



***Le Soir* newspaper ordered to anonymise identity of rehabilitated offender to respect his right to be forgotten: no violation of freedom of expression**

In today's **Chamber** judgment¹ in the case of [Hurbain v. Belgium](#) (application no. 57292/16) the European Court of Human Rights held, by a majority (6 votes to 1), that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned a civil judgment against Mr Hurbain, in his capacity as publisher of the daily newspaper *Le Soir*, ordering him to anonymise an article in its electronic archive which mentioned the full name of a driver who had been responsible for a deadly road accident in 1994. The order was based on the individual's right to be forgotten.

The Court noted in particular that, according to the Court of Appeal, a search on the newspaper's website or on Google, just by entering the first name and surname of the driver concerned, immediately brought up the article in question. The domestic court had taken the view that to keep the article online could cause indefinite and serious harm to the driver's reputation, giving him a "virtual criminal record", when he had not only served his sentence after a final conviction but had also been rehabilitated. It had thus found that the most effective way to ensure respect for his private life, without disproportionately affecting Mr Hurbain's freedom of expression, would be to anonymise the article on the newspaper's website by replacing the individual's full name with the letter X.

The Belgian courts had weighed up the driver's right to respect for his private life, on the one hand, and Mr Hurbain's freedom of expression, on the other, in accordance with the criteria laid down in the Court's case-law. The Court of Appeal had, in particular, considered the harm sustained by the driver on account of the article being online, having regard to the passage of time (about 20 years) since its original publication and to the fact that its anonymisation on the website of *Le Soir* would not affect the text of the original article and would be the most effective and proportionate measure, among the various options. The reasons given by the domestic courts had thus been relevant and sufficient, and the measure imposed on Mr Hurbain could be regarded as proportionate to the legitimate aim pursued (right to respect for the driver's private life) and as striking a fair balance between the competing rights at stake.

The Court explained that the conclusion it had reached in the present case did not involve any obligation for the media to check their archives on a systematic and permanent basis. With regard to the archiving of articles, they would not be required to make such verification, and therefore to weigh up the various rights at stake, unless they received an express request to that effect.

Principal facts

The applicant, Patrick Hurbain, is a Belgian national who was born in 1959 and lives in Genappe (Belgium). He is the publisher of *Le Soir*, one of Belgium's leading French-language newspapers.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In a 1994 print edition, an article in *Le Soir* reported on a car accident that had caused the death of two people and injured three others. The article mentioned the full name of the driver, who was convicted in 2000. He served his sentence and was rehabilitated in 2006.

In 2008 the newspaper created an electronic version of its archives from 1989 onwards (including the above-mentioned article), which became freely available on its website. In 2010 the driver applied to *Le Soir*, requesting that the article be removed from the newspaper's electronic archives or at least anonymised. The request mentioned his profession and the fact that the article appeared among the hits when his name was entered in several search engines.

In 2011 the newspaper's legal department refused to remove the article from its archives, but indicated that it had given notice to the administrator of the search engine Google to dereference the article. Before the domestic courts, Mr Hurbain argued that those steps remained pending.

In 2012 the driver sued Mr Hurbain to obtain the anonymisation of the press article about him. In 2013 the court of first instance granted most of the driver's claims. In 2014 the Court of Appeal upheld this judgment. Mr Hurbain then appealed on points of law, but his appeal was dismissed in 2016.

Complaints, procedure and composition of the Court

Relying on Article 10, Mr Hurbain complained that he had been ordered to anonymise the archived version of an article on his newspaper's website.

The application was lodged with the European Court of Human Rights on 26 September 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Georgios A. Serghides (Cyprus), *President*,
Paul Lemmens (Belgium),
Georges Ravarani (Luxembourg),
María Elósegui (Spain),
Darian Pavli (Albania),
Anja Seibert-Fohr (Germany),
Peeter Roosma (Estonia),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\)](#)

The Court observed that the civil judgment against Mr Hurbain ordering him to anonymise the disputed article constituted an "interference" with his rights under Article 10 of the Convention.

It further noted that the interference was "prescribed by law". Belgian law recognised a right to be forgotten as an integral part of the right to respect for private life (Article 8 of the Convention, Article 17 of the International Covenant on Civil and Political Rights and Article 22 of the Belgian Constitution, these being the main provisions relied upon by the Court of Appeal in recognising the driver's right to be forgotten). In addition, Article 1382 of the Civil Code served as a basis for civil actions for alleged abuses of the freedom of the press.

In addition, the interference pursued a legitimate aim within the meaning of Article 10 of the Convention, namely the protection of the reputation and rights of others (in this case, the right to respect for the private life of the driver concerned).

