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

Press Release
issued by the Registrar of the Court

ECHR 085 (2017)
09.03.2017

A refusal to hold the owner of a blog liable for a defamatory anonymous online comment did not violate the Convention

In its decision in the case of Pihl v. Sweden (application no. 74742/14) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The applicant had been the subject of a defamatory online comment, which had been published anonymously on a blog. The applicant made a civil claim against the small non-profit association which ran the blog, claiming that it should be held liable for the third-party comment. The claim was rejected by the Swedish courts and the Chancellor of Justice. The applicant complained to the Court that by failing to hold the association liable, the authorities had failed to protect his reputation and had violated his right to respect for his private life.

The Court held that the complaint was without merit. In cases such as this, a balance must be struck between an individual's right to respect for his private life, and the right to freedom of expression enjoyed by an individual or group running an internet portal. In light of the circumstances of this case, the national authorities had struck a fair balance when refusing to hold the association liable for the anonymous comment. In particular, this was because: although the comment had been offensive, it had not amounted to hate speech or an incitement to violence; it had been posted on a small blog run by a non-profit association; it had been taken down the day after the applicant had made a complaint; and it had only been on the blog for around nine days.

Principal facts

The applicant, Mr Rolf Anders Daniel Pihl, is a Swedish national who was born in 1986 and lives in Linköping, Sweden.

On 29 September 2011, a blog run by a small non-profit association published a post, accusing Mr Pihl of being involved in a Nazi party. An anonymous person posted a comment stating, "that guy pihl is also a real hash-junkie according to several people I have spoken to". Nine days later and following a complaint by Mr Pihl, the association removed the blog post and comment, and published an apology.

Mr Pihl sued the association, claiming symbolic damages of one Swedish krona for defamation. He claimed that the association was responsible for both the post and the comment – in regard to the latter, because the association had failed to remove it immediately. The Linköping District Court dismissed the claim relating to the blog post, finding that it was covered by freedom of expression legislation which fell under the competence of the Stockholm District Court. After examining the claim in relation to the anonymous comment, the court rejected it. Though the court accepted that the comment had been defamatory, it found no legal grounds on which to hold the association responsible for failing to remove it sooner than it had done. The Court of Appeal upheld the District Court's judgment in full, and the Supreme Court refused to grant Mr Pihl leave to appeal.

Mr Pihl lodged a further application with the Chancellor of Justice, claiming that the State had failed in its obligations under Article 8 to hold the association responsible for the defamatory comment against him. The application was rejected in July 2015.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 November 2014.

Relying on Article 8 (right to family and private life), Mr Phil complained that the fact that Swedish law prevented him from holding the association responsible for the defamatory comment had violated his right to respect for his private life.

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

Branko **Lubarda** (Serbia), *President*,
Helena **Jäderblom** (Sweden),
Luis **López Guerra** (Spain),
Helen **Keller** (Switzerland),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus)*, Judges*,

and also Stephen **Phillips**, *Section Registrar.*

Decision of the Court

Article 8 (right to respect for private and family life)

The Court noted that, though the comment had not amounted to hate speech or an incitement to violence, it had been defamatory. It was therefore the type of speech which citizens may be protected against under the right to respect for private life provided by Article 8. However, there was also a competing right at stake –the right to freedom of expression under Article 10 – which protects the right to freely impart information and comment.

These two rights deserve equal respect, and require a balancing exercise to be undertaken when they come into conflict. However, where the balancing exercise between them has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts.

In making this assessment in cases where a protagonist has played an intermediary role on the internet, the Court has identified a number of factors as being relevant. These are: the context of the comments; the measures applied by the publisher to prevent or remove defamatory comments; the liability of the actual author of the comment as an alternative to the liability of the intermediary; and the consequences of the domestic proceedings for the publisher.

In regard to the context of the comment, the association could hardly have anticipated it, given that it had nothing to do with the content of the blog post. Furthermore, the association was small, not-for-profit, and unknown to the wider public. It was therefore unlikely that its website would attract a lot of comments, or that this comment would be widely read. Expecting the association to assume that some unfiltered comments might be in breach of the law would amount to requiring excessive and impractical forethought capable of undermining the right to impart information via the internet.

As regards the measures taken by the association to prevent or remove defamatory comments, the blog had a function that notified the association when comments were posted on it. However, the blog clearly stated that such comments were not checked before they were published; that commentators were responsible for their own statements; that they should display good manners; and that they should obey the law. Furthermore, the association removed the blog post and comment one day after being contacted by Mr Pihl, and published a new post with an explanation and apology. The amount of time that the comment was on the blog was limited to nine days. Furthermore, Mr Pihl is entitled to request that search engines remove any traces of it.

In regard to the liability of the original author of the comment, Mr Pihl had obtained the IP-address of the computer used to submit the comment, but did not state whether he had taken any further steps to discover the author's identity. As to the consequences of the domestic proceedings, given

that the domestic courts had rejected Mr Pihl's claim, the proceedings did not have any negative consequences for the association. However, the Court recalls that liability for third-party comments may have negative consequences on the comment-related environment of an internet portal and thus a chilling effect on freedom of expression via internet.

Finally, Mr Pihl's case was scrutinised on its merits by two domestic courts and the Chancellor of Justice. The latter had examined the issue in light of the competing interests - with the assistance of the Court's case law - and found that there had been no violation of Mr Pihl's rights.

In view of the above, in rejecting Mr Pihl's claims the domestic authorities acted within their margin of appreciation and struck a fair balance between Mr Pihl's rights under Article 8 and the association's opposing right to freedom of expression under Article 10. The application is therefore manifestly ill-founded, and inadmissible.

The decision is available only in English.

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