1.1, 1.2, 1.3 and 1.6 of the allegations ...

Item 1.4 also concerns a violation of the seal hunting regulations. In this regard, reference is made to Article 8 b of the regulations, according to which the seal shall first be struck with the blunt end of the gaff and then with the spike. The reason for this is that the animals are to be knocked unconscious before they are killed with the spike. The statement must imply that the blows with the blunt end had been omitted.

A breach of the regulations constitutes a criminal offence. It is regarded as a misdemeanour and may be punished by a fine. Generally speaking, an allegation of such a violation must also be considered to be defamatory ...

In the Court's view, the statements relating to the killing of female harp seals must be regarded as defamatory.

Hunting for this species of seal was not permitted at all in 1988. The statements do not differ from allegations of illegal hunting in general and imply that the crew behaved in a morally reprehensible manner. The Court will deal below with the question as to whether the statements can be regarded as substantiated and thus lawful.

The Court is, however, in doubt as regards the statement quoted in item 1.4. It is not alleged that the seal pups were made to suffer, but simply that the killing methods used were not in accordance with the regulations. Given that it is not alleged that the seal pups were made to suffer, the statement can hardly be interpreted as implying strong moral condemnation of the seal hunter. ... The decisive question is whether the killing is carried out in a responsible manner. The statement cannot be understood to mean that it was not. At any rate, given the fact that it was not suggested that the pups had been made to suffer, the matter must be regarded as trivial. The court has, with some doubt, reached the conclusion that the statement cannot be considered defamatory.

Accordingly, with the exception of item 1.4, the statements must fall within two of the situations described in Article 247 of the Penal Code, i.e. 'to harm another person's good name or reputation', and 'to expose him to ... loss of the confidence necessary for his position or business'. There can be no doubt that the statements were capable of having such effects. In this regard, the defendants have pointed out that considerable sympathy was shown to the crew during the ensuing public debate. The legal requirement is, however, that the statements were 'capable' of doing harm. The ensuing debate revealed that opinions about the hunting process differed.

There has been considerable opposition to seal hunting for a number of years, particularly at the international level. Although many people in Norway, especially in northern Norway, were opposed to Mr Lindberg, this did not automatically mean that there was a corresponding support for the seal hunters. The latter received media coverage because of their hunting methods, for which they are being remembered. Apart from this, the crew members were not much involved in the debate about other aspects of seal hunting, in particular, the ecological aspect of the debate was especially heated during the so-called seal invasions at the end of the 1980s.

It is undisputed that the group of persons to whom the statements apply is not so wide as to leave unaffected the individuals concerned. The defendants have thus not argued that deletion [of names] ensured sufficient anonymity. Even though the names of individual seal hunters had been deleted, it was clear that the *Harmoni* was the vessel at issue. Therefore, everyone who was on board must be seen as having been aggrieved by the statements ... In fact the deletion had an effect which was contrary to its purpose. In the report only four of the crew are named as having committed offences. If the newspaper had not deleted the names, the group of persons targeted would have been reduced correspondingly ...

Although the statements objectively fall within the scope of Article 247 of the Penal Code, it is also a requirement that they be 'unlawful' [*rettsstridig*]. In this regard the defendants have submitted several arguments. Firstly, it is argued that the seal hunting matter in Norway was probably the biggest news story in 1988. It is argued that in such a situation the press must enjoy a great deal of latitude in order to enable it to highlight all aspects of the matter (the 'public interest' point of view) ...

The Court accepts that an extensive freedom of expression must apply to discussion on matters of general public interest. This consideration is precisely the linchpin of Article 100 of the Norwegian Constitution and it is essential in a democratic society ... In spite of this, however, there are some limitations. Firstly, the Court has in mind that certain requirements relating to privacy and truth must be taken into account. ... All the statements complained of must be understood to mean that the crew of the *Harmoni* committed unlawful acts. This is the main theme of the newspaper articles of 15 and 20 July 1988.

It hardly appears to the Court that the newspaper's presentation of the matter, particularly on 15 July, was primarily intended to promote a serious debate on matters of public interest. It focused on the criminal aspects. The public debate for and against seal hunting definitely remained in the background. The form in which the material was presented must also be taken into consideration. The affair was splashed across the front page in bold type. Words such as 'lie' are used in one of the headings of the articles that follow. The Court is definitely of the impression that the primary motive of the newspaper was to be the first to print the story. In particular the front-page article is of a sensational nature. Sufficient attention was not paid to the protection of other persons in this disclosure. The newspaper was also aware that the material was sensitive and had thus particular reason to proceed with caution. The journalist, Mr Raste, had been told, presumably on 13 July, during a telephone conversation with the Ministry of Fisheries, that the report was exempt from public disclosure. In the light of this, the Court cannot see that the newsworthiness of the matter could justify the manner in which it was presented.

Secondly, it has been argued that the publication concerns an official document. According to the newspaper, such documents are reliable sources which one should be able to trust. In this regard, reference is being made to Article 253 § 3 of the Penal Code. Generally speaking, the Court agrees that official documents must normally be considered as good journalistic sources. How good they are, however, depends on the circumstances. In the present case, the newspaper was aware that the report had been exempt from public disclosure and the reasons therefor. The Ministry wished to investigate the matter more closely before deciding whether to make the report public. Mr Raste was also aware that the allegation that seals had been skinned alive would sound like a tall story. Mr Raste himself kept sheep and had some insight into the killing of animals. In spite of this, the matter was given wide coverage. In the circumstances, the newspaper clearly should have investigated the matter more closely before printing the material. On the evidence adduced, the Court finds that no investigation had been made. In his testimony, Mr Gunnar Gran, Secretary General of the Norwegian Press Association, stated that, as a matter of press ethics, it was objectionable to print the allegation that seals had been skinned alive if Mr Raste was aware that it was untrue.

Statements based on an inspection report clearly fall outside the ambit of Article 253 § 3. This provision is exhaustive ...

... The defendants have invoked Article 10 of the Convention. In this connection what is called the 'public interest' point of view has been stressed. This may be described as the doctrine of unrestricted freedom of expression with regard to matters of public interest. Although the Court has in fact already dealt with this point, it sees reason to comment that the present case differs from the *Sunday Times* case and the Lingens v. Austria case.

The latter case concerned in particular the expression of political opinions. Mr Lingens, the editor, had used such expressions as 'the basest opportunism', 'immoral' and 'undignified' to describe certain aspects of Chancellor Bruno Kreisky's character. These are value judgments and are not, like the statements in the present case, linked to facts ...

A defamatory statement which is true is not unlawful, cf. Article 253 § 1 and Article 249 § 1 of the Penal Code. In the present case, the defendants have admitted that, except in the case of one female harp seal, no proof has been adduced. However, it has been argued that Mr Lindberg produced photos showing that several female harp seals had been killed. Notwithstanding the said admission by the defence, the Court will assess the matter for itself. As regards item 2.1 of the allegations, it has clearly not been proved that the statement was true or probably true. On the contrary, Mr Raste was of the opinion that the statement had to be inaccurate. Mr Lindberg and Mr K. have submitted two different versions. As to item 2.2 there is no reason for the Court to give greater credence to Mr Lindberg than to Mr K. The Court cannot see that there are other circumstances that would support this statement. Thus there is no evidence to substantiate the statement.

As regards the killing of female harp seals the Commission of Inquiry states at p. 84 of its report: 'Our conclusion is that we must regard the allegations about the killing of five female harp seals as highly improbable.' It is, however, a fact that the *Harmoni* was carrying the skin of a female harp seal when it returned from the West Ice. [Crew

member S.'s] explanation was that [crew member H.] had killed a harp seal pup. Its mother had been nowhere in sight. She had turned up afterwards and had attacked [H.]. He had become frightened and had tried to hit her on the nose with his gaff. He had, however, hit her too hard, so that she had started bleeding. The mother had been killed because of the blood. This is the matter referred to in item 1.5. The Court cannot see that the statement gives an objectively incorrect impression of what occurred. This does not imply that the Court finds that [H.] acted unlawfully. If he acted in self-defence, his action was not unjustified. This question the Court does not need to determine. Against this background the expression will not be declared null and void.

