WYŻSZA SZKOŁA GOSPODARKI EUROREGIONALNEJ IM. ALCIDE DE GASPERI W JÓZEFOWIE

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THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS IN MATTERS RELATED TO THE EXERCISE OF FREEDOM OF EXPRESSION ON THE INTERNET

Abstract

The rapid development of information technology among other things, expand the opportunities for citizens to express their views and beliefs. The Internet is widely used to exercise the freedom of expression, while at the same time there are frequent cases of abuse of this right. Therefore, it is important for states to find the optimal model of legal regulation of freedom of expression on the Internet. The conditions for restriction of the freedom of expression should be derived from international legal acts governing these issues, as well as the case law of the European Court of Human Rights (ECHR). Therefore, the analysis of the decisions of the ECHR on this issue is relevant. The purpose of the article is to analyze the decisions of the ECHR in the field of legal protection of the freedom of expression on the Internet in order to identify trends in the development of its case law in this field.

Keywords: *freedom of expression, the right to express views and beliefs, global information society, protection of human rights*

Access to the Internet is an important means of exercising human rights and freedoms, including the right to freedom of expression. In its judgments, the ECHR found restrictions on access to the Internet as violation of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for freedom of expression. This position was expressed in the case of Yildirim v. Turkey, in which the Denizli Criminal Court ruled to block the user of the website where he published his scientific works and his views on various issues, in connection with the accusation of insult in memory of Ataturk. The applicant did not gain access to his website even after the termination of the criminal proceedings against him. The ECHR found that interference with the applicant's right to receive and impart information was unlawful and ordered Turkey to pay the applicant EUR 7,500 for non-pecuniary damage [1].

[1] Yıldırım v. Turkey. (2012). Retrieved from: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-7328%22]} Editorial Board «Right Cause» and Shtykel v. Ukraine (2011). Retrieved from: https://zakon.rada.gov.ua/laws/show/974_807#Text

In Handyside v. the United Kingdom case, the ECHR took the position that freedom of expression extends not only to information and ideas that are perceived as neutral, but also to such statements that cause a negative reaction from the state or society. Its conclusion contains the famous phrase that: «Freedom of expression … is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population»[2].

In the case of Editorial Board «Pravoye Delo» and Shtekel v. Ukraine, the ECHR noted that the risk of human rights violations, including the right to respect for private life, in the exercise of the right to freedom of expression on the Internet is higher than in the exercise of this right in the print media. Therefore, the dissemination of information on the Internet should be regulated, taking into account the features inherent in these technologies in order to protect human rights and freedoms. In this case, a local Ukrainian newspaper published an anonymous letter posted on the Internet accusing officials of various criminal offenses. The newspaper indicated the source of the information, noting that the letter was not verified and might thus be false. One of the government officials filed a lawsuit and received a monetary award for defamation. Ukrainian legislation excludes the responsibility of journalists for referring to materials that have already been published in mass media. However, the Ukrainian court justified its decision by the fact that this exclusion would not apply to publications made by publishers that are not registered. At the same time, Ukrainian legislation does not regulate the process of registration of internet media. The ECHR decided that since Ukrainian legislation does not establish clear criteria for how information obtained from the Internet should be used, the applicants could not have foreseen that the exclusion from liability would not be applied. Therefore, the decision of the Ukrainian court was illegal and violated Article 10 of the Convention, according to which any restriction of freedom of expression should be based on a clear and reasonably foreseeable law. Therefore, the court

[2] Handyside v. the United Kingdom. (1976). Retrieved from: https://www.bailii.org/eu/cases/ECHR/1976/5.html

established that it is necessary to adopt legislation that would regulate how journalists can use information obtained from the Internet. (Editorial Board « Pravoye Delo « and Shtekel v. Ukraine, 2011). In our opinion, it is worth agreeing with the authors, such as Benedek W., Kettemann M.[3], Holland A. [4], Horowitz, J. [5], Sableman M. [6], Wakabayashi D. [7], Vashchenko A. [8], who believe that the legal regulation of the use of information from the Internet by journalists should be formulated in such a way that journalists are not afraid to publish information on issues in which society has an interest. The main principle in this matter should be the principle of due diligence.

According to the case law of the European Court of Human Rights, state intervention in the exercise of freedom of speech should be carried out only if it is necessary in a democratic society and meets an urgent public need. At the same time, Article 10 of the Convention protects the content of ideas and information, and not the form in which they are expressed. Thus, in the case of Stoll v. Switzerland, concerning the conviction of the applicant, a journalist by profession, payed a fine for publishing in the press a confidential report of the Swiss ambassador to the United States of America concerning the strategy of the Swiss government in negotiations, in particular with the World Jewish Congress and the Swiss banks, the ECHR agreed with the Swiss authorities and the Press Council that the main intention of the applicant was not to inform the public about a topic of public interest, but make the ambassador's report

[3] Benedek, W., Kettemann, M.C. Freedom of Expression and the Internet, Council of Europe Publishing, 2 nd ed. 2020

[4] Holland A., Bavitz C., Hermes J., Sellars A., Budish R., Lambert M., & Decoster N. (2021). Good Practices in Online Intermediary Liability Regimes. Retrieved from: https://publixphere.net/i/noc/page/Online_Intermediaries_Research_Project_Good_Practice_Document.html

[5] Horowitz, J. (2021). The First Amendment, Censorship, and Private Companies: What Does «Free Speech» Really Mean? Retrieved from: https://www.carnegielibrary.org/the-first-amendment-and-censorship/

[6] Sableman, M. (2013). ISPs and content liability: The original Internet law twist. https://www.thompsoncoburn.com/insights/blogs/internet-law-twists-turns/post/2013-07-09/isps-and-content-liability-the-original-internet-law-twist

[7] Wakabayashi, D. (2020). Legal Shield for Social Media Is Targeted by Lawmakers. The New York Times. Retrieved from: https://www.nytimes.com/2020/05/28/business/section-230-internet-speech.html

[8] Vashchenko, A.V. (2014). Freedom of expression on the Internet: Pro et contra. Law and Innovation, No 3 (7). P. 49-54

the subject of an unnecessary scandal. Articles written with distortions and simplifications could have misled readers about the ambassador's personality and abilities, which significantly undermined their contribution to the public debate protected by Article 10 of the Convention. Therefore, the ECHR ruled that the fine imposed on the applicant was lawful [9].

