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Verdict by European Court of Human Rights in case of Delfi As Vs. Estonia in 2013 confirmed that web sites are legally responsible for visitor's comments whether they appeared anonymously or not. This verdict was, after many appeals confirmed by the European Court on 16 June 2015 and this decision by European Court created many reactions by media communities throughout the world.

Media Legal Defense Initiative (MLDI) stood up against punishing online media for hate speech and defamation as part of anonymous comments following the news posted on web sites. They believe that the above mentioned verdict is not in accordance with practice and laws of European Union.

Decision brought by the Great Council of European Court of Human Rights could make an impact and influence similar court cases in future, including court cases in BiH. Certain web sites in BiH have already been charged against because of inappropriate comments by their users and visitors because of defamation comments.

Most common way would be the abatement of possibility of commenting and self – regulation, that is, control and deleting posted comments violating the rules. However, most online editors seem unaware of this problem so far. Significant number of web sites do not pay attention to code of ethics and professional responsibility and because of the profit they do everything they can more comments resulted by users.

After the verdict by the European Court of Human Rights several questions arise: how aware the online editors are regarding this sensitive issue? What are the possibilities of implementing the so called “the self controlled”? Can comment abatement be a solution to this problem? Should online media be regulated legally by governing officials/? How to legally regulate online media”? How to preserve freedom of speech and expression on internet?

In this edition of E – Journalist these problems shall be covered by articles written by: Faruk Kajtaz, editor of StarMo, local web site; Jurica Gudelj, dnevnik.ba web site editor and Borislav Vukojevic, researcher of Banjaluka Social /Research Institute. We shall also cover the reaction by the Media Legal Defense Initiative (MLDI) regarding the verdict in case of Delfi As vs. Estonia and letter by 49 organizations addressed to the European Court of Human Rights after this verdict adoption.

Adis Šušnjar, Udruženje/udruga BH Novinari

Events

15 July 2015

2015 Journalism Academy ends

A ceremonial certificate award for second module participants was successfully completed at the Journalism Academy in 2015 which was dedicated to reporting on ethnic communities and vulnerable groups. Second module got together journalists and editors from Sarajevo, Mostar, Bihać, Trebinje, Travnik, Kakanj, Prijedor, Zenica, Tuzla and Banja Luka.

Linked news:

14 July 2015 *“Vulnerable groups should not be sympathized through media contents; instead they should be allowed to speak out”*

12 July 2015 *Editors fail to identify “economic benefit” from reporting on vulnerable and marginalized groups*

10 July 2015 *Beginning of second module of 2015 Journalism Academy for journalists and editors*

New rules for „new age“

(origin: nova pravila za „novo doba“)

By: Faruk Kajtaz

The Internet changed everything! It's a fact that no person can doubt anymore, including those that tend to be skeptical and cautious in regards with all challenges that “Global Network” introduced. Perhaps Internet biggest changes have been those imposed in media and global communication fields. When people bashfully talked, some thirty years ago, about the world, as of some “global country”, not even greatest advocates of advanced development of communications could not have predicted where this would lead us to, since changes had been so deep that old rules simply ceased to exist.

There is a total information system on stage with events appearing in real time and on screens of our, more and more powerful “gadgets”. New technologies would not provide fantastically quick communication between media and journalists with the public and audience on planetary level, but also the “interaction” system. Audience involvement in program creation, not so long, was brought down to “pre-scheduled” polls or appearing “on air” in radio or TV station. Today it does sound unreal, but printed media used to communicate with public and readers mainly through “clas-



Events

9 July 2015

Web site Fairpress.eu celebrates its 1st birthday

Web sites Fairpress has been active since 9 July 2014 and during the first year of its existence it has overcome expectations regarding visits and public interest from web site contents. During the period of first 12 months, the web site had 64.617 sessions in total, 105 327 page visits and 47 542 active users as well.

