European Court of Human Rights: *Index.hu Zrt v. Hungary*

IRIS 2023-9:1/22

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

The European Court of Human Rights (ECtHR) delivered a judgment in a case concerning the decision by Hungarian courts to order the Internet news portal Index.hu to pay compensation for having published a story recounted by a third person, which the domestic courts found to have been false and defamatory. The ECtHR considered the imposition of objective liability on Index.hu for the reproduction of the statements, irrespective of whether the author or publisher acted in good or bad faith and in compliance with journalistic duties and obligations, to be a violation of Index.hu's right of journalistic reporting as guaranteed by Article 10 of the European Convention on Human Rights (ECHR).

Index.hu had complained before the Strasbourg Court that the article in question concerned a public figure, more precisely the then President of Hungary, János Áder, and a matter of public interest. It argued that the order to pay compensation had violated its right to freedom of expression as an online news medium.

In its finding of a violation of Article 10 ECHR, the ECtHR reiterated that a politician inevitably and knowingly laid himself open to close scrutiny of his every word and deed by both journalists and the public at large, and that he should therefore have displayed a correspondingly greater degree of tolerance. János Áder was certainly entitled to have his reputation protected, but the requirements of such protection should have been weighed by the domestic courts against the public interest in the open discussion of political issues. However, in the present case the domestic courts did not perform any such balancing and they failed to include in their assessment any considerations as regards the contribution of the article to debate on a matter of public interest, or the scrutiny that János Áder should have anticipated regarding his actions. The ECtHR also reiterated that, as part of their role as "public watchdog", the media's reporting on "stories" or "rumours" – emanating from other persons – or "public opinion" is to be protected where these are not completely without foundation. The ECtHR found that the imposition of objective liability on Index.hu for the reproduction of defamatory statements made by third parties is difficult to reconcile with the existing case-law according to which the "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" (see *Jersild v. Denmark*, IRIS 1995-1/2 and *Thoma v. Luxembourg*,

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IRIS 2001-9/1). Against this background, the ECtHR unanimously concluded that the national courts had failed to apply standards in conformity with the principles embodied in Article 10 ECHR. The interference in issue was therefore not necessary in a democratic society, and hence breached Article 10 ECHR (see also *Magyar Jeti Zrt v. Hungary*, IRIS 2019-2:1/1).

Judgment by the European Court of Human Rights, First Section, in the case of Index.hu Zrt v. Hungary, Application no. 77940/17, 7 September 2023

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