



## Ukrainian newspaper's staff sanctioned wrongly for a publication of material obtained from the Internet

In today's Chamber judgment in the case [Editorial Board of Pravoye Delo and Shtekel v. Ukraine](#) (application no. 33014/05), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**Two violations of Article 10 (right to freedom of expression and information)** of the European Convention on Human Rights.

The case mainly concerned the lack of adequate safeguards in Ukrainian law for journalists' use of information obtained from the Internet.

### Principal facts

The applicants are the Editorial Board and the editor-in-chief of Ukrainian newspaper *Pravoye Delo*. At the time, the newspaper published articles on political and social questions three times a week, frequently reproducing material obtained from various public sources due to a lack of funds.

In September 2003, *Pravoye Delo* published an anonymous letter, allegedly written by an employee of the Security Service of Ukraine, which had been downloaded from a news website. The letter contained allegations that senior officials of the Odessa Regional Department of the Security Service had been engaging in corrupt and otherwise criminal activities, including in connection with organised criminal groups. The newspaper provided reference to the source of the information and also published a comment by the editorial board which indicated that the information in the letter might be false and invited comments and other related information from all sources.

A month later, the president of the national Thai Boxing Federation, who featured in the letter as a member of a criminal group, brought proceedings for defamation against both applicants. In particular, he complained that the allegations about him were untrue and had damaged his dignity and reputation.

In May 2004, the court ruled against the editorial board and editor-in-chief of *Pravoye Delo* and ordered them to publish a retraction of a part of the publication containing particularly strong accusations in respect of the Boxing Federation president. In addition, the court ordered them to pay jointly around 2,394 euros (EUR) as compensation for the damage caused to the president by the publication, and ordered separately the newspaper's editor-in-chief to publish an official apology for having allowed the publication in question.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

The applicants appealed unsuccessfully. However, in July 2006, the Boxing Federation president and the applicants reached a friendly settlement as a result of which they did not have to pay him the compensation awarded by the courts, apart from the costs and expense related to the court proceedings. The applicants also undertook to publish promotional and information material as requested by the Federation president until the amount of compensation they had been ordered to pay was reached. In 2008, the applicants discontinued the publishing of *Pravoye Delo*.

## Complaints, procedure and composition of the Court

Relying on Article 10, the applicants complained that their right to freedom of expression had been breached as a result of the sanctions imposed on them by the courts because of the publication in question.

The application was lodged with the European Court of Human Rights on 22 August 2005.

Judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Elisabet **Fura** (Sweden),  
Karel **Jungwiert** (the Czech Republic),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),  
Ann **Power** (Ireland),  
Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 10

#### Apology ordered by courts

The applicants had published a letter alleging – without providing any proof – that a public figure, the president of the national Thai Boxing Federation, had been a member of a criminal group and had coordinated and sponsored murders.

Ukrainian law at the time had only provided that defamed individuals could ask for a retraction of the defamatory material and for compensation for damage. Both of those measures had been applied in respect of the applicants.

However, the courts had ordered the editor-in-chief to also publish an official apology in the newspaper, which had not existed in national law. In addition, the national judges had found in their subsequent practice that an obligation to apologise imposed by a court following a publication was against the Ukrainian Constitutional guarantee of freedom of expression.

Consequently, the Court held that the order to the editor-in-chief to apologise had not been done in accordance with the law, and had, therefore, been in violation of Article 10.

#### Lack of safeguards for usage of Internet material

The publication in question had been a literal reproduction of material downloaded from a publicly accessible Internet newspaper. It had referred to the source of the information

and had contained in addition comments by the editorial board clearly distancing the newspaper from the content of the material.

Ukrainian law, and in particular the Press Act, absolved journalists from civil responsibility for reproducing material published elsewhere in the press. The Court noted that this had been its own consistent approach in respect of journalists' freedom to disseminate statements made by others.

However, the Ukrainian courts had found that no immunity from liability existed for journalists in cases in which the source of the material came from Internet publications not registered in accordance with the Ukrainian Press Act. At the same time, no domestic rules had existed on State registration of Internet media.

The Court, having had regard to the important role the Internet played for media activities generally, and for the exercise of the freedom of expression, found that the absence of legal regulation allowing journalists to use information obtained from the Internet without fear of being sanctioned, was an obstacle to the press exercising their vital function of a "public watchdog".

In addition, under Ukrainian law, journalists might be exempt from the payment of compensation if they had acted in good faith, had checked the information and had not disseminated the untrue information intentionally. The applicants had raised all these arguments in their defence yet it had been ignored by the national courts.

The Court concluded that, in the absence of clarity in domestic law in respect of journalists using information obtained from the Internet, the applicants could not have foreseen the consequences of their action. Therefore, the Convention requirement that any limitation to freedom of expression had to have a basis in law, which was clear, accessible and foreseeable, was not met.

There had, therefore, been a violation of Article 10 because of the lack of adequate safeguards for journalists using information obtained from the Internet.

### Article 41 (just satisfaction)

Under Article 41, the Court held that Ukraine was to pay the applicants EUR 6,000 in respect of non-pecuniary damage.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.