

CIVIL DEFAMATION AND MEDIA FREEDOM IN HUNGARY

TRENDS AND CHALLENGES IN COURT PRACTICE
IN PERSONALITY RIGHTS CASES



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Trends and Challenges in Court Practice in Personality Rights Cases

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Publisher: **International Press Institute (IPI)**

February 2017



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This report was supported by funding from the European Commission.

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I. INTRODUCTION

The present study examines current legislation and court practice in Hungary regarding civil law violations of rights to reputation, privacy and likeness, with a particular focus on trends in terms of awarding non-pecuniary damages/restitution.¹ Through an analysis of relevant legislation and a presentation of cases connected with the press, it critiques the current situation in terms of limitations on freedom of expression.²

Personality rights³ in this context is a difficult area of jurisprudence, as it involves the consideration and balancing of two important values and constitutional rights: freedom of expression on the one hand and the rights to reputation, privacy and likeness on the other. This balancing act requires the interpretation of very succinctly worded legislative texts and rulings by the Constitutional Court with the help of the guidelines issued by the Supreme Court (also known as the Kúria).

Another difficulty for the judiciary is the recent increase in Hungary of cases in which politicians turn to the courts to seek relief for injuries they allege to have suffered, hoping to obtain a judgment that will put an end to political and societal controversies in which they are involved. Meanwhile, the media get caught in the crossfire: on one hand, news outlets seek to report on such controversies and to provide a forum for diverging opinions; on the other, they are also directly affected through legal action taken against them in media and personality rights cases.

II. LEGISLATIVE BACKGROUND

In 2014, Hungary adopted a new Civil Code⁴, which affects the protection of personality rights in two ways. First, lawmakers changed the text of the Civil Code in order to match new jurisprudence. Second, the new Code introduced the institution of restitution instead of non-pecuniary damages. The latter change is relevant in that in cases where personality rights have been violated, claimants can now request monetary compensation without having to prove that the violation caused damage. Thus, a finding of a violation of personality rights on its own constitutes grounds for entitlement to restitution.

¹ It is important to note that it is fairly common in Hungary for criminal charges to be brought against journalists as well, particularly for defamation and libel. This study focuses however on the civil law aspects of freedom of expression.

² The present study is based on a review of 250 court decisions, as well as in-depth interviews with the in-house counsel of three media providers (two news portals and a tabloid paper) as well as with one judge.

³ The term "personality rights" may have different meanings in different contexts. In Hungary, the violation of "personality rights" covers violations to life, bodily integrity, health, personal liberty, privacy, discrimination, defamation, violation of personal data, facial likeness, recorded voice and violation of the right to a name. The present study focuses on defamation, reputation and violation of privacy as well as the right to one's facial likeness, as these are the rights most frequently referred to in personality rights cases against media outlets in Hungary.

⁴ Act V of 2013 on the Civil Code. Available at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300005.TV.

a. General legislative protection of personality rights

Protection of rights relating to personality

Section 2:42

(1) Everyone is entitled to freely practice his personality rights within the framework of the law and within the rights of others, and to not be impeded in exercising such right by others.

(2) Human dignity and the related personality rights must be respected by all. Personality rights are protected under this Act.

(3) Personality rights shall not be considered violated by any conduct if the person affected has given prior consent thereto.

b. Specific personality rights

In addition to the general rules protecting personality rights, the Civil Code also specifies the main types of violations of personality rights.

Specific personality rights

Section 2:43 The following, in particular, shall be construed as violation of personality rights:

- a. any violation of life, bodily integrity or health;*
- b. any violation of personal liberty or privacy, including trespassing;*
- c. discrimination;*
- d. any breach of integrity, defamation;*
- e. any violation of the right to protection of privacy and personal data;*
- f. any violation of the right to a name;*
- g. any breach of the right to facial likeness and recorded voice.*

c. Enforcement of rights relating to personality

Enforcement of rights relating to personality

Section 2:54 (1) Personality rights must be enforced in person.

(4) If the violation of personality rights infringes upon the public interest, the public prosecutor shall be entitled to bring action upon the victim's consent, and to invoke the sanctions independent of attributability. Pursuant to the public prosecutor's action the financial advantage achieved shall be relinquished for public purposes. This Subsection shall apply to the infringement referred to in Subsection (5) with the exception that the public prosecutor shall be entitled to bring action without the victim's consent within the applicable limitation period.

(5) Any member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large

for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognised as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personality rights, with the exception of laying claim to the financial advantage achieved.

