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Review paper

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PROTECTION OF THE REPUTATION OF THE LEGAL ENTITIES IN TERMS OF HUMAN RIGHTS

ABSTRACT

Whether there is a right to reputation or not can no longer be a matter of question since the status of the right to reputation has been developing for decades from the context of the two articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR). However, the right to protection is not listed among the rights and freedoms in the ECHR, it is now organically included in particularly two articles. Having Article 8 and Article 10 suggesting that the right to reputation should be understood as human right, the European Court of Humans Rights (hereinafter: ECtHR) established the value of the right to reputation. Through the way, not only natural persons are included but legal entities are also given the right to reputation due to several judgements by the ECtHR. This paper focuses on essential steps of the way how the right to reputation has still been developing due to the cases the ECtHR.

Keywords: *right to reputation, legal entity, human rights*

1. INTRODUCTION

In terms of the question of the right to reputation, it is needed to reach to the Universal Declaration of Human Rights (hereinafter: Declaration) which is a milestone in the history of humankind. The Declaration has globally and regionally inspired human right treaties as a permanent basis. In Europe, the European Convention on Human Rights (hereinafter: ECHR) was the first measure to make the human rights stated in the Declaration binding. However, the right to reputation is not so evidently fundamental as it seems to be.

2. THE RIGHT TO PROTECTION OF REPUTATION BEING CONSIDERED AS A HUMAN RIGHT

As for the protecting reputation, ECHR Article 12 provides that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.¹ However, ECHR is a milestone in the European countries, regarding human rights and freedom, privacy was included in the document but not reputation. Regarding the right to respect for private and family life Article 8 of the ECHR provides: “(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”²

However, ECHR was summoned with the intention of having parallel importance with the Declaration, Article 8 in the ECHR is different to the relevant Article 12 in Declaration with the omission of the phrase of “nor to attacks upon his honour and reputation”. According to the preparatory documents of the ECHR, the omission is deliberate in the view of “not to refer to all provisions of the Article in question but only to those specifying the content of the freedom provided for in the resolution.”³

Expressly, the ECHR refers to reputation only in Article 10. It guarantees the right to freedom of expression and identifies a number of proportionate restriction on the exercise of the right providing that “(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. (...) (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,

¹ Art. 12. of the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette - International Conventions, No. 18/1997, 6/1999, 14/2002, 13/2003, 9/2005, 1/2006, 2/2010, 13 /2017 (hereinafter: ECHR)

² Art. 8. ECHR

³ Preparatory work on Article 8 of the European Convention on Human Rights, Council of Europe, 1956., p. 3, <https://www.echr.coe.int/documents/d/echr/echrtravaux-art8-dh-56-12-en1674980>, 11 December, 2023.

for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The Article 8 and Article 10 consequently includes the protection of reputation but as a degree of the right of the protection of reputation is not given as a human right.

3. THE RIGHT TO PROTECTION OF REPUTATION DEVELOPED BY ECtHR CASES

The last 20 years, the ECtHR held that the protection of reputation institutes the part of the right manifested in Article 8. In many cases⁴, the ECtHR began to act towards the person’s reputation as part of the right to respect for private life by Article 8.⁵ Mentioning only the case of *Lindon v. France*, it was a good example of the new approach setting out in the judgement: “(...) freedom of speech has on occasion shown excessive sensitivity and granted over-protection in respect of interference with freedom of expression, as compared with interference with the right to reputation. (...) The right to reputation should always have been considered as safeguarded by Article 8 of the Convention, as part and parcel of the right to respect for one’s private life.”⁶ (...) “The right to reputation, having the same legal status as freedom of speech, as explained above, is entitled to effective protection so that under any circumstances any false defamatory statement, whether or not it is malicious and whether or not it may be inevitable for an uninhibited debate on public issues or for the essential function of the press, should not be allowed to remain unchecked.”⁷

On the other hand, in the case of *Pfeifer v. Austria* it was stressed out “that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights concerning the Austrian courts’ failure to strike a fair balance between the protection of freedom of expression and the right of the applicant to have his reputation safeguarded.”⁸

⁴ E.g. *Cumpana v. Romania* [2004], *Chauvy v. France* [2004], *White v. Sweden* [2007], *Lindon v. France* [2008], *Pfeifer v. Austria* [2009]

⁵ <https://inform.org/2010/10/26/is-there-a-right-to-reputation-part-1-heather-rogers-qc/>, 11 December, 2023.

