Before the European Court of Human Rights in Strasbourg, 2019[1]

In the case of *Stanislas Olyrid v. Smalland*

Instructions, General and as per Rules of Court, August 2018

The application had been, by the Court, conditionally—because eventually the merits and the admissibility will have been joined—declared as admissible. You are, in this case, the appellant and/or the respondent before the European Court of Human Rights in Strasbourg (hereinafter: the Court and/or ECtHR). You are filing your Legal Memorandum (supplemental information) in accordance with Rule 47 and especially Rule 47(2)(b). There are numerous hidden issues in the facts and the law for you to spot and to deal with.

You should be persuasive, which is the main purpose; to this end keep in mind that the ECtHR judges will be persuaded if the application is also doctrinally innovative and thought-provoking. You are free to critique prior judgments of the Court, especially of the Sections (and not of the Grand Chamber leading cases). Given the rapid evolution of the ECtHR case law, comparison with other Common Law jurisdictions—especially of the US and the UK), is encouraged.[2] You may resort to West Law and/or Lexis.[3]

[1] Before ECtHR, you are alternatively counsel for the Applicant (Appellant) or the State of Smalland (Respondent). The case, which has been declared admissible, proceeds, *one*, in the preceding written exchange of briefs procedure and, *two*, in the public hearing held at ECtHR to be held in 2019. Keep in mind that the case may be declared inadmissible at any stage of the proceedings before ECtHR.

[3] West Law and/or Lexis are probably not available in your Law School. In this respect Google will have been deemed sufficient.

All the references are to be cited in footnotes as per *Oxford Standard for Citation of Legal Authorities*.[4] Table of Contents, the Tables of Cases and Authorities are to be provided in the Appendix to the Memorandum, which should be preceded by the Table of Contents.[5]

For the purposes of the concluding public hearing you may prepare for yourself a written text but the presentation (recital of the case) should be from memory; mere recital is not encouraged; you should be able to think on your feet; you should expect to be interrupted by the judges and be able to come back to your main line of reasoning (red thread). Keep in mind that the purpose of the public hearing in the Court is always to provide (only) for the final direct exchange between the parties to the case. It follows that the riposte to the arguments of the other party is crucial. As for the style in the Memorandum, you are encouraged to follow Strunk and White, THE ELEMENTS OF STYLE. [6]

During the public hearing the conservative courtroom dress code[7] will apply both for gentlemen and for the ladies.

Facts and Legal Developments prior to Application to ECtHR in 2019

Facts

SMALLAND is one of the original (1953) signatories of the European Convention on Human Rights (ECHR). This case concerns the August 2017 domestic conviction of the

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[4] See, THE OXFORD STANDARD FOR CITATION OF LEGAL AUTHORITIES, at https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_2006.pdf

[5] As per MS Word 365 (2019)

[6] Available gratis on http://www.jlakes.org/ch/web/The-elements-of-style.pdf

[7] See, for example, https://www.lynchowens.com/blog/2016/september/what-is-proper-dress-and-or-attire-for-a-court-h/

applicant Mr. Stanislas OLYRID —, for the transgression of 'hate speech', which the defendant had allegedly committed vis-à-vis the Muslims in the State of Smalland.[8] In the disparaging editorial published exactly a year before on his blog "GENERATION IDENTITY", of which he was the owner but not the writer and/or editor (whom Mr. Olyrid had never revealed), the blog had maintained that: *sharia is incompatible with the Western Judaeo-Christian tradition; that the problem is identical with the one described by Vladimir Bartol in his famous (translated) novel 'Alamut'* [9]*; that the 1400-years old Muslim inbreeding* [10] *resulted in a series of medical and other problems for the host state into which the Muslims were migrating; that the migration itself violates sovereignty and national law; that without national referendum the State od Smalland will not have been authorised to sign any future international agreement as to migration;*[11] *and that the whole migration process was a globalist conspiracy.*

Given that the blog itself was just one of the many similar unfriendly pronouncements on social networks, there had been, except for the text of the editorial going viral, no explicit public reaction. Thereafter, however, the chief imam of the Muslim community of the capital Hagendasz of the State of Smalland filed a criminal complaint with the district attorney (DA) based on the alleged 'hate speech' of the defendant (here: the Applicant).

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[9] https://en.wikipedia.org/wiki/Alamut_(Bartol_novel)#Translations

[10] See, https://www.10news.one/what-are-the-effects-widespread-inbreeding-among-muslims/

[11] On 19 September 2016, the United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants, the predecessor of the Marrakesh Compact and the Resolution of the UN General Assembly.

