European Court of Human Rights: Ólafsson v. Iceland

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According to the European Court of Human Rights (ECtHR), Iceland has breached the right to freedom of expression of the editor of a web-based media site, by holding him liable for defamation. The applicant in this case is Mr. Ólafsson, editor of the web-based media site Pressan. He published articles alleging that a political candidate ('A.') had sexually abused children. The allegations were based on statements made by relatives of 'A.' who had declared that he had sexually abused them when they were children. These allegations were also forwarded to the police and the child protection services, but for an unknown reason, the police had not instigated an investigation.

The Supreme Court of Iceland held Mr. Ólafsson liable for defamation, because statements in the articles had indeed insinuated that 'A.' was guilty of having abused children. Whilst the Supreme Court accepted that candidates for public service had to endure a certain amount of public scrutiny, it held that this could not justify the accusations of criminality against 'A.' in the media, particularly because A. had not been found guilty of the alleged conduct and had not been under criminal or other investigation for it. The Supreme Court also held that Mr. Ólafsson, as an editor, had a supervisory obligation which entailed that he should conduct his editorial duties in such a way that the published material would not harm anyone by being defamatory. Mr. Ólafsson was ordered to pay, under the Tort Act, EUR 1,600 for non-pecuniary damages, and compensation for 'A.''s legal costs of EUR 6,500. Under Article 241 of the Penal Code the statements at issue published on Pressan were declared null and void.

Mr. Ólafsson complained to the ECtHR of a violation of his right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The ECtHR found that it has been adequately established that Mr. Ólafsson's liability was prescribed by domestic law within the meaning of Article 10 § 2 of the ECHR, and that the interference complained of pursued the legitimate aim of the protection of the reputation or rights of others. The ECtHR however found the arguments for the interference with Mr. Ólafsson's right to freedom of expression as an editor insufficiently convincing. In doing so the ECtHR referred to the standards and principles that the ECtHR has developed when considering disputes requiring an examination of the fair balancing of the right to respect for private life under Article 8 and the right to freedom of expression. The ECtHR recalled that in order for Article 8 to come into play, an attack on a

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person's reputation must attain a certain level of seriousness and its manner must cause prejudice to personal enjoyment of the right to respect for private life. The criteria which are relevant when balancing the right to freedom of expression against the right to respect for private life are: (1) the extent to which the impugned statement contributes to a debate of general interest; (2) how well known the person concerned is and what the subject of the report is; (3) his or her prior conduct; (4) the method of obtaining the information and its veracity; (5) the content, form, and consequences of the publication and (6) the severity of the sanction imposed.

The ECtHR confirmed that the general public had a legitimate interest in being informed about 'A.''s running for general election and of such serious matters as child abuse. It also considers that, by running for office in general elections, 'A.' must be considered to have inevitably and knowingly entered the public domain and laid himself open to closer scrutiny of his acts. The limits of acceptable criticism are accordingly wider than in a case of a private individual. Next the ECtHR referred to the obligation for journalists to rely on a sufficiently accurate and reliable factual basis which can be considered proportionate to the nature and degree of their allegations, such that the more serious the allegations, the more solid the factual basis has to be. The ECtHR accepted that the journalist tried to establish the credibility and the truth of the allegations by interviewing several relevant persons, and that the impugned articles offered 'A.' an opportunity to comment on the allegations. The Court reiterated that a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult, or provoke others, or damage their reputation, is not reconcilable with the press's role of providing information on current events, opinions, and ideas and that "punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so". The ECtHR was of the opinion that Mr. Ólafsson acted in good faith and made sure that the article was written in compliance with ordinary journalistic obligations to verify a factual allegation.

Although the ECtHR agreed that the allegations were of such nature and gravity as to be capable of causing harm to 'A.''s honour and reputation, it emphasised that the disputed statements did not originate from Mr. Ólafsson himself nor from the journalist who wrote the articles, but from the alleged victims. Insofar as Mr. Ólafsson's conviction may have been in the legitimate interest of protecting 'A.' from the impugned defamatory allegations made by the alleged victims, that interest was, in the Court's view, largely preserved by the possibility available to him under Icelandic law to bring defamation proceedings against the persons who made the claims. The ECtHR regarded it as significant that 'A.' opted to institute proceedings against Mr. Ólafsson only. 'A.' had indeed chosen not to sue the

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persons making the claims, and that might have prevented Mr. Ólafsson from establishing that he had acted in good faith and had ascertained the truth of the allegations. With regard the proportionate character of the order by the Iceland Supreme Court to pay compensation and costs, the ECtHR considered that what matters is the very fact of judgment being made against the person concerned, even where such a ruling is solely civil in nature. It emphasised that any undue restriction on freedom of expression effectively entails a risk of obstructing or paralysing future media coverage of similar questions.

The ECtHR concluded that the Supreme Court had failed to strike a reasonable balance between the measures restricting Mr. Ólafsson's freedom of expression, and the legitimate aim of protecting the reputation of others. The ECtHR held, unanimously, that there had been a breach of Mr. Ólafsson's freedom of expression and that the Icelandic judicial authorities had violated Article 10 ECHR.

Judgment by the European Court of Human Rights, First Section, Ólafsson v. Iceland, Application no. 58493/13, 18 March 2017

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