European Court of Human Rights: Halldórsson v. Iceland

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In a case against Iceland, the European Court of Human Rights (ECtHR) stated that a journalist responsible for a TV news item causing prejudice to an identifiable public person must give relevant evidence that he or she has been acting in good faith as pertains to the accuracy of the allegations in the news item. The ECtHR also made clear that a journalist cannot shield behind his right to protect his sources where he cannot produce evidence of serious accusations uttered in a news item, tarnishing a person's reputation as protected under Article 8 of the European Convention on Human Rights.

The applicant is a journalist working for the newsroom of the Icelandic National Broadcasting Service (RUV). RUV broadcasted a series of news reports about a loan transaction of about EUR 20 million between an Icelandic company and a shelf company in Panama. It was reported that three Icelandic businessmen (A, B and C) had planned the Panama deal in advance in order to send the money to Panama and then back into their own company again. Pictures of A, B and C were shown on the screen with the text "under investigation", accompanied by the message that the authorities were investigating the case and the role of A, B and C. In another news item, pictures of A, B and C were shown above a world map, with a pile of money being visually transferred to the pictures of the men, mentioning that the money went back in "the pockets of the threesome". An article summarising the content of the broadcasted news items was also published on RUV's website. After the news broadcast, A issued a press release denying any link with the alleged suspect transaction. The online news article was promptly updated to include the press release.

A few weeks later, A lodged defamation proceedings against Svavar Halldórsson, the RUV journalist who produced the news items. He requested that the reference to his name and the word "threesome" in the news report and on the website be declared null and void. The Supreme Court, overturning the judgment by the District Court which found for the journalist, ordered Halldórsson to pay approximately EUR 2,600 to A in compensation for non-pecuniary damage, and about EUR 8,800 for A's legal costs before the domestic courts. The mentioning of A's name and the word "threesome" were declared null and void. Before the ECtHR, Halldórsson maintained that the statements in the news items had not affected A's reputation to a sufficient degree, and that therefore A could not invoke the protection of Article 8 ECHR. He also argued that the statements were

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not defamatory and that there was nothing presented in the news item to the effect that A had been guilty of a financial crime or other actions punishable by law.

In evaluating whether the interference with Halldórsson's freedom of expression was justified as being necessary in a democratic society, the ECtHR first clarifies that a person's reputation, even if that person is being criticised in the context of a public debate, forms part of his or her personal identity and psychological integrity and therefore falls within the scope of his or her "private life". The attack on personal honour and reputation must however attain a certain level of gravity and in a manner causing prejudice to the personal enjoyment of the right to respect for private life in order for Article 8 ECHR to come into play. In line with the findings by the domestic courts, the ECtHR confirms that the news items indeed contained a serious accusation of a factual nature concerning unlawful and criminal acts; therefore the ECtHR is of the opinion that the dispute requires an examination of the fair balance to be struck between the right to respect for private life and the right to freedom of expression. The ECtHR refers to the criteria which are relevant when balancing these rights, such as the contribution to a debate of general interest; how well known the person concerned is and what the subject of the report is; his or her prior conduct; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and the severity of the sanction imposed.

The ECtHR agrees that A was to be considered a public person and that the subject matter of the disputed news items was an issue of public interest; however, it confirms the findings by the Icelandic Supreme Court that Halldórsson had not been acting in good faith, as he had not presented any documents supporting the legitimacy of the statements, for which he had to bear the burden. Halldórsson had also omitted to seek information from A while preparing the news item. The ECtHR reiterates that the safeguard afforded by Article 10 ECHR to journalists in relation to reporting on issues of general interest is subject to the condition that they are acting in good faith and on an accurate factual basis and that they provide "reliable and precise" information in accordance with the ethics of journalism. It finds that there were no special grounds to dispense the journalist from his ordinary obligation to verify factual statements that are defamatory of private individuals, and it observed that there was no confirmation that A had been charged, indicted, or was on trial or had been convicted of a crime.

Next, the ECtHR dismisses Halldórsson's arguments referring to the right to protect his sources and to keep his sources and the documentation behind the news items confidential. The ECtHR confirms that the protection of journalistic sources is one of the basic conditions for press freedom, without which sources may be deterred from assisting the press in informing the public on matters of public concern. In the present case, however, the journalist was at no stage

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required to disclose the identity of his sources. The ECtHR clarifies that “a mere reference to protection of sources cannot exempt a journalist from the obligation to prove the veracity of or have sufficient factual basis for serious accusations of a factual nature, an obligation that can be met without necessarily having to reveal the sources in question”.

Finally, the ECtHR does not find the financial compensation and payment of the costs of the domestic proceedings excessive or to be of such a kind as to have a “chilling effect” on the exercise of media freedom. The ECtHR also considers the potential impact of the medium an important factor in the consideration of the proportionality of an interference. In this respect, the ECtHR reiterates “that the audio-visual media have a more immediate and powerful effect than the print media”. Because the Icelandic Supreme Court balanced the right of freedom of expression with the right to respect for private life, and took into account the criteria set out in the ECtHR’s case law, it acted within the margin of appreciation afforded to it and struck a reasonable balance between the measures imposed, restricting the right to freedom of expression. Therefore, the ECtHR concludes, unanimously, that there has been no violation of Halldórsson’s right to freedom of expression under Article 10 ECHR.

Judgment by the European Court of Human Rights, Second Section, case of Halldórsson v. Iceland, Application no. 44322/13 of 4 July 2017

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