

La Corte EDU sulla libertà di espressione in Internet (CEDU, sez. I, sent. 7 settembre 2023, ric. n. 77940/17)

La decisione resa dalla Corte Edu si inquadra nell'ambito delle pronunce giurisdizionali in tema di libertà di espressione in "Internet".

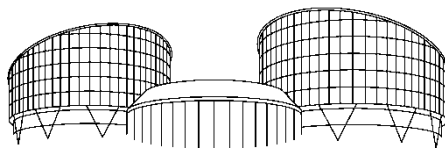
Più esattamente, la Corte è stata investita di un ricorso da parte di una società privata, proprietaria di un portale di notizie *online*, la quale era stata condannata al pagamento di un risarcimento per avere ospitato sul proprio sito la pubblicazione di alcune dichiarazioni rese da terzi, ritenute false e diffamatorie, riguardanti la vita privata di un personaggio pubblico (*rectius*: i fatti riguardavano alcune vicende occorse durante il servizio militare del Presidente dell'Ungheria).

Richiamandosi alla pregressa giurisprudenza in tema di libertà di stampa e, in particolare, al ruolo di *public watchdog* che i giornalisti sono tenuti ad assumere nello svolgimento della propria professione, la Corte ritiene che nel caso di specie l'interferenza praticata dai tribunali nazionali con l'esercizio della libertà di espressione da parte della società ricorrente non fosse "necessaria" in una società democratica.

A parere dei giudici, infatti, anche la pubblicazione di notizie sulla vita privata di personaggi pubblici può contribuire a soddisfare un interesse generale e, in questo caso, beneficia indubbiamente della tutela di cui all'articolo 10 della Convenzione.

Facendo applicazione di tali principi generali, i giudici osservano come i tribunali nazionali abbiano omesso di compiere qualsiasi valutazione circostanziata della vicenda, limitandosi a riconoscere in capo alla società ricorrente una responsabilità oggettiva per la pubblicazione di tali dichiarazioni; una conclusione che, a parere dei giudici, si pone in netta contraddizione con l'orientamento da essa maturato secondo il quale "la sanzione di un giornalista per aver contribuito alla diffusione di dichiarazioni rese da un'altra persona in un'intervista ostacolerebbe gravemente il contributo della stampa alla discussione di questioni di interesse pubblico e non dovrebbe essere previsto, a meno che non vi siano ragioni particolarmente valide per farlo".

Per questi motivi, la Corte ritiene che i tribunali nazionali abbiano deciso in maniera non conforme ai principi stabiliti dalla Convenzione sulla libertà di espressione, riscontrandosi una violazione dell'articolo 10.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF XXX v. HUNGARY

(Application no. 77940/17)

JUDGMENT

STRASBOURG

7 September 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Hungary,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President,*

Alena Poláčková,

Krzysztof Wojtyczek,

Péter Paczolay,

Ivana Jelić,

Erik Wennerström,

Raffaele Sabato, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 77940/17) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by XXX (“the applicant company”) on 27 October 2017;

the decision to give notice to the Hungarian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 11 July 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a decision by the domestic courts ordering the applicant company to pay compensation for having published a story recounted by a third person, which the courts found to have been false and defamatory. The applicant company complained that the article in question concerned a public figure and a matter of public interest and that the order to pay compensation had violated its right to freedom of expression, contrary to Article 10 of the Convention.