⁶ *Lindon v. France* [2008]

⁷ *Ibid.*, p. 42.

⁸ Press release issued by the Registrar, European Court of Human Rights, Chamber Judgement, *Pfeifer v. Austria*, 2007.

Despite there is an ongoing battle between the protection of reputation versus the freedom of expression, nowadays the protection of reputation is gaining more importance in the light of threats in the digital space. The over-important nature of the online sphere results severe harms of the reputation not only natural persons but also legal entities. Just as natural persons corporates also have reputations to protect, as a reference paper based e.g. the law-cases in the UK emphases it.⁹ It concludes that it is more difficult for companies to bring claims, a number of court decisions in the UK showed that companies were able to assert their rights under the law to protect their reputation. However, the common law requires companies to establish that the words complained of have caused or are likely to cause 'serious financial loss'. Whether the loss is 'serious', it depends on the particular circumstances assessed on a case-by-case-basis. In other words, there is no 'one size fits all' approach to assessing whether the loss suffered, or likely to be suffered is 'serious'.

Reputation is important because it can influence how others interact with the legal entity. It can also impact the entity's success or opportunities. On the other hand, the term of reputation can be understood as opinion and estimation about someone. It measures the character of a certain and entity i.e. how much respect, admiration, credibility, or trust the entity has earned. The law is obliged to protect the image someone appears to have. Also, "reputation capital is the value of the intangible assets of a business, such as reviews, word of mouth, brand identity, and stakeholder trust, and reputation capital can increase the perceived value of products and services, stock price, and company valuation".¹⁰

Based on several business reports and references, reputation is an essence of any business, therefore corporate reputation is the valuable intangible resource of a company. It can be measured in money, financial and social influences, as well as share in the market. There is no question to dispute that in the digital age the reputation is at a higher risk, and it can be easily damaged in the online world via reviews, comments, as well as on the social media platforms. For a business the consequences of reputational damage can go to the be extreme including termination of business. What is more, it can take a long time and can be costly to recover from reputational damage. Significant resources might be needed for rebranding, relaunching a public relations campaign, reimplementing new policies and procedures, and regain the trust of its stakeholders.

⁹ <https://www.financierworldwide.com/protecting-corporate-reputation>, 11 December, 2023.

¹⁰ Kent Campbell: *What is Reputation?*, <https://blog.reputationx.com/whats-reputation>, 27 December, 2023

Non-pecuniary damage was linked to company's reputation in the judgement of the ECtHR¹¹, saying "(...) non-pecuniary damage suffered by such companies may include heads of claim that are to a greater or lesser extent 'objective' or 'subjective'. Among these, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team".¹²

In Hungary based on the Civil Code¹³, sanctions for violating personality right can be no-fault sanctions, grievance award¹⁴ and liability for damages¹⁵. Based on the verity of infringement anyone whose personality rights have been overstepped may claim the establishment of the violation by the court. In case of the violation be ceased, the person committing the violation is forbidden from continuance, or is obliged to give appropriate satisfaction and publicity at his own expenses. In case of the violation established, several scenario of the ending can happen i.e. ending of the injurious situation, the restoration to the situation existing prior to the violation, as well as the destruction of things produced through the violation or the depriving such things of their unlawful character. In Hungary, grievance award was introduced that means that any person whose personality rights have been violated may claim a grievance award for non-material harm done. Conditions of pay grievance award are governed by the rules on liability for damages. In this case, apart from the fact of the violation is established, there is no need to prove further loss, and the court determines the amount taking into account the circumstances of the case, in particular the gravity, the occasions and the degree of the fault of the violation. Liability for damages is also on option in Hungary when the person who suffers the damage of his personality rights can claim compensation from the person committing the violation.

¹¹ Case of *Cominersoll S.A. v. Portugal*, 35382/97, Judgement 6 April, 2000.

¹² *Ibid.*, Point 35. Further in the Concurring opinion of Judge Rozakis joined by Judges Sir Nicolas Bratza, Caflisch and Vajic: "I do not see why, in matters of compensation, the Court should be obliged to deviate, even partly, from such an approach and why it should be prevented from accepting, without any reservation, implied or otherwise, that a company may suffer non-pecuniary damage, not because of the anxiety or uncertainty felt by its human components, but because, as a legal person, in the society in which it operates, it has attributes, such as its own reputation, that may be impaired by acts or omissions of the State."