One of the new elements of the Civil Code is the right of communities to enforce claims. Under existing case law, a member of a community could not, without personal standing, bring a claim in cases where statements had resulted in injury to the reputation of his/her community. However, this is now possible under the new Code.⁵

The present study will focus on violations of the personality rights of integrity, reputation, privacy and facial likeness, as these are the rights most frequently cited in personality rights cases against media outlets.

d. Sanctions for violations of personality rights

Sanctions for violations of personality rights can be divided into two groups: objective and subjective. Objective sanctions can be enforced even where the defendant was not negligent, i.e., where the violation was "not the defendant's fault". These are as follows:

Sanctions independent of attributability

Section 2:51 (1) A person whose personality rights have been violated shall have the right to demand within the term of limitation – based on the infringement – as appropriate by reference to the circumstances of the case:

- a. a court ruling establishing that there has been an infringement of rights;*
- a. to have the infringement discontinued and the perpetrator restrained from further infringement;*
- a. that the perpetrator make appropriate restitution and that the perpetrator make an appropriate public disclosure for restitution at his own expense;*
- a. the termination of the injurious situation and the restoration of the previous state, and to have the effects of the infringement nullified or deprived of their unlawful nature;*
- a. that the perpetrator or his successor surrender the financial advantage acquired by the infringement according to the principle of unjust enrichment.*

⁵ A binding court decision has been handed down based on this new legislative provision. In the case in question, an MP of the extreme-right Jobbik party stated that "if Viktor Orbán thinks that Gypsies are Europe's hidden resources, then we could deport them so that they can flourish". Besides finding that rights had been violated in the case, the court ordered the payment of 100,000 HUF (273 EUR) as restitution, and also ordered the MP to make a public apology.

See <http://www.haon.hu/fizethet-a-szavai-miatt-a-jobbikos-kepvisele/2961580>.

Insofar as the violation results from the negligence of the perpetrator – i.e., the perpetrator failed to act with due care – the injured party may also claim subjective sanctions (restitution) in addition to the objective sanctions listed above in Section 2:51.

As noted above, the new Civil Code brought with it a substantial change in that the institution of non-pecuniary damages was replaced by restitution. Restitution serves both as a monetary compensation for the breach of personality rights and as a civil law sanction. In contrast to non-pecuniary damages, to claim restitution the plaintiff need not prove that s/he has suffered any disadvantage as a result of the violation. In the case of a wrongful violation, the injured party will always have a right to some amount of restitution. The amount of restitution that is set by the court depends on evidentiary elements and the judgment of the tribunal.

Restitution

Section 2:52(1) Any person whose rights relating to personality had been violated shall be entitled to restitution for any non-material violation suffered.

(2) As regards the conditions for the obligation of payment of restitution – such as the definition of the person liable for the restitution payable and the cases of exemptions – the rules on liability for damages shall apply, with the proviso that apart from the fact of the infringement no other harm has to be verified for entitlement to restitution.

(3) The court shall determine the amount of restitution in one sum, taking into account the gravity of the infringement, whether it was committed on one or more occasions, the degree of responsibility, the impact of the infringement upon the aggrieved party and his environment.

Liability for damages

Section 2:53 Any person who suffers any damage from the violation of his personality rights shall have the right to demand compensation from the infringer in accordance with the provisions on liability for damages resulting from unlawful actions.

The rules on damages have only changed in that restitution has taken the place and the role of non-pecuniary damages. Otherwise, the general rules of civil law apply when it comes to providing compensation for material damage. Thus, the general rules for damages govern the finding and quantification of compensation for the injury sustained. It should be noted that, in the case of violations of personality rights that are not accompanied by personal injuries, plaintiffs rarely make claims for pecuniary damages.

e. Regulations and judicial guidelines on non-pecuniary damages and restitution

Given that in cases that occurred before the 2014 legislation was enacted the courts must apply the provisions of the previous civil code with its rules on non-pecuniary damages (which applies to many pending cases), we must include those rules in our review of the case law.

Non-pecuniary damages: In essence, non-pecuniary damages refers to the payment of compensation for injuries suffered. Under this approach, the plaintiff must prove not only a violation of personality rights, but also the existence of negligent conduct, i.e., that damage occurred and that there was a causal connection between the unlawful conduct and the damage that occurred.

Thus, for the purposes of a finding of injuries of a non-pecuniary nature, establishing that a violation of personality rights has occurred is a necessary step but is not sufficient in and of itself. Damage that is non-pecuniary is considered to be a negative change in the physical or psychological quality of life of an individual, indicated by a worse quality of life than what the person experienced prior to the violation.⁶ The injured party must prove all of the foregoing.

It is at the discretion of the court to set the amount of compensatory damages taking into consideration all the facts and circumstances of the case. As part of this process, the court must evaluate the conduct giving rise to the violation, its impact and results, as well as the degree of negligence of the perpetrator and any contributory negligence on the part of the injured party.