The other statements concerning female harp seals have not ... been substantiated by documentary evidence. The seal hunters deny that more than one female harp seal had been killed. In his testimony Mr Lindberg referred to photos which, in his view, substantiated the statements. He refused to produce the photos so that they could be assessed by experts. The day after [his] testimony ... an article appeared in ... *Bladet Tromsø*, accompanied by a photo of female harp seals. According to the seal hunters, the photo dated back to 1987, when such seal hunting had been permitted. The Court cannot base its decision on newspaper articles but only on what has taken place during the main hearing. Therefore it must be obvious that the other statements cannot be regarded as having been proved. Moreover, the Court is somewhat surprised by Mr Lindberg's refusal to produce the photos in court.

To sum up, the Court observes that the conditions have been fulfilled for declaring null and void the statements cited in items 1.1, 1.2, 1.3, 1.6, 2.1 and 2.2 of the allegations. The expression cited in item 1.4 is not deemed to be defamatory, whereas that cited in item 1.5 is deemed to have been proved true.

It is not a requirement for declaring the statements null and void that the conditions for imposing a penalty have been fulfilled ... The Court will consider the question of liability when discussing the claim for damages.

The conditions for awarding damages are set out in sections 3-6, subsection one, of the Damages Compensation Act 1969 (*Skadeerstatningsloven,* 13 June 1969, no. 26) … Only [compensation for non-pecuniary damage] has been claimed. It is being specifically argued that the newspaper must be deemed to have acted negligently and that it would be reasonable if the Court were to make an award for non-pecuniary damage. In its assessment, the Court will attach weight to the existence of negligence as well as other circumstances. Thus, a number of factors are relevant to its determination of the compensation issue. In the Court's view, the newspaper has behaved negligently. It had made no further investigation prior to the publication of the material in question, despite this having been called for in the circumstances. The Court has expressed its views on this point above. As regards the compensation claim, it must nevertheless consider the significance of the measures taken to preserve anonymity. The deletion of names did not mean that the crew members could not be identified. As the name of the vessel, *Harmoni*, was clearly stated, it was easy to find out the identity of the crew. The individual seal hunters were known to their neighbours, acquaintances, families, etc. The newspaper must have been aware of this. In any event, it ought to have known that there was a real risk that the persons in question would be identified.

The Court finds it reasonable that the plaintiffs be awarded compensation. The newspaper coverage caused such inconvenience to the crew members and damage to

their reputation as to justify upholding their claim. A total of 2,999 seals were caught during the expedition to the West Ice. Even though it is probable that some violations of the seal hunting regulations occurred, the rendering of Mr Lindberg's report gave a grossly distorted picture. The main impression is that the regulations were essentially complied with.

As far as [the second applicant] is concerned, sections 3-6 must be read in conjunction with Article 431 of the Penal Code. The editor was at his cottage at the time and was not fully aware of the contents of the matters printed. Nonetheless, he did consent to the material being printed. Mr Stensaas has not invoked the exception clause on freedom from liability. Accordingly, [he] must also be considered liable for the newspaper articles. This in turn will have a bearing on the compensation issue.

...

There are factors militating in favour of awarding a substantial amount in compensation: in the first place, certain statements in the preparatory work and, secondly, the degree of abusiveness of the material and the extent to which it was disseminated. In this connection it should be noted that Mr Lindberg has been ordered to pay each of the plaintiffs NOK 10,000 in compensation for non-pecuniary damage [see paragraph 32 above]. … In determining the amount, importance has been attached to the fact that the statements were widely disseminated. Given that this factor has already been taken into account, it must carry a little lesser weight in the case against the newspaper. Otherwise the crew would to some extent receive double compensation.

Moreover, the newspaper was aware that the material was sensitive and that one of the allegations was false. A further factor is the form in which the material was presented, as is the fact that no investigations had been made. In addition, the newspaper did not apologise for having printed the material.

A factor pointing in the opposite direction is, in particular, the fact that the crew members were permitted to express their views. Generally speaking, the seal hunting matter was one of the biggest news stories in 1988. This fact must be accorded some weight, although it does not free the newspaper from liability. In the light of the circumstances, the Court cannot see that importance should be attached to the fact that inspector reports are normally public documents. Mr Lindberg's report had been exempt from public disclosure. Nor is it significant that the report was eventually also published by *Fiskaren*. This fact was only mentioned but was not elaborated upon during the main hearing. The Court has no knowledge of the context, circumstances, etc. The financial standing of [the first applicant] is of significance. The Court finds that the newspaper has been in somewhat strained circumstances for several years. Still its gross annual turnover is said to be approximately NOK 30 million.

Accordingly, each of the plaintiffs is to be paid NOK 11,000 in compensation, of which NOK 10,000 are to be paid by the newspaper, and NOK 1,000 by the editor. The newspaper is also jointly and severally liable with the editor for the amount he has to pay."

36. On 18 March 1992 the applicants sought leave to appeal to the Supreme Court (*Høyesterett*), alleging that the District Court had made an error of law. On 18 July 1992, the Appeals Selection Committee of the

Supreme Court decided not to allow the appeal, finding it obvious that the appeal would not succeed.

I. Defamation proceedings against other media companies

37. The crew of the *Harmoni* also brought defamation proceedings against other media companies, including the newspaper *Aftenposten*, its editor and journalist, in respect of an article published on 22 July 1988 on the seal hunting issue. The action did not relate to an article of 16 July 1988 in which *Aftenposten* reproduced Mr Lindberg's statements, published by *Bladet Tromsø*, to the effect that seals had been flayed alive.

In a judgment of 1 February 1993 the Oslo City Court dismissed the action. The City Court found that, although the impugned article had contained several allegations that seal hunting regulations had been violated, the manner of journalistic reporting at issue could not be considered "unlawful" ("*rettsstridig*").

The City Court stated, *inter alia*:

> "*Bladet Tromsø* received the report from Mr Lindberg in July and published a major article on 15 July 1988, in which it was claimed that seals had been 'skinned alive'. The article aroused great media interest. The Norwegian Telegram Agency ... issued bulletins on the seal hunting affair on 15, 18, 20 and 21 July. *Aftenposten* also followed up the affair, but most of its coverage was based on [those] bulletins. *Aftenposten*'s first article, published on 16 July, stated in an introductory paragraph: 'Strong criticism of seal hunters'. In an evening issue on the same date it was stated: 'Seal hunters must explain'. In the morning issue on 18 July the seal hunters had their say at p. 4, under the heading: 'Seal hunters: never flayed seals alive'. Mr Kvernmo had stated to the newspaper that 'we are shocked about Mr Lindberg's allegations that we have skinned seals alive. ... He is of the view that Mr Lindberg has misunderstood the situation during the seal hunt and deplores that the crew has been blamed in his report to the Ministry of Fisheries.' Furthermore, it is stated that 'the allegation is so grotesque and removed from reality that a number of seal hunters have reacted very strongly against these. 'Flaying seals alive has never occurred during the sixty seal hunt seasons in which I have participated', says arctic shipowner, Mr Jacobsen. … On 19 July *Aftenposten* published an interview with seal inspector, Mr Nilssen, under the headline 'Disagreement on killing methods applied to seal'. On 21 July it published an article entitled: 'Seal hunting report without substantiated allegations' …
>
> To sum up, the Court considers the seal hunting case, as it stood on the evening of 21 July as follows:
>
> Mr Lindberg's report had aroused a great deal of interest. Its contents had been disputed by the seal hunters, a shipowner and the Ministry of Fisheries. All the different points of view had been reported in *Aftenposten*. Despite the refutations of

the report made by the seal hunters and the Ministry of Fisheries, its contents had not been effectively and objectively refuted …

Aftenposten's report on 22 July amounted to a continuation of the seal hunting debate which had already started. Attacks had been made against the report and these Mr Lindberg wished to counter, through the newspaper article – together with photographs. The debate was going on and it was only natural that *Aftenposten* allowed Mr Lindberg to present his version of the matter … The Court considers that *Aftenposten*'s article enabled the discussion to progress.

Aftenposten's presentation is an objective, balanced account in defence of Mr Lindberg's report. The article presents the evidence put forward by Mr Lindberg in support of the accuracy of the report and is an important element in the current seal hunting debate. *Aftenposten* focuses on the lawfulness of the existing seal hunting methods and has no intention of exposing the seal hunters to public contempt by means of malicious coverage ... The coverage clearly cannot be compared to the article printed in ... *Bladet Tromsø* on 15 July. The Court would also point out that *Aftenposten* fairly consistently refers to Mr Lindberg as its source. Although the heading, when seen together with the photos, suggests that there have been violations of the regulations and cruelty to animals, these violations are not particularly highlighted. The newspaper focuses on the seal hunting case. It should also be noted that on the following day the sealers were given an opportunity, in a conspicuous place, to refute the inspector's report. This indicates that there was an ongoing debate on a matter of public interest in which the parties involved were, in a proper manner, given an opportunity to express their views. *Aftenposten*'s coverage of the seal hunting case is characterised precisely by reciprocity: *Aftenposten* maintained that, from a journalistic point of view, the coverage of 22 July was exemplary. The Court agrees with the newspaper's view, particularly as regards the situation that obtained prior to the article published on 22 July.

