[RU] Constitutional Court on Defamation Online

IRIS 2013-8:1/32

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On 9 July 2013, the Constitutional Court of the Russian Federation adopted a Resolution concerning the constitutionality of several paragraphs of Article 152 ("Defamation") of the Russian Civil Code. The case was raised by a citizen named Krylov who complained that the Civil Code does not oblige the Internet service providers (ISPs) to remove defamatory statements made by third parties.

The complaint arose from decisions of the courts of first and second instances in the Sverdlovsk region on the lawsuit of Mr Krylov against the regional ISP. The plaintiff demanded that the defendant remove remarks posted by an anonymous user on the "Surgutsky forum" website. He wanted his photograph, which accompanied the statement, to be removed as well. The remarks had earlier been found to be of a defamatory nature by the city court of Surgut.

The Sverdlovsk courts noted that the Civil Code provides that the refutation of defamatory statements is to be made by the person who disseminated them or a mass media outlet that disseminated them. As such a person was not found in that case, "Surgutsky forum" was not registered as a media outlet, nor the Internet-forum could be considered as illegal form of disseminating information, the claims were dismissed.

The Constitutional Court noted with concern that in cases like this the plaintiff can only obtain a court decision on the defamatory and untrue nature of information disseminated online, but has no other means of protection of his honour and dignity, or privacy, as would be available in the case of defamation offline. It gave a review of the constitutional and legal norms on freedom of expression and the right to protect one's reputation, as well as relevant national law, international covenants and soft law such as the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information of 1 June 2011.

The Constitutional Court ruled that the impossibility of finding the person responsible for defamatory statements shall not exclude the right of the defamed party to protect his/her reputation, e.g. by restoring the situation that existed prior to the violation of the right.

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An imposition on the ISP of the obligation to remove the (defamatory) information declared by a court of law to be untrue shall not be considered as an excessive burden or as a disproportionate restriction of its rights. The obligation to comply means that the ISP should do so as soon as it learns about the relevant court decision that had entered into force. Such an action is not considered as putting the blame on the ISP, but only as a form of protection of reputation. If the relevant court decision was not enforced, then the court may consider imposing on the ISP the burden of paying moral damages to the plaintiff.

These rules relate also to the owners and administrators of websites.

As the norms of the Civil Code neither provide the possibility to demand that defamatory online statements be removed, nor introduce liability for refusal to do so, they contradict the constitutional provision (part 2 of Art. 45), which says: “Everyone shall be free to protect his rights and freedoms by all means not prohibited by law.”

The Resolution was issued a week after President Vladimir Putin signed into law widespread amendments to the Civil Code (Part I) of the Russian Federation, including its Article 152 (see IRIS 2013-8/34). The new text of the Article reflects the position of the Constitutional Court.

Постановление Конституционного Суда Российской Федерации по делу о проверке конституционности положений пунктов 1, 5 и 6 статьи 152 Гражданского кодекса Российской Федерации в связи с жалобой гражданина Е.В.Крылова

http://www.rg.ru/2013/07/19/ks-gk-dok.html

Resolution of the Constitutional Court of the Russian Federation on the case of the constitutionality test of paragraphs 1, 5 and 6 of Article 152 of the Civil Code of the Russian Federation in response to the complaint of citizen Ye. V. Krylov, Saint-Petersburg, 9 July 2013

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