



No breach of the Convention in case against an editor for the right to be forgotten

In today's Chamber judgment¹ in the case of [Biancardi v. Italy](#) (application no. 77419/16) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the “right to be forgotten”. The applicant, a former editor-in-chief of an online newspaper, was found liable in civil proceedings for having kept on his newspaper’s website an article reporting on a fight in a restaurant, giving details on the related criminal proceedings. The courts noted in particular that the applicant had failed to de-index the tags to the article, meaning that anyone could type into a search engine the name of the restaurant or its owner and have access to sensitive information on the criminal proceedings, despite the owner’s request to have the article removed.

The Court shared the Government’s point of view that not only Internet search engine providers could be obliged to de-index material but also administrators of newspaper or journalistic archives accessible through the Internet, such as the applicant.

It also agreed with the domestic courts’ rulings that the prolonged and easy access to information on the criminal proceedings concerning the restaurant owner had breached his right to reputation. The applicant’s right to impart information under the Convention had not therefore been breached, and all the more so given that he had not actually been required to remove the article from the Internet.

This was the first case in which the Court had examined whether a journalist’s civil liability for not de-indexing information published on the Internet had been compatible with Article 10 of the Convention.

Principal facts

The applicant, Alessandro Biancardi, is an Italian national who was born in 1972 and lives in Pescara (Italy). He was an editor-in-chief of an online newspaper.

In March 2008 he published an article concerning a fight, involving a stabbing, in a restaurant. The article mentioned the names of those involved, namely the family – two brothers and their respective sons – who owned the restaurant. It also reported that the reason for the fight had probably been related to a financial quarrel over ownership of a building, and gave details about the family members’ house arrest and/or detention.

In September 2010 one of the brothers and his restaurant sent a formal notice to the applicant asking that the article be removed from the Internet, to no avail. He therefore brought a claim in the domestic courts.

In January 2013 the district court ruled that there was no need examine the request for the article to be removed from the Internet, as the applicant had in the meantime de-indexed the article. It found,

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.

however, that the easy access via the Internet to information on the criminal proceedings from March 2008 to May 2011, when the applicant had de-indexed the article, had breached the claimants' right to respect for his reputation. It noted in particular that the applicant's failure to de-index the tags to the article meant that anyone could access the sensitive data on the proceedings by simply inserting the plaintiffs' names in the search engine.

The Supreme Court upheld the first-instance decision on all grounds in June 2016.

Complaints, procedure and composition of the Court

Mr Biancardi alleged that there had been a breach of his right to impart information under Article 10 (freedom of expression) and that the 5,000 euros he had been ordered to pay in compensation to each claimant had been excessive.

The application was lodged with the European Court of Human Rights on 7 December 2016.

Reporters Committee for Freedom of the Press, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, the Media Lawyers Association and the Media Legal Defence were granted leave to intervene in the proceedings as third parties.

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

Ksenija **Turković** (Croatia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

The Court pointed out that requiring the applicant to permanently remove the article had not been at issue in the domestic courts. The crux of the case was the applicant's failure to de-index the information concerning the restaurant owner and his decision to keep the article easily accessible. Nor had any intervention regarding the anonymisation of the online article been at issue in the case.

From that starting point, the Court went on to note that the article had remained online and easily accessible for eight months, despite the claimant's request to remove it. Furthermore, under the applicable domestic law, the applicant's right to disseminate information decreased over time, whereas the claimant's right to respect for his reputation increased.

Moreover, the information published, relating to criminal proceedings against a private individual, had been sensitive.

Lastly, the Court did not consider that the severity of the sanction – civil not criminal liability – and the amount of compensation awarded had been excessive.

It therefore concluded that the domestic jurisdictions findings had constituted a justifiable restriction on the applicant's freedom of expression – all the more so given the fact that he had not been obliged to permanently remove the article from the Internet.

Accordingly, there had been no violation of Article 10.

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.