In setting the amount of non-pecuniary compensation, the following types of evidence may be taken into account: personal statements by the injured party, witnesses, expert evidence, physical evidence and judicial notice.⁷

Restitution: The purpose of restitution, which now takes the place of non-pecuniary damages, is primarily to ensure that the injured party receives compensation for the violation of his/her rights. **The Civil Code presumes that injury has been suffered as a result of the violation of the injured party's rights, thus injury itself need not be proven.** This change came in response to problems in both the legislation and jurisprudence regarding the difficulty of proving the existence of non-pecuniary damage.

Evidentiary rules: Under both the previous law and the current Civil Code, the plaintiff must prove that s/he suffered a violation of personality rights, i.e., that the impugned conduct fit one of the categories of personality rights violations listed within the law. Although there is no obligation under the new legislation to prove that other injuries were sustained, the plaintiff may, of course, bring evidence to show the effect and consequences of the conduct, as these may be relevant in establishing the amount of the restitution awarded.

In setting the amount of restitution, the court takes into account all circumstances, and in particular, the gravity of the violation, whether it was repeated, the degree of negligence as well as the impact of the violation on the plaintiff and others.

⁶ Related guidelines for judges: EBH2005.1203., BDT2004.11.

⁷ Section 163 (3) of Act III of 1952 on Civil Procedure: "The court may accept as true those facts which it recognises as being of public knowledge. The same applies to facts of which the court has official knowledge. The court shall take these facts into consideration even if the parties in question have not raised them, however the court must draw the attention of the parties to these facts during the court hearing." An example of judicial notice in this context would be where the court recognises as obvious (and thus does not require proof) that a false accusation of the commission of a criminal offense results in an injury to the person thus falsely accused.

The court may take the following types of evidence into account in setting the amount of restitution: statements made by the plaintiff, witnesses, documentary evidence and judicial notice.

The Budapest Court of Appeal has issued guidelines (1/2013.V.17.) in connection with the legislative changes in which it answers questions of procedural law that have arisen in connection with claims for non-pecuniary damages and restitution. These include jurisdictional, evidentiary and assessment issues.

The two-year period since the new legislation came into effect is insufficient for the purposes of giving a clear, comprehensive overview of the corresponding case law. What can already be seen, however, from the decisions reviewed is that the courts are divided with regards to the quantification of the restitution amount, and especially with regards to the minimum amount that can be awarded. One recent case regarding Hungarian President János Áder – examined in detail in this study – is a good example of this lack of consensus.

f. Defamation and right to reputation

With regards to press freedom, the rules regarding defamation and the right to reputation are the most important, as claims based on these issues constitute a significant proportion of the personality rights legal actions brought against the press and media.

Right to reputation

Section 2:45 (2) Defamation means when something bad about someone that is not true, or a true fact with an untrue implication is published or disseminated in an abusive attack on that person's good name.

A finding of injury to one's reputation can be established irrespective of whether the violation was made in good or bad faith. A violation of this right is said to have occurred if someone makes a statement that is injurious to another person; where this includes a statement of facts; or if a person makes or disseminates untrue statements, or presents the truth in a false light.

From the perspective of civil law, injuries to reputation can only be considered to have occurred in cases where untrue facts are involved. At the same time, statements of true facts do not constitute a violation of the right to one's reputation, regardless of whether these statements are unpleasant or even injurious to the person concerned. Naturally, a statement of true facts may violate other personality rights besides the right to reputation, such as the right to privacy, and may also extend to violations of confidential business or service information as well.

Right to integrity

Section 2:45 (1) The integrity of a person is considered violated when a false and malicious oral statement is uttered publicly to damage that person's reputation, and to make people have a bad opinion of such person.

A violation to a person's right to integrity is an injury to or an attack on a person's human dignity. Within civil law, injuries to integrity and dignity occur through the expression of opinions, not facts.

It is both the task and the challenge of the courts to draw the line between facts and opinions, and to set the limit for the reasonable expression of opinion. In addition, the questions of whether the injured party is a public figure and/or whether the dispute involves issues of public affairs also play an important role in the process of distinguishing between facts and opinions. The principle of reduced protection for the personality rights of public figures is well-known and accepted in Hungarian case law and has been upheld by many rulings of the Constitutional Court⁸, in guidelines issued to judges, not to mention in the standards and case-law of the European Court of Human Rights (ECtHR). Despite all of the foregoing, it is in this respect that Hungarian judicial practice has been criticised the most – and rightly so.