[Details](#)

8 July 2015

First Module of 2015 Journalism Academy held for journalism and communication studies students

A ceremonial certificate awards at Aquareumal Fojnica Hotel terminated the First module session of Journalism Academy in 2015 covering the following topic: "«Diversity reporting-Reporting on vulnerable and ethnic groups» (origin. Izvještavanje o manjinskim i ranjivim grupama)"

During the four – day program dedicated to both male and female journalism students, over twenty participants of the Academy from the University of Sarajevo and Istocno Sarajevo, Mostar, Banjaluka and Tuzla, had the opportunity to acquire knowledge on techniques and methods of media research and reporting on rights and necessities of ethnic and vulnerable groups.

Linked news:

8 July 2015 *First module of 2015 Journalism Academy ends*

7 July 2015 *EUD/EUSR spokesperson, Andy McGuffie holds lectures to students – beginners of the Journalism Academy*

5 July 2015 *Beginning of 2015 Journalism Academy*

08.07.2015.

Electoral Assembly of the Journalists Club Zenica held

The members of the Association "BH Journalists" from Zenica held the Election Assembly of the Club of Journalists of Zenica. Velida Kulević was elected as president and Nedžad Glibo as the Secretary. Adem Mecavica, Enes Begičević, Ermin Jalimam, Jasmin Hadzic and Harun Bosnjak were appointed for the Board of Directors.

[Details](#)

29 June 2015

OSCE representative of freedom of the media in the official visit to Bosnia

During her visit from 29 June to 3 July, Dunja Mijatović discussed on media freedom issues with government, civil society and media representatives.

Mijatović held meetings with the members of the Presidency, states prime minister, foreign affairs minister, minister of communications and traffic and presidents of both parliamentary houses. Mijatović also visited the executive institutions of both entities.

The visit of the OSCE representative included two round tables with representatives from media and civil society, held in Sarajevo and Banjaluka.

Linked news:

1 July 2015 *Crnadak and Mijatović discussed on media freedom in Bosnia and Herzegovina*

sical letters" sent by post! For new, digital generations, this communication model is simply inconceivable and to some extent ridiculous.

New, fast and permanent availability of communication between new media with the public opened a new possibility, but also new dilemmas. Internet web sites are not just media that "provide information" only, but also platforms through which real social communications take place based on extremely wide level of interest. Public used to a wide range of information and broad contents cannot be satisfied by basic communication, instead it wishes to participate in it and express its opinion. Naturally, in ideal world, the one we usually like imagine (though it does not exist), everything seems to be simplified, media release information and news and public, according to its interests takes part in this process.

The problem occurs when imaginary borders of "good customs" or even "good taste" are crossed. The world is not perfect and media just reflect the public and processes occurring in it. During the global communications period, the responsibility for public word has never been so great, but on the other hand also neglected! Interactivity of new media is great opportunity but also great problem since contents are not available to public only with constructive ideas and good intentions. In fact, one could say that new media and web sites "attract" various modern manipulators, exhibitionists and persons that have been convinced that now, they can "speak out", associated with modern technology. Famous "comments" on web sites have thus become new space for conflict and venue being used to fire poisonous arrows of false information on daily basis, primitivism but also very open hate.

The world "behind the screen" and with imaginary identities appeared as perfect weapon for "haters". Things have gone too far that "comments" have become so profitable provided that someone would be willing to pay for such "services". Latest researches showed that internet interaction is mostly ruled and administrated by so called "puppets" being on hold and steady until given orders by their "bosses" to get involved in any issue at any time in the world! Nothing happens without a cause nowadays...

What role do internet web sites play in all of this?

Comments represent, for many internet web sites, some kind of "Holy Grail", an unnecessary evil being a source which significantly enlarges number of "clicks" and number of readers in general. This may, to some extent, be considered, the thrush, since, regardless to all changes in journalism, it seems that the old saying „only bad news is good news „is still on! Thorough analysis if internet websites and comments contents however guide us to the existence of "closed system" within a "commentating community", where same people appear most of the time expressing their personal opinions and attitudes using different "nicknames". Some of them appear "on business task"; others desperately seek self – promotion, while others simply have plenty of free time. Internet websites somehow found themselves in between these gaps, i.e. positioned between the hammer and the anvil – respecting the journalism rules and willing to please the audience at any cost. Utterly open channels of communications aimed towards the public appeared as inappropriate model, since the democracy and openness of internet, as media source, has not been considered and treated equally by all parties involved.