National Proceedings

The defendant had been arrested in full presence of the mainstream media, initially with no more to go than the notorious text on the blog. The police did not publicly boast of the arrest but the DA issued a written statement about the apprehension of the applicant.

Given the nature of the incriminated editorial, there was no need for an investigation apart for the interrogation of Mr. Olyrid as to his motives. The DA filed an indictment based upon the domestic definition of 'hate speech' that had been the redacted in 2010. The language of the definition of the offence is consonant with the ECtHR case law. The DA also filed for a pretrial injunctive relief (interim measure) for the expurgation of the whole blog named "GENERATION IDENTITY", which was granted immediately by the investigation judge of the first instance court in Hagendasz, Smalland.

Mr. Olyrid, the defendant in the case, here the applicant, had been, by decision of the first instance investigating judge, thereafter placed in pretrial detention with the specification that his remaining in liberty would cause riots in the numerous Muslim communities in the capital of Hagendasz. Initially, the defendant was interrogated *incommunicado* with the application of mild physical pressure. He admitted to being a 'neo-reactionary' and to his failed hope that the publication on his blog would stir a public outrage in the State of Smalland.

After the interrogation by police and prior to interrogation by the investigating judge, the defendant did not retain a lawyer, but at that stage the investigating judge procured to him a rather disinterested *pro bono* attorney. Later in court, the defendant duly retracted his prior confession, which the five-member (2 judges and 3 assessors) trial court, which was of course familiar with the revelation, abstained from referring to in its judgment. However, during the trial hearing the defendant's attorney was offended by the dismissive attitude of

the presiding judge and made an inopportune remark. The judge then and there, for the contempt of court, fined him to pay € 2000.

The defendant remained in detention pending trial and was then convicted for 'hate speech' as such. He received a two-years suspended sentence, a fine of € 5000 and was imposed the five-year security measure prohibiting him from engaging in publishing activity, on Internet or otherwise. His defence cited many ECtHR cases concerning the additional material (substantive criminal law) preconditions for conviction, but to no avail.

The conviction was then in short shrift (3 pages) confirmed on appeal, similarly on the Supreme Court of Smalland, and ultimately by the Constitutional Court. The latter did not allow the appeal and issued the standard one-page dismissal to the effect that the constitutional complaint did not raise a significant issue of constitutional rights.

Developments before the ECtHR

The defence respected the time limit for the application before the ECtHR. The application was posted one week before the expiration of the time limit. The defence also filed, in French and in English, a Legal Memorandum (supplemental information) in 30 pages long brief. The application, due to the inefficacy of the French mail, arrived in Strasbourg two weeks after the expiration period. His *pro bono* lawyers also forgot to add to his application the constitutional complaint to the Constitutional court, assuming that they anyways filed the latter's decision in his case. The Smalland national unit in the Registry of the ECtHR, in an attempt to get rid of it, sent the case as inadmissible to the single judge. The Registry did not reveal that the 30-page brief had been filed in both of the Court's official languages. Nevertheless, the single judge, alerted by phone by the above *pro bono* lawyer, then demanded to see the file and since the brief was written in English, he had read it and sent the case to the Chamber (the Section). The Chamber, appreciating the importance of the

issue, relinquished the case to the Grand Chamber. The grand Chamber, in its treatment of the case, decided to join the considerations on admissibility to the merits of the case.

The Registry then duly forwarded the application for response to the State of Smalland.

In its rejoinder, the State defended the arrest, the interrogation and the two-year long pretrial detention — much of which was, according to Smalland tradition, spend in solitary confinement — and the conviction of the applicant for 'hate speech', etc.

The President of the Court, according to the Rules of Court (2018) allowed the *amici curiae* briefs to be filed by several Smalland and foreign non-governmental organisations (NGO's). Some of them defended the freedom of expression in general and on Internet, and were alleging the systemic and structural curtailments of the freedom of speech and the press in the State of Smalland. Other NGO's, also financed by outside sources, defended the position of the State, maintaining *inter alia* that the December 2018 Marrakesh Compact required the signatory states to enforce the media-friendly attitude vis-à-vis migration.

Public Hearing before the Court

Before the public hearing, the Registry prepared the brief for the judges, which they had studied. During the hearing, there was an exchange of arguments between the parties, during which, and afterwards, there were several queries by the judges. Thereafter, the Court withdrew for immediate deliberations and a tentative decision in the case. The judgment was then being prepared by the Registry and was voted upon several months after the public hearing.

The State of Smalland could be condemned, we do not know. As lawyers retained by the State and the Appellant you may wish to have a contingency plan, i.e., for requesting a trial *de novo*. The latter is provided for in the Smalland Code of Criminal Procedure.