THE FACTS

2. XXX is a private company limited by shares which has its headquarters in Budapest. It is the owner of a major Internet news portal in Hungary, XXX.
3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.
4. The facts of the case may be summarised as follows.
5. In November 2014 a series of anti-government demonstrations took place in Hungary. Subsequently, in the applicant company's submission, one of the main television news channels ran reports on various past infractions and misdemeanours committed by the organisers and spokespersons of the demonstrations in order to discredit them.
6. As a response to that perceived smear campaign, a journalist at the Internet blog portal *Kettős Mérce* ("Double Standard") launched a "solidarity initiative" as an expression of sympathy with the activists, inviting people to share their own stories of minor infractions on social media with a hashtag referring to the television channel. A number of media outlets reported on the action.
7. On 1 December 2014 XXX published an article entitled "I was in jail with J.A." (J.A. being the President of Hungary at the time), reporting on the highlights of the solidarity initiative and summarising a story shared on Facebook by A.V., the former editor-in-chief of *Magyar Narancs*, a weekly political magazine. The report was accompanied by an interview in which A.V. recounted that he had been in military prison together with J.A., who, according to rumours circulating at the time, had been drunk and firing his weapon at random. A.V. admitted to not remembering the events perfectly, but stated that they had occurred at the time of the Argentina World Cup.
8. XXX added the following comment to the article:
"[A.V.] himself said that he wasn't sure that [J.A.] had actually been firing his weapon at random. Bearing in mind that that qualifies as a military offence which carries a sentence of more than just a couple of days of detention, the story is – at least in that respect – certainly made up. We have contacted the Office of the President for comment, and we will update the article once we have received their answer."
9. A few hours after the publication of the article, the Office of the President issued a statement confirming that the President had been placed in military detention twice during his compulsory military service and that one of those detentions had happened during the Argentina World Cup. However, the reason for his detention had not been firing his weapon while drunk, but rather because he had fallen asleep in the early hours of the morning while on guard duty, as he had been secretly watching football matches at night.
10. On the same day the applicant company published a separate article in which it summarised the story of A.V. and quoted the statement of the Office of the President denying the allegations. The second half of the article again reported on the online initiative launched in reaction to what the article called the "character assassination" of the organisers of the demonstrations by various media outlets.
11. On 16 January 2015 J.A. lodged a civil action with the Budapest High Court against A.V. and the applicant company for having distributed a false statement about him and having infringed his right to reputation. J.A.'s action against the applicant company was dismissed on 20 February

2015, essentially on the grounds that the applicant company had complied with journalistic standards. A.V., however, was ordered to pay compensation.

12. On appeal, the Budapest Court of Appeal overturned the first-instance judgment in respect of the applicant company and found in favour of J.A. The court found that the impugned statements had not concerned a matter of public interest and were not related to the media campaign, since J.A. had not been part of either the demonstrations or the governmental measures preceding them. Thus, it was not necessary to balance the applicant company's right to freedom of expression against J.A.'s right to protection of his right to reputation. The statement had been injurious to J.A. and the applicant company had failed to check whether it was true. The Court of Appeal ordered it to pay 600,000 Hungarian forints (HUF – approximately 1,500 euros (EUR)) to J.A.

13. The applicant company submitted a petition for review to the *Kúria*. By a decision of 7 September 2016, the *Kúria* dismissed the applicant company's petition and endorsed the conclusion of the second-instance court that the publication in question had not concerned a debate of public interest since it had not concerned the exercise of public power by J.A., but rather the dissemination of untrue statements which were not protected by the constitutional right to freedom of expression. Applying the rule of objective liability, the *Kúria* held that the applicant company had been responsible for transmitting the injurious Facebook post to the broader public and that the question whether it had acted in good or bad faith was only relevant for the calculation of damages. It nonetheless reduced the amount of damages payable to J.A. to HUF 50,000 (approximately EUR 120), finding it relevant that the applicant company had expressed its doubts as to the veracity of the statements, presented their context and subsequently published J.A.'s response to the article. Furthermore, its readership had been perfectly capable of assessing such "soldiers' tales" for what they were, without attaching any importance to them. In the view of the *Kúria* no serious harm had been caused to J.A. and the public perception of him had not changed as a consequence of the publication.

14. The applicant company lodged a constitutional complaint, arguing that the publication had concerned a matter of public interest, namely the conduct of the President of Hungary during his compulsory military service. The Constitutional Court declared the complaint inadmissible on 23 May 2017, finding that the applicant company had merely challenged the courts' assessment of facts, which was not subject to review by the Constitutional Court.

RELEVANT LEGAL FRAMEWORK

15. The relevant provisions of Act no. V. of 2013 on the Civil Code provide as follows:

Section 2:42

General protection of personality rights

"(1) Everyone shall have the right, subject to limitations by law and by the rights of others, to exercise his personality rights freely, in particular the right to respect for his private and family life, for his home, and for his communications *via* any medium, and the right to a good reputation and not to be hindered by anyone from exercising these rights.