"Tender balance" is required between the responsibility for words spoken publically and media openness. Bans are not solution to these issues, but media must realize that poisonous communications are transferred through THEIR platforms and that they cannot get away with this just like that. More "editing assistance" is required, instead of supervision of robot – based programs having reactions on "disputable words". The problem of insulting comments may be reduced by obeying the rules of professional journalism and outlining responsible journalism where sensational news cannot overshadow information based on facts.

The world sailed into new digital world and new rules thus emerge. Internet has changed our new model of communicating, however did we manage to change ourselves?



Events

30 June 2015

Self-censorship undermines the credibility of the media

Self-censorship is omnipresent in the media in BiH and it undermines the dignity of the profession and the credibility of the media, have told the participants of the workshop on self-censorship, which took place in the Sarajevo Media Centre. Journalists, editors and journalism students, agreed that self-censorship is a problem that is not discussed, and that very few journalists are willing to resist the pressures.

[Details](#)

Editors, advertisers, comments and click journalism

Freedom of expression and defamation: online media responsibility for insulting comments by visitors

By: *Jurica Gudelj*

Comments by users on internet web sites have through years become implacable and constant web site content. Furthermore, comments have in many cases been considered as most interesting parts on entire web site.



Often, information missing in particular articles is completed by comments posted by users. For instance, articles covering criminal offences

often appear with no names of participants, such as fights, a reader or visitor gets more useful information through comments than through the article itself. From mainly anonymous comments we find out participants' names, their criminal or non-criminal history, motives and event outcomes and final results.

Also, comments posted by users supplement articles from different areas, particularly politics, since one could, by going through them, balance the report, because commentators notice and point out immediately the biasing of certain articles.

Articles with comments are by rules more popular and read than others, users often return to same articles following comments and discussion between the commentators thus increasing the total numbers of users and viewers of certain internet web site (including number of clicks), directly bound with the advertising price of net space, but also with the attractiveness of particular internet web sites as source of advertising for potential advertisers and business partners.

And this is where many problems arise, including controversies about internet news web sites and comments by their users. Most advertisers in BiH are actually not interested in contents posted by certain internet web sites; instead they're more interested in number of people visiting some web sites every day. The more people on daily basis visiting any internet web site means the greater the opportunity to spot the commercial advertisements is. The profile of people visiting certain web sites is less important, including the profile of web site itself. Numbers matters – "number of displaying" rules!

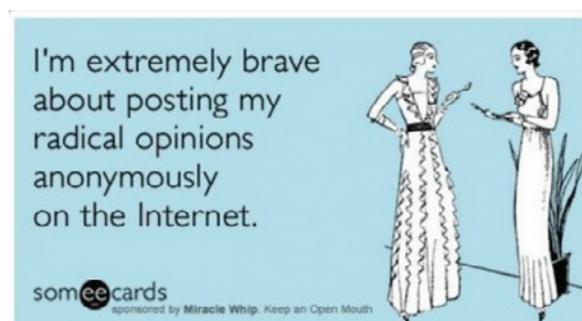
In order to attract more web site users, entrepreneurs and editors mainly provide users with anonymous commenting of almost all contents on internet web sites. Hidden in anonymous comments, users often cross the line of good taste with their comments producing thus hate speech, defamation, including mutual arguing, criticize almost everyone etc.

But instead of banning, or at least moderating such arguing discussions appearing on their internet web sites, many editors and entrepreneurs, particularly those owns most popular web sites, actually initiate them. They initiate them since they increase their popularity and consequently marketing attractiveness. Launching a conflict based on some politically – international or multiethnic issue producing thus a variety of insulting comments seems easier than covering same topic on professionally – based journalism principles, with no biasing whosoever, including further comments moderating as well.

On one hand, we have web sites failing to moderate their comments justifying this by stating that absolutely all comments, including insulting and offensive comments and those spreading hate speeches or initiating violence, in fact represent public opinion. On the other hand, there are those making moderations because they simply do not want hate speech and defamation to appear on their media source.

