

DENMARK

By Martin Dahl Pedersen and Linnea Clara Klingberg-Jensen,
Kromann Reumert Law firm

Changes in the Media Liability Act, revised Press Ethical Rules and signs of a different approach in the latest rulings of the Press Council. These are some examples of recent changes in Danish press law. The essence of the changes is a tightening of the responsibility and sanctions imposed on the media. The effect is an easier access for the public to file complaints over the media and get redress.



Martin Dahl
Pedersena



Linnea Clara
Klingberg-Jensen

Changes in Danish Press Law

The Media Liability Act regulates periodical publications, radio and television broadcasters, and news websites if registered with the Press Council. More than being an act regulating the content of the media and setting up boundaries for the freedom of speech, the Media Liability Act is an act determining how and upon whom to place responsibility for actions in the media in contradiction with rules in other parts of Danish law, e.g. rules on defamation, copyright etc. However, the Act contains in Section 34 one important content rule requiring the media to act in accordance with

‘sound press ethics’.

According to Section 34 the content and conduct of the media shall be in accordance with sound press ethics. Section 34 is a dynamic legal standard, the content of which can change over time as society develops. As guidance to interpret the legal standard, the organisations that have established the Press Council, The Association of Danish Media (Danske Medier) and The Danish Union of Journalists (Dansk Journalistforbund), have issued a set of guidelines ‘The Press Ethical Rules’ which the Press Council has

adopted as guidelines for the interpretation of sound press ethics.

The Press Council is an independent public body dealing with complaints about the media. It is not subject to government control. People, companies, associations etc. who believe the media has acted against sound press ethics can file a complaint to the Press Council. Four out of the eight members of the Press Council are appointed by and among the media itself. The other four members are a supreme court judge, an attorney and two public representatives. Thus, the composition of the Press Council members makes it a kind of self-regulatory body as representatives of the journalists and the editors, this way, make up for half of the members.

The Press Ethical Rules

Safeguarding freedom of speech is obviously fundamental to the Press Council. However, the media must also recognise and respect that the individual citizens are entitled to respect for their personal integrity as well as the sanctity of their private lives. When interpreting sound press ethics the Press Council will seek to balance the freedom of speech on the one side and on the other side the need for protection of personal rights.

According to the Press Ethical Rules information which may be prejudicial or insulting shall be very closely examined before publication, primarily by submission to the person concerned. The editor must, on his own initiative, correct information if and as soon as errors of importance become known. Corrections must be made in such way that the readers, listeners or viewers easily

become aware of the correction. The Press Council assesses the circumstances in every single case and based on the Press Ethical Rules determines whether the publication made is contrary to sound press ethics and decides whether or not the media is under an obligation to publish a reply.

Even though the Press Council cannot impose a sentence on the media or assure the complainant financial compensation, the Press Council can express its criticism of the media. Normally, just criticism, but if extraordinary circumstances apply the Press Council expresses "serious criticism". Furthermore, the Press Council can direct the editor of the media in question to publish a reply and/or to publish the decision of the Council to an extent specified by the Council.

Change of the Rules

In some countries, e.g. in the UK and in Denmark, the ethics of modern media have been debated the last couple of years and some have suggested enactment of stricter liability rules and more severe sanctions against media that act contrary to sound press ethics. In Denmark the Press Ethical Rules were revised last year. The main focus was to modernise the rules to keep them up-to-date with the developments in technology, but on some points the rules were also made stricter towards the media. Of these, the most prominent were those imposing an express obligation on the media to:

- provide visible and clear guidance on how to complain about media content and conduct,

- provide reasonable time for comments from the relevant person before publication of information that may be prejudicial or insulting,
- give special notice and consideration to children or other persons not able to protect and/or recognise the consequences of their statements,
- not use hidden recordings or footage unless consent has been obtained from the participants or if the public interest clearly outweighs the need for protection of the participants and the documentation could not or could only with much difficulty have been produced, and;
- not exploit the confidence, feelings, ignorance, lack of experience or lack of self-control when collecting or publicising information. The main focus here is information collected from social media.

Even though some of the changes are in reality a codification of current practice of the Press Council, the message is still rather clear. The media and the Press Council wish to safeguard the personal rights of people, also taking express notice of people who might have been in a vulnerable situation when the statements were made or who were not capable of understanding the nature and the implications of their statements. This is especially important in a modern social media context. In addition to the changes in the Press Ethical Rules, a rather substantial change was also made to the Media Liability Act. According

to the previous Act the notice of the complaint to the Press Council should be made four weeks after publication. The time limit has now been extended quite significantly to 12 weeks after publication.

