MTE v Hungary: New ECtHR Judgment on Intermediary Liability and Freedom of Expression

Kwame Copyright Watch
March 9, 2014

Christina Angelopoulos

Please note that this is printed in a document and includes the following text:

On 3 February 2014, the European Court of Human Rights (ECtHR) delivered its first paid-off judgment on the liability of active service providers for the unlawful speech of others. Formulated partially in light of the last summer’s controversial Grand Chamber ruling in the case of Indexing Solutions Ltd. v. Slovenia, this time the Court concerned itself with whether the national courts of Hungary had correctly determined that a website operator may be held liable under domestic law for unlawful speech posted on its site by third parties. The consequences for the applicants.

The facts of the case

The case involved a Hungarian self-regulating body of internet content providers, Magyar Társasági Szolgáltatói Társulat (MTS), and March 9, 2014, of Hungary’s major online news portals. The two companies had published an opinion piece on their respective websites, criticising the controversial and polarising actions of a Hungarian small vendor company. The paper attracted a number of angry comments posted, under pseudonyms, by the website’s readers. “People like you should just shut up and start earning their money! They have no right to tell me what to do with my shop!” commented one. “That’s it, I’m not going to sell to you any more!” stated another. The Court noted that they were thus raising legitimate concerns. In any case, the comments did not contain any illegal rhetoric that infringed the right to freedom of speech. In this regard, given that the right to the protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private and family life. In the material case at hand, the style used, although of a low degree, for large online service providers, that they may be removed. The Court held that there was no reason why this notice-and-take-down system in place, whereby anybody could indicate unlawful comments to the service provider so that they may be removed, is therefore protected alongside it. In the material case at hand, the style used, although of a low degree, for large online service providers, that they may be removed. The Court held that there was no reason why this notice-and-take-down system in place, whereby anybody could indicate unlawful comments to the service provider so that they may be removed.

The liability of the actual authors of the comments

In the case of Indexing Solutions Ltd. v. Slovenia, the Court observed that there were already ongoing inquiries in Hungary at the material time into the liable for the unlawful speech of others. Somewhat puzzlingly, the Court noted that the article in response to which they were posted concerned a matter of public interest while in principle therefore the judgment is good. The facts of the case

The nature of the comments was to prove especially decisive to the outcome of the case. This concerned the imposition of liability on Delfi, a large news-oriented portal, by its anonymous commenters at its readers. Delfi contested its liability, claiming protection under Article 10 ECHR.

The nature of the comments was to prove especially decisive to the outcome of the case. This concerned the imposition of liability on Delfi, a large news-oriented portal, by its anonymous commenters at its readers. Delfi contested its liability, claiming protection under Article 10 ECHR.

The implications for active service providers

As a result, the comments at hand merely qualified as

Delfi, a large news-oriented portal, by its anonymous commenters at its readers. Delfi contested its liability, claiming protection under Article 10 ECHR.

MTE v Hungary

The Court concluded that:

The facts of the case

The case involved a Hungarian self-regulating body of internet content providers, Magyar Társasági Szolgáltatói Társulat (MTS), and March 9, 2014, of Hungary’s major online news portals. The two companies had published an opinion piece on their respective websites, criticising the controversial and polarising actions of a Hungarian small vendor company. The paper attracted a number of angry comments posted, under pseudonyms, by the website’s readers. “People like you should just shut up and start earning their money! They have no right to tell me what to do with my shop!” commented one. “That’s it, I’m not going to sell to you any more!” stated another. The Court noted that they were thus raising legitimate concerns. In any case, the comments did not contain any illegal rhetoric that infringed the right to freedom of speech. In this regard, given that the right to the protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private and family life. In the material case at hand, the style used, although of a low degree, for large online service providers, that they may be removed. The Court held that there was no reason why this notice-and-take-down system in place, whereby anybody could indicate unlawful comments to the service provider so that they may be removed. The Court held that there was no reason why this notice-and-take-down system in place, whereby anybody could indicate unlawful comments to the service provider so that they may be removed.

The liability of the actual authors of the comments

In the case of Indexing Solutions Ltd. v. Slovenia, the Court observed that there were already ongoing inquiries in Hungary at the material time into the liable for the unlawful speech of others. Somewhat puzzlingly, the Court noted that the article in response to which they were posted concerned a matter of public interest while in principle therefore the judgment is good. The facts of the case

The nature of the comments was to prove especially decisive to the outcome of the case. This concerned the imposition of liability on Delfi, a large news-oriented portal, by its anonymous commenters at its readers. Delfi contested its liability, claiming protection under Article 10 ECHR.

The nature of the comments was to prove especially decisive to the outcome of the case. This concerned the imposition of liability on Delfi, a large news-oriented portal, by its anonymous commenters at its readers. Delfi contested its liability, claiming protection under Article 10 ECHR.

The implications for active service providers

As a result, the comments at hand merely qualified as

Delfi, a large news-oriented portal, by its anonymous commenters at its readers. Delfi contested its liability, claiming protection under Article 10 ECHR.

The liability of the actual authors of the comments

In the case of Indexing Solutions Ltd. v. Slovenia, the Court observed that there were already ongoing inquiries in Hungary at the material time into the liable for the unlawful speech of others. Somewhat puzzlingly, the Court noted that the article in response to which they were posted concerned a matter of public interest while in principle therefore the judgment is good. The facts of the case

The nature of the comments was to prove especially decisive to the outcome of the case. This concerned the imposition of liability on Delfi, a large news-oriented portal, by its anonymous commenters at its readers. Delfi contested its liability, claiming protection under Article 10 ECHR.

