

# European Court of Human Rights: Agentstvo televideniya Novosti, OOO v. Ukraine

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

The European Court of Human Rights (ECtHR) has clarified some characteristics of what is to be considered as ‘responsible journalism’ and it has explained the reasons for limiting the right to freedom of expression and journalistic reporting on the occasion of a series of news stories covering an incident where a police officer fell out of a moving trolleybus while on his way to work. The ECtHR found that some parts of the reporting on TV by a Ukrainian broadcasting company failed to act in line with the tenets of responsible journalism, while other parts of the TV-coverage of the incident did not justify an interference with the broadcasters’ right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR).

In 2006, the Ukrainian broadcasting company, Agentstvo televideniya Novosti, OOO (ATN OOO), in four news stories, reported on a trolleybus incident involving a police officer in Kharkiv (Officer G). The man suffered from brain trauma and remained in a coma for some time. The news coverage mentioned that Officer G had intentionally jumped out of the trolleybus, namely that he had grabbed the handles on the trolleybus doors, pried them open and jumped out of the moving trolleybus (further: retraction A), and that he was possibly under the influence of alcohol or drugs (further: retraction B). Officer G's mother lodged a claim against ATN OOO, seeking that this information disseminated about her son be retracted as untrue. She also sought compensation for non-pecuniary damage. In her claim before the domestic courts, Ms G stated that the above information had damaged her son’s honour, dignity and professional reputation. The District court of Kharkiv allowed the claim, ordered the retraction of both statements, and awarded Ms G EUR 730 for non-pecuniary damage and EUR 12 for court costs. The court of appeal endorsed the finding of the district court, and added that the media had no right to collect and report rumours, presenting them as corroborated by witnesses. The Supreme Court refused ATN OOO leave to appeal on points of law.

ATN OOO lodged an application with the ECtHR, complaining that the decisions of the domestic courts ordering it to retract the information in question and awarding compensation to Ms G. had violated its freedom of expression under Article 10 ECHR. As the interference with ATN OOO’s right were prescribed by law and pursued the legitimate aim of protecting the reputation of Officer G, the crucial question remained whether the interference at issue was necessary in a

democratic society.

The ECtHR was of the opinion that the broadcasting of the impugned information related to the role of the media in a democratic society to participate in debates over matters of legitimate public concern, and that, accordingly, freedom of the press was at stake. Therefore the margin of appreciation available to the authorities in establishing the “need” for the interference was narrow.

Next, the ECtHR observed that the domestic courts based the interference with ATN OOO’s right under Article 10 ECHR on the finding that the broadcasting company had not proved that the information which it had disseminated was factually accurate and had been sufficiently verified. It confirmed that such a finding is not, as such, contrary to Article 10 ECHR, as the statements broadcast by ATN OOO were allegations of facts rather than value judgments. Hence, the statement was susceptible of proof. The ECtHR also reiterated that the protection afforded by Article 10 ECHR was subject to the proviso that ATN OOO acted in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism. The ECtHR clarified that its assessment was different with respect to retraction A and retraction B.

With regard to retraction A, that Officer G had intentionally jumped out of the trolleybus, the ECtHR agrees with the findings by the Ukraine courts that ATN OOO had failed to verify this statement. Indeed, this statement was only based on a declaration by a representative of the company (L.) that operated the trolleybus and was, moreover, responsible for that company’s traffic safety service. The company could have been found liable if it had been shown that a technical malfunction or negligence on its part had led to the incident. Indeed, under certain circumstances, L. himself, as a person responsible for the traffic safety service of the company, could conceivably have faced liability. As such, he may well have had a vested interest in presenting the incident as being entirely the victim’s fault. Nevertheless, the ATN OOO presented this version of events as a matter of established fact, moreover, using a dismissive sensationalist language in respect of Officer G. There was no indication that ATN OOO has attempted to verify that aspect of the declaration and that it has informed the viewers that that part of the declaration came from an interested party and could not be verified. Also, in the subsequent reporting about the case, ATN OOO omitted to verify and nuance its reporting. Even worse, it turned what could initially be seen as merely a lack of precision in the coverage of the incident into a misleading representation of the facts, combined with gratuitous mockery of the report’s subject. The ECtHR concluded that the domestic courts legitimately found that in making the statements subject to retraction A, ATN OOO’s journalists failed to act in line with the tenets of responsible journalism.

By contrast, the ECtHR is not convinced that the reasons relied on by the domestic courts to justify retraction B were relevant and sufficient. The domestic

courts found that ATN OOO had wrongfully declared that Officer G had been under the influence of alcohol or drugs, while the ECtHR observed that the impugned broadcasts did not contain such a statement. Indeed, the ATN OOO broadcast only indicated that two possibilities were being investigated, including the possibility that Officer G “could have been under the influence of alcohol or drugs”. The domestic courts also failed to explain why, despite the literal language used in the broadcast, which explicitly presented Officer G’s intoxication as only one of the versions of events being investigated, they interpreted that statement as a positive affirmation that Officer G had been intoxicated. Nor did had they take into account the context, namely a subsequent broadcast, in which ATN OOO had clarified the situation and has reported that the criminal investigation unit has stated that it had definitely been established that Officer G had not been under the influence of alcohol or drugs. Therefore, the ECtHR held that the interference with ATN OOO’s right to freedom of expression was not based on relevant and sufficient reasons. Despite the relatively modest nature of the civil sanction imposed on ATN OOO, it has not been shown that the interference at issue was necessary in a democratic society. There has, accordingly, been a violation of Article 10 ECHR on account of the domestic courts’ decisions in respect of retraction B.

***ECtHR, Fifth section (sitting as a Committee), Agentstvo televideniya Novosti, OOO v. Ukraine, Application no. 34155/08, 16 January 2020***

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