(2) Everyone shall respect human dignity and the personality rights derived from it. Personality rights are protected by this Act.

..."

Section 2:45

Right to honour and reputation

“... ”

(2) Infringement of reputation means, in particular, misrepresenting or reporting untrue facts concerning and offending another person, or misrepresenting true facts.

...”

Section 2:52

Damages

“(1) Any person whose personality rights have been violated may seek compensation in respect of non-pecuniary damage done to him.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

16. The applicant company complained that the obligation imposed on it by the domestic courts to compensate J.A. for non-pecuniary damage had amounted to a breach of its right to freedom of expression, guaranteed under Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

17. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

18. The applicant company submitted that J.A., as a former President of Hungary and a member of the ruling party, was a public figure and a legitimate target of criticism. The publication in question had concerned matters of public interest, namely a media campaign and the conduct of the President during his military service, and had thus enjoyed the protection afforded to political speech. The applicant company also maintained that it had acted in line with journalistic ethical standards as it had contacted the President's office for comment and had published the President's reaction to the article in its entirety. Moreover, the article had given a factual presentation of all the relevant circumstances, as well as of the political and societal background to the case, and had expressed doubts as to the veracity of the story.

19. The applicant company also argued that the rule of objective liability, that is, holding media outlets liable for statements clearly emanating from third parties, as applied to its case, was contrary to the Court's case-law under Article 10.

20. The Government contended that the domestic courts had provided relevant and sufficient reasons to justify the interference with the applicant company's right to freedom of expression.

21. They argued that the statements in question had not concerned a matter of public interest because they had not related to the public performance or conduct of the President. The publication of the statements had simply constituted the dissemination of false information and an infringement of the personality rights of a public figure. The Government submitted that a person using offensive and hurtful statements to humiliate others was not exercising his or her right to freedom of expression. Similarly, the assertion of a fact capable of constituting defamation did not enjoy the protection of freedom of expression if the speaker was either aware of the falsity of his or her statements or was not aware of it owing to his or her failure to exercise the diligence required by his or her profession.

22. Under domestic law, a person spreading false statements had to be held objectively liable. The applicant company could have relied on its right to freedom of expression only if it had been unaware of the falsity of the information. In any event, the applicant company had published the statement in question without verifying its truthfulness with the Office of the President prior to publication.

2. *The Court's assessment*

(a) General principles

23. The general principles concerning the necessity of an interference with freedom of expression and restrictions on political speech or on a debate on matters of public interest have been summarised in, among many other authorities, *Morice v. France* ([GC], no. 29369/10, §§ 124-25, ECHR 2015, and the cases cited therein). The general principles applicable to cases in which the right to freedom of expression under Article 10 of the Convention has to be balanced against the right to respect for private life under Article 8 have been summarised in, among many other authorities, *Perinçek v. Switzerland* ([GC], no. 27510/08, § 198, ECHR 2015 (extracts), and the cases cited therein).

24. It is to be recalled that methods of objective and balanced reporting may vary considerably and that it is therefore not for the Court to substitute its own views for those of the press as to what particular reporting techniques should be adopted (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). However, editorial discretion is not unbounded. The press must not overstep the bounds set for, among other things, "the protection of ... the rights of others", including the requirements to act in good faith and on an accurate factual basis and to provide "reliable and precise" information in accordance with the ethics of journalism (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI).

25. The Court also reiterates that there is a distinction to be drawn between reporting facts – even controversial ones – capable of contributing to a debate of general public interest in a democratic society, and making tawdry allegations about an individual's private life (see *Armonienė v. Lithuania*, no. 36919/02, § 39, 25 November 2008). In respect of the former, the pre-eminent role of the press in a democracy and its duty to act as a "public watchdog" are important considerations

in favour of a narrow construction of any limitations on freedom of expression. However, different considerations apply to press reports concentrating on sensational and, at times, lurid news intended to titillate and entertain, which are aimed at satisfying the curiosity of a particular readership regarding aspects of a person's strictly private life. Such reporting does not attract the robust protection which Article 10 affords to the press. As a consequence, in such cases, freedom of expression requires a narrower interpretation (see *Khadija Ismayilova v. Azerbaijan (no. 3)*, no. 35283/14, § 58, 7 May 2020).