The Court does not see any reason to examine whether *Aftenposten* has adduced proof. The Commission of Inquiry report … concludes that the regulations have clearly been breached. At p. 101, the Commission states:

> 'We cannot avoid mentioning that during the period under consideration the implementation of the hunting regulations has been characterised by several defects which on the whole are not insignificant.'

The ensuing circumstances thus demonstrate that *Aftenposten* to a large degree could substantiate the allegations that the rules had been breached. Mr Lindberg's report was not a serious work and suffered from a number of shortcomings, but parts of it proved later to be accurate.

Accordingly, the Court concludes that *Aftenposten*'s coverage was not unwarranted. It does not contain any unlawful defamatory statements ..."

The crew members' appeal to the Supreme Court was not allowed. Their claim for compensation for non-pecuniary damage was further rejected by the Eidsivating High Court (*lagmannsrett*) in a judgment of 6 March 1995.

38. On 4 August 1993, in further defamation proceedings instituted by

the crew of the *Harmoni*, the Oslo City Court declared null and void a statement to the effect that seals had been skinned alive, which had been transmitted by the Norwegian Broadcasting Corporation on 16 and 18 July 1988.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. Under Norwegian defamation law, there are three kinds of response to unlawful defamation, namely the imposition of a penalty under the provisions of the Penal Code, an order under its Article 253 declaring the defamatory allegation null and void (*mortifikasjon*) and an order under the Damage Compensation Act 1969 to pay compensation to the aggrieved party. Only the latter two were at issue in the present case.

40. Under Article 253 of the Penal Code, a defamatory statement which is unlawful and has not been proved true may be declared null and void by a court. In so far as relevant this provision reads:

> "1. When evidence of the truth of an allegation is admissible and such evidence has not been produced, the aggrieved person may demand that the allegation be declared null and void unless otherwise provided by statute."
>
> *"1. Når det har vært adgang til å føre bevis for sannheten av en beskyldning og beviset ikke er ført, kan den fornærmete forlange at beskyldningen blir erklært død og maktesløs (mortifisert) dersom ikke annet følger av lov."*

Such a declaration is applicable only with regard to factual statements, the truth of value judgments not being susceptible of proof.

Although the provisions on orders declaring a statement null and void are contained in the Penal Code, such an order is not considered a criminal sanction but a judicial finding that the defendant has failed to prove its truth and is thus viewed as a civil-law remedy.

In recent years there has been a debate in Norway as to whether one should abolish the remedy of null and void orders, which has existed in Norwegian law since the sixteenth century and which may also be found in the laws of Denmark and Iceland. Because of its being deemed a particularly lenient form of sanction, the Norwegian Association of Editors has expressed a wish to maintain it**.**

41. The conditions for holding a defendant liable for defamation are set out in Chapter 23 of the Penal Code, Article 247 of which provides:

> "Article 247. Any person who, by word or deed, behaves in a manner that is likely to harm another person's good name and reputation or to expose him to hatred, contempt, or loss of the confidence necessary for his position or business, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding one year. If the defamation is committed in print or in broadcasting or otherwise under especially aggravating circumstances, imprisonment for a term not exceeding two years may be imposed."

"§ 247. Den som i ord eller handling optrer på en måte som er egnet til å skade en annens gode navn og rykte eller til å utsette ham for hat, ringeakt eller tap av den for hans stilling eller næring fornødne tillit, eller som medvirker dertil, straffes med bøter eller med fengsel inntil 1 år. Er ærekrenkelsen forøvet i trykt skrift eller i kringkastingssending eller ellers under særdeles skjerpende omstendigheter, kan fengsel inntil 2 år anvendes."

42. A limitation to the applicability of Article 247 follows from the requirement that the expression must be "unlawful" ("*rettsstridig*"). While this is expressly stated in Article 246, Article 247 has been interpreted by the Supreme Court to include such a requirement.

In a civil case concerning pre-trial reporting by a newspaper, the Supreme Court found for the newspaper, relying on the reservation of lawfulness (*rettsstridsreservasjonen*), even though the impugned expressions had been deemed defamatory. It held that, in determining the scope of this limitation, particular weight should be attached to whether the case was of public interest, having regard to the nature of the issues and to the kind of parties involved. Furthermore, regard should be had to the context in which, and the background against which, the statements had been made. Moreover, it was of great importance whether the news item had presented the case in a sober and balanced manner and had been aimed at highlighting the subject-matter and the object of the case (*Norsk Retstidende* 1990, p. 636, at p. 640).

43. Further limitations to the application of Article 247 are contained in Article 249, which, in so far as is relevant, reads:

"Article 249

1. Punishment may not be imposed under Articles 246 and 247 if evidence proving the truth of the accusations is adduced.

…"

"*§ 249.*

1. Straff efter §§ 246 og 247 kommer ikke til anvendelse dersom det føres bevis for beskyldningens sannhet.

..."

44. As regards the requirement of proof under Article 249 § 1, the same standard which applies to the author of a libellous statement applies in principle also to a person who disseminates it. It is not clear under Norwegian law whether the criminal-law standard of proof beyond reasonable doubt or the civil-law standard of balance of probability applies. The applicants have referred to a judgment of the Supreme Court, in which it accepted the standard applied by the lower court in a criminal libel case concerning allegations made in a television programme and a newspaper

that a private practising lawyer had recommended his spouse to commit tax offences in connection with a property sale. In view of the seriousness of the accusation, it was found appropriate in that case to apply the same standard of proof as would apply to a public prosecutor in criminal proceedings on tax evasion. Leading legal writers are of the opinion that the truth of a defamatory accusation of theft must, in order to discharge the defendant from liability, be proved according to the same standard as would apply to the prosecution in a theft case**.** According to Professor Mæland, it would be reasonable to increase the burden of proof according to the seriousness of the defamatory statement. Professor Andenæs and Professor Bratholm have expressed the view that, although there may be good reasons for imposing a strict burden of proof in libel cases, in certain circumstances it may be justified to apply a somewhat less strict standard than in criminal cases, for instance where the victim of the libel has behaved in a particularly reprehensible manner (see, H.J. Mæland, *Ærekrenkelser, Universitetsforlaget*, 1986, pp. 178-79; and J. Andenæs and A. Bratholm, *Spesiell strafferett*, *Universitetsforlaget*, 1983, p. 196).

PROCEEDINGS BEFORE THE COMMISSION

45. Bladet Tromsø A/S and Mr Pål Stensaas lodged an application (no. 21980/93) with the Commission on 10 December 1992. They complained that the District Court's judgment constituted an unjustified interference with their right to freedom of expression under Article 10 of the Convention, which provision had therefore been violated.

46. The Commission declared the application admissible on 26 May 1997. In its report of 9 July 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of

Article 10 (twenty-four votes to seven). The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

47. At the hearing on 27 January 1999 the Government invited the Court to hold that, as submitted in their memorial, there had been no violation of Article 10 of the Convention.

48. On the same occasion the applicants reiterated their request to the Court to find a violation of Article 10 and to make an award of just satisfaction under Article 41.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

49. The applicants complained that the Nord-Troms District Court's judgment of 4 March 1992, against which the Supreme Court refused leave to appeal on 18 July 1992, had constituted an unjustified interference with their right to freedom of expression under Article 10 of the Convention, which reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

50. It was common ground between those appearing before the Court that the impugned measures constituted an "interference by [a] public

1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

authority" with the applicants' right to freedom of expression as guaranteed under the first paragraph of Article 10. Furthermore, there was no dispute that the interference was "prescribed by law" and pursued a legitimate aim, namely "the protection of the reputation or rights of others" and thus fulfilled two of the conditions for regarding the interference as permissible under the second paragraph of this Article. The Court arrives at the same conclusion on these issues.

The dispute in the case under consideration relates to the third condition, that the interference be "necessary in a democratic society". The applicants and the Commission argued that this condition had not been complied with and that Article 10 had therefore been violated. The Government contested this contention.

