European Court of Human Rights: Węgrzynowski and Smolczewski v. Poland

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The European Court of Human Rights (ECHR) has recently clarified the application of freedom of expression when conflicting with personality rights in the environment of online news media and digital archives. The case concerns the complaint by two lawyers that a newspaper article damaging to their reputation - which the Polish courts, in previous libel proceedings, had found to be based on insufficient information and in breach of their rights - remained accessible to the public on the newspaper's website. They complained that the Polish authorities, by refusing to order that the online version of the news article should be removed from the newspaper's website archive, breached their rights to respect for their private life and reputation as protected by Article 8 of the European Convention on Human Rights.

In its judgment, the Court emphasises the potential impact of online media, stating that the Internet is "an information and communication tool particularly distinct from the printed media, especially as regards the capacity to store and transmit information". The Court stresses the substantial contribution made by Internet archives to preserving and making available news and information and it reiterates that news archives "constitute an important source for education and historical research, particularly as they are readily accessible to the public and are generally free. While the primary function of the press in a democracy is to act as a "public watchdog", archives have a valuable secondary role in maintaining and making available to the public archives containing news which has previously been reported". According to the Court the internet "is not and potentially never be subject to the same regulations and control" as the traditional media. The Court, however, also recognises that "the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press". Therefore it accepts that the policies governing reproduction of material from the printed media and the Internet may differ, taking also into consideration technology's specific features in order to secure the protection and promotion of the rights and freedoms at issue.

Turning to the particular circumstances of the case, the Court is of the opinion that the newspaper was not obliged to completely remove from its Internet archive the article at issue, as was requested by the two lawyers. The Court firmly

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states “that it is not the role of judicial authorities to engage in rewriting history by ordering the removal from the public domain of all traces of publications which have in the past been found, by final judicial decisions, to amount to unjustified attacks on individual reputations” and it also refers to the legitimate interest of the public to have access to the public Internet archives of the press, as being protected under Article 10 of the Convention. The Court is of the view that the alleged violations of rights protected under Article 8 of the Convention should be redressed by more adequate remedies available under domestic law and it refers to the observation by the Warsaw Court of Appeal in the present case, that it would have been desirable to add a comment to the article on the website informing the public of the outcome of the civil proceedings in the earlier libel case regarding the printed version of the article. The Court observes that in the proceedings at the domestic level the applicants did not submit a specific request for the information to be rectified by means of the addition of a reference to the earlier judgments in their favour. It follows from the Court’s judgment that a rectification or a reference to the judgment in the libel case about the printed version of the article at issue, would have been a pertinent and sufficient interference with the rights of the newspaper in order to secure in its online archives the effective protection of the applicants’ rights. Hence, the Court accepts that the Polish authorities complied with their obligation to strike a balance between the rights guaranteed by Article 10 and Article 8 of the Convention. The requested limitation on freedom of expression for the sake of the applicants’ reputation in the circumstances of the present case would have been disproportionate under Article 10 of the Convention. Therefore the Court comes to the conclusion that there has been no violation of Article 8 of the Convention.

Judgment by the European Court of Human Rights (Fourth Section), case of Węgrzynowski and Smolczewski v. Poland, Appl. No. 33846/07 of 16 July 2013

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