26. News reporting based on interviews or reproducing the statements of others, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of "public watchdog". 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*, cited above, § 35). In such cases, a distinction needs to be made according to whether the statements emanate from the journalist or are quotations from others (see *Pedersen and Baadsgaard*, cited above, § 77).

(b) Application of those principles to the present case

27. The parties did not dispute that the domestic courts' judgments amounted to an "interference" with the applicant company's exercise of the right to freedom of expression. The Court also finds that the interference complained of was prescribed by law, namely Article 2:45 of the Civil Code as in force at the time, and pursued a legitimate aim referred to in Article 10 § 2 of the Convention, namely the "protection of the reputation or rights of others". What remains to be established is whether the interference was "necessary in a democratic society". The Court is called upon to analyse the decisions of the Hungarian courts in the light of all the facts of the case, including the publication in question and the circumstances in which it was written.

28. The first of those circumstances was the fact that the applicant company published the statements in question together with a description of the campaign initiated by another media outlet with a view to counterbalancing allegedly defamatory media reports targeting opposition activists. Furthermore, the applicant company made it clear that the story had originated from A.V., who himself was unsure about what exactly had happened. Moreover, the article explained that A.V.'s story about J.A.'s drunken firing of his weapon was unlikely to be true given the lenient penalty J.A. had received.

29. In the domestic proceedings against the applicant company the domestic courts treated the impugned statements concerning J.A. as unrelated to his conduct in his official capacity and not concerning a debate of public interest, and therefore as falling outside the scope of the right to freedom of expression.

30. The Court cannot agree with the domestic courts' finding that the right to freedom of expression was inapplicable to the applicant company's conduct. Admittedly, A.V.'s statements could be considered polemical. The Court notes, however, that what the article in question described as a "soldier's tale" was the only statement referred to by the domestic courts in inferring that the article had been injurious to J.A.'s reputation. The domestic courts did not examine the article published by the applicant company as a whole, but rather focused on the account given by A.V. detached from its general context.

31. The Court reiterates that in proceedings such as those in the present case the domestic courts are to consider whether the context of the case, the public interest or the intention of the author of the impugned article justified the possible use of a dose of provocation or exaggeration (see *Balaskas v. Greece*, no. 73087/17, § 58, 5 November 2020). However, having regard to the reasons advanced by them in their decisions, the Court considers that the national courts unduly dissociated the impugned statement from its context and apparent goal by focusing only on the fact that it shared an allegation about the private life of J.A. (compare *Ziemiński v. Poland* (no. 2), no. 1799/07, §§ 44-45, 5 July 2016). As a consequence, they failed to include in their assessment any considerations as regards the possible contribution of the article to debate on a matter of public interest.

32. The Court observes that, at the time, J.A. was the President of Hungary and a prominent politician of the governing party. The domestic court, however, did not find those elements relevant for their assessment, since – apparently – in their understanding the publication had not concerned J.A.'s public functions and, therefore, had not related to a matter of public interest.

33. As the Court has previously held, although the publication of news about the private life of public figures is generally for the purposes of entertainment, it also contributes to the variety of information available to the public and undoubtedly benefits from the protection of Article 10 of the Convention (see *Dupate v. Latvia*, no. 18068/11, § 51, 19 November 2020). Furthermore, the public interest also relates to matters which are capable of giving rise to considerable controversy, which concern an important social issue or which involve a problem that the public would have an interest in being informed about (see, for example, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 89 and 103, ECHR 2015 (extracts), with further references). In order to ascertain whether a publication concerning an individual's private life is not intended purely to satisfy the curiosity of a certain readership, but also relates to a subject of general importance, it is necessary to assess the publication as a whole and to examine whether, having regard to the context in which it appears (see *Björk Eiðsdóttir v. Iceland*, no. 46443/09, § 67, 10 July 2012), it relates to a question of public interest.

34. In this connection, the Court considers that information on the President's conduct during his compulsory military service was not of an intimate nature and did not fall solely within the private sphere with its publication intended merely to satisfy the public's curiosity. The information in question was not without political import and could have aroused the interest of the public with regard to the way in which the President approached or assumed his responsibilities.

