European Court of Human Rights: Mária Somogyi v. Hungary

IRIS 2024-6:1/20

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The European Court of Human Rights (ECtHR) found a violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) in a case concerning the sharing of a Facebook post criticising a municipality.

The case started in 2014 when K. published a post on his Facebook page calling on the inhabitants of Tata, a town in the northwest of Hungary, to participate in a demonstration as a protest against the sale of a building belonging to the Tata municipality. According to K. the building was sold for an unreasonably low price to a local businessman, who had then rented out the same building to municipal bodies for a "ridiculously high price". K. described that as "robbing the citizens of Tata". Mária Somogyi shared K.'s post on her Facebook wall, adding a critical comment of her own, on another issue about the high costs of the municipality's purchase of a new building. The Tata municipality and the Tata joint municipal office brought a civil action against Mária Somogyi, seeking compensation for non-pecuniary damage in the amount of EUR 1 400 for the violation of their right to reputation, and an injunction, ordering her to terminate her unlawful conduct and not to engage in further unlawful conduct. In 2015 in the civil proceedings, the Tatabánya High Court found for the plaintiff and ordered Mária Somogyi to post on her Facebook page an apology and the message that the allegation in her Facebook post was false, in combination with an order to pay the municipality compensation for non-pecuniary damage. The Court of Appeal upheld this decision, considering that legal entities were entitled to protection of their reputation, which in the case of public bodies corresponded to the public trust of citizens. It endorsed the first-instance court's finding that the case had not concerned the municipality's exercise of public power, but its property rights. It also held that the dissemination of untrue information was not protected by the right to freedom of expression. The order to pay non-pecuniary damages was reduced to EUR 28. That decision was upheld by the Kuria, while the Constitutional Court dismissed Mária Somogyi's constitutional complaint.

Mária Somogyi lodged an application with the ECtHR arguing that the domestic courts' decision to impose a penalty on her for sharing a Facebook post by a third party had breached Article 10 ECHR. She submitted that the municipality as a public authority could not rely on the right to privacy and the protection of its

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reputation under Article 8 ECHR and that paying non-pecuniary damages and the costs associated with legal proceedings lasting for several years had been disproportionate to the triviality of the Facebook post.

The judgment of the ECtHR focussed on the question whether the interference with Mária Somogyi's right to freedom of expression could be justified under the ambit of the "protection of the reputation of others" clause of paragraph 2 of Article 10 ECHR. It observed that this clause is not restricted to natural persons, notwithstanding a difference between the reputational interests of a legal entity and the reputation of an individual as a member of society. However, as regards public bodies seeking legal protection of their reputation, the ECtHR has noted that local authorities, government-owned corporations and political parties cannot sue in defamation, because of the public interest that a democratically elected organisation, or a body controlled by such an organisation, should be open to uninhibited public criticism. Shielding bodies of the executive branch of state power from media criticism by according them protection of their "business reputation" might seriously hamper the freedom of the media. That executive bodies be allowed to bring defamation proceedings against members of the media places an excessive and disproportionate burden on the media and could have an inevitable chilling effect on the media in the performance of their role as purveyors of information and as a public watchdog. The ECtHR also referred to its findings in OOO Memo v. Russia (IRIS 2022-5:1/19) where it considered that bodies of the executive vested with state powers were essentially different from legal entities, including public or state-owned corporations, engaged in competitive activities in the marketplace. The latter relied on their good reputation to attract customers with a view to making a profit in the marketplace, while bodies of the executive existed to serve the public and were funded by taxpayers. Civil defamation proceedings brought by a legal entity that exercised public power therefore cannot, as a general rule, be regarded to be in pursuance of the legitimate aim of the "protection of the reputation of others" under Article 10 paragraph 2 ECHR.

Finally, the ECtHR is not convinced that the Tata municipality had an interest in protecting its commercial success and viability, whether for the benefit of shareholders and employees or for the wider economic good, that would warrant legal protection. The Tata municipality was not a competitive actor in the immovable property market seeking to maximise their profits by attracting customers. Even in the exercise of their right to property, it was supposed to serve the public and was funded by taxpayers. Nor could it be said that its members were "easily identifiable" given that neither the original post shared by Mária Somogyi nor her own comment concerned alleged wrongdoing by any identified or identifiable employees. In any event, the defamation case was brought by the legal entities as such, not by their individual members. Accordingly, the ECtHR found that the civil defamation proceedings brought by the Tata municipality against Mária Somogyi did not pursue any of the

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legitimate aims enumerated in paragraph 2 of Article 10 ECHR. Where it has been shown that the interference did not pursue a legitimate aim, it is not necessary to investigate whether it was “necessary in a democratic society”. Therefore the ECtHR concluded unanimously that there has been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, First Section, in the case Mária Somogyi v. Hungary, Application No. 15076/17, 16 May 2024

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