European Court of Human Rights: Rolf Anders Daniel Pihl v. Sweden

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

The decision in Rolf Anders Daniel Pihl v. Sweden deals with a complaint about an alleged breach of the applicant's right to privacy and reputation under Article 8 of the European Convention on Human Rights (ECHR), because the Swedish authorities had refused to hold the operator of a website liable for a defamatory blog post and an anonymous online comment. Again, the European Court of Human Rights (ECtHR) applies a crucial distinction between illegal hate speech and defamation, limiting the liability of the operator of the blog when it (only) concerns defamation, and not incitement to violence. The blog post at issue had wrongfully accused Mr. Pihl of being involved in a Nazi political party. The day after publication of the post, an anonymous person posted a comment calling Pihl "a real hash-junkie". The blog, which was run by a small non-profit association, allowed comments to be posted without being checked before publication. The commentators were considered responsible for their own statements, and therefore they were requested to "display good manners and obey the law". Nine days later Pihl posted a comment on the blog in reply to the blog post and comment about him, stating that both allegations were false and requesting their immediate removal. The following day the blog post and the comment were removed and a new post was added on the blog by the association - stating that the earlier post had been wrong and based on inaccurate information - and it apologised for the mistake. However, Pihl sued the association and claimed symbolic damages of SEK 1, approximately EUR 0.10. He submitted that the post and the comment constituted defamation, and that the association was responsible for the fact that the blog and the comment had remained on the website for nine days. The Swedish courts however rejected Pihl's claim. They agreed that the comment constituted defamation, but found no legal grounds on which to hold the association responsible for failing to remove the blog post and comment sooner than it had done. Pihl complained before the ECtHR that his right to privacy and reputation under Article 8 ECHR had been breached.

First the Court considered that the comment, although offensive, certainly did not amount to hate speech or incitement to violence, and accepted the national courts' finding that the comments at issue constituted defamation and, consequently, fell within the scope of Article 8. Next, the Court referred to its case law in Delfi AS v. Estonia (see IRIS 2015-7/1) and Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary (see IRIS 2016-3/2), and summarised the aspects that are relevant for the concrete assessment of the interference in

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question: “the context of the comments, the measures applied by the company in order to prevent or remove defamatory comments, the liability of the actual authors of the comments as an alternative to the intermediary’s liability, and the consequences of the domestic proceedings for the company”. As regards the context of the comment, the Court noted that the underlying blog post accused Pihl, incorrectly, of being involved in a Nazi political party, but also that the post and the subsequent comment were promptly removed and an apology published when Pihl notified the association of the inaccurate allegations about him. The Court attached particular importance to the fact that the association is a small non-profit association, and observed that it was also unlikely that the blog post and the comment at issue would be widely read. It considered that “expecting the association to assume that some unfiltered comments might be in breach of the law would amount to requiring excessive and impractical forethought capable of undermining the right to impart information via internet”. As regards the measures taken by the association to prevent or remove defamatory comments, the Court noted that it was clearly stated on the blog that the association did not check such comments before they were published and that commentators were responsible for their own statements. The Court also referred to its earlier case law in which it held that “liability for third-party comments may have negative consequences on the comment-related environment of an internet portal and thus a chilling effect on freedom of expression via internet. This effect could be particularly detrimental for a non-commercial website”. Turning to the liability of the originator of the comment, the Court observed that Pihl obtained the IP-address of the computer used to submit the comment, but that there were no indications that he took any further measures to try to obtain the identity of the author of the comment. Lastly the Court noted that Pihl’s case was considered on its merits by two judicial instances at the domestic level before the Supreme Court refused leave to appeal. The Court further observed that the scope of responsibility of those running blogs is regulated by domestic law and that, had the comment been of a different and more severe nature, the association could have been found responsible for not removing it sooner, e.g. if it had concerned child pornography or incitement to rebellion or violence. In its overall conclusion the ECtHR again emphasised the fact that the comment, although offensive, did not amount to hate speech or incitement to violence and was posted on a small blog run by a non-profit association, which removed it the day after the applicant’s request and nine days after it had been posted. In view of this, the Court finds that the domestic courts acted within their margin of appreciation and struck a fair balance between Pihl’s rights under Article 8 and the association’s opposing right to freedom of expression under Article 10 ECHR. Therefore the Court found the application to be manifestly ill-founded.

Decision by the European Court of Human Rights, Third Section, case of Rolf Anders Daniel Pihl v. Sweden, Application no. 74742/14, 9 March 2017

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