A. Arguments of those appearing before the Court

1. The applicants and the Commission

51. For the Commission, with which the applicants essentially agreed, the impugned statements in *Bladet Tromsø*, which had all been based on Mr Lindberg's report, bore on a matter of serious public concern. The essential aim of the various articles had not been to damage the reputation of those engaged in the seal hunting industry but to initiate a debate as to the proper means of ensuring its survival through compliance with the relevant regulations and, where necessary, by amending those rules so as to improve seal hunting and its image.

The allegations in issue had effectively been directed against only seven out of the seventeen members of the *Harmoni*'s crew and their names had been deleted in the report as reproduced. The reproduction of Mr Lindberg's report in *Bladet Tromsø* had been preceded by the crew members' own appeal that the report be disclosed to the public.

In a spirit of dialogue, the applicants had invited the crew members and various representatives of the government and the seal hunting industry to comment on Mr Lindberg's statements both before and after his report was published in *Bladet Tromsø.*

The Commission further emphasised that, as representatives of the press, the applicants were entitled to rely on, and could not be expected to verify, the observations which Mr Lindberg had conveyed to them in his capacity as a ministry-appointed official and which related directly to his mission on board the *Harmoni* (see paragraph 7 above). In so far as the applicants were required to establish the truth of Mr Lindberg's statements (see paragraph 35 above), they were faced with an unreasonable, if not impossible, task.

The contested measures could not afford any significant further protection of the seal hunters' reputation and rights, since, firstly, at the time of the District Court's judgment the contents of Mr Lindberg's report had already been in the public domain for a year and a half and had been divulged (without disclosing the seal hunters' identities) through a number of other publications, including the Commission of Inquiry report (see paragraph 31 above); secondly, the seal hunters had successfully challenged various passages in Mr Lindberg's report in defamation proceedings against him (see paragraph 32 above).

52. The applicants maintained that the District Court's judgment was inadequate in that it failed to place the statements in question in the larger context of the controversy about the hunting expedition (see paragraphs 29-30 above). Rather than causing harm to their reputation, the effect of the Lindberg report had been to increase public support for seal hunters.

The impugned statements did not concern the private affairs of private persons. The burden of proof of a defendant facing a claim for a null and void order was quite strict (see paragraph 44 above). None of the impugned statements had been proved untrue (see paragraph 35 above).

2. The Government

53. The Government stressed that the present case concerned a conflict between two human rights – on the one hand, the right to freedom of expression and, on the other hand, the right of an individual to protection against unlawful attacks on his or her honour and reputation, the latter being expressly guaranteed under Article 17 of the 1966 International Covenant on Civil and Political Rights.

The Government argued mainly that *Bladet Tromsø* had launched a serious attack on the reputation and honour of the seal hunters by breaking the news about the report in a sensational manner on 15 July 1988 and reproducing very serious accusations of cruel and unlawful behaviour during the hunt (see paragraph 12 above). While not contesting that seal hunting was an issue of public interest, the Government pointed out that it would have been possible for the newspaper to take part in public discussion on the matter without attacking the crew members of the *Harmoni* personally. The impugned allegations had been directed against a small group of persons who could easily be identified because of the newspaper's reference to the crew of the *Harmoni* (see paragraph 12 above). These persons could not be regarded as public figures.

In the view of the Government, the newspaper could hardly be said to have acted in good faith. The applicants were aware that Mr Lindberg's

report had been exempted from public disclosure and that this decision had been taken temporarily in order to protect the individuals who had been accused of having committed inhuman and criminal acts, by giving them an opportunity to reply to the accusations (see paragraph 11 above). This measure must be seen in the light of the right of every person, including the seal hunters, under Article 6 § 2 to be presumed innocent of any criminal offence until proved guilty. It also suggested that the report did not necessarily present the Government's official view. Moreover, as found by the District Court, even the journalist in question had considered the allegation that seals had been flayed alive too unreasonable to be true (see paragraph 35 above).

54. The Government further disputed that the news coverage had been based on an accurate factual basis. The District Court, having assessed the evidence, found it obvious that the statements had not been proved (see paragraph 35 above).

Nor could the applicants reasonably consider that the information derived from Mr Lindberg's report was reliable, as they were aware of the fact that his qualifications had been questioned when it was published (see paragraphs 15, 20 and 26 above).

55. Furthermore, it could not be said that *Bladet Tromsø* complied with ethics of journalism. Under the Norwegian Code of Press Ethics, a person who is subject to serious criticism should as far as possible have an opportunity to reply simultaneously. The journalist has a duty to verify the truth of the information, which task would have been neither impossible nor unreasonable in the instant case. The allegations that seals had been skinned alive could have been verified by consulting an expert. However, no investigation had been undertaken by the newspaper (see paragraph 35 above).

The finding by the Commission that the publication of the report by *Bladet Tromsø* had been preceded by the crew members' own appeal to this effect was not correct (see paragraph 15 above). In any event, their demand was put forward after most of the damaging information had been made public, namely on 15 July 1988 (see paragraph 12 above). Nor was it correct that, prior to its being published, the applicants had invited the crew to comment on Mr Lindberg's report.

56. Finally, the Government pointed out that the impugned interference had not been of a criminal-law character; rather, the domestic court's finding had entailed a civil liability for the applicants to pay damages and meant that they had been unable to prove the truth of the allegations (see paragraph 40 above).

57. In the light of the foregoing, the Government were of the view that the domestic court had acted within its margin of appreciation and that there was a reasonable relationship of proportionality between the legitimate aim pursued and the interference complained of.

B. The Court's assessment

1. General principles

58. According to the Court's well-established case-law, the test of "necessity in a democratic society" requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see the *Sunday Times* (no. 1) v. the United Kingdom judgment of 26 April 1979, Series A no. 30, p. 38, § 62). In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10.

59. One factor of particular importance for the Court's determination in the present case is the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others 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 (see the Jersild v. Denmark judgment of 23 September 1994, Series A no. 298, p. 23, § 31; and the De Haes and Gijsels v. Belgium judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233-34, § 37). In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see the Prager and Oberschlick v. Austria judgment of 26 April 1995, Series A no. 313, p. 19, § 38). In cases such as the present one the national margin of appreciation is circumscribed by the interest of democratic society in enabling the press to exercise its vital role of "public watchdog" in imparting information of serious public concern (see the Goodwin v. the United Kingdom judgment of 27 March 1996, *Reports* 1996-II, p. 500, § 39).

60. In sum, the Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken

pursuant to their power of appreciation (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I).

2. Application of those principles to the present case

61. In the instant case the Nord-Troms District Court found that two statements published by *Bladet Tromsø* on 15 July 1988 and four statements published on 20 July were defamatory, "unlawful" and not proved to be true. One statement – "Seals skinned alive" – was deemed to mean that the seal hunters had committed acts of cruelty to the animals. Another was understood to imply that seal hunters had committed criminal assault on and threat against the seal hunting inspector. The remaining statements were seen to suggest that some (unnamed) seal hunters had killed four harp seals, the hunting of which was illegal in 1988. The District Court declared the statements null and void and, considering that the newspaper had acted negligently, ordered the applicants to pay compensation to the seventeen plaintiffs (see paragraph 35 above).

The Court finds that the reasons relied on by the District Court were relevant to the legitimate aim of protecting the reputation or rights of the crew members.

62. As to the sufficiency of those reasons for the purposes of Article 10 of the Convention, the Court must take account of the overall background against which the statements in question were made. Thus, the contents of the impugned articles cannot be looked at in isolation of the controversy that seal hunting represented at the time in Norway and in Tromsø, the centre of the trade in Norway. It should further be recalled that Article 10 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 the State or any sector of the population (see the Handyside v. the United Kingdom judgment of 7 December 1976, Series A no. 24, p. 23, § 49). Moreover, whilst the mass media must not overstep the bounds imposed in the interests of the protection of the reputation of private individuals, it is incumbent on them to impart information and ideas concerning matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Consequently, in order to determine whether the interference was based on sufficient reasons which rendered it "necessary", regard must be had to the public-interest aspect of the case.

63. In this connection the Court has noted the argument, relied on by the District Court (see paragraph 35 above), that *Bladet Tromsø*'s manner of presentation, in particular in the article of 15 July 1988 (see paragraph 12 above), suggested that the primary aim, rather than being the promotion of a

serious debate, was to focus in a sensationalist fashion on specific allegations of crime and to be the first paper to print the story.

