THE MEANING OF BUSINESS REPUTATION AND THE WAYS OF ITS PROTECTION IN THE EU COUNTRIES

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Abstract: The article deals with studying standards, methods, and approaches to reputation protection in state courts of European countries and the European Court of Human Rights. The purpose of the article is to give a practical example of various ways and approaches to protecting business reputation in the European Court of Human Rights. Topic relevance is formed by the functional problem of creating the state, companies, public persons, and population's value in the society's eyes. Business reputation violation leads to violation of life foundations and social status lowering. During the study, general scientific methods of knowledge were used and systemic, historical, logical, formal-legal, structural-legal, comparative-legal approaches. The study's novelty lies in the systematization of methods and techniques of business reputation protection in European practice. The peculiarities of the material and non-material damage protection and decision-making on protecting business reputation in the courts are shown. The practical value of the study lies in the formation of generalized techniques of preparing court cases to protect business reputation in European state courts.

Keywords: defamation, business reputation, European Court of Human Rights, moral damage.

1 Introduction

Today, business reputation is an essential intangible asset, which allows its owner to engage in a normal lifestyle, make money, and conduct their activities. The issue of business reputation is relevant both for states and individuals. In practice, the business reputation of public persons is often in need of protection since they are the constant object of general observation. Therefore, disclosing personal and non-personal life facts can destroy their social status. In the business environment, companies planning to cooperate with financial institutions or stand on the way to conclude contracts with partners need business reputation protection because a bad reputation can paralyze the company's work. Business reputation also affects the organizational business processes, particularly the ability to assemble a highly skilled workforce. Under the conditions of digital transformation and uncontrolled information flows on the Internet, the protection issues of business reputation are raised more and more often in the European courts. The ways to protect business reputation can be different, depending on the objectives of the victim. At the same time, according to the court decision, persons who cause damage to business reputation may have both administrative and criminal liability.

Different countries have their approaches, standards, and solutions. Still, the European Court of Human Rights practice is the most generalized, and it forms the regulatory and legal standards and approaches to solving the problem. That is why we consider it necessary to highlight the critical aspects of business reputation judicial protection in EU countries, which are decisive in considering such cases. Therefore, this study shows the case law, which considers shaping the approaches, standards, and ways of protecting business reputation in EU countries.

The study aims to illustrate different ways and approaches to protecting business reputation in the European Court of Human Rights on a practical example.

The research should perform the following tasks to achieve the objective:

- show the basic standards of law applied in defamation proceedings;
- identify the norms of responsibility for damage to business reputation;
- to show the practice of compensation for material and non-material damage;
- show the peculiarities and procedure of defamation cases at the European Court of Human Rights;
- conduct a critical analysis of scientific approaches to the study of the problem.

2 Literature Review

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Mills, 2015), taken into account in decision-making in all EU countries, can now be applied as legal aid in dealing with defamation. Since each dispute is different, decisions of past cases are not copied in current processes. At the same time, the generalization of this Court's various findings in similar legal proceedings helps to build standard guidelines, attitudes, and principles that can be used in professional practice by lawyers and members of the media (Pereplesnina, 2013). With its wealth of practical experience in analyzing legal situations, the European Court of Justice tends to adhere to its past decisions. At the same time, each country has its courts, which have the right to independently consider the situation based on the current circumstances, but consider the European Court of Human Rights standards.

In general, in resolving disputes concerning the protection of the honor, dignity, and business reputation of a public person and the right to freedom of journalism, several conclusions of the European Court are taken into account, which has formed a set of standards.

1. Breadth of views. The case law of the European Court shows that meaningful disseminated information may be harmless, benign or offensive, shocking and disturbing. These requirements of pluralism, tolerance, and broadmindedness, without which a democratic society is impossible, have been shown in Handyside v. the United Kingdom (ECHR, 1976); Jersild v. Denmark (ECHR, 1994).
2. The press can cover all kinds of information. The press performs an essential function in a democratic society. It must not overstep certain limits related to the information's confidentiality. But at the same time, it should highlight issues of general interest and be responsible for all kinds of publication, as shown in De Haes and Gijsels v. Belgium (ECHR,1997) and Bladet Tromsd and Stensaas v. Norway (ECHR,1993).
3. The public also has the right to disseminate information. It is not only the task of the press to share such information and opinions. The public has a right to receive such information and publish it, as shown in Thorgeir Thorgeirson v. Iceland (ECHR,1992).
4. Provocation and exaggeration are standards of journalism. Journalistic freedom extends to the possible use of a degree of exaggeration or even provocation. However, this freedom contains several exceptions set out in Article 10 of the Convention, subject to strict interpretation, as illustrated in Prager and Oberschlick v. Austria (ECHR, 1995).
5. The information disseminated must be verified. Article 10 of the Convention protects the journalists' right to publicize issues of general interest. They act in good faith and on an accurate factual basis, providing reliable and accurate

