Committee of Ministers: Declaration on the Desirability of International Standards Dealing with Forum Shopping in Respect of Defamation, “Libel Tourism”

IRIS 2012-9:1/3

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On 4 July 2012, the Council of Europe’s Committee of Ministers (CM) adopted a Declaration on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, “Libel Tourism”, to Ensure Freedom of Expression.

The CM firstly notes that although everyone is entitled to freedom of expression, the media have specific rights, because they play an essential role in democratic societies. Freedom of expression, as guaranteed by Article 10 of the European Convention of Human Rights, is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive, but also to those that offend, shock or disturb the State or any sector of the population” (case Handyside v. United Kingdom, 7 December 1976). However, freedom of expression carries with it duties and responsibilities, meaning that inter alia the media at any time must respect the reputation and rights of others and their right to private life. That means that in defamation cases, a fair balance must be struck between guaranteeing freedom of expression and protecting a person’s honour and reputation.

The CM emphasises that the existing differences between national defamation laws and the special jurisdiction rules in tort and criminal cases have given rise to the phenomenon known as “libel tourism”. Libel tourism is a form of “forum shopping” when a complainant files a complaint with the court thought most likely to provide a favourable judgment and where it is easy to sue. Forum shopping may have a chilling effect and restrict freedom of expression, and can therefore have detrimental effects on media pluralism and diversity. These risks are exacerbated as a consequence of increased globalisation and the persistent accessibility of content and archives on the Internet (see IRIS 2009-5/1).

According to the margin of appreciation of member states, the proportionality of the balance between the competing human rights in defamation cases has led to substantial variations in the stringency of defamation law or case law. Because it is often impossible to predict where a defamation claim will be filed, a general need for increased predictability of jurisdiction exists. To prevent libel tourism, member states are obliged to reform the legislation on defamation in order to ensure better protection of freedom of expression within a system that strikes a

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fair balance between competing human rights. The relevant case law of the European Court of Human Rights (ECtHR) should be inventoried with a view to suggesting new action if need be. Also, clear rules as to the applicable law and indicators for the determination of the personal and subject matter jurisdiction should be created to enhance legal predictability, in line with the case law of the ECtHR. Likewise, clear rules as to the proportionality of damages in defamation cases are highly desirable. The CM acknowledges therefore the necessity for member states to provide appropriate legal guarantees against awards for damages and interest that are disproportionate to the actual injury. Furthermore, the CM notes the need to align national law provisions with the case law of the ECtHR. Finally the CM undertakes to pursue further standard-setting work in order to provide guidance to member states.

Declaration of the Committee of Ministers on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, "Libel Tourism", to Ensure Freedom of Expression, 4 July 2012

https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(04.07.2012)&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383- FR

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