35. In any event, in the present case the intrinsic political importance of the story about the President's military service was supplemented by a further aspect related to the public interest. Placed in the context of the article as a whole, it is clear that A.V.'s story was part of the reporting on a media initiative which was a topical event at the time, and which had seemingly been the subject of public attention and engagement. The basic reason for publishing the story had been to draw attention to and illustrate that initiative, which was in turn intended to counter the perceived smear campaign being run against the organisers of an anti-government demonstration, rather than to gratuitously insult or attack J.A. Having regard to that wider background, the Court considers that the impugned statement seen in its proper context constituted a comment on a matter of public interest.

36. Furthermore, J.A., as 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 he should have displayed an accordingly greater degree of tolerance (see *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 71, 19 July 2018). While that requirement of tolerance did not involve a duty to tolerate factual inaccuracies (see *Axel Springer SE v. Germany*, no. 8964/18, § 42, 17 January 2023) and J.A. was certainly entitled to have his reputation protected, the requirements of such protection should have been weighed 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 did not take into account the Convention aspects of the case; 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 J.A. should have anticipated regarding his actions.

37. As to the content, form and consequences of the impugned statements, the Court notes firstly that the article in question consisted of defamatory statements of fact, according to the findings made by the domestic courts. Even accepting that the allegations were of such a nature and such gravity as to be capable of causing harm to J.A.'s honour and reputation, the Court cannot disregard the conclusions reached by the *Kúria* concerning the amount of compensation and its finding in that connection that the publication of the story had not caused J.A. any serious harm. The *Kúria* reasoned that given his status, J.A. had the means to react to any public statement, a possibility of which he had in fact made use. Furthermore, public opinion had not attached much importance to such "soldiers' tales", and the public perception of J.A. had not changed as a result of the article.

38. As to the veracity of the information and the way in which it had been obtained, the Court emphasises that the applicant company was bound by the Article 10 "duties and responsibilities" and therefore had to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.

39. The Court observes in this connection that the applicant company specified that A.V. did not perfectly remember the story, explained the contradictions in A.V.'s statements and published the President's reaction on the same day. The domestic courts, however, did not give any consideration to those relevant contextual factors, or to whether, when publishing A.V.'s story, the applicant company expressed any endorsement, approval or support of its content. They found the applicant company liable on the basis of the Civil Code: by disseminating the story to a wider public, the applicant company assumed objective liability for any untrue and injurious statement made by a third party. The *Kúria* thus held that the question of whether the applicant company had acted in good or bad faith was not relevant for the assessment of objective liability but rather for the assessment of any compensation. However, when read in its entirety, the article reveals the rather extensive steps taken by the author to warn the reader about the unreliable character of the rumour on which it was reporting. In this context, the Court reiterates that, as part of their role of "public watchdog", the media's reporting on "'stories' or 'rumours' – emanating from persons other than the applicant – or 'public opinion'" is to be protected where these are not completely without foundation (see *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 36, 27 November 2007).

40. The Court therefore considers that the imposition of objective liability on the applicant company for the reproduction of statements made by third parties, irrespective of whether the author or publisher acted in good or bad faith and in compliance with journalistic duties and obligations, 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*, cited above, § 35, and *Thoma v. Luxembourg*, no. 38432/97, § 62, ECHR 2001-III).

(c) Conclusion

41. Against that background, the Court is unable to conclude that the national courts applied standards which were in conformity with the principles embodied in Article 10 of the Convention. The interference in issue was therefore not “necessary in a democratic society”.

42. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

44. The applicant company did not submit a claim in respect of damages. Accordingly, the Court considers that there is no call to award it any sum on that account.

B. Costs and expenses

45. The applicant company claimed 5,520 euros (EUR) for the costs and expenses incurred before the domestic courts and the Court. That sum corresponded to ninety-two hours of legal work billable by its lawyer at an hourly rate of EUR 60.

46. The Government contested that claim.

47. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,520 to the applicant company for the proceedings before the domestic courts and the Court, plus any tax that may be chargeable to it.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*

(a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,520 (five thousand five hundred and twenty euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 7 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar
Marko Bošnjak President