information under the ethics of journalism. Under Article 10(2) of the Convention, expression freedom links to duties and responsibilities, which also apply to the media concerning matters of general severe interest. Moreover, these duties and responsibilities' significance increases in cases of attack on the reputation of a particular people and a violation of others' rights. Thus, special reasons are required to relieve the media from its standard obligation to verify allegations of facts that diminish the reputation of private individuals. The availability of such reasons depends on the nature and extent of the defamation and on the extent to which the media outlet can reasonably regard its sources as reliable. Examples of such situations were Lindon, Otchakovsky-Laurens, July v. France (ECHR,2007), and Pedersen and Baadsgaard v. Denmark (ECHR, 2003).

6. Public Servants – Object of Observation. Although we cannot keep constant that public servants knowingly place themselves in a position that permits scrutiny of their every word and deed on an equal footing with politicians, public servants in office, like politicians, are subject to a wider margin of appreciation than private individuals, as shown in Thoma v. Luxembourg (ECHR, 1997).
7. Right to privacy. The European Court considers that a restriction on information publication in the public domain may be justified under certain circumstances. For example, to prevent further general discussion of the details of a person's private life when such discussion is not part of a political or public debate about a matter of public interest. The European Court reminds in this connection that in cases concerning publications concerning details of a person's private life for the sole purpose of satisfying the curiosity of individual readers, a person's right to adequate protection of their personal life takes precedence over journalistic freedom of expression, as shown in Von Hannover v. Germany (ECHR, 2000).
8. The European Court recalls that it is unacceptable to attack a public official concerning matters concerning members of their family (De Haes and Gijsels v. Belgium, 1997).
9. The European Court notes that in the case of civil servants acting in an official capacity, as in the case of politicians, although not to the same extent, the scope of acceptable criticism is broader than in the case of private individuals (Janowski v. Poland, 1994).

In general, European practice has collected a sufficiently large number of standards in the business reputation protection of public officials and public figures. When it comes to companies, in general, a legal entity has the same responsibility to society as a public official, so when protecting the companies' rights, one can also rely on these precedents. At the same time, the issues of solution methods and approaches are pretty debatable. Therefore, it will form the field for research.

3 Materials and Methods

The complex of general scientific and particular scientific methods of cognition was used to achieve the goal and solve the above tasks. General scientific, philosophical methods include analysis (systemic, historical, grammatical, formal-logical, etc.), synthesis, induction, deduction, etc. Among the applied scientific methods of cognition, legal modeling, comparative-legal, structural-functional, and formal-legal analysis should be noted. Domestic and foreign authors' similar studies were studied to write the work. The information was systematized in the course of the study. It allowed determining the problem's general and individual approaches to the study of this topic.

4 Results

As noted in the legal literature, for the legislation of EU member states, it is standard practice that persons who cause damage to business reputation may be criminally or administratively liable. It is the situation in the legislation of most European states, except Ireland, Norway, Romania, Montenegro, and Macedonia (Pereplesnina, 2013). In most countries, the abuse of freedom of speech is qualified as a crime, although quite often of a minor degree of severity. An exception is the Federal Republic of Germany (Germany), where slander and insult in media materials are punishable by up to five years in prison (Art. 188, Chapter 14 of the Criminal Code of Germany) (McGonagle, 2016).

Foreign legislation on protecting the business reputation of business entities allows different ways to protect a person in court. For example, Article 2 of the Defamation Act of 1952 of Great Britain indicates that the only way to protect business reputation is a Defamation Action (Defamation Act, 1952). The Defamation Act 1996 significantly expanded the protection methods for business reputation (Article 9). In addition to a claim for defamation, the following claims are possible:

- correction or apology;
- a certain amount of compensation for damages;
- prohibition to disseminate information (Defamation Act, 1996).

Let us examine in more detail the precedents of the ways to protect business reputation in the practice of the European Court. To begin with, the satisfaction of the demands is possible only if the victim of defamation proves that the information disseminated is defamatory and applies to them. If the disseminator of information believed that he acted in good faith and did not intend to cause harm to anyone, he would be exempt from civil and legal liability. The law also shows that if the information is not entirely but partially defamatory, the disseminator of the information may be justified. The law also provides for a standard of damages.

