



Newspaper was not obliged to completely remove from its Internet archive article found by a court to be inaccurate

In today's Chamber judgment in the case of [Węgrzynowski and Smolczewski v. Poland](#) (application no. 33846/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the complaint by two lawyers that a newspaper article damaging to their reputation – which the Polish courts, in previous libel proceedings, had found to be based on insufficient information and in breach of their rights – remained accessible to the public on the newspaper's website.

The Court declared the complaint inadmissible as regards one of the applicants, as he had failed to lodge his complaint within the required time-limit, six months after the last decision of the Polish courts.

As regards the other applicant, the Court found that the Polish courts had struck a fair balance between the public's right to access to information on the one hand and the applicant's right to have his reputation protected on the other. The Court held in particular that completely removing the contested article from the newspaper's archive would have been disproportionate; at the same time, the applicant had not requested for a reference to the judgments in his favour to be added to the article online.

Principal facts

The applicants, Szymon Węgrzynowski and Tadeusz Smolczewski, are Polish nationals who live in Katowice (Poland) and work as lawyers. In May 2002, they won a libel case against two journalists working for the daily newspaper *Rzeczpospolita* following the publication of an article alleging that the two lawyers had made a fortune by assisting politicians in shady business deals. The judgment was upheld on appeal in April 2003. Holding in particular that the journalists' allegations were largely based on gossip and hearsay and that they had failed to take the minimum steps necessary in order to verify the information, the courts ordered them and their editor in chief to pay a fine to a charity and to publish an apology in the newspaper. These obligations were complied with.

In July 2004, the two lawyers brought new civil proceedings against *Rzeczpospolita*, alleging that they had recently found out that the article remained accessible on the newspaper's website. They sought an order to have the article removed from the site and to have an apology published. Their claim was dismissed by the Warsaw Regional

¹ 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

Court in September 2005. It found that the discovery of the article on the newspaper's website provided a factual basis for a new claim; therefore the issues in the case were not a matter already decided in the first set of the proceedings. However, the court held in particular that removing the article from the website would amount to censorship and to rewriting history. Had the applicants sought an order for the article on the Internet to be supplemented by a footnote or a link informing the readers about the judgments in the original libel proceedings, the court would have given serious consideration to such a request. The Warsaw Court of Appeal upheld the judgment in July 2006. The applicants' cassation appeal to the Supreme Court was unsuccessful.

Complaints, procedure and composition of the Court

Relying on Article 8, the applicants complained about the courts' dismissal of their action seeking to have the contested article removed from the newspaper's website archive.

The application was lodged with the European Court of Human Rights on 7 August 2007.

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

Ineta **Ziemele** (Latvia), *President*,
David Thór **Björgvinsson** (Iceland),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Krzysztof **Wojtyczek** (Poland),

and also Françoise **Elens-Passos**, *Section Registrar*.

Decision of the Court

The Court declared the complaint inadmissible as regards Mr Węgrzynowski, as he had failed to lodge his complaint within the required time-limit, six months after the last decision of the Polish courts. The Court was therefore in a position only to examine the complaint by Mr Smolczewski.

The Court observed that during the first set of civil proceedings – in which the Polish courts had acknowledged a breach of the applicants' rights by the publication of the contested article – Mr Smolczewski had failed to make claims regarding the article's presence on the Internet, where it had been published simultaneously with the print edition. The courts had therefore not been able to decide on this matter. Their judgment in the first set of proceedings had not created a legitimate expectation for the applicants that the article would be removed from the newspaper's website. Mr Smolczewski had not advanced any arguments to justify his failure to address the presence of the article online, in particular in view of the fact that the Internet archive of *Rzeczpospolita* was a widely known and frequently used resource both for Polish lawyers and for the general public.

The Court had pointed out in previous cases that the Internet was an information and communication tool particularly distinct from the printed media, especially as regards the capacity to store and transmit information. Serving billions of users worldwide, it was not and potentially would never be, subject to the same regulations and control. The risk of harm posed by content and communications on the Internet to the exercise and enjoyment of the rights guaranteed by the Convention, particularly the right to respect for private life, was certainly higher than that posed by the printed media. Therefore, the policies governing reproduction of material from the printed media and the Internet

might differ. The latter undeniably had to be adjusted according to technology's specific features in order to secure the protection and promotion of the rights and freedoms concerned.

In that light, the Court observed that in the proceedings brought in 2004, the first-instance court had found that the case did not concern a matter already adjudicated in the first set of the proceedings. Mr Smolczewski had therefore been given the opportunity to have his claims examined by a court, enjoying full procedural guarantees. The courts had accepted that the claim for the protection of his rights and reputation could be examined under the Civil Code, which demonstrated, in the Court's opinion, that an appropriate legal framework was in place.

The Court accepted the view of the Warsaw Regional Court that it was not the role of judicial authorities to engage in rewriting history by ordering the removal from the public domain of all traces of publications which had in the past been found, by final judicial decisions, to amount to unjustified attacks on individual reputations. Furthermore, it had to be taken into consideration that the legitimate interest of the public in access to public Internet archives of the press was protected under Article 10 of the Convention (freedom of expression).

It was significant that the Polish courts had pointed out that it would be desirable to add a comment to the article on the newspaper's website informing the public of the outcome of the first set of the civil proceedings in which the courts had allowed the applicants' claim for the protection of their personal rights. The Court was therefore satisfied that the Polish courts had been aware of how important publications on the Internet could be for the effective protection of individual rights and how important it was to make full information about judicial decisions concerning the contested article available. However, in the civil proceedings brought in 2004, Mr Smolczewski had not requested for the information to be rectified by adding a reference to the judgments in his favour to the contested article.

Taking into account all those circumstances, the Court accepted that Poland had complied with its obligation to strike a balance between the rights guaranteed under Article 10 (freedom of expression) and under Article 8 (right to respect for private life) of the Convention. A limitation on freedom of expression for the sake of Mr Smolczewski's reputation would have been disproportionate under Article 10. Accordingly there had been no violation of Article 8.

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.