¹³ Act V of 2013 on the Civil Code, *Magyar Kozlony*, Hungary Official Journal, Vol. 31. 26 February, 2013., p. 2382-2664.

¹⁴ *Idib.*, 2:52.

¹⁵ *Ibid.*, 2:53.

3.1. Protecting the Right to Reputation of the Legal Entities

Cases are brought before the ECtHR for violations of Article 10 of the ECHR. Andras Koltay says that on some issues the ECtHR raises the bar for freedom of expression.¹⁶ Andras Koltay concludes that the ECtHR's practice has focused on issues such as the protection of political speech, the discussion of public affairs and the freedom to criticise public figures. At the same time, Andras Koltay also argues that for other types of opinions, such as hate speech, the ECtHR does not set a standard and is content to lay down certain general principles. Speaking about the future of gatekeeper regulation, Andras Koltay notes that individual states – and on this topic he is not only talking about EU member states, but also gives examples from US case law – do not have the exclusive right to set limits on freedom of expression. In his conclusion it is stated that the history of the right to freedom of expression is entering a new phase, which will be no less exciting and unpredictable than any that has gone before.

3.2. There is No Full Responsibility for Comments in the Online Sphere

The ECtHR primarily censures the applicant for defamation of a legal person on civil or criminal grounds. The exception is where the legal person has brought proceedings under Article 8 ECHR to protect its reputation. The ECtHR has extended the scope of Article 8 to cover the protection of reputation. It may also be concluded that, in weighing the freedom of expression protected under Article 10 against the restrictions imposed by the national state for the protection of reputation, the ECtHR, with its language tilted towards expression, considered the domestic restrictions excessive and unnecessary in a democratic society, widening the scope of freedom of expression. The ECtHR later included Article 8 ECHR in its analysis, thus weighing reputation directly against freedom of expression. The ECtHR accepted that Article 8 ECHR also protects the reputation of legal persons. It further stated that there is a difference between a commercial company's interest in its commercial reputation and the reputation of an individual. While the latter may affect dignity, the commercial reputational interest lacks a moral dimension. On this basis, the ECtHR has taken a more tolerant approach to opinions concerning legal persons in the face of perceived offences.

The reputation of a legal person in the online space was affected by the case of Hungarian Content Providers Association (hereinafter: HCPA) and Index.hu Zrt.

¹⁶ Koltay, Andras: *Gatekeepers of the Internet and the Article 10 of the ECHR: the new subject of the press freedom (Az internetes kapuorok es az Emberi Jogok Europai Egyezmenyenek 10. cikke: a sajtoszabadsag uj alanyai)*, Allam-es Jogtudomány, 2017, Vol. 4., p. 129-140.

v. Hungary. On 5 February 2010, HCPA published an opinion entitled 'Another unethical business conduct on the internet' on two real estate websites operated by the same company. According to the opinion, the two real estate websites initially offered users a free advertising service for 30 days. However, the service became subject to a fee after the 30-day free period had expired, and users were not notified in advance. This was possible because the service provider could unilaterally modify the terms of use, which users had accepted when registering on the website. The opinion pointed out that the service provider only removed outdated advertisements and personal data from the website once the due fees had been paid. The opinion noted that the provider's conduct was unethical and misleading. Users responded to the review in pseudonymous user comments, which included vulgar language. The index.hu news portal's Prodigal Lobster consumer blog also wrote about the opinion, and the full text of the opinion was published. Index.hu also published the comments of users who reacted under a pseudonym. The company running the websites concerned has brought an action for defamation. The Hungarian courts found both HCPA and Index.hu Zrt. liable for publishing the offending opinions and comments, but disputed that the defendants were merely intermediary service providers. The Hungarian courts found that the offensive opinions and comments were capable of damaging the reputation of the applicant. The applicants lodged a constitutional complaint on 3 January 2013, essentially challenging the court's decision to hold them responsible for the content of the comments, but the Hungarian Constitutional Court dismissed the complaint.

The applicants brought the proceedings for breach of the freedom of expression under Article 10 ECHR, in which the ECtHR also addressed the legal liability of the operators of internet news portals for opinions and comments published. The ECtHR stressed that the right to protection of reputation is protected by Article 8 ECHR as part of the right to respect for private and family life.