Amendment or Apology. To date, many defamation cases involve the satisfaction of financial compensation and are purely formal, which is particularly important for public persons. European courts decide based on developed approaches to resolve the issue, discussed below. As a court decision appears, the disseminator's obligation of information is to make a public apology. The problem becomes more debatable when the victim of damage to business reputation demands material compensation.

Compensation of damages in a certain amount. According to Article 2, reparation is made based on an offer the disseminator sends to the post-distributor based on prior negotiations. Therefore, the amount of compensation must be discussed orally and in writing. After signing such an agreement, the lawsuit will be terminated, and the plaintiff has no right to assert a new claim to protect his rights under the same circumstances.

Intangible Damages to Legal Entities. Wilcox (2016) writes that taking into account the enforcement positions of such states as Austria, Great Britain, Spain, the Netherlands, Poland, Portugal, France, Switzerland, one cannot deny the possibility of compensation for non-material damage to legal entities. Indeed, speaking of compensation for damages, at common law, researchers note that the legislation of Great Britain under the settlement of harm caused to a legal entity as a result of the dissemination of defamatory information about it understands only the coverage of economic damage (Krug, 2005). Neither the legislator nor German court practice provides for the possibility of compensation for the damage to a legal person's reputation. As for compensation for non-material harm, as legal scholars point out, the courts prefer to compensate only material harm in England, but not non-material claims (Ali & Dmitrenko, 2016). At the same time, a claim for non-material harm may be satisfied when the amount of damages is difficult to prove. In the court's opinion, the decision to deny any monetary compensation is unfair (Dupont, 2014).

European Court of Human Rights supports the right to compensation for non-material harm by business entities. Fundamental on this issue is the ruling in the case of Comingersoll S.A. v. Portugal (2000), which states that the possibility of compensation for non-pecuniary damage should be available to individuals and companies. Subsequently, the ECtHR began to award companies compensation for non-pecuniary damage, for example, in the case of Meltex Ltd. and Mesrop Movsesyan v. Armenia (2008) and the possibility of Dacia S.R.L. v. Moldova (2009).

The practice of compensation for pecuniary damage. In 2013 the Defamation Act was adopted in Great Britain, which applies when the violation of business reputation occurred after January 1, 2014 (Defamation Act, 2013). Article 1 introduces the concept of serious harm to protect the rights of business people, which means that the claim can be satisfied if the dissemination of defamatory information has caused or may cause severe financial losses in the future. This issue is resolved in a preliminary hearing. However, the law does not specify what evidence of such harm is accepted by the court.

It should be noted that foreign practice concerning compensation for pecuniary damage is also ambiguous. For example, an analysis of German law suggests an approach to compensation for damages to legal entities in this country. For instance, in one situation involving a pharmaceutical company, a claim for compensation for non-pecuniary damages was filed (Bergmann, 2008). As the court pointed out, the occurrence of damages can only be based on empirical indicators, if any, i.e., the protection of the economic interests of the legal person is done by claiming compensation for material damages in court. The possibility of a decrease in turnover in the future is also not a basis for compensation. The court also points out that it is necessary to consider the difference between a legal entity and an individual since the former do not have a personality; respectively, it can not be injured in any way.

The prohibition of information dissemination is another way to deal with the issue, which is especially relevant for Internet resources that, once published information on the site, leave it in public view for the entire site's life. The Defamation Law of 2013 introduced a procedure for resolving disputes about the protection of business reputation when information is posted on the Internet. In this situation, the person concerned may file a complaint with the site administration. Only after the expiry of the deadline for consideration of the complaint may it appeal to the court with a lawsuit (Article 5, Paragraph 5). If the court decision is favorable, the site undertakes to remove the information from the publication.

Approaches to resolving defamation cases. The European Court of Human Rights, in dealing with defamation cases, essentially tests the balance between the right under Article 8 ("right to respect for private and family life") and the right under Article 10 ("freedom of expression") of the Convention for the Protection of Human Rights and Fundamental Freedoms. In the context of the correlation of these rights, the European Court has issued several judgments to justify the possibilities and grounds for their restriction. In such cases, two key circumstances must be taken into account:

1. the degree of public interest in the information disseminated;
2. the degree of publicity of the person against whom the information has been disseminated. The person's prior conduct, the manner and circumstances in which the information was obtained, its accuracy, the form, and the publication consequences should also be considered.