Non – moderating comments that spread hate speech directed towards pretty much anyone would be equal to situation where daily news papers would publish letters of readers instigating violence. Editing office is responsible for all contents appearing on the web site, not only news information. What appears to be an excuse is the fact that editors say that they cannot influence the comments posted by users and this is nothing but mere cheap and low excuse. BiH is not the only place that faces this kind of problem. Hate speech appears everywhere throughout the world and today we have simply tools used for its supervision and control.

So far, most effective method of supervision and control of comments are "clearing" from anonymousness. Real life has shown that



Press releases

16 July 2015

Protest to the Mayor of Bihać Emdžad Galijašević for verbal attack toward the journalist Aida Štilić

The Management Board of the Association and Free Media Help Line strongly protested against Emdžad Galijašević, the Mayor of Bihać, for breaking into the Informative - Technical Centre of Bihać and the verbal attack on the toward Aida Štilić, the correspondent of Federal Television (FTV).

[See details](#)

users have been extra cautious when their comments appeared while being logged on through their profiles from social networks. If a person spreads hate speech using his or her full name it is easier to track such person and accordingly prosecute him or her. Also, spreading hate speech under personal full name predicts that such user would be willing to bear all consequences based on what he or she had previously said or commented.

It is important to mention that no comment appearing on internet can be considered as anonymous and the police have the authority to investigate any “anonymous comment”.

But, the responsibility for content of comments mostly bears on editors. Just as they edit news agenda, they also must edit content of appearing comments. Hate speech cannot be tolerated and this is what most editors in BiH would agree with.

How come we still have plenty of anonymous commentators on most internet web sites containing at least inappropriate comments?

Today, we could say that real villains are perpetrators are commercial advertisers since they push and force internet web sites to the abyss of so called click – journalism, a new form of modern quasi and semi journalism with user’s click as priority target, instead of information providing. As a result we have titles such as: “Sexy blonde opened the door and you won’t believe what happened next”. More clicks produce more money from potential commercial advertisers.

By banning comments of particular news, internet web sites actually take great risk of creating business losses and this is why rarely few of them decide to make such actions. However, this is where the editors should display their integrity. Some things, like human dignity must be above profit on a scale of motives. Editors have to protect dignity of those being subject to discussions on internet web sites. Accordingly, editors have to protect them from inappropriate or insulting comments posted by mostly anonymous commentators.

Options and consequences of abatement of comments on web sites

By: *Borislav Vukojević*

Verdict by European Court of Human rights confirming that Estonian web site responsible for comments contents launched additional debate regarding this issue in Bosnia and Herzegovina. Namely, even before this verdict was passed in mid June, this issue had widely existed in campaigns and round tables identifying highlighted consequences such as: hate speech, agitation, offences, insults etc. However, regardless to affirmative contribution of these campaigns and events, one could get the impression that web sites have not done enough in order to take, at least, minimum responsibility. This article shall clarify the uniqueness of web sites in Bosnia and Herzegovina, and describe hypothetical implications of abatements and/or regulation of users’ comments on web sites.

Web sites in Bosnia and Herzegovina have identical properties including those throughout the world: speed, hyper production of texts/articles, multimedia features and most importantly – they are interactive. Also, we should make the distinction between three groups of web sites:

- a) Web sites existing as platform of current standard media (TV, radio, press etc)
- b) Web sites honoring principles of transparency and act as standard media source in terms of organization (editorial management, desks, correspondents);
- c) Personal web sites or blogs that, due to particular influence on public are considered as informative source

Regardless to consequences of abatement of comments that we shall describe later on, these three web site groups have identical journalist based duty towards the public: assist public in understanding the world in a simple way. Also, legal foundations of online media sources is rooted in conventions based on human rights, since freedom of speech and opinion are guaranteed in Bosnia and Herzegovina. However, can we say that this freedom is limitless and is there a way that users’ comments may perhaps be misused?



Competitions / vacancies

Competition for Lorenzo Natali journalism award prize

This year's Lorenzo Natali media award was released under the following motto: "Today's stories may change our future" and it does coincide with the European development year – 2015. European Commission shall in December reward journalist for excellent reporting on development and poverty extinction. Completion shall remain open for professional journalists in all media houses. This year's novelty is a possibility for amateur journalists, including bloggers to take part in it.

Deadline for applying is **31 August 2015**.