In the Court's view, however, the manner of reporting in question should not be considered solely by reference to the disputed articles in *Bladet Tromsø* on 15 and 20 July 1988 but in the wider context of the newspaper's coverage of the seal hunting issue (see paragraphs 8-9, 12-19, 21-24 above). During the period from 15 to 23 July 1988 *Bladet Tromsø,* which was a local newspaper with – presumably – a relatively stable readership, published almost on a daily basis the different points of views, including the newspaper's own comments, those of the Ministry of Fisheries, the Norwegian Sailors' Federation, Greenpeace and, above all, the seal hunters (see paragraphs 12-19, 21-24 above). Although the latter were not published simultaneously with the contested articles, there was a high degree of proximity in time, giving an overall picture of balanced news reporting. This approach was not too different from that followed three months earlier in the first series of articles on Mr Lindberg's initial accusations and no criticism appears to have been made against the newspaper in respect of those articles. As the Court observed in a previous judgment, the methods of objective and balanced reporting may vary considerably, depending among other things on the medium in question; it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted by journalists (see the Jersild judgment cited above, p. 23, § 31).

Against this background, it appears that the thrust of the impugned articles was not primarily to accuse certain individuals of committing offences against the seal hunting regulations or of cruelty to animals. On the contrary, the call by the paper on 18 July 1988 (see paragraph 16 above) for the fisheries authorities to make a "constructive use" of the findings in the Lindberg report in order to improve the reputation of seal hunting can reasonably be seen as an aim underlying the various articles published on the subject by *Bladet Tromsø*. The impugned articles were part of an ongoing debate of evident concern to the local, national and international public, in which the views of a wide selection of interested actors were reported.

64. The most careful scrutiny on the part of the Court is called for when, as in the present case, the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see the Jersild judgment cited above, pp. 25-26, § 35).

65. Article 10 of the Convention does not, however, guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it "duties and

responsibilities", which also apply to the press. These "duties and responsibilities" are liable to assume significance when, as in the present case, there is question of attacking the reputation of private individuals and undermining the "rights of others". As pointed out by the Government, the seal hunters' right to protection of their honour and reputation is itself internationally recognised under Article 17 of the International Covenant on Civil and Political Rights. 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 the seal hunters had a right to be presumed innocent of any criminal offence until proved guilty. By reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see the Goodwin judgment cited above, p. 500, § 39, and *Fressoz and Roire* cited above, § 54).

66. The Court notes that the expressions in question consisted of factual statements, not value-judgments (cf., for instance, the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 28, § 46). They did not emanate from the newspaper itself but were based on or were directly quoting from the Lindberg report, which the newpaper had not verified by independent research (see the Jersild judgment cited above, pp. 23 and 25-26, §§ 31 and 35). It must therefore be examined whether there were any special grounds in the present case for dispensing the newspaper from its ordinary obligation to verify factual statements that were defamatory of private individuals. In the Court's view, this depends in particular on the nature and degree of the defamation at hand and the extent to which the newspaper could reasonably regard the Lindberg report as reliable with respect to the allegations in question. The latter issue must be determined in the light of the situation as it presented itself to *Bladet Tromsø* at the material time (see paragraphs 7-19, 25-26 above), rather than with the benefit of hindsight, on the basis of the findings of fact made by the Commission of Inquiry a long time thereafter (see paragraph 31 above).

67. As regards the nature and degree of the defamation, the Court observes that the four statements (items 1.1, 1.2, 1.3 and 1.6) to the effect that certain sealers had killed female harp seals were found defamatory, not because they implied that the hunters had committed acts of cruelty to the animals, but because the hunting of such seals was illegal in 1988, unlike the year before (see paragraphs 13 and 35 above). According to the District

Court, "the statements [did] not differ from allegations of illegal hunting in general" (see paragraph 35 above). Whilst these allegations implied reprehensible conduct, they were not particularly serious.

The other two allegations – that seals had been skinned alive and that furious hunters had beaten up Mr Lindberg and threatened to hit him with a gaff (items 2.1 and 2.2) – were more serious but were expressed in rather broad terms and could be understood by readers as having been presented with a degree of exaggeration (see paragraph 12 above).

More importantly, while *Bladet Tromsø* publicised the names of the ten crew members whom Mr Lindberg had exonerated, it named none of those accused of having committed the reprehensible acts (see paragraphs 13 and 18 above). Before the District Court each plaintiff pleaded his case on the basis of the same facts and the District Court apparently considered each of them to have been exposed to the same degree of defamation, as is reflected in the fact that an equal award was made to each of them (see paragraph 35 above).

Thus, while some of the accusations were relatively serious, the potential adverse effect of the impugned statements on each individual seal hunter's reputation or rights was significantly attenuated by several factors. In particular, the criticism was not an attack against all the crew members or any specific crew member (see the Thorgeir Thorgeirson v. Iceland judgment of 25 June 1992, Series A no. 239, p. 28, § 66).

68. As regards the second issue, the trustworthiness of the Lindberg report, it should be observed that the report had been drawn up by Mr Lindberg in an official capacity as an inspector appointed by the Ministry of Fisheries to monitor the seal hunt performed by the crew of the *Harmoni* during the 1988 season (see paragraph 7 above). In the view of the Court, the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research. Otherwise, the vital public-watchdog role of the press may be undermined (see, *mutatis mutandis,* the Goodwin judgment cited above, p. 500, § 39).

69. The Court does not attach significance to any discrepancies, pointed to by the Government, between the report and the publications made by Mr Lindberg in *Bladet Tromsø* one year before in quite a different capacity, namely as a freelance journalist and an author.

70. The newspaper was, it is true, already aware from the reactions to Mr Lindberg's statements in April 1988 that the crew disputed his competence and the truth of any allegations of "beastly killing methods" (see paragraph 9 above). It must have been evident to the paper that the Lindberg report was liable to be controverted by the crew members. Taken on its own, this cannot be considered decisive for whether the newspaper had a duty to verify the truth of the critical factual statements contained in

the report before it could exercise its freedom of expression under Article 10 of the Convention.

71. Far more material for this purpose was the attitude of the Ministry of Fisheries, which had appointed Mr Lindberg to carry out the inspection and to report back (see paragraph 7 above). As at 15 July 1988 *Bladet Tromsø* was aware of the fact that the Ministry had decided to exempt the report from public disclosure with reference to the nature of the allegations – criminal conduct – and to the need to give the persons named in the report an opportunity to comment (see paragraph 11 above). It has not been suggested that, by publishing the relevant information, the newspaper was acting in breach of the law on confidentiality. Nor does it appear that, prior to the contested publication on 15 July 1988, the Ministry had publicly expressed a doubt as to the possible truth of the criticism or questioned Mr Lindberg's competence. Rather, according to a bulletin of the same date by the Norwegian News Agency, the Ministry had stated that it was possible that illegal hunting had occurred (see paragraph 25 above).

On 18 July 1988 the Norwegian News Agency reported the Ministry as having stated that veterinary experts would consider the controversial Lindberg report and that the Ministry would issue information of the outcome and possibly also of the circumstances of Mr Lindberg's recruitment as inspector; and, moreover, that the Ministry would not comment any further until it had collected more information (see paragraph 26 above). On 19 July the News Agency reported that the Ministry had believed, on the basis of information provided by Mr Lindberg himself, that his research background was far more extensive than it was in reality. It was on 20 July, the same date as the last of the disputed publications, that the Ministry expressed doubts as to Mr Lindberg's competence and the quality of the report (see paragraph 20 above).

In the Court's opinion, the attitude expressed by the Ministry before 20 July 1988 does not constitute a ground for considering that it was unreasonable for the newspaper to regard as reliable the information contained in the report, including the four statements published on 20 July to the effect that specific but unnamed seal hunters had killed female harp seals (see paragraph 13 above). In fact, the District Court later found that one such allegation (item 1.5) had been proved true (see paragraph 35 above).

72. Having regard to the various factors limiting the likely harm to the individual seal hunters' reputation and to the situation as it presented itself to *Bladet Tromsø* at the relevant time, the Court considers that the paper could reasonably rely on the official Lindberg report, without being required to carry out its own research into the accuracy of the facts reported. It sees no reason to doubt that the newspaper acted in good faith in this respect.