III. REVIEW OF CASES

a. Injury to the reputation of politicians and public office holders

Over the last ten years in Hungary, there has been an increase in legal actions by public officials and politicians who seek redress in the courts for attacks on their reputations, and who seek to put an end to political and societal disputes by means of a court judgement. Meanwhile, the media and news outlets get caught in the crossfire as they seek to report on such controversies and provide a forum for diverging opinions. For example, there are some politicians who are notorious for threatening to sue, and actually suing, in response to any article that is critical of them. It is in these cases that the responsibility of the courts is heightened. Every court ruling of this type, in which the court awards non-pecuniary damages or restitution to a politician or other public figure for a violation of personality rights, finds itself in the public eye and sends out a message. It is therefore crucial that the courts achieve a proper balance between freedom of speech and the protection of privacy, and that they do not unjustifiably "punish" media outlets for publishing information originating from a third party. As the latter phenomenon (and practice) is a serious issue in the practice of the Hungarian courts, we have devoted a separate section to this topic.

The new Civil Code brought another innovation in that it devotes a separate provision to the personality rights of public figures:

⁸ Rulings of the Constitutional Court: 36/1994. (VI.24.), 7/2014. (III.7.).

Protection of the personality rights of politically exposed persons

Section 2:44 Exercising the fundamental rights relating to the free debate of public affairs may diminish the protection of the personality rights of politically exposed persons for overriding public interest, to the extent necessary and proportionate, without prejudice to human dignity.

In a 2014 decision,⁹ the Constitutional Court of Hungary made important and progressive statements in keeping with the ECtHR's jurisprudence with regards to the scope of public figures and the latter's obligation of tolerance. In this respect, the focus of the tolerance obligation of public figures is on statements related to public affairs, while the person (status) of the public figure is only secondary. It is not only holders of public office who must bear this heightened obligation of tolerance, but also anyone who speaks out in public debates. Naturally, these persons also benefit from personality-rights protection with regards to false statements.

The Constitutional Court emphasised in its ruling:

"[T]he heightened protection of freedom of political speech applies to all value judgements made with regards to public affairs as well as to statements of fact related to public affairs. On one hand, the unhindered evaluation and critique of the operation and activities of the institutions of a democratic state of law and of the politicians who choose the pursuit of public affairs as their vocation is a basic right of members of society, citizens, and of the press, and constitutes a fundamental element of democracy. On the other hand, opinions generally form the basis for the dissemination of facts. Accordingly, in assessing negligence and the magnitude of any limitation on rights, the importance of the greatest possible freedom for public debate should be taken into consideration, even with regards to facts which ultimately turn out to be false and which do not have any constitutional value."¹⁰

Nevertheless, Hungarian case law is uneven in this respect and fails to consistently apply the principles expressed above, especially with regards to the definition of public affairs and the scope of the liability of the press.

Below, we will present a few typical cases that are connected with public life and public affairs, and in which the court awarded non-pecuniary damages/restitution. Several of these examples highlight the inconsistencies among Hungarian courts in terms of the existence and extent of media liability in cases involving public figures. Aside from a few salient exceptions, damage awards for politicians and holders of public office range between 100,000 and 1,000,000 HUF.

⁹ 7/2014 (III.7.) CC ruling.

¹⁰ Excerpt from 7/2014. (III. 7.) from the ratio of the CC ruling.

Ferenc Papcsák (Fidesz¹¹) v. László Varjú (DK¹²)¹³: László Varjú, a politician from the official opposition, wrote of Papcsák, a member of the ruling party: "*Papcsák is very clever, in every issue so far, his people have always taken the fall for him, and in 2002, it wasn't him who was condemned [by the court], but one of the guys who was buying votes for Papcsák*". Final ruling in 2013: violation of reputation. Amount of non-pecuniary damages: **650,000 HUF**.

Filó András (Fidesz) v. Index.hu¹⁴: Filó, a politician of the ruling Fidesz party from a small town in Hungary (Szentendre), was accused by the Index.hu online news portal of using his position as a local government representative to argue against an impact assessment so that he could gain tens of millions of forints by having the properties in question included within the city limits. Ruling: injury to reputation (false allegations). Amount of non-pecuniary damages: **1,000,000 HUF**.

It is important to note that the court of first instance awarded 350,000 HUF in non-pecuniary damages, which was increased on appeal. The court of appeal's decision in 2013 does not give detailed reasons for the increase, only stating that the article forced the politician to present explanations to various people. It also referred to existing case law in this area.

Csaba Hende (Fidesz) v. Hungarian Socialist Party (MSZP)¹⁵: The Socialist Party held a press conference in the Hungarian city of Szombathely, during which it claimed that the tenders for tobaccoists in Szombathely were rigged, and that tender winners were actually hand-picked by Csaba Hende, a politician and former defence minister belonging to the ruling party. Final ruling in 2016: false statements, injury to reputation. Amount of non-pecuniary damages: **100,000 HUF**.

Csaba Hende v. Nyugat.hu: At the same time, Csaba Hende also sued the media outlet reporting on the press conference, Nyugat.hu. Final ruling in 2016: injury to reputation, false statements.