[Details](#)

Photo competition "Europe in my region"

General directorate of European Commission for regional politics announces photo competition contest organized on Facebook and named "Europe in my region". It should release projects financed by the EU.

Competition shall remain open for all EU residents, including citizens from pre-admission countries.

Competitors/applicants are allowed to send max. three photos.

Deadline for applying is **28 August 2015 until 12 a.m. CET**.

[Details](#)

Citizen Media Award (origin. Međunarodna nagrada za građansko novinarstvo)

This year's competition for citizen journalism - Citizen Media Award is: "Our world, our dignity, our future – Sustainable development and engagement".

Content shall remain open for individuals, groups, associations, civic initiatives, manufacturers, actors and editing offices from citizen journalism ...

Deadline for applying is **30 September 2015**.

[Details](#)

SENSE journalism awards competition

Regional center for environment for Central and eastern Europe (REC), office in Serbia has announce content for rewards for most successful journalists and editors for media works in the field of environment and sustainable development.

Prize shall be awarded as encouragement to media staff, including civic journalism activists that follow the field of environment and sustainable development, particularly civic sector activists in these areas.

Application deadline is **31 July 2015**.

[Details](#)

First option for hate speech reducing is utter abatement of comments on every single web site in Bosnia and Herzegovina. This option initially contradicts with the platform that online media houses exist: internet. How do you repeal interactive way of communicating when there is a possibility of not having public as passive receiver of information deriving from web sites? Consequence of this option would include severe pressures on governing officials that eventually passed such decision since it directly confronts with the right of free expression and opinion. Web site entrepreneurs would be motivated to stand up against this eventual decision, since, looking from common sense side of view, most web sites rely on this so called "freedom" which brings profit from commercial advertisements (due to more visits on web sites).

On the other hand, looking from experts' point of view, abatement of comments would not prevent hate speech and violence agitating occurrences if these kinds of opinions are rooted with certain part of public. Therefore, complete abatement of comments option cannot be justified since there are mechanisms for self – regulation. One of these mechanisms is the above mentioned verdict which basically implicates the following: every single internet web site shall bear the responsibility for its complete media contents regardless to the third party that may eventually spread or announce the information.

Another option would include self – regulation which in my opinion in Bosnia and Herzegovina cannot create long – term affirmative results. Self – regulation in its full meaning does make sense in communities supporting democratic political culture, that is, areas where consciousness on "public shame" is present (for instance Germany). For instance if editing offices/entrepreneurs are to be held responsible for posting being threatened and eventually fined, both ethically and morally, in BiH media system that would not result in many changes in BiH. Besides, we can see that now: Press Council of BiH sends warnings on regular basis to all web sites informing them that they shall bear the responsibility for inappropriate comments but these warning make no results whatsoever. Any article or text containing issues on Serbs, Croats or Bosniaks, regardless to its content generates hundreds of negative comments on Klix.ba, Nezavisne, Avaz and other local web sites. There is no difference in terms of uniqueness from the beginning: Klix is mainly online media, while Nezavisne and Avaz have their pendants in standard media sphere.



Third option would include fining of web sites for posting inappropriate and insulting comments with efficient system of recognizing users posting such comments. Regardless to correctness or incorrectness of arguments provide by web site entrepreneurs, censorship of insulting comments and violence agitating shall not represent freedom of speech and expression but its improvement instead. Penalties shall represent sufficient corrector of this problem because web sites would no longer be motivated to sustain such comments (profits made out of visits would be equal to the amount of penalties applied). Naturally, in this article I

Competitions / vacancies

Vacancy for the position of journalist in magazine and web site Professional from Croatia

Professional is specialized magazine and web site for FMCG and HORECA sector and most popular magazine of this kind in Croatia.

We seek experienced / journalist (male or female) to work in editorial office.

Deadline for application is **22 July 2015**.

[Details](#)

PR Officer vacancy with the Special Representative Office in BiH

Candidates are encouraged to submit cover letter and an EU format CV.

Deadline for application is 2 August 2015.

[Details](#)

haven't mentioned real possibilities in order to implement this particular option as this issue can be a subject to further discussion some other time. Having said that, the consequences of this option would be most affirmative for BiH society which, to some extent, favors and supports reconciliation process and spreading and promoting democratic values.