Recent Case Law - The Hostage Cases

Just about the same time as the media organisations and the Press Council announced the revised Press Ethical Rules last year, a news story made quite some commotion in Denmark. Or rather it was the culmination of the story of six sailors who had been held hostage by Somali pirates off the coast of Somalia for more than two years. The hostages - one of whom was a Danish captain - were released in May 2013. The captain lodged a complaint before the Press Council over both the Danish tabloid EkstraBladet and the public broadcaster TV2 for their coverage of the story. The cases were essentially based on the same facts.

The captain felt that both his integrity and his privacy had been grossly offended as he believed to have been exposed in a humiliating way in the media by EkstraBladet and TV2 that had respectively published and broadcast interviews made with the captain while he was being held hostage. The interviews were made by a freelance journalist, who had been able to establish contact with the hostage-takers. EkstraBladet and TV2 had covered the story both while the hostage-taking took place and after the hostages were released. Prior to the release EkstraBladet had launched a campaign posting stories and pictures of the hostages for many days and months.

The Press Council stated that the stories of the hijacked ship, the hostage-taking, and later the release of the hostages were clearly in the public interest and as such worthy of publication. However, the Press Council's job is to oversee the balancing of on one side freedom of speech and releasing information in the public interest and on the other side the protection of an individual's privacy and integrity.

The Press Council found that EkstraBladet and TV2 had both failed to treat their sources with due criticism and furthermore failed to inform the public under which circumstances the interviews were made e.g. while the captain was probably under great pressure, being held hostage, and at a time when the captain had been held hostage for nearly two years. In other words, EkstraBladet and TV2 had, according to the Press Council, disregarded the delicacy of the situation. In addition, the Press Council noted that publication of information, likely to offend, harm, insult or invade someone's privacy should be avoided unless it is in the express public interest to publish it. Nevertheless, EkstraBladet and TV2 had several times published very personal information about the physical and mental condition of the captain as well as information about the fact that the captain was tortured and subject to violence.

The Press Council found that the story could have been covered without bringing the personal information as at least some of the information was unnecessary to tell the public the story. As an aggravating circumstance EkstraBladet and TV2 had not - after the captain was

released - obtained his consent to the publication.

In both cases the Press Council expressed 'serious criticism'. More remarkably the Press Council decided, contrary to the normal editorial freedom of the editor, very precisely how and when EkstraBladet and TV2 were obligated to publish the main points of the decision and at the same time how much exposure the decision at least was to be given by EkstraBladet and TV2. The Press Council thus decided that the main points of the decision must be published on e.g. the front-page of EkstraBladet with full front page coverage. In respect of TV2 the main points of the decision must be broadcast during the first five minutes of the news broadcast at 7pm and 10pm. This interference with the editorial freedom of the editor is quite remarkable and the Press Council has in this matter gone quite far compared to earlier decisions.

Actually, the Danish media has in the beginning of March 2014 reported on a new hostage case. A Danish journalist was taken as hostage in Syria for a month. Danish media knew of this incident, but this time no Danish media reported on the hostage-taking until the journalist had been released.

A Different Approach

The latest changes in both the Press Ethical Rules and the Media Liability Act suggest that the media can expect a more strict approach from the Press Council when complaints are made by people having their privacy invaded, if the media cannot document that they have complied with sound press ethics

e.g. performed correct source criticism or obtained consent in specific situations. This is for sure confirmed by the Press Council's remarkable rulings in the hostage cases which were even decided under the former Press Ethical Rules. At the same time, however, the changes of the Press Ethical Rules and the stricter approach of the Press Council have probably - at least for a while - resulted in avoidance of more severe interference from the politicians in the self-regulated legal standard of sound press ethics.

as an assistant attorney after graduating from Copenhagen University, Faculty of Law and a semester abroad in Chicago at Illinois Institute of Technology. She dedicated her master thesis to a comparative analysis between EU and U.S. regulation and case law concerning the liability of the advertiser and the service provider (e.g. Google) with regard to keyword advertising online. At Kromann Reumert Linnea is primarily concerned with IP related litigation and assists Martin by advising clients within the intellectual property, marketing and media field.

BIOGRAPHIES

Martin Dahl Pedersen works within the IP, Media and Entertainment Group of Kromann Reumert, the leading law firm in Denmark. Martin became a partner there in 2002. Martin has many years' experience in advising clients in the broad media and entertainment field and also particularly within the newspaper, publishing and sports sectors. He has conducted media and copyright cases of general public importance in which significant principles have been determined, such as the use of digital technology in connection with copyright material and the limits of artistic freedom of expression in relation to the right of privacy. Martin recently won the important copyright Infopaq case in the Supreme Court for the Danish Newspaper Publishers Association, a case which he also argued before the Court of Justice of the European Union.

Linnea Clara Klingberg-Jensen also works within the IP, Media and Entertainment Group of Kromann Reumert. Linnea joined Kromann Reumert in 2013