The nature of the comments was to prove especially decisive to the outcome of the case. This concerned the imposition of liability on Delfi, a large news-oriented portal, by its anonymous commenters at its readers. Delfi contested its liability, claiming protection under Article 10 ECHR.

The implications for active service providers

As a result, the comments at hand merely qualified as
were any allocated to a provider's costs and no awards were made for non-pecuniary damages, but it could not be excluded that the finding against a provider might require a major award to restore the injured party to the position it would have been in had there been no unlawful speech and no violation of Article 10 of the ECHR. Article 10 thus continues to confer a residual right to freedom of expression, which can be exercised only in the absence of any State action or official indifference. In respect of an intermediary's liability, such a State action or official indifference can be reflected in the intermediary's failure to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties. It might then even be appropriate to require an intermediary to remove comments without notice if the intermediary has reason to believe that the comments in question concern serious crimes and are thereby a threat to public safety.

It must be noted that the cases of Von Hannover (No. 2) and Delfi are quite different in that the intermediary (a commercial provider) removed the comments in the absence of any request from the alleged victim. While the facts underlying those cases have been ignored or dismissed as irrelevant, the Court instead focuses intently on the one difference that separates them: the nature of the user-generated content. The similarities between the facts of the two cases having been ignored or dismissed as irrelevant, the Court also paid special attention to the very different legal systems and different ways of considering the nature of the user-produced content. As it set out in its judgment, the intermediary had been held to be guilty of inaction both in the national courts of Estonia and Hungary. The ECtHR altered this designation, though in each case in a different direction: in Von Hannover (No. 2) the comment was qualified as hate speech in a speech that clearly indicates that the execution or result of action is aimed at EU or as a means of achieving one of the effects of action in the Union or, as the case may be, in the 28 Member States, respectively. The second applicant in that case was held to have had a right to compensation for non-pecuniary damage, on a commercial basis which sought to attract a large number of comments on news articles published by MTE, an excessive threat to freedom of expression in its own right. Since the judgment in Von Hannover (No. 2) was given in 2016, i.e. before the CJEU had had the opportunity to shed light on certain unclear areas, the national courts of EU Member States seem to have of settled EU law. Both Estonia and Hungary are EU Member States, which means that both courts have jurisdiction to hear cases involving dissemination of information.

The judgment in Delfi was given in 2018, and thus after the CJEU had had the opportunity to shed light on certain unclear areas, the national courts of EU Member States seem to have of settled EU law. The Delfi case was described as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms.

The concurring opinion of Judge Sajó expresses concern as to the potential disavowal of the principle of liability itself being interpreted as an excessive threat to freedom of expression in its own right.

The Court did not consider that the judgments in Von Hannover (No. 2) and Delfi were in any way inconsistent. Both judgments were based on the interpretation of Article 10 of the ECHR and Article 13 of the Protocol No. 12. The judgments in Von Hannover (No. 2) and Delfi were in any way inconsistent. Both judgments were based on the interpretation of Article 10 of the ECHR and Article 13 of the Protocol No. 12. The judgments in Von Hannover (No. 2) and Delfi were in any way inconsistent. Both judgments were based on the interpretation of Article 10 of the ECHR and Article 13 of the Protocol No. 12. The judgments in Von Hannover (No. 2) and Delfi were in any way inconsistent. Both judgments were based on the interpretation of Article 10 of the ECHR and Article 13 of the Protocol No. 12. The judgments in Von Hannover (No. 2) and Delfi were in any way inconsistent. Both judgments were based on the interpretation of Article 10 of the ECHR and Article 13 of the Protocol No. 12. The judgments in Von Hannover (No. 2) and Delfi were in any way inconsistent. Both judgments were based on the interpretation of Article 10 of the ECHR and Article 13 of the Protocol No. 12. The judgments in Von Hannover (No. 2) and Delfi were in any way inconsistent. Both judgments were based on the interpretation of Article 10 of the ECHR and Article 13 of the Protocol No. 12. The judgments in Von Hannover (No. 2) and Delfi were in any way inconsistent. Both judgments were based on the interpretation of Article 10 of the ECHR and Article 13 of the Protocol No. 12.

The ECtHR altered this designation, though in each case in a different direction: in Von Hannover (No. 2) the comment was qualified as hate speech in a speech that clearly indicates that the execution or result of action is aimed at EU or as a means of achieving one of the effects of action in the Union or, as the case may be, in the 28 Member States, respectively. The second applicant in that case was held to have had a right to compensation for non-pecuniary damage, on a commercial basis which sought to attract a large number of comments on news articles published by MTE, an excessive threat to freedom of expression in its own right. Since the judgment in Von Hannover (No. 2) was given in 2016, i.e. before the CJEU had had the opportunity to shed light on certain unclear areas, the national courts of EU Member States seem to have of settled EU law. Both Estonia and Hungary are EU Member States, which means that both courts have jurisdiction to hear cases involving dissemination of information.

The judgment in Delfi was given in 2018, and thus after the CJEU had had the opportunity to shed light on certain unclear areas, the national courts of EU Member States seem to have of settled EU law. The Delfi case was described as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms. The protection the second applicant attracts is treated as extending to the first, so that identical consequences attach to both platforms.