Finally, I shall refer shortly to the above mentioned verdict passed by European Court. It is still ineffective in terms of its influence in Bosnia and Herzegovina, but its consequences may be considered affirmative and positive. This case may play a raw role since web sites shall not be able to justify themselves by stating that "abatement of comments which is legal and cannot be prevented shall not be considered illegal". Besides, press sources still provide users with a possibility of sending letters to editorial offices so may question to web site entrepreneurs would be: What if printing sources publish letters containing hate speech? Abatement of such letters/comments is not an option; instead it's your duty and responsibility.

The reaction of Media Legal Defence Initiative (MLDI) on the verdict of the ECHR

The Grand Chamber of the European Court of Human Rights handed down judgment in the case of *Delfi v. Estonia* on June 16, finding no violation of Article 10 in the case of an Estonian news website that was held liable for third party defamatory comments made by its users, despite the fact that the article itself was balanced and contained no offensive language. Today's decision affirms an earlier judgment by the first section of the Court in 2013, which also held that there had not been a violation of Delfi's right to freedom of expression, despite the fact that it had removed the comments as soon as it had been notified of them.

MLDI intervened in the case, filing a brief joined by 27 media organisations from around the world. The brief emphasised the importance of user comments in online media, and warned that imposing liability on intermediaries could result in news websites closing down their comments sections or proactively removing and comments that they think could be offensive, which would severely limit public debate.

The Grand Chamber emphasised a number of factors that led it to rule that Delfi was liable: the "extreme" nature of the comments which the court considered to amount to hate speech, the fact that they were published on a professionally-run and commercial news website, the insufficient measures taken by Delfi to weed out the comments in question and the low likelihood of a prosecution of the users who posted the comments, and the moderate sanction imposed on Delfi. Nevertheless this judgment is inconsistent with best practices on intermediary liability. It also contradicts existing Council of Europe standards and European Union law, which creates a state of legal uncertainty that will be detrimental to the free flow of information, opinions, and ideas.

MLDI's CEO, Peter Noorlander, expressed disappointment with the judgment: "Comment sections are important: they allow for debate on issues of public interest and have become an integral part of online media. Holding organisations liable for user comments hampers freedom of speech."

(Originally available at <http://www.mediadefence.org/>)

MLDI
Media Legal
Defence Initiative

Upcoming Events

- **Debates** at journalists' clubs
- Research as part of the **Media Circle project**
- **Workshops for solicitors and lawyers:** Applications of EU media laws in BiH judiciary system.

Reactions

Letter to the Great House of the European Court of Human Rights on the occasion of the verdict in the case of *Delfi* against Estonia

Dear President Spielmann and members of the panel:

We, the undersigned 69 media organisations, internet companies, human rights groups and academic institutions write to support the referral request that we understand has been submitted in the case of *Delfi v. Estonia* (Application No. 64569/09). Signatories to this letter include some of the largest global news organisations and internet companies including Google, Forbes, News Corp, Thomson Reuters, the New York Times, Bloomberg News, Guardian News and Media, the World Association of Newspapers and News Publishers and Conde Nast; prominent European media companies and associations including the European Newspaper Publishers' Association, Sanoma Media Netherlands B.V. and the European Publishers Council; national media outlets and journalists associations from across the continent; and advocacy groups including Index on Censorship, Greenpeace, the Center for Democracy and Technology and ARTICLE 19.

We understand that the applicant in the above-referenced case has requested that the chamber judgment of 10 October 2013 be referred to the Grand Chamber of the Court for reconsideration. We are writing to endorse Delfi's request for a referral due to our shared concern that the chamber judgment, if it stands, would have serious adverse repercussions for freedom of expression and democratic openness in the digital era. In terms of Article 43 (2) of the Convention, we believe that liability for user-generated content on the Internet constitutes both a serious question affecting the interpretation or application of Article 10 of the Convention in the online environment and a serious issue of general importance.

The case involves the liability of an online news portal for third-party defamatory comments posted by readers on the portal's website, below a news item. A unanimous chamber of the First Section found no violation of Article 10, even though the news piece itself was found to be balanced and contained no offensive language. The portal acted quickly to remove the defamatory comments as soon as it received a complaint from the affected person, the manager of a large private company.