73. On the facts of the present case, the Court cannot find that the crew members' undoubted interest in protecting their reputation was sufficient to outweigh the vital public interest in ensuring an informed public debate over a matter of local and national as well as international interest. In short, the reasons relied on by the respondent State, although relevant, are not sufficient to show that the interference complained of was "necessary in a democratic society". Notwithstanding the national authorities' margin of appreciation, the Court considers that there was no reasonable relationship of proportionality between the restrictions placed the applicants' right to freedom of expression and the legitimate aim pursued. Accordingly, the Court holds that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Bladet Tromsø A/S and Mr Pål Stensaas sought just satisfaction under Article 41 of the Convention, which provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

75. Under the head of pecuniary damage, the applicants requested compensation for the economic loss which they had suffered as a result of the District Court's judgment of 4 March 1992 ordering them to pay 187,000 Norwegian kroner (NOK) in damages to the plaintiffs and NOK 136,342 to cover the latter's costs before the District Court.

76. Subject to the Court finding a violation of the Convention, the Government did not contest the above claim. The Delegate of the Commission did not offer any comment.

77. The Court, being satisfied that there was a causal link between the damage claimed and the violation found of the Convention, awards the totality of the sum sought under this head.

B. Costs and expenses

78. The applicants further claimed reimbursement of costs and expenses, totalling NOK 652,229 in respect of the following items:

(i) NOK 138,887 for their costs and expenses in the proceedings before the District Court;

(ii) NOK 29,560 for their costs and expenses in the appeal to the Supreme Court;

(iii) NOK 150,000 for work (128 hours at NOK 1,000 and 20 hours at NOK 1,100) by Mr Wolland in the proceedings before the Strasbourg institutions until 28 August 1998;

(iv) NOK 79,200 for work (60 hours at 100 pounds sterling (GBP) per hour) by Mr Boyle during the aforementioned period;

(v) NOK 23,840 for expenses incurred in the Strasbourg proceedings until 28 August 1998;

(vi) NOK 104,500 for work (95 hours at NOK 1,100) by Mr Wolland from 29 August 1998 until and including the Court's hearing on 27 January 1999;

(vii) NOK 26,481 in expenses (travel, accommodation and miscellaneous) incurred by Mr Wolland in connection with the above;

(viii) NOK 68,330 for work (46 hours at GBP 100 per hour) by Mr Boyle and expenses (travel, accommodation and miscellaneous) incurred by him from 29 August 1998 until and including the Court's hearing on 27 January 1999;

(ix) NOK 17,551 for travel and accommodation expenses incurred in connection with Mr Y. Nielsen's (current chief editor of *Bladet Tromsø*) attendance at the hearing;

(x) NOK 13,880 for travel and accommodation expenses incurred in connection with Mr Stensaas's attendance at the hearing.

79. The Government contested the above claim, arguing that the number of hours and the rates were excessive. The Delegate of the Commission also in this context left the matter to the Court's discretion.

80. The Court, in accordance with its case-law, will consider whether the costs and expenses were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for instance, the Tolstoy Miloslavsky v. the United Kingdom judgment of 13 July 1995, Series A no. 316-B, p. 83, § 77). It is satisfied that the hourly rates charged in the Strasbourg proceedings were reasonable but finds the number of hours claimed excessive. Making an assessment on an equitable basis the Court awards the applicants NOK 80,000 with respect to the work by Mr Wolland and NOK 40,000 with regard to the work by Mr Boyle in the Strasbourg proceedings. The remainder of the claim for costs and expenses is to be reimbursed in its entirety.

C. Interest pending the proceedings before the national courts and the Convention institutions

81. The applicants in addition claimed NOK 515,337 in interest (18% per year until 1 January 1994 and then 12% per year until 1 November 1998) on the amounts claimed in respect of pecuniary damage and of costs and expenses incurred until 28 August 1998.

82. The Government observed that it was difficult, on the basis of the breakdown of the applicants' claim to verify the accuracy of the calculations of interest. The latter had been based on the Act on Default Interest 1976 (*morarenteloven*, Law no. 100 of 17 December 1976). It included a penalty element and clearly exceeded the ordinary level of interest in Norway. The said Act could not, in their submission, constitute a basis for the assessment of an award under Article 41 of the Convention.

83. The Court finds that the applicants must have suffered some pecuniary loss by reason of the periods that elapsed from the times when the various costs were incurred until the Court's award (see, for instance, the Darby v. Sweden judgment of 23 October 1990, Series A no. 187, p. 14, § 38, and the *Observer* and *Guardian* v. the United Kingdom judgment of 26 November 1991, Series A no. 216, p. 38, § 80 (d)) . It does not consider itself bound by the national law on the calculation of interest nor does it propose to undertake a precise quantification of the loss sustained by the applicants in the present case. Deciding on an equitable basis and having regard to the rates of inflation in Norway during the relevant period, it awards the applicants NOK 65,000 with respect to their claim under this head.

D. Default interest to apply with respect to the Court's award

84. According to the information available to the Court, the statutory rate of interest applicable in Norway at the date of adoption of the present judgment is 12% per annum. The Court, in accordance with its established case-law, deems this rate appropriate with regard to the sums awarded in the present judgment.

FOR THESE REASONS, THE COURT

1. *Holds* by thirteen votes to four that there has been a breach of Article 10 of the Convention;

2. *Holds* unanimously that the respondent State is to pay the applicants, within three months,
   (a) for pecuniary damage, 323,342 (three hundred and twenty-three thousand three hundred and forty-two) Norwegian kroner;
   (b) for costs and expenses, 370,199 (three hundred and seventy thousand one hundred and ninety-nine) Norwegian kroner;
   (c) for additional interest, 65,000 (sixty-five thousand) Norwegian kroner;

3. *Holds* unanimously that simple interest at an annual rate of 12% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* unanimously the remainder of the applicants' claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 May 1999.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinions are annexed to this judgment:

(a) joint dissenting opinion of Mrs Palm, Mr Fuhrmann and Mr Baka;
(b) dissenting opinion of Mrs Greve.

L.W.
M.B.

JOINT DISSENTING OPINION OF JUDGES PALM, FUHRMANN AND BAKA

We disagree with the majority opinion that there has been a violation of Article 10 of the Convention on the facts of this case.

It is clear from the structure of Article 10 and from the Court's case-law that the exercise of freedom of expression "carries with it duties and responsibilities" and that restrictions on freedom of the press may be justified where it is necessary in a democratic society for the protection of the reputation of others. As the Court has stated in its De Haes and Gijsels v. Belgium judgment of 24 February 1997, "Although [the press] must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest …" (*Reports of Judgments and Decisions* 1997-I, pp. 233-34, § 37).

It is the right to the protection of reputation aspect of the present case which has been given insufficient attention in the Court's judgment and which motivates the present dissent. The crucial watchdog role of the press in a democratic society has been positively asserted and defended by this Court in the course of a large corpus of cases concerning freedom of expression which have stressed not only the right of the press to impart information but also the right of the public to receive it. In so doing the Court has played an important role in laying the foundations for the principles which govern a free press within the Convention community and beyond. However, for the first time the Court is confronted with the question of how to reconcile the role of newspapers to cover a story which is undoubtedly in the public interest with the right to reputation of a group of identifiable private individuals at the centre of the story. In our view the fact that a strong public interest is involved should not have the consequence of exonerating newspapers from either the basic ethics of their trade or the laws of defamation. As the Grand Chamber of the Court stated in *Fressoz and Roire v. France* ([GC], no. 29183/95, ECHR 1999-I) – the first judgment of the new Court – Article 10 "protects journalists' rights to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide 'reliable and precise' information in accordance with the ethics of journalism" (§ 54).

It is also central to our position that the present case does not involve a situation where a government has sought, by way of prior restraint, to suppress a newspaper story which was embarrassing to it or indeed a complaint of a general nature not involving specific individuals as in the Thorgeir Thorgeirsson v. Iceland case (judgment of 25 June 1992, Series A no. 239) despite the Court's veiled attempt to suggest otherwise (see

paragraph 67 of the judgment). The present case is brought by a group of aggrieved private individuals as part of a predominantly civil process. Of course, as the Court has often held – most recently in *Janowski v. Poland* ([GC], no. 25716/94, § 33, ECHR 1999-I) – the limits of acceptable criticism are wider as regards politicians or public figures than they are as regards private persons. However, it cannot be doubted that the seal hunters involved in these proceedings are private persons *par excellence*. The fact that they are involved in as unpopular an activity as seal hunting does not remove their status as private individuals.