In this case, the court did not order the news provider to pay damages, "only" that it publish an apology and a retraction on its website (see below for an analysis of the problem of dissemination by the press).

Kiss László v. Ungváry Krisztián, Életés Irodalom (ÉS)¹⁶: In a study published in the *Életés Irodalom* newspaper, historian Krisztián Ungváry wrote that under the Kádár regime, the majority of informers supporting the state security apparatus were not actual agents, but so-called ad-hoc social and "official contacts". Among members of this latter category, he mentioned László Kiss, a former judge of the Constitutional Court.

¹¹ Hungarian Civic Alliance, Fidesz-Magyar Polgári Szövetség (Fidesz), the ruling party in Hungary since 2010.

¹² Democratic Coalition, Demokratikus Koalíció (DK): A party created as an offshoot of the Hungarian Socialist Party (MSZP). Its leader is former Prime Minister of Hungary Ferenc Gyurcsány.

¹³ See http://mandiner.hu/cikk/20140113_tartozas_marciusig_fizet_papcsaknak_a_dk_s_varju_laszlo,

¹⁴ Budapest Court of Appeal, 2.Pf.20.784/2013/4.

¹⁵ See http://www.nyugat.hu/tartalom/cikk/kis_gyozelem_hendenek_nagy_pofon_sajtoszabadsagnak.

¹⁶ *Életés Irodalom (ÉS)* a weekly newspaper on literature and public affairs.

Kiss launched several legal actions in connection with the article. He lost his criminal case for libel and defamation, but won his case before the civil courts for injury to reputation in 2010. He was awarded 3 million HUF in compensation, to be paid by Ungváry and the media outlet that published the article.

Subsequently, Ungváry and the newspaper that had published the impugned article turned to the ECtHR which found, in its *Ungváry and Irodalom Kft. v. Hungary* (2013) ruling, that Hungary had violated Article 10 of the European Convention on Human Rights (ECHR).¹⁷ In its judgement, the Court found that the domestic courts had not evaluated the personality rights of László Kiss in light of his role in the press, and had failed to apply the “most careful scrutiny” when balancing freedom of expression with the protection of reputation (par. 57).

According to the ECtHR, the article was a value judgment based on facts. A historian may, with a reasonable factual basis, freely express an opinion on historical and academic issues.

*László Kiss v. Index.hu*¹⁸: In two articles, the Index.hu news portal reported on the ECtHR’s decision, with a detailed description of the proceedings before the domestic courts and the decision of the Strasbourg court. László Kiss sued Index.hu for both articles, claiming that they injured his reputation, as he alleged that both articles had interpreted the ECtHR’s ruling in such a manner so as to insinuate that he actually had been an agent (informant).

Both at first instance and on appeal, courts held that the Index.hu articles had provided factual reporting on the ECtHR decision, and that furthermore, Index.hu had acted in accordance with the rules of journalistic ethics (it had published the statement by László Kiss in its entirety), and thus committed no injury to László Kiss’ reputation. László Kiss then appealed to the Kúria for judicial review. The Kúria held in 2016 that Index.hu had injured the reputation of László Kiss, as the article did not reflect the actual content of the court’s decision, and was susceptible of giving the misleading impression that the ECtHR had actually upheld as true Ungváry’s opinion as an historian, i.e. that Kiss had served as an agent. Amount of non-pecuniary damages: **800,000 HUF**.¹⁹

b. Politicians and the right to privacy

The right to privacy very often comes into conflict with freedom of the press and expression. To a certain extent, these freedoms take precedence in privacy cases as well. Naturally, the protection granted to privacy in cases of public interest is more limited. However, the concept of public interest must be subject to a stringent interpretation, as not every topic in which the public is interested is, in fact, of “public interest”. Information about a politician’s private life may be published without the former’s consent, insofar as it contains information of public interest. However, it is another issue

¹⁷ Application no. 64520/10, judgement 3 December 2013.

¹⁸ Kúria Pfv.IV.21.779/2015/4

¹⁹ In this case, Index.hu then turned to the ECtHR, claiming a violation of Article 10. These proceedings are currently pending.

altogether to determine which issues and types of information pertain to the person's performance of tasks related to public affairs, and thereby become issues of public interest. After all, the protection of privacy extends to everyone, including politicians and public officials. Persons in these positions have the obligation to tolerate limitations on their right to privacy only to the extent that these limitations are indispensable for the performance of their duties pursuant to their public office. For this reason, the court must examine in such cases whether a public figure is actually engaged in matters considered to be of public interest.²⁰

In cases where courts have determined that the right to privacy outweighs freedom of speech, the amount of damages awarded by the courts ranges between 500,000 and 3,000,000 HUF.

