European Court of Human Rights: Tamiz v. the United Kingdom

IRIS 2018-1:1/2

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On 12 October 2017, the European Court of Human Rights (ECtHR) issued its decision in Tamiz v. U, concerning a politician's claim that his right to protection of reputation had been violated following the UK courts' refusal to find Google liable for allegedly defamatory comments on Google's Blogger platform. The applicant was a Conservative Party candidate in local UK elections, and on 27 April 2011, a blog post was published on the "London Muslim" blog, hosted on blogger.com, which is owned by Google Inc. The blog post concerned the applicant, and included the observation that "this Tory prat with Star Trek Spock ears might have engaged the odd brain cell before making these offensive remarks." A number of anonymous comments were posted under the blog post, including that the applicant "is a known drug dealer" and a "class A prat".

The applicant used the blog's "report abuse" function to indicate that he considered certain comments to be defamatory, and sent a letter of claim to Google in respect of "defamatory" comments. Google confirmed that it would not itself remove the comments, but forwarded the claim to the blog's author, who three days later removed the post and comments. Meanwhile, the applicant also sought to bring a libel claim against Google Inc. (US) in relation to the comments. Ultimately, the Court of Appeal held that the claim should not be allowed to proceed. The Court held that since it could not be said that Google Inc. had known or ought reasonably to have known of the defamatory comments prior to it being notified by the applicant, Google Inc. could not be viewed as a secondary publisher prior to that notification. In relation to the period following notification, the Court held that the claim should not be allowed because it was "highly improbable that any significant number of readers will have accessed the comments after that time and prior to the removal of the entire blog", any damage to the appellant's reputation arising from the continued publication of the comments will have been trivial, and the costs of the exercise would be out of all proportion to what would be achieved.

The applicant then made an application to the European Court of Human Rights (ECtHR), claiming that in refusing him permission to serve a claim on Google Inc., the UK was in breach of its positive obligation under Article 8 of the European Convention on Human Rights (ECHR) to protect his reputation.

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The ECtHR stated that the case concerned whether an appropriate balancing exercise was conducted by the national courts between the applicant's right to respect for his private life under Article 8 ECHR and the right to freedom of expression guaranteed by Article 10 of the ECHR and enjoyed by both Google Inc. and its end users. Firstly, the Court reiterated that in considering the gravity of the interference with the applicant's Article 8 rights, an attack on personal honour and reputation must attain a certain level of seriousness and must have been carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life. The Court stated that this threshold test is important, and that the reality is that millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. On the facts, the Court was inclined to agree with the national courts that while the majority of comments about which the applicant complains were undoubtedly offensive, for the large part they were little more than "vulgar abuse" of a kind which is common in communication on many Internet portals and which the applicant, as a budding politician, would be expected to tolerate. Furthermore, many of those comments which made more specific allegations would, in the context in which they were written, likely be understood by readers as conjecture which should not be taken seriously.

Secondly, the Court noted that although the applicant was ultimately prevented from serving proceedings on Google Inc., this was not because such an action was inherently objectionable to the national courts. Rather, having assessed the evidence before them, they concluded that the applicant's claim did not meet the "real and substantial tort" threshold required to serve defamation proceedings. This conclusion was based, to a significant extent, on the courts' finding that Google Inc. could only, on the most generous assessment, be found responsible in law for the content of the comments once a reasonable period had elapsed after it was notified of their potentially defamatory nature. The Court noted that the approach of the national courts is entirely in keeping with the position in international law that information society service providers (ISSPs) should not be held responsible for content emanating from third parties unless they failed to act expeditiously in removing or disabling access to it once they became aware of its illegality. The Court concluded that it was satisfied that the appropriate balancing exercise was conducted by the national courts, and the applicant's Article 8 complaint was therefore rejected as manifestly ill-founded, pursuant to Article 35 § 3 (a) of the Convention.

Decision by the European Court of Human Rights, First Section, case of Tamiz v. the United Kingdom, Application no. 3877/14 of 19 September 2017, notified in writing on 12 October 2017

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