

European Court of Human Rights: Case of Times Newspapers Ltd. (nos. 1 and 2) v. UK

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*Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy*

The European Court of Human Rights has held unanimously that there had been no violation of Article 10 of the European Convention on Human Rights in the case of Times Newspapers v. the UK, because the British courts' finding that the Times Newspapers Ltd had libelled G.L. by the continued publication on its Internet site of two articles did not represent a disproportionate restriction on the newspaper's freedom of expression.

The applicant in this case, Times Newspapers Ltd, is the owner and publisher of The Times newspaper, registered in England. It published two articles, in September and October 1999 respectively, reporting on a massive money-laundering scheme carried out by an alleged Russian mafia boss, G.L., whose name was set out in full in the original article. Both articles were uploaded onto The Times website on the same day as they were published in the paper version of the newspaper. In December 1999, G.L. brought proceedings for libel against the Times Newspapers Ltd, its editor and the two journalists who signed the two articles printed in the newspaper. The defendants did not dispute that the articles were potentially defamatory, but contended that the allegations were of such a kind and seriousness that they had a duty to publish the information and the public had a corresponding right to know. While the first libel action was underway, the articles remained on The Times website, where they were accessible to Internet users as part of the newspaper's archive of past issues. In December 2000, G.L. brought a second action for libel in relation to the continuing Internet publication of the articles. Following this, the defendants added a notice to both articles in the Internet archive announcing that they were subject to libel litigation and were not to be reproduced or relied on without reference to the Times Newspapers Legal Department.

Times Newspapers subsequently argued that only the first publication of an article posted on the Internet should give rise to a cause of action in defamation and not any subsequent downloads by Internet readers. Accordingly, Times Newspapers submitted, the second action had been commenced after the limitation period for bringing libel proceedings had expired. The British courts disagreed, holding that, in the context of the Internet, the common law rule according to which each publication of a defamatory statement gives rise to a separate cause of action meant that a new cause of action accrued every time the defamatory material

was accessed ("the Internet publication rule").

Relying on Article 10 (freedom of expression) of the Convention, the Times Newspapers Ltd complained before the Strasbourg Court that the Internet publication rule breached its freedom of expression by exposing them to ceaseless liability for libel. The European Court noted that while Internet archives were an important source for education and historical research, the press had a duty to act in accordance with the principles of responsible journalism, including by ensuring the accuracy of historical information. Further, the Court observed that limitation periods in libel proceedings were intended to ensure that those defending actions were able to defend themselves effectively and that it was, in principle, for contracting States to set appropriate limitation periods. The Court considered it significant that, although libel proceedings had been commenced in respect of the two articles in question in December 1999, no qualification was added to the archived copies of the articles on the Internet until December 2000. The Court noted that the archive was managed by the applicant itself and that the domestic courts had not suggested that the articles be removed from the archive altogether. Accordingly, the Court did not consider that the requirement to publish an appropriate qualification to the Internet version of the articles constituted a disproportionate interference with the right to freedom of expression. There was accordingly no violation of Article 10.

Having regard to this conclusion, the Court did not consider it necessary to consider the broader chilling effect allegedly created by the Internet publication rule. It nonetheless observed that, in the present case, the two libel actions related to the same articles and both had been commenced within 15 months of the initial publication of the articles. The Times Newspaper's ability to defend itself effectively was therefore not hindered by the passage of time. Accordingly, the problems linked to ceaseless liability did not arise. However, the Court emphasised that, while individuals who are defamed must have a real opportunity to defend their reputations, libel proceedings brought against a newspaper after too long a period might well give rise to a disproportionate interference with the freedom of the press under Article 10 of the Convention.

Judgment by the European Court of Human Rights (Fourth Section), case of Times Newspapers Ltd. (nos. 1 and 2) v. United Kingdom, Application no. 3002/03 and 23676/03 of 10 March 2009

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