The Court of Justice must ascertain whether the national authorities have struck the right balance between the sometimes conflicting values protected by the ECHR when considering the necessity of interfering with freedom of expression in order to "protect the reputation and rights of others". Tension may arise between freedom of expression, protected by Article 10 ECHR, on the one hand, and the right to privacy enshrined in Article 8 ECHR, on the other. The Court has held that, in substance, the rights guaranteed by Articles 8 and 10 ECHR deserve equal respect.

In the case of Hungarian Content Providers Association and Index.hu Zrt. v. Hungary, the ECtHR also examined the legal basis and purpose of the interference and whether it was "necessary in a democratic society". The ECtHR found that the underlying article concerned the business practices of two major real estate

websites which were misleading and prejudicial to their customers. This implied that the public interest justified allowing a debate on a public matter that involved many consumers and internet users and provided for an exchange of information. In the past, the conduct in question had already led to a number of complaints to consumer protection bodies and a number of proceedings had been brought against the two companies operating real estate websites. The article cannot be considered as a publication without factual basis or as a publication that provokes unduly offensive comments. The ECtHR considered that it was a matter of value judgments or opinions. They were in fact a condemnation of business conduct, and were partly influenced by the personal frustration of the commentators at being deceived by the company in question. The terms used in the comments were offensive, one was explicitly vulgar, but the use of vulgar terms is not in itself determinative of the value of an offensive expression. In the ECtHR's view, style as a form of expression forms part of communication and as such is protected together with the content of the expression. The ECtHR also found that, although the expressions used in comments belong to a low stylistic stratum, they are frequently used in communications on internet portals. At the time the article and the contested comments were published, investigations into the applicant company's business conduct were already underway.

In this context, the ECtHR was not convinced that the comments in question could have had any further significant impact on the attitudes of the consumers concerned. The Hungarian courts did not assess whether the comments had reached a sufficient level of seriousness and whether they had been published in a manner which might actually harm the professional reputation of a legal person. The ECtHR found a breach of Article 10 of ECHR. In its decision of 2 February 2016, the ECtHR ruled that a content provider cannot necessarily be held liable for comments posted by users for the user content placed on them. The case is of particular importance because in June 2015 the ECtHR ruled the opposite in the highly publicised and considered landmark case of *Delfi AS v. Estonia*, which held that websites and portals could be liable for comments posted on their sites.

3.3. The Public Interest is a Priority over the Protection of Reputation

Protecting the reputation of businesses was also a central issue in the case of *OOO Regnum v. Russia*. The electronic news portal *OOO Regnum* reported information disseminated by local police and the state consumer protection agency about mercury poisoning following the consumption of a branded juice-based drink. The drinks, marketed under the brand name in question, were produced by at least two legal entities, one of which has filed a defamation case against *OOO Regnum* in the commercial court. The Russian Commercial Court ruled against *OOO*

Regnum, finding that three news items published on a website owned by the plaintiff company had damaged the business reputation of a private commercial company and ordered OOO Regnum to pay substantial damages to the private commercial company which produced them. OOO Regnum alleged infringement of its right to freedom of expression.

The ECtHR examined whether the interference with the applicant company's right to freedom of expression was "necessary in a democratic society". Whether the interference in question was proportionate to the legitimate aim pursued and struck a fair balance between the right of a commercial company to a reputation and the right of an electronic media to freedom of expression. While the right to protection of reputation is guaranteed by Article 8 ECHR as part of the right to respect for private life, the concept of 'privacy' is a broad one, encompassing the physical and mental integrity of the individual. However, an attack on a person's reputation must reach a certain level of seriousness.

When deciding on a conflict between two equally protected rights under the ECHR, the ECtHR has to weigh the competing interests, in relation to which the ECtHR has considered as relevant principles, for example, whether the publication contributed to the public interest dispute, the degree of awareness of the person concerned, the prior conduct of the person concerned, the content, form and consequences of the publication. As the applicant is a commercial company, the ECtHR notes that it has previously accepted that the interest of a private company in protecting its reputation may be equivalent to a wider economic interest. According to the ECtHR, it is for the State to consider what means it provides in national law for a company to challenge the truthfulness of allegations that threaten its reputation. However, the ECtHR emphasises that there is a difference between the interests of the reputation of a legal person and the reputation of an individual as a member of society. Based on the ECtHR, when the right to freedom of expression in the media must be weighed against the right of a commercial company to a reputation, the relevant criterion is whether the publications in question concerned a matter of public interest, and what the content, form and consequences of the publications were. Before weighing the general interest in protecting public health and providing information about potential health risks, the interest and duty of the media to report on such risks and the reputational interest of a commercial company, national courts must convincingly demonstrate the existence of an overriding social need. As for the ECtHR, the district court in Russia did not put forward any arguments as to why it attached greater importance to the reputational interests of a commercial company than to the public's interest in being informed about a serious matter such as mercury poisoning caused by commercial foodstuffs. The ECtHR found that the Russian court had not provided