We find the chamber's arguments and conclusions deeply problematic for the following reasons.

First, the chamber judgment failed to clarify and address the nature of the duty imposed on websites carrying user-generated content: what are they to do to avoid civil and potentially criminal liability in such cases? The inevitable implication of the chamber ruling is that it is consistent with Article 10 to impose some form of strict liability on online publications for all third-party content they may carry. This would translate, in effect, into a duty to *prevent* the posting, for any period of time, of any user-generated content that may be defamatory.

Such a duty would place a very significant burden on most online news and comment operations – from major commercial outlets to small local newspapers, NGO websites and individual bloggers – and would be bound to produce significant censoring, or even complete elimination, of user comments to steer clear of legal trouble. The *Delfi* chamber appears not to have properly considered the implications for user comments, which on balance tend to enrich and democratize online debates, as part of the 'public sphere'.

Such an approach is at odds with this Court's recent jurisprudence, which has recognized that "[i]n light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information generally." [1] Likewise, in *Ahmet Yildirim v. Turkey*, the Second Section of the Court emphasised that "the Internet has now become one of the principal means of exercising the right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest". [2]



Free Media Help Line

Actual cases:

Štefica Galić – All cases processed in Municipal Court of Ljubuski completed

Bojan Bobić – Photo reporter of Euroblic physically assaulted while performing his professional assignments. Free Media Help Line send a note to local police authorities in Bijeljina

Faruk Zametica - Radiosarajevo.ba journalist verbally assaulted by the director of Sarajevo football club

Secondly, the chamber ruling is inconsistent with Council of Europe standards as well as the letter and spirit of European Union law. In a widely cited 2003 Declaration, the Committee of Ministers of the Council of Europe urged member states to adopt the following policy:

“In cases where ... service providers ... store content emanating from other parties, member states may hold them co-responsible if they do not act expeditiously to remove or disable access to information or services as soon as they become aware ... of their illegal nature.

When defining under national law the obligations of service providers as set out in the previous paragraph, due care must be taken to respect the freedom of expression of those who made the information available in the first place, as well as the corresponding right of users to the information.”[3]

The same position was essentially adopted by the European Union through the Electronic Commerce Directive of 2000. Under the Directive, member states cannot impose on intermediaries a general duty to monitor the legality of third-party

communications; they can only be held liable if they fail to act “expeditiously” upon obtaining “actual knowledge” of any illegality. This approach is considered a crucial guarantee for freedom of expression since it tends to promote self-regulation, minimizes the need for private censorship, and prevents over-broad monitoring and filtering of user content that tends to have a chilling effect on online public debate.

Thirdly, it follows from the above that the Delfi chamber did not thoroughly assess whether the decisions of the Estonian authorities were “prescribed by law” within the meaning of Article 10 § 2. Under the E-Commerce Directive and relevant judgments of the Court of Justice of the European Union (CJEU), it was not unreasonable for Delfi to believe that it would be protected by the “safe harbour” provisions of EU law in circumstances such as those of the current case.[4] The chamber ruling sets the Court on a potential course of collision with the case law of the CJEU and may also give rise to a conflict under Article 53 of the Convention.

Finally, the chamber ruling is also at odds with emerging practice in the member states, which are seeking innovative solutions to the unique complexities of the Internet. In the UK, for example, the new defamation reforms for England and Wales contain a number of regulations applicable specifically to defamation through the Internet, including with respect to anonymous third-party comments. Simply applying traditional rules of editorial responsibility is not the answer to the new challenges of the digital era. For similar reasons, related among others to the application of binding EU law, a recent Northern Ireland High Court judgment expressly chose not to follow the Delfi chamber ruling.[5]

For all these reasons, we strongly urge the Court to accept the applicant’s request for a referral that would allow the Grand Chamber to reconsider these issues, taking into account the points raised by the signatories in this letter. There is no question in our minds that the current case raises “a serious question affecting the interpretation” of Article 10 of the Convention as well as “a serious issue of general importance” (Art. 43).

Sincerely,

(Source: <http://mediadefence.org/>)

Impressum

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