



Information society service providers may be held civilly liable for circulating defamatory information

Judgment of the European Court of Justice of 11 September 2014, in case C-291/13

Background

The judgment under analysis was issued as a result of a request for a preliminary ruling referred by the Court of Cyprus. The questions arose within the framework of national proceedings against the chief editor of a newspaper, as well as against one of its journalists, from whom the plaintiff sought reparation for the damage caused by the publication in the newspaper of two articles that allegedly constituted acts of defamation.

The plaintiff also sought reparation from a press-editing society, which hosted the digital version of the newspaper on its website, through which said articles had also been circulated. The Cypriot court understood that this last claim depended on the correct interpretation of Directive 2000/31/EC regarding certain legal aspects of information society services, and decided to suspend the main proceedings and put forth several questions to the ECJ.

Scope of service providers' liability

The ECJ begins by making it clear that the term "information society services" includes those services offering online information, and for which the service provider is paid a fee.

The Court goes on to clarify that said fee does not need to come from the services' recipient, but, as in this case, can come from other sources, such as the revenues obtained with the advertisements inserted on the service provider's website.

Directive 2000/31/EC, the ruling continues, does not oppose against the application of a civil liability regime for defamation to the providers of said services, at least when they reside in the Member State where the matter is under litigation. Regarding the scope of their liability, the Court points out that the Directive exempts those service providers that carry out mere transmission or temporal hosting activities of the information for their subsequent dissemination to third parties. Thus, for the exemption of liability as established by the Directive to apply, it must be ascertained whether the role played by the service provider was merely technical, automatic and passive, so that it had no knowledge of, or control over, the information.

On the basis on these ideas, the European Court of Justice points out that the press editing society can hardly expect to be exempted by claiming that it was unaware of the contents of said information, when, in fact, its website hosted the digital version of the newspaper.

Consequently, the Court concludes that said press editing society cannot benefit from the exemption of liability as established in the Directive.