János K. (Fidesz) v. seven media outlets²¹: The deputy mayor of the city of Esztergom, János K., had stored on his laptop five photographs of himself with sexual content, showing him naked and engaged in oral sex. An unknown person accessed the images and forwarded them to several media outlets at the beginning of the local elections in 2010. Seven media outlets published the photos in various ways (some blacked out his face, or his likeness altogether). However, in each case, the text accompanying the picture made János K. clearly identifiable. Final ruling in 2013: violation of rights to privacy and facial likeness. Amount of non-pecuniary damages: **700,000 HUF**/media outlet.

Lajos Kósa (Fidesz) v. Blikk²²: During the 2002 election campaign, the tabloid newspaper Blikk claimed that Lajos Kósa, mayor of the city of Debrecen, had used the services of prostitutes working along Highway 4. Final ruling in 2003: injury to reputation. Amount of non-pecuniary damages: **3 million HUF**.

Tamás Deutsch v. Péter Juhász²³: Juhász, a politician of the official opposition party, said that Deutsch, a politician of the ruling party, was a drug addict. The court in 2016 made a finding of violation of human dignity and reputation, as Juhász was not able to prove his statement. Amount of restitution: **500,000 HUF**.

c. Violation of the right to reputation and privacy of other public figures and celebrities

Hungarian case law with regards to the personality rights of "other public figures" appears to be more uniform and streamlined. Public figures in this broader scope must tolerate the media's interest in reporting on public affairs, but public figures also have the right to require that the media respect the details of their private lives. The media may only report on such details if they become public by way of the person's involvement in public affairs, or if the person consents to such publication. Public figures also

²⁰ BDT.2011.2420.

²¹ 17.Pf.20.482/2013/5. Budapest Court of Appeals

²² See <http://index.hu/bulvar/kosanyert091/>.

²³ See <http://www.origo.hu/itthon/20161027-deutsch-tamas-nyert-juhasz-peterrel-szemben-drogugyben.html>drogozik.

have the right to keep the details of their private lives secret. In these types of cases, the courts tend to make higher awards for non-pecuniary damages/restitution, generally between 500,000 and 3,000,000 HUF.

Koltay Róbert v. Bors²⁴: Criminal proceedings for tax fraud had been launched against the son of famous actor Róbert Koltay. The article portrayed the actor in a light that made it appear as though he had also committed a crime, and illustrated the article with a photograph published without the actor's consent. Final ruling in 2013: violation of reputation and facial likeness. Amount of non-pecuniary damages: **600,000 HUF**.

Liptai Klaudia v. Bors²⁵: The tabloid media wrote many articles about the suicide of the life partner of Klaudia Liptai, a well-known personality on commercial television. One article claimed that Liptai had begun taking medication after her partner's death. However, the article portrayed her in such a way as to make it appear that she also had suicidal tendencies. Final ruling in 2013: violation of right to reputation and privacy. Amount of non-pecuniary damages: **1,200,000 HUF**.

Szellő István v. Bors²⁶: When the wife of István Szellő (a well-known news anchor for RTL Klub) died, the Bors tabloid newspaper published an article on the funeral, including photos taken without Szellő's consent. The article also included details about debts owed by the family, about which Szellő had not made any statement. Final ruling in 2015: violation of privacy and right to facial likeness. Amount of non-pecuniary damages: **1,200,000 HUF**.

Kovács Katalin v. Bors: The tabloid paper published information about Katalin Kovács (Olympic medallist in kayaking) regarding her divorce and new partner without her consent. Ruling: violation of rights to privacy and facial likeness. Amount of non-pecuniary damages awarded: **2,600,000 HUF**.

d. Protection of the reputation of non-public figures (private individuals)

Perhaps the cases that are the easiest for the courts to adjudicate are those that deal with injuries sustained by private individuals, i.e., people who are not considered to be public figures. This study primarily reviewed cases in which private individuals were mentioned in the press in connection with a crime that they had not committed. In these types of cases, the amount of non-pecuniary damages or restitution ranges between 500,000 and 3 million HUF.

²⁴ Győr Court of Appeals, 33.P.23.930/2013/10. Bors is a print and online tabloid newspaper.

²⁵ Budapest Court of Appeals, 2.Pf.20.897/2013/9

²⁶ Győr Court of Appeals, Pf.I.20-168/2015/3/I.

e. Dissemination: liability for the publication of information obtained from a third party

A breach of personality rights can be committed not only by making statements of untrue, offensive facts, or unreasonably offensive opinions, but also by disseminating any of the foregoing. Dissemination in this respect occurs when a person communicates to others false information obtained from a third party, i.e. by means of hearsay. **This type of breach is without question the most difficult and delicate aspect of handling information reported by the press.** Indeed, a violation of this nature can be committed even if the information is transmitted only once, irrespective of the good faith and absence of culpability of the party disseminating it. This is referred to as objective liability, and the courts only allow a very narrow scope of exceptions to it, namely, when pending criminal, civil or other official proceedings allow the media to provide information about the current state of the case.

