



Judgments on the right to freedom of expression

Bulletin XLVII: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: October - December 2014

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During December 2014, the European Court of Human Rights did not decide any freedom of expression cases. However, various constitutional courts and courts of appeal across Europe adopted important judgments including the following:

- ***“re. Right to be forgotten”***, Amsterdam Court, case no. C/13/569654 / KG ZA 14-960, 18 September 2014: convicted criminal does not have “right to be forgotten”;
- ***Belhadad v. Girard, Paolini and others***, Regional Court of Paris (press chamber), 17 October 2014: good faith of journalist meant that wrongful portrayal of man as terrorist was not defamatory;
- ***‘Saint Projet’, ‘Institut du Bon Pasteur’ and others v. De Carolis, Pujadas, and others***, Regional Court of Paris (press chamber), 16 October 2014: use of hidden camera does not mean journalists do not report in “good faith”;
- ***Federal Supreme Court Germany***, case no. VI ZR 490/12, 30 September 2014: use of illegally obtained e-mails is permitted for reporting purposes.

These cases concerned the following issues:

- ***“re. Right to be forgotten”***, Amsterdam Court, case no. C/13/569654 / KG ZA 14-960, 18 September 2014: convicted criminal does not have “right to be forgotten”;

This case concerned a convicted criminal who had lodged a request with Google that links to his criminal conviction be deleted from the search engine’s index. In 2012, the plaintiff had been convicted in first-instance for attempted incitement to assassination, but he appealed and pending this appeal was released from custody. The record of his conviction was still online and were among the top ‘hits’ in Google for an internet search on the plaintiff’s name, He requested that these links be removed from the Google index, but Google refused. The plaintiff then sued Google.

The Court of Amsterdam considered the case on the basis of national data protection law as well as the decision of the European Court of Justice in the so-called “Google Spain” case, which held that Google may be required to remove links that are “inadequate, irrelevant or no longer relevant, or excessive”. The court explicitly acknowledged that removal requests, as in the present case, involve not only the plaintiff’s fundamental right to privacy, but also the search engine’s right to freedom of information, and that the interests of internet users and information providers on the internet

should be taken into account. The court noted that committing a serious crime inevitably results in a lot of (negative) publicity, that, together with the criminal conviction itself will remain as relevant information about a person. Only in exceptional circumstances will such information be considered “excessive” or “unnecessarily defamatory”. The plaintiff had neither sufficiently substantiated that the search results in question were irrelevant, excessive or unnecessarily defamatory, nor had he shown compelling, legitimate grounds relating to his situation that would have required Google to remove the links. The court therefore rejected the plaintiff’s claim.

- ***Belhadad v. Girard, Paolini and others***, Regional Court of Paris (press chamber), 17 October 2014: **good faith of journalist meant that wrongful portrayal of man as terrorist was not defamatory;**

This concerned a case against the directors of a television channel and its Internet site, and a print journalist, brought by a man whose picture had been shown on TV as part of a news report on the expulsion of five Islamic extremists. The commentary with the news report stated that the man had been found guilty of terrorist attacks committed in Morocco in 1994 and that he maintained “regular contact” with jihadists who had been through training at camps in Afghanistan and Pakistan. However, the man had been wrongly identified and claimed that the news report was defamatory.

The Court’s Press chamber found that the information that had been published clearly caused prejudice to the man’s honour. However, it found that the journalists were not liable for this because they had acted in good faith. The Court found that the aim of the news report had been legitimate – namely, to report on the expulsion from the country of extremists. This was a matter of clear public interest which the journalists were entitled to report on. The journalists had been entitled to trust the source of the information, the Ministry of the Interior, which itself ought to have checked the accuracy of its press release. Because the item was broadcast as part of the latest evening news, the journalists were not required to carry out a full investigation and to doublecheck the content of the information – particularly since it came from a trustworthy source (the ministry).

- ***‘Saint Projet’, ‘Institut du Bon Pasteur’ and others v. De Carolis, Pujadas, and others***, Regional Court of Paris (press chamber), 16 October 2014: **use of hidden camera does not mean journalists do not report in “good faith”;**

This concerned a defamation case brought by local school and parish associations against TV journalists who had broadcast a report on right-wing religious groups. The journalists had infiltrated a small extreme right-wing group presented, which was portrayed as being extremely violent and racist, and had used a hidden camera as part of the report. The report claimed that Roman Catholic associations had links with this small group and with the school, which was described as a “nest of Fascists”. It was also claimed that the school’s teaching was “overtly anti-Semitic”.

The Court found that the report was defamatory with regard to the parish, the school, and its manager, who was shown un-blurred in the broadcast and who was wrongly presented as the founder of the school, whereas he is in fact chairman of the association which manages the school. However, the journalists had acted in good faith. Their aim had been to inform the public of the existence of violent and racist political groups, and of the links that may exist between such groups and religious associations. This was clearly an issue of public interest which the journalists were entitled to report on. The journalists had heard both sides and had included interviews with the

school's manager as well as with the priest who was its head teacher, and another priest had been present among the participants in the studio debate that followed the broadcast. The use of a hidden camera did not mean that the journalists did not act in good faith: hidden cameras were permitted if they were necessary to reveal legitimate information to the public on an item of general interest that could not have been discovered otherwise.

- **Rainer Speer v. Bild**, Federal Supreme Court Germany, case no. VI ZR 490/12, 30 September 2014: **use of illegally obtained e-mails is permitted for reporting purposes;**

This concerned Rainer Speer, a politician who had held various high-ranking posts in the state of Brandenburg between 1994 and 2010, including that of Finance Minister, Home Affairs Minister, and Head of the State Chancellery. In 2009, the German newspaper, *Bild*, reported that Speer had had a daughter from an extra-marital relationship with a colleague, and that he had failed to support the child financially. The girl's mother, who brought the child up alone, instead received child support from the state. In 2009, *Bild* received email correspondence between Speer and the child's mother which had been obtained from a laptop which Speer had lost. In the e-mails, the child's mother accused Speer of failing to provide financial support, and that by forcing her to apply for State child support Speer was committing social insurance fraud. *Bild* published the e-mails and Speer resigned as Minister. He then applied for an injunction against the reporting of the private e-mails.

The German Federal Supreme Court held that in this case, the public's right to information should take precedence over Speer's general privacy rights. While *Bild* had intruded on Speer's privacy, and the emails published by it had been obtained unlawfully by a third party, the public's right to information outweighed the plaintiff's right to privacy. Speer was a well-known politician and he was in the public eye. *Bild* had published the e-mails to prove that Speer knew that his child was receiving child support from the State even though he himself should have been supporting her financially. This meant that the information had a high level of "public value", and publication of the emails was lawful.

Prepared by Peter Noorlander, Director of Media Legal Defence Initiative, London in cooperation with HRA



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