



Court condemns libel verdict against a Hungarian media company, stresses importance of hyperlinks on Internet

In today's **Chamber judgment**¹ in the case of **Magyar Jeti Zrt v. Hungary** (application no. 11257/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the applicant company being found liable for posting a hyperlink to an interview on YouTube which was later found to contain defamatory content.

The Court underscored the importance of hyperlinking for the smooth operation of the Internet and distinguished the use of hyperlinks from traditional publishing – hyperlinks directed people to available material rather than provided content.

Updating its case-law on these issues, the Court set down elements which need to be considered under Article 10 when looking at whether posting a hyperlink could lead to liability and said that an individual assessment was necessary in each case.

The Court found that the Hungarian domestic law on objective (strict) liability for disseminating defamatory material had excluded the possibility of any meaningful assessment of the applicant company's right to freedom of expression in a situation where the courts should have scrutinised the issue carefully

Such objective liability for using a hyperlink could undermine the flow of information on the Internet, dissuading article authors and publishers from using such links if they could not control the information they led to. That could have a chilling effect on freedom of expression on the Internet. Overall, the applicant company had suffered an undue restriction of its rights.

Principal facts

The applicant company, Magyar Jeti Zrt, is private limited company registered under Hungarian law.

The company operates a popular news website called www.444.hu. In September 2013 the website published an article about an incident in the village of Konyár, near the border with Romania, in which a group of apparently drunk football supporters had stopped outside a school attended mainly by Roma students and had shouted racist remarks.

The article included a hyperlink to an interview placed on YouTube by a media outlet focusing on Roma issues, which had spoken with a Konyár Roma community leader and a parent. In the interview the community leader asserted that the football supporters were members of the Jobbik political party, stating: "Jobbik came in", and "They attacked the school, Jobbik attacked it".

In October Jobbik brought defamation proceedings against eight defendants, including the community leader, the outlet which interviewed him, the applicant company and other media firms.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In March 2014 the High Court found that the community leader's statements had been defamatory as he had falsely claimed that Jobbik was involved in the incident. The court also held that the applicant company and other media had "objective liability" (strict liability) as they had disseminated defamatory statements and it did not matter whether they had done that in good or bad faith.

The court order included a requirement for the applicant company to publish excerpts from the judgment on www.444.hu and to remove the hyperlink to the YouTube video from the article.

The judgment was upheld on appeal and the applicant company lodged a constitutional complaint and a petition for review with the *Kúria* (the supreme court).

In the constitutional complaint, the applicant company essentially argued that under the Civil Code a media company could be held liable for defamation for the statements of a third party, even if the company had otherwise prepared a well-balanced and unbiased article on a matter of public interest. It also argued that the courts did not look at whether publishers had followed the ethical and professional rules of journalism, but only whether they had disseminated a false statement.

The *Kúria* upheld the appeal judgment in June 2015 while the Constitutional Court dismissed the constitutional complaint in December 2017.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant company complained that by finding it liable for posting a hyperlink on its website which led to defamatory content the domestic courts had unduly restricted its rights.

The application was lodged with the European Court of Human Rights on 23 February 2016.

The following groups were given leave to intervene as third parties: the European Publishers' Council, The Media Law Resource Center Inc., the Newspaper Association of America, BuzzFeed, Electronic Frontier Foundation, Index on Censorship, Professor Lorna Woods, Dr Richard Danbury and Dr Nicole Stremlau, jointly; Article 19; the European Roma Rights Centre; Access Now; Mozilla Foundation and Mozilla Corporation; and the Collaboration on International ICT Policy in East and Southern Africa and European Digital Rights, jointly.

Judgment was given by a Chamber of seven judges, composed as follows:

Ganna **Yudkivska** (Ukraine), *President*,
Paulo **Pinto de Albuquerque** (Portugal),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Carlo **Ranzoni** (Liechtenstein),
Marko **Bošnjak** (Slovenia),
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Deputy Section Registrar*.

Decision of the Court

The Court highlighted the importance of hyperlinks for the smooth operation of the Internet by making information available through linking. When it came to reporting, hyperlinks were different from other traditional acts of publication as they did not present content or communicate it, but directed users to information available elsewhere or called readers' attention to its existence.

Another distinguishing feature was that someone who posted a hyperlink did not control the information which it contained and that information could subsequently change. The content behind

a hyperlink had also already been made available by the original publisher, providing unrestricted access to the public.

Given such considerations the Court did not agree with the Hungarian courts' approach of equating the posting of a hyperlink with the dissemination of defamatory information, which led to objective liability. Rather, the question of such liability, within the context of Article 10, required an individual assessment, having regard to several elements.

It went on to identify five such elements: whether the journalist endorsed the impugned content; did he or she repeat the content, without endorsing it; did the journalist simply post a hyperlink, without endorsing or repeating it; did the journalist know, or could he or she have reasonably known, that the content was defamatory or otherwise unlawful; and did the journalist act in good faith, respecting journalistic ethics and with the due diligence of responsible journalism.

It noted that the applicant company's article had simply mentioned that an interview with the community leader was available on YouTube and provided a link to it, without any comments, repetition of the content or mention of the political party. The article made no mention of whether the community leader's comments were true or not, and had not amounted to an endorsement.

The Court found that it could not have been obvious to the journalist who provided the hyperlink that it led to defamatory content – at that stage there had been no judgment on the matter and it was not possible from the outset to view the statements as being clearly unlawful. Furthermore, politicians or political parties had to accept wider limits of acceptable criticism.

Lastly, the Court noted that Hungarian law, as interpreted by the courts, did not provide for any assessment of the applicant company's Article 10 rights in a situation where such scrutiny had been very important given the debate on a matter of general interest that was involved at the time.

A finding that the hyperlink amounted to dissemination of information which entailed objective (strict) liability meant there had been no balancing of the parties' rights under Article 8 and Article 10.

Such objective liability could have negative consequences on the flow of information on the Internet by impelling authors and publishers to refrain altogether from hyperlinking to material whose content they could not control. That could directly or indirectly have a chilling effect on freedom of expression on the Internet.

Overall, the applicant company had suffered a disproportionate restriction on its right to freedom of expression and there had been a violation of its Article 10 rights.

Just satisfaction (Article 41)

The Court held that Hungary was to pay the applicant company 597.04 euros (EUR) in respect of pecuniary damage and EUR 4,149.39 in respect of costs and expenses.

Separate opinion

Judge Pinto de Albuquerque expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.