Hungarian legislation and case law on dissemination of third-party information are not uniform, and generally do not comply with the practice of the ECtHR in this respect. In its *Thoma v. Luxembourg*²⁷ ruling, the ECtHR stated that the ruling against a journalist who had disseminated statements made by a third party infringed upon the right of the press to engage in the debate of issues of public interest, and that this right can only be limited in cases where there are very strong reasons for doing so.

The problem with Hungarian legislation and court practice on this issue is that the judiciary tends to take a "lawnmower approach" to dissemination, finding the press liable even in cases in which this is almost completely indefensible. One example is media coverage of parliamentary debates. What happens if, during a session of Parliament, one MP exposes a case of suspected corruption by another MP? If no investigation has yet been launched on the issue, then in principle, the press would have no right to report on it, nor can it be mentioned on television, as this would constitute "dissemination".²⁸

The two following recent cases (2016) highlight not only the failings of Hungarian legislation and precedent in this area but also how the interpretation of the law and application of restitution diverges between the lower courts and the highest court (Kúria).

Csaba Hende (Fidesz) v. Nyugat.hu²⁹: The Socialist Party held a press conference in the Hungarian city of Szombathely during which it claimed that the tenders for tobacco in Szombathely were rigged, and that the tender winners were actually hand-picked by Csaba Hende, a politician and former defence minister belonging to the ruling party. In this case, the court ordered the Socialist Party in 2016 to pay **100,000 HUF** in non-pecuniary damages for false statements and injury to reputation.

At the same time, Csaba Hende also sued the Nyugat.hu website, which had reported on the press conference. The court of second instance (Court of Appeals of the City

²⁷ Application no. 38432/97 of 29 March 2001.

²⁸ LászlóBodolai (in-house counsel for Index.hu): Megosztáséshíresztelés ("Sharing and dissemination"), Életés Irodalom, year LX., issue 1, Jan. 8, 2016.

²⁹ See http://www.nyugat.hu/tartalom/cikk/kis_gyozelem_hendenek_nagy_pofon_sajtoszabadsagnak.

of Győr) found that Nyugat.hu had not infringed upon the personality rights of Csaba Hende, as the media outlet had given fair and objective information (in accordance with the Media Law) on the event, and had given both parties a chance to voice their positions. According to the court, the fact that the media outlet had acted in compliance with applicable legislation relieved it of any further liability. The Kúria however, when consulted in the matter on appeal, held that the press has an objective liability for any content that it publishes, and thus could not be relieved from liability even in this case. The highest court thus concluded that there had been an infringement of rights, but given that the defendant had been fair in its reporting, it was not ordered to pay non-pecuniary damages.

János Áder (President of the Republic of Hungary) v Vágvölgyi and Index.hu³⁰: Vágvölgyi (a writer and journalist) published a military anecdote on his Facebook page. According to the story, he had met János Áder decades ago in jail, and, as he recalls, Áder had ended up there for having abandoned his post and for drunkenly shooting at random targets. The Index.hu news portal ran the story, highlighting however that it was probably a tall tale, as the commission of this type of military offence would have resulted in his being sent to a more serious penal institution, and not only to jail.

Áder sued. According to the ruling of the court of first instance, the news portal was not guilty of dissemination in the classical sense, as it had – while acting with due prudence and publishing the statement of Áder in the article as well – given information about an event of public interest. With regards to Vágvölgyi, the court concluded that he had violated Áder’s right to his reputation and ordered him to pay 50,000 HUF in restitution.

However, in 2016, the court of appeals found that the story did not pertain to public affairs, but rather to the president’s private life. Accordingly, it held that Áder’s right to reputation had been violated and that Index.hu was guilty of dissemination in this respect. It ordered both defendants to pay 600,000 HUF in non-pecuniary damages.

The case was then brought before the Kúria, which upheld the ruling of the court of appeals in all respects, except that it lowered the amount of restitution to 50,000 HUF for each of the defendants. In support of this reduction, it cited the overall circumstances of the case: the media outlet had acted with due care and given objective information on the case, while Áder, given his status, was able to make a public rebuttal within a short time.

In this case, the decision of the Kúria appropriately illustrates the broader claims of this study in terms of the main issues with regards to personality rights and the media:

- *The case law regarding the question of debates on public affairs is not uniform.*
- *The press is held liable for the dissemination of news on which it reports objectively and with due care, but that later turns out to be untrue.*

³⁰ Pfv.IV.20.903./2016/7.