'relevant and sufficient grounds' to justify an award of damages for the alleged damage to the reputation of a commercial company.

3.4. Protection of Reputation in Cases of Legal Entities and Natural Persons

The recent judgment of the ECtHR in *Freitas Rangel v. Portugal* is an important milestone in the assessment of the reputation of legal persons. *Freitas Rangel* was convicted of insulting a legal person for statements he made about the professional association of judges and prosecutors during a hearing before the Parliamentary Committee on Ethics, Society and Culture, which affected freedom of expression and the Portuguese media. He was also fined euro 6,000 and ordered to pay euro 25,000 to both associations in compensation for non-material damage. The applicant made contested statements about freedom of expression and the media and how they are influenced by politics and the economy. He alleged that the associations shared confidential information with journalists in order to further their political aims. These issues were matters of general community interest and their discussion before Parliament was part of a political debate, an area where a high level of protection of freedom of expression is generally guaranteed and the authorities thus have a narrow margin of discretion. Furthermore, as the parliamentary session was open to the public and journalists were present, it is not surprising that in the days following his speech his statements were widely disseminated in the online media. Immediately after the sitting, he was interviewed by a journalist who was present during his speech and was interviewed again the next day, in which he reiterated his views.

Reputable and well-known professional bodies, professional associations of judges and prosecutors, have often been invited to present their views to Parliament on legislative proposals concerning the functioning of the judiciary. The domestic courts have assumed that the plaintiff only made statements of fact which he knew to be false and defamatory against these bodies. However, most of his allegations consisted of personal opinions, the veracity of which could not be proven. The only contested factual allegation was his claim concerning the sharing of confidential information, which could be considered to be more general in nature about the sharing of information between the two organisations. Although probably an exaggeration and therefore unfortunate wording, his comments could be interpreted as illustrative of a wider social criticism of the misuse of the judiciary in politics and the media, a public interest issue which he believed to be true.

The ECtHR found that protecting the reputation of a legal person did not have the same force as protecting the reputation or rights of individuals. The ECtHR also

noted that the journalist applicant, as an invited expert, had expressed his views before a parliamentary committee, but that his speech should have been afforded a higher level of protection, as parliamentary and political speech. Notwithstanding this, the Lisbon Court of Appeal based its decision solely on the right to the reputation and good name of the bodies, without taking due account of or examining in detail the criteria of the ECtHR case-law. Finally, the ECtHR referred to the fact that the amounts of compensation were disproportionate to any damage to the reputation of the bodies. Such severe sanctions may have a dissuasive effect on the exercise of freedom of expression by persons invited to participate in debates on matters of general public interest and institutions. In conclusion, the ECtHR's judgment of 11 April 2022 held that the Portuguese courts had not provided relevant and sufficient reasons to justify interference with the applicant's freedom of expression and had exceeded their discretion to restrict public interest litigation. Furthermore, there was no reasonable proportionality between the restriction of the applicant's right and the legitimate aim pursued. However, it was important to note that the protection of the reputation of a legal person does not have the same force as the protection of the reputation or rights of individuals.

4. CONCLUSION

As a conclusion we can come to the point when it can be stated that the protection of the reputation was not that obvious as it seemed to be at the first sight. Especially, as for the protection of the reputation of the legal entities. Through a relatively long way with the development of society that can change throughout time along with the society progresses, based on the judgements of the ECtHR understanding Article 8 and Article 10 of the ECHR, the freedom of expression and the protection of reputation are linked as two fundamental concepts. We can also declare that a democratic society is not able to function properly without adequate protection given to both, although the protection of reputation is not given the status of a human right in the ECHR. In terms of the developed and incorporated right to reputation, it is evident that one should not exist without the other and only together they can safeguard our fundamental and included rights and freedoms.

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