In the present case a Norwegian District Court, after a careful examination of the evidence, concluded that the seal hunters on board the *Harmoni*, who were clearly identifiable from the impugned press articles published by *Bladet Tromso*, had been defamed. The court had held a hearing which lasted three days and heard relevant witnesses. It subsequently delivered a well-reasoned judgment applying Norwegian law of defamation to the facts of the case (see paragraph 35 of the judgment). The finding of defamation was based on the allegations that the crew members had killed female harp seals which, at the time, amounted to a criminal offence, that Mr Lindberg had been assaulted and that a seal had been skinned alive (ibid). It should be recalled that, prior to these proceedings, Mr Lindberg had been held liable in defamation with regard to these allegations, in a suit brought by the crew members, by the Sarpsborg City Court and that the Swedish Supreme Court, in proceedings brought by Mr Lindberg to oppose execution of the judgment abroad, has found in a decision of 16 December 1998 that the Norwegian judgment did not entail a breach of Article 10 of the Convention (see paragraph 33 of the judgment). In addition the accusations had also been held to be unfounded by a

Commission of Inquiry which had been set up to investigate the issues (see paragraph 31).

In our view the findings of the District Court cannot be faulted. It has been held by the European Court in numerous cases that it falls in principle to the national courts to interpret and apply national law and that the European Court's role is limited to examining whether the decisions of the national authorities were arbitrary and whether they applied standards which were in conformity with the principles embodied in Article 10 and based themselves on an acceptable assessment of the relevant facts (see, for instance, the Jersild v. Denmark judgment of 23 September 1994, Series A no. 298, p. 24, § 31). In the present case it cannot be said in any respect that the decision of the District Court failed to meet this test, was arbitrary or even unreasonable or that the reasons given were not "sufficient" for the purposes of Article 10 § 2. It is not disputed by the parties that the article implicated identifiable members of the crew even including some of those who had not participated in the voyage. Moreover, the findings of the District Court are supported by the conclusions of an independent Commission of Inquiry which had carried out an extensive investigation into the allegations prior to the proceedings and found them to be unfounded as well as the findings of the Sarpsborg City Court in the Lindberg proceedings (see paragraphs 31-33 of the judgment). It thus must be taken as accepted that the seal hunters were defamed in the articles published by *Bladet Tromsø*. We do not accept the Court's reasoning that the defamation was of a lesser nature because no specific crew member was named in the articles (see paragraph 67 of the judgment). On the contrary, the weight of the remarks was heavier precisely because they implicated the entire crew of the *Harmoni* without exception and irrespective of whether they were actually on board the ship at the relevant time.

Nor can the Norwegian law of defamation or the decision of the District Court be open to criticism from the standpoint of freedom of the press on the grounds that they were over-protective of the reputations of private individuals or failed to attach sufficient weight to the public interest . The holding that the accusations were null and void amounts merely to a finding that the applicant had not been able to establish the truth of the statements. It does not carry any criminal stigma or amount to a penalty as the words might suggest. The requirement to prove the truth of the allegations as a defence to a defamation action is an elementary feature of defamation proceedings in most legal systems and as such cannot be criticised. Indeed,

in one case the Court found that the unavailability of the defence of *exceptio veritatis* to a defendant gave rise to a violation of Article 10 of the Convention (see the Castells v. Spain judgment of 23 April 1992, Series A no. 236, pp. 22-24, §§ 40-50).

Moreover, under Norwegian law the defamation must also be unlawful. This development in Norwegian case-law – described in the judgment of the District Court as "the linchpin of Article 100 of the Norwegian Constitution and … essential in a democratic society" (see paragraph 35 of the judgment) – gives the court the possibility to weigh in the balance the respective interests and to find that the public interests involved in publication outweigh the private one in a given case. Norwegian law has thus developed in a manner which has taken into account the principles of Strasbourg case-law. Indeed the District Court followed this approach in the present case but found against the applicants essentially on the grounds that the newspaper focused its attention on sensational headlines and that "sufficient attention was not paid to the protection of other persons in this disclosure" and that the newspaper was well aware that the report had been exempted from public disclosure precisely because of the accusations of wrongdoing. Neither of these factual points can be seriously contested. The *Aftenposten* judgment shows that the test of "unlawfulness" is an important guarantee of press freedom under Norwegian law since it was exactly on this basis that the court found for the defendant newspaper, contrasting that paper's balanced coverage with that of *Bladet Tromsø* in the present case.

Against this background is it for the European Court to say that the District Court's assessment on this point was wrong? Even if the Strasbourg Court should substitute its judgment in this way for that of the national court, on what grounds could this balancing of the interests be called into question? We observe that the Court has previously stated that it is in the first place for the national authorities to determine the extent to which the individual's interest in full protection of his or her reputation should yield to the interests of the community (as regards the investigation of the affairs of large public companies) – *a fortiori* where the reputation of private persons is at stake (see the Fayed v. the United Kingdom judgment of 21 September 1994, Series A no. 294-B, p. 55, § 81). Is this not the essence of the margin of appreciation in a case like the present one?

The crux of the Court's reasoning involves essentially a new test that newspapers can be dispensed from verifying the facts of a story depending on (1) the nature and degree of the defamation and (2) whether it was reasonable in the circumstances to rely on the details of the Lindberg report (see paragraphs 66-73 of the judgment). On both points we find the Court's reasoning to be flawed.

The majority has tried hard to minimise the extent of the defamation in the present case but eventually considers that "some of the accusations were relatively serious" (see paragraph 67). However it reaches the rather vague conclusion that "the criticism was not an attack against all the crew members or any specific crew member". This is obviously unsupported by the facts and tends to suggest that the complaint of defamation was lacking in any real substance. We must ask whether it is at all appropriate for the Court to seek to reassess the extent of the harm caused by the defamatory remarks and in effect to retry the issues on this point. Surely the Court should accept that this is a matter best left to the judgment of the national courts which heard at first hand and carefully assessed the evidence in the light of standards which are in conformity with Article 10? This approach of the majority illustrates the main fault-line running through the judgment, namely that the Court does not give sufficient weight to the reputation of the seal hunters. The effort to balance the respective public and private interests is thus defective from the start.

The reasoning is equally unconvincing in its treatment of the question concerning the "reasonableness" of the paper's reliance on the Lindberg report. How could it have been "reasonable" to rely on this report when the newspaper was fully aware that the Ministry had ordered that the report not be made public immediately because it had contained possibly libellous comments concerning private individuals? It was thus temporarily not in the public domain and rightly so. The question of whether the Ministry believed or disbelieved Lindberg's claims (see paragraph 71 of the judgment) is simply not relevant to this issue. The Court's finding on this point also ignores the calling into question of the good faith of the paper's journalist (Mr Raste) by the District Court. How then can reliance on the details of the Lindberg report be judged to be reasonable when a national court has found in effect that the paper has not only indulged in sensationalism but must have been aware that some of the details were entirely false?

We accept that if the case concerned the publication of an official report which had been made public by the competent authorities, a newspaper would in principle be entitled to publish it under Article 10 of the Convention without carrying out any further investigation as to the accuracy or precision of the details of the report even if it was damaging to the reputation of private individuals. All that could be expected of a newspaper in such a situation would be to check that the published text corresponded to the official published text.

But the present case does not concern an official public report. On the contrary the report had not immediately been made public by the Ministry precisely because it contained allegations of wrongdoing against the crew members and it was considered only fair and proper to afford them an opportunity to defend themselves and to verify the information (see paragraph 11 of the judgment). The subsequent series of defamation proceedings and the Commission of Inquiry report vindicated such a cautious approach. Moreover it is clear that the newspaper was aware of this decision but decided nevertheless to go ahead and publish (see paragraph 35 of the judgment). It was also aware that Mr Lindberg had previously worked as a freelance journalist on seal hunting issues, having published several of his articles, and did not have the traditional profile of a Ministry inspector.

In our view, judged against this background, the newspaper knew that it was taking the risk of exposing itself to legal action by publishing the articles without taking any steps whatsoever to check the veracity of the claims being made. The action taken by the crew members cannot have come as a surprise, since the newspaper must have known that it should have exercised caution before printing accusations that private persons had committed criminal offences or other forms of wrongdoing. The fact that the report was drawn up by a person who was officially appointed by the Ministry, or that the report was potentially a public report, does not assist the applicants any more than it could justify the publication of secret material harmful to the national interest obtained in the same manner. The key fact is that the contents of the report were not in the public domain or accessible to the public (see paragraph 11 of the judgment) and not (as the majority consider) whether the applicant was contravening the law on confidentiality. *Bladet Tromsø* knew this and the reasons for it.