As to whether the interference had been necessary, the Court made the following points, among others.

The Court of Appeal had rightly observed that the online article was of no value in terms of newsworthiness; 20 years after the events, the identity of a person who was not a public figure did not enhance the public interest of the disputed article, which merely contributed to a general debate on road safety at a statistical level.

With the passage of time, a convicted offender might have an interest in no longer being confronted with his or her offence, to ensure reintegration into society. As the Court of Appeal had stated, the electronic archiving of an article about the offence must not create a kind of “virtual criminal record” for the person concerned. This was particularly true where, as in the present case, the individual had served his or her sentence and had been rehabilitated.

The Court of Appeal had pointed out that the driver did not hold any public office. He was a private person unknown to the general public at the time of his request for anonymisation. The facts for which he was convicted had not been the subject of any media coverage, except for the article in question, and the case had not received any media attention either at the time of the accident or when the archived version was posted on the Internet. Furthermore, the driver had not at any time contacted the media to publicise his situation, neither when the article had been published in 1994 nor when it had been posted online in 2008. On the contrary, he had made every effort to stay out of the media spotlight.

Online communications and their content were far more likely than print publications to interfere with the exercise and enjoyment of fundamental rights and freedoms, in particular the right to respect for private life. Thus, the reproduction of material from the print media and of material from the Internet could be governed by different rules. The same applied to the difference between paper archives and digital archives. The scope of the latter was indeed much greater and the consequences for the private life of the named persons all the more serious, causing harm that was further amplified by search engines.

The Court took into account the fact that consulting archives required an active search by entering keywords on the newspaper’s archive site. Owing to its location on the website, the disputed article was not likely to attract the attention of Internet users unless they were specifically looking for information about the driver. The Court did not call into question the purpose of giving access to the disputed article, which had not been to propagate information about the driver afresh. It noted, however, that at the time of the driver’s request and throughout the domestic proceedings, the archives of the newspaper *Le Soir* had been available to all free of charge.

As regards the repercussions of the publication, the Court of Appeal had noted that a search on the newspaper’s website or on Google, just by entering the individual’s first name and surname, immediately brought up the article in question. That court had taken the view that to keep the article online could cause indefinite and serious harm to the driver’s reputation. As already pointed out, it had given him a “virtual criminal record”, whereas he had not only served his sentence after a final conviction but had also been rehabilitated. The Court took the view that the assessment of the Court of Appeal on this point had not been arbitrary or manifestly unreasonable. With the passage of time, a person should have the opportunity to rebuild his or her life without being confronted with errors of the past by members of the public. Online searches for people by name had become common practice in contemporary society and such searches usually had nothing to do with any criminal proceedings or convictions against the person concerned.

As to the seriousness of the measure imposed on the applicant, the Court of Appeal had found that the most effective way to ensure respect for the driver’s private life, without disproportionately affecting Mr Hurbain’s freedom of expression, would be to anonymise the article on the newspaper’s website by replacing the individual’s full name with the letter X.

The Court attached weight to the fact that the nature of the measure imposed had ensured the integrity of the original article, because only the online version would have to be anonymised. Mr Hurbain had been authorised to retain the original print and electronic archives. In other words anyone interested in the original article could still request access to it, even in electronic form. Thus the article itself had not been affected by the measure but merely its accessibility on the newspaper's website.

The Court thus found that the domestic courts had been entitled to conclude that the requirement of proportionality of the interference with Mr Hurbain's right to freedom of expression had been met. The courts had weighed up the driver's right to respect for his private life, on the one hand, and Mr Hurbain's freedom of expression, on the other, in accordance with the criteria laid down in the Court's case-law. In particular, the Court of Appeal had considered the harm sustained by the driver on account of the article being online, having regard to the passage of time (about 20 years) since its original publication and to the fact that its anonymisation on the website of *Le Soir* would not affect the text of the original article and would be the most effective and proportionate measure, among the various possible options.

The reasons given by the domestic courts had thus been relevant and sufficient, and the measure imposed on Mr Hurbain could be regarded as proportionate to the legitimate aim pursued and as striking a fair balance between the competing rights at stake. **There had therefore been no violation of Article 10 in the present case.**

The Court explained that the conclusion it had reached in the present case could not be interpreted as entailing any obligation for the media to check their archives on a systematic and permanent basis. Without prejudice to their duty to respect private life at the time of the initial publication, when it came to the archiving of articles they would not be required to make such verification, and therefore to weigh up the various rights at stake, unless they received an express request to that effect.

Separate opinion

Judge Pavli expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.