In its practice, the ECHR has repeatedly drawn attention to the need to protect the rights of others in the exercise of freedom of expression. It should be noted that the ECHR pays special attention to the right to respect for private life and the reputation of minors. Thus, in the case of K.U. v. Finland, an unidentified person posted a sexual advertisement on an internet dating site with the name of the applicant, who at the time was 12 years old, without his knowledge. The police tried to find out the name of the individual, but the Internet service provider refused to give it, citing confidentiality conditions. He was also unable to be influenced by the courts due to the lack of relevant national legislation. The ECHR found a violation of the right of a minor to respect for private life, in particular, the placement of the aforementioned announcement made the minor an object of attention of pedophiles, and the court also ruled that it was necessary to develop and adopt legislation providing for a provision on the denial of confidentiality in order to ensure the prevention of the commission of crimes, as well as violation of the rights other persons [10].

In its decisions, the ECHR also stressed the need to comprehensively address cases of domestic violence in all its forms, including on social media through the dissemination of information [11], thus reaffirming that domestic violence can be committed online through freedom of expression.

The position of the ECHR in the case of Panioglu v. Romania is interesting, in which the court noted the need for maximum refraining from expressing their views in the media on the part of judges regarding the impartiality

[9] Stoll v. Switzerland (2007). Council of Europe. Retrieved from: http://www.echr.ru/documents/doc/new2009/Shtoll_v_Shveyc.htm

[10] K.U. v. Finland. (2008). Council of Europe. Retrieved from: https://www.juridice.ro/wp-content/uploads/2016/07/K.U.-v.-FINLAND-en.pdf

[11] Buturuga v. Romania. (2020). European Court of Human Rights. Retrieved from: https://hudoc.echr.coe.int/eng#{%22itemid%[22:[%22001-208235%22]}

of the courts [12]. Therefore, the position of the Romanian courts on the need to protect the authority of the judiciary, which ensures the exercise of the right to a fair trial, was supported.

In the case *Sener v. Turkey*, the Istanbul State Security Court decided to confiscate one of the issues of weekly newspaper *Haberde Yorumda Gercek* due to the article *Aydin Itirafi*, which allegedly contained separatist propaganda directed against the integrity of the state. The controversial publication sharply criticized the government's policy and the actions of the state security forces against the population of Kurdish origin. The court charged the owner of the publishing house Pelin Sener with separatist propaganda in accordance with Section 8 of the Turkish Law *On Prevention of Terrorism*. Pelin Sener denied the charges, claiming that the article did not contain separatist propaganda and that the case against her was aimed at punishing the publishing house. The applicant invoked Article 10 of the Convention and argued that Section 8 of the Turkish Law *On Prevention of Terrorism* limited her right to freedom of expression. The ECHR drew attention that intervention into the freedom of expression, according to the principles of the court, should be considered as having violated Article 10 of the Convention, if it was not *prescribed by law*, did not have at least one legitimate aim specified in paragraph 2 of Article 10 of the Convention, and was not *necessary in a democratic society* to achieve such a goal [13]. Since these conditions were not fulfilled, the court confirmed that the applicant's rights were violated. In this case we see a clear position of the ECHR that restrictions on freedom of speech should be clearly spelled out in legislation.

[12] Paniougli v. Romania. (2020). Council of Europe. Retrieved from: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-206352%22]}

[13] Sener v. Turkey. (1993). European Court of Human Rights. Retrieved from: https://www.stradalex.com/nl/sl_src_publ_jur_int/document/echr_26680-95_001-124494

Conclusions

We can conclude that there is already a relevant practice of the ECHR in the field of freedom of expression on the Internet, which reflects the position that the restriction of freedom of expression on the Internet is possible only in limited cases to protect national and public security, the authority of the judiciary and the protection of the rights of others. Freedom of expression extends to speech, which may be a concern for society and the state.

The practice of the ECHR in cases related to the exercise of freedom of expression on the Internet confirms the need to develop and adopt legislation that ensures the effective protection of freedom of expression on the Internet, in particular by journalists, as well as the protection of the rights of others, including the right to respect for private life. The ECHR recognized the restriction of access to the Internet as a violation of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for freedom of expression. The ECHR confirmed that the Internet is an important tool for exercising the right to freedom of expression, and the disseminated information can cause a negative reaction from the state and society and does not have to be neutral. At the same time, the ECHR stands for the protection of public order and the rights of others in the exercise of the right to freedom of expression.

The problem of legal regulation of freedom of speech, the right to express views and beliefs is relevant for all countries without exception. With the development of information and communication technologies and the increasing use of the Internet, new problems arise related to the realization of this right on the Internet: protection of the rights of others, national security, public order, copyright protection, protection of minors, freedom of the press, etc. All these issues need legislative regulation.

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