We are not persuaded either by the argument that the newspaper could not realistically have checked the claims and that it was entitled to rely on the details of the report since they concerned matters – e.g. the killing of female harp seals during the *Harmoni*'s sea voyage – which by their nature were unverifiable. We observe, in passing, that newspapers can generally be expected to carry out checks on controversial stories before rushing into print. But what could *Bladet Tromsø* have been expected to do? We accept, in keeping with the Court's previous holdings (see, for example, the Fayed judgment cited above, p. 55, § 81), that it would have been unreasonable to expect the paper to suspend publication until it had carried out a serious investigation of the matter. Equally it did not have to prove the story to be true before printing. The story was obviously too pressing to bury in time-consuming investigatory procedures. But as the District Court found, the newspaper did nothing at all to check the story, even when one of its journalists must have known from his own experience that the allegation concerning the flaying of seals alive must have been "a tall story" (see paragraph 35 of the judgment). In other words, the paper published the story without caring whether the allegations were true or false, relying entirely on the "official" nature of the report as their cover. They could have been expected, at the very least, to ask the crew members for their version of the events and their reaction to the various accusations made by Mr Lindberg and given them an opportunity to answer the accusations at the same time as the impugned articles were printed. After all, they were also witnesses to what had happened on board the *Harmoni* and were the persons directly implicated in the accusations. The paper would then have discovered – if nothing else – that some of the crew members could not have been concerned by the claims since they had stayed on dry land. That the paper carried a story concerning the reactions of a crew member subsequent to the publication of the entire report (see paragraphs 12-15 of the judgment) when the damage to reputation had already occurred can hardly be regarded as sufficient.

Bladet Tromsø took a risk in publishing the Lindberg report. They had the real possibility to cover this important story in a manner which would have enabled Lindberg's claims to have been aired in a general way without implicating the crew of the *Harmoni*. In fact, other publications, notably *Aftenposten*, had been able to cover the story properly but in a manner which was more respectful of the reputations of the seal hunters (see paragraph 37 of the judgment). Of course, in a small fishing community even a general report might have enabled the crew members to have been

identified by some. However, this cannot excuse the absence of any concern to attempt to protect the reputation of the seal hunters. Moreover, it should not be forgotten that the paper had a 9,000-strong readership. If this is deemed to miss the point, in that the only concern of the paper was to carry the precise details of the Lindberg report, then the reputation of the hunters is legitimately protected by the law of defamation and the paper, having assumed the risk, is not well placed to complain of the inevitable outcome.

The present judgment's conclusion, that the newspaper was exonerated from the verification of basic factual information by virtue of the degree of defamation involved and the supposedly "official" nature of the Lindberg report, appears to suggest an exceptionally low threshold for the protection of the right to reputation of others where there is an important public interest involved and no public figures. Such an elevation of the public interest in the freedom of the press at the expense of the private individuals caught up in the seal hunting story in this case pays insufficient attention to the national laws on defamation and the balanced freedom of the press-conscious judgments of the domestic courts. It is abundantly clear from the decision of the District Court that the factual basis of the story was inaccurate and that the ethics of journalism were not respected as they ought to have been. Our Court should not, against such a background, reach a different conclusion on these points.

The present judgment thus departs significantly from the above-mentioned cautious wording in the Court's *Fressos and Roire* judgment elucidating the scope of the journalist's freedom to disclose information on issues of general interest. In so doing the judgment sends the wrong signal to the press in Europe. Few stories can be so important in a democratic society or deserving of protection under Article 10 of the Convention, that the basic ethics of journalism – which require, *inter alia*, journalists to check their facts before going to press with a story in circumstances such as the present – can be sacrificed for the commercial gratification of an immediate scoop. We are not persuaded that the Court's approach in this case which has exonerated the applicant newspaper from this elementary requirement will actually advance the cause of press freedom since it undermines respect for the ethical principles which the media voluntarily adhere to. Article 10 may protect the right for the press to exaggerate and provoke but not to trample over the reputation of private individuals.

DISSENTING OPINION OF JUDGE GREVE

Together with my colleagues in the minority – Judges Palm, Fuhrmann and Baka – I find no violation of Article 10 of the Convention in the present case and I basically share their reasoning. Moreover, I attach particular significance to the following considerations.

In my view, the case under review is essentially an ordinary defamation case concerning restrictions placed on accusations of criminal conduct made in the press against private individuals. It is vital that the assessment of the necessity of the interference in a democratic society not be obscured by the sensitive nature of the seal hunting issue.

I agree with the majority that the manner of reporting by *Bladet Tromsø* should not be considered solely by reference to the disputed articles on 15 and 20 July 1988 but in the wider context of the newspaper's coverage of the seal hunting issue. *Bladet Tromsø* carried altogether twenty-six articles about the controversy between 11 April 1988 – when the newspaper broke the story – and 19 and 20 July 1988 when it published Mr Lindberg's report.

In my opinion the majority do not give sufficient weight to the fact that, under Article 6 § 2 of the Convention, the seal hunters had a right to be presumed innocent of any criminal offence until proved guilty. I fully accept the majority's view that *Bladet Tromsø* had a "public-watchdog" function in disseminating information derived from the Lindberg report about alleged irregularities and crimes committed during seal hunting – a highly controversial activity. However, the restrictions imposed on the newspaper's freedom of expression in the wake of the impugned statements related solely to allegations of crimes committed by identifiable individuals, allegations which were not proved true. Normally, a newspaper would in such a situation issue a disclaimer, which also would benefit the general readership who have a right to receive correct and complete information where possible. Since *Bladet Tromsø* did not issue a disclaimer, it ought to be recognised that the seal hunters had a legitimate need for recourse to defamation proceedings in order to protect their reputation and rights.

While it can hardly be argued that the identification of the persons concerned corresponded to any public interest, it would have been possible for *Bladet Tromsø* to protect the seal hunters' reputation simply by leaving out any reference to the *Harmoni*. Had information enabling readers to identify the alleged perpetrators been omitted from the relevant articles, this would, in my opinion, not really have affected the newspaper's exercise of its freedom of expression. To oblige a paper to take such measures in the circumstances could, to my mind, not be viewed as a measure capable of discouraging the participation of the press in debates over matters of legitimate public concern. In this respect it is indicative that no argument has been presented suggesting that there was a need to identify the alleged perpetrators.

On the other hand the majority seem to lay much emphasis on the official nature of Mr Lindberg's report, in finding that the newspaper could rely on this source without taking any steps to verify the veracity of the impugned accusations. In so doing, the majority do not, in my view, take necessary account of the particular relationship which existed between Mr Lindberg and *Bladet Tromsø*.

As a freelance journalist, Mr Lindberg had covered the *Harmoni*'s seal hunting expedition for *Bladet Tromsø* in 1987. *Bladet Tromsø* must have been aware of his background when it contacted him in April 1988 as the vessel returned to port in Tromsø. It cannot, in my opinion, be considered acceptable that an officially appointed inspector let himself be approached by the media at his duty station and be photographed and then proceed to give the media a first-hand report about his inspection findings – allegations of crimes against private individuals included – without even having made a prior report to his principal, the Ministry of Fisheries. Such lack of professionalism would be comparable to, for instance, a police officer reporting criminal charges directly to the media in order first to have a trial by the press. In this connection it is significant that Mr Lindberg made himself immediately available to *Bladet Tromsø* after his return from the expedition, whereas almost three months elapsed before he made his first report to the Ministry that had appointed him.

In the light of the above, *Bladet Tromsø* must have been aware at the relevant time not only of Mr Lindberg's apparent lack of professionalism, but also of a conflict of interests between his official role and his relationship with the newspaper. *Bladet Tromsø* exploited both these aspects.

To *Bladet Tromsø* the printing of Mr Lindberg's report was only one and a late phase in the newspaper's co-operation with Mr Lindberg. The publication of the report was not intended to break the story. This had already been done in the first of the series of twenty-six articles which *Bladet Tromsø* had published on the issue. The report seems rather to have been utilised as a kind of final and official imprimatur on *Bladet Tromsø*'s wider coverage of the seal hunting issue, in which context Mr Lindberg had been their main informant all along. In these circumstances, I do not find that the newspaper could, as a matter of good faith, pray in aid their argument that Mr Lindberg's report was an official document on which it was entitled to rely without further inquiry.