

European Court of Human Rights: Lack of safeguards for the use by journalists of information from the internet

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On 5 May 2011 the European Court of Human Rights (ECtHR) held that both the lack of safeguards for the use by journalists of information from the internet and the imposition of an obligation to apologise in defamation cases constitute a violation of Article 10 of the European Convention on Human Rights (ECHR).

A local Ukrainian daily newspaper received an anonymous letter that had been downloaded from the homepage of a news service. The letter's author accused several senior officials of engaging in unlawful and corrupt activities. The newspaper published the letter and added a note that it might not be genuine. One of the officials accused in it brought defamation proceedings against the newspaper's editorial board and editor-in-chief. They were ordered to pay damages, to retract the parts of the letter concerning the plaintiff and to publish an apology for publishing the letter. The Court stressed that they could not claim the exemption from civil liability provided for in Ukrainian law for the reprinting of already published information because section 42 of the Press Act only referred to printed works. However, the Court went on, the internet site on which the letter at issue had been published did not constitute a printed work within the meaning of the Press Act. Having lost their case before the domestic courts, the members of the editorial board and the editor-in-chief filed an application with the ECtHR alleging a violation of their freedom of expression (Article 10 ECHR).

In its decision, the ECtHR emphasised that the exercise of the vital function of the press as a "public watchdog" is seriously impeded when there are no national provisions enabling journalists to use information from the internet without exposing them to the risk of punishment. The lack of relevant provisions constitutes a breach of Article 10 § 2 ECHR, which permits statutory restrictions on freedom of expression.

The ECtHR also established that Ukrainian law does not provide for an obligation to publish an apology in a defamation case. In its case-law, it noted, the Court has accepted that the domestic courts are entitled to interpret rules that impose an obligation to retract statements and publish rectifications to mean that they also comprise the publication of an apology. However, the Ukrainian courts undertook no such interpretation of Ukrainian law but ordered the publication of an apology without giving any reasons.

ECtHR judgment of 5 May 2011, application no. 33014/05

<https://hudoc.echr.coe.int/eng?i=001-104685>