- *The assessment of the liability of the press/media is not uniform. While the lower courts tend to rule that, in cases of dissemination, the press can be relieved from liability if it provides appropriately objective information, the highest court (Kúria) applies the criterion of strict, objective liability to the press on a “no exceptions” basis.*
- *The courts are divided with regards to the quantification of restitution, primarily with regards to the minimum amount that can be awarded. One approach is that excessively low restitution amounts could result in making the legal institution meaningless. Under another, contrary approach, the scale of damages should depend on all the circumstances of the case and that a low amount can be justified in certain cases without causing damage to the system as a whole.*

f. Right to one’s facial likeness and voice recording

According to the new Civil Code,³¹ consent of the affected person is required when copies or recordings are made of his/her voice or facial likeness. However, the consent of this person is not required when recordings of his/her facial likeness or voice are made or for the use of such recording if made of a crowd or as part of a public event.

Right to facial likeness and recorded voice

Section 2:48 (1) The consent of the person affected shall be required for producing or using his/her likeness or recorded voice.

(2) The consent of the relevant person is not required for recording his/her likeness or voice, and for the use of such recording if made of a crowd or in a public event.

The prior legislation on the abuse of recordings of facial likenesses or voice recordings centred around the necessity of consent (by the person entitled to give such consent) to their use.³² The earlier wording of the legislation was much more “media-friendly” than the provision currently in force because, although case law indicated that the affected person must consent to the taking of the picture, the judge was given a broader scope of discretion in taking all of the circumstances of the case into account.

If it does not have the consent of the affected person, the press may only use the facial likeness (photo) of a public figure in connection with the performance of his/her public office, within the specified frameworks for expression in public affairs.³³ In addition, the press only has an obligation to report in connection with public affairs. With regards to statements, consent must be express and unequivocal – tacit consent is not sufficient.³⁴

³¹ New Civil Code, section 2:48.

³² See former Civil Code section 80 paragraphs (1) and (2)k.

³³ BH2006.282.

³⁴ BH2002.7.

With respect to identifying instances of violations, the jurisprudence shows a uniform and streamlined approach. Compensation for non-pecuniary damages range between 100,000 and 300,000 HUF per infringing image.

A recent ruling and guidelines for judges that follow the test of the ECtHR are worth mentioning in this respect:

“When reporting on criminal proceedings against a public figure, and where these proceedings are connected with this person’s public role, a picture taken of the person can be used even without the express consent of said person insofar as it was taken in the course of the proceedings in question.”³⁵

g. The faces of police officers

A legal debate has been going on for years in Hungary with regards to the country’s practice – unusual in Europe – of blurring out or covering the faces of police officers when the press reports on public events, such as demonstrations, where police officers are acting in the performance of their duties.³⁶

Under Hungarian case law, media outlets must always hide the faces of police officers if the latter have not consented to the taking of photographs or the recording of film images, given that police officers are not public figures. Due to this court practice, the police, with the help of a specialised legal team, sued on virtually every occasion when the face of an officer was recognisable in broadcasts of demonstrations, or was shown on a news report even just for a second or two. In these cases, the courts awarded between 200,000 and 400,000 HUF per image in non-pecuniary damages. Court proceedings began to taper off when media outlets began to settle out of court with the police officers for amounts ranging between 100,000 and 150,000 HUF, and as the courts began to reduce the amounts of non-pecuniary damages as they recognised the commercial aspect of these regularly occurring lawsuits.

After about 15 years of precedent in this direction, a turning point came with a ruling of the Constitutional Court in 2014 (28/2014), in which it quashed a judgement against Index.hu ordering it to pay damages for having shown the face of a police officer in an image taken of a public demonstration.³⁷

The Kúria ordered a retrial in that case and issued the following guidelines in respect of press freedom: images of police operations made without the consent of the affected parties can be published insofar as they are not an end in themselves, but are connected to the freedom to provide information about the events in question, and where the images are of public interest in terms of how the state exercises its powers. An exception can be if the publication of these images constitutes an infringement of human dignity, e.g., showing a police officer injured in the performance of his/her duties.

³⁵ Pfv.IV.21.840/2015/5.

³⁶ See <http://www.ekint.org/en/media-and-press-freedom/2016-10-19/police-officers-face-before-the-constitutional-court-second-session>.

³⁷ See http://index.hu/belfold/2015/10/30/itelotabla_rendor_kepmas_meglepo_itelet/.

To the surprise of observers, at the retrial in October 2015, the court held once again in favour of the police, despite the instructions of the Constitutional Court to the contrary. The media outlet in question has brought the matter back before the Constitutional Court as well as the ECtHR. A decision is expected in early 2017.



International Press Institute

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