The public interest. A significant public interest, according to the Court, exists when the information has a direct effect on the public to a considerable extent and the public has a legitimate interest in this information (e.g., para. 66 of Sunday Times v. United Kingdom (ECHR, 1979)), especially if it concerns the public welfare (para. 58 of Barthold v. Germany (ECHR, 1985)). In addition, many cases note that information about officials' misconduct, including corrupt acts, is of public interest, and therefore prosecuting for disseminating such information violates Article 10 of the Convention (para. 43 of Nadtoka v. Russia (ECHR, 2019), para. 62, para. 71 of Morar v. Romania (ECHR, 2016), para. 68 of Axel Springer AG vs. Germany (ECHR, 2005), para. 52 of Ojala And Etukeno Oy v Finland (ECHR, 2014)).

Numerous ECHR jurisprudence is based on the view that states have a limited scope of discretion where disseminated information concerns a topic of public interest (e.g., para. 44 of Plon v. France (ECHR, 2014)). That is, the cases in which a departure from the Court's practice in such cases may be justified under domestic law are minimal compared to cases concerning the protection of honor and dignity and the refutation of untrue information that is not of significant public interest.

Consequently, if the information of significant public interest is disseminated about an individual, the ECtHR considers the restriction of such person's rights to respect for private and family life (Article 8 of the Convention) justified, and the balance of ownership in such cases shifts towards freedom of expression (Article 10). The courts must regard this information as a value judgment, as the ECHR pointed out in paragraph 43 of the judgment in Ghiulfer Predescu v. Romania (ECHR, 2018). Therefore, if it is a topic of public interest, statements should be considered a value judgment rather than a factual statement.

The degree of personal publicity. The degree of publicity of a person is also directly relevant: the higher the position a person holds, the more his right to private and family life can be limited by publishing relevant information about him (para. 52 of Ojala And Etukeno Oy v. Finland (ECHR, 2014), para. 119 of Hachette Filipacchi Associés v. France (ECHR, 2015)).

In particular, a telling case in this regard is Axel Springer AG vs. Germany No. 2 (ECHR,2005), which concerned information disseminated about former German Federal Chancellor Gerhard Schroeder and his possible ties to Russia. The European Court of Human Rights noted that Schroeder, who held one of the highest positions in Germany, should have been more open to the press than private individuals. Under such circumstances, the ECHR concluded that the German courts had failed to provide sufficient grounds for the necessity of restricting the freedom of speech and found a violation of Article 10 of the Convention.

A textbook case in this respect is Lingens v. Austria (1986), which is cited in nearly every decision of a national court on matters of reputation. Political journalist Peter Lingens was accused of defamation for stating that Austrian Federal Chancellor B. Krajski collaborated with the Nazis in his publications. Having found the violation of Article 10 of the Convention, in point 42 of the judgment, the Court defined how the person' status as a political figure influences the possibility to protect his reputation, stating that the requirements to protect one's reputation should be considered taking into account the personality status and in connection with the interest of discussing political issues. The ECHR's position is that the more prominent a person is and the more power they have, the more their right to privacy can be restricted in favor of freedom of speech. Simply put, the higher the rank of an official, the less opportunity he has to refute information about himself in Court, especially if such information is disseminated by journalists who perform their function of drawing public attention to important topics.

However, all is not so hopeless for public figures willing to defend their rights in Court. Of course, freedom of expression is not absolute. In particular, the Court notes that Article 10 of the Convention provides guarantees for disseminating information on matters of public interest, provided that such dissemination is

in good faith. The information is accurate and reliable under the requirements of journalistic ethics (para 45 of the judgment in Ojala And Etukeno Oy v Finland (ECHR, 2014) para. 65 of Bladet Tromso and Stensaas v. Norway (ECHR, 1999). Under certain circumstances, even if a person has a significant degree of public popularity, they may invoke a "legitimate expectation" of protecting their private life (para. 97 of Von Hannover v. Germany (ECHR, 2004).

Significant in this context is the case of Mihaiu v. Romania (ECHR, 2008), where the ECHR pointed out that in cases where the disseminated information indicates the name of a person, their position, and the charge of a particular crime, the disseminator should provide sufficient factual substantiation of their statements. Otherwise, they cannot justify their behavior with the degree of exaggeration that is admissible in exercising freedom of speech. In this case, there was no evidence to support the applicant's dissemination, so the Court concluded that there had been no violation of Article 10 of the Convention, guaranteeing the applicant's freedom of expression.

The criteria mentioned above developed by the European Court of Human Rights in defamation cases are a coordinate system for European courts in this category of cases. Therefore, to neglect these legal positions of the ECHR or to pay insufficient attention to them when preparing relevant claims is highly short-sighted to both sides of the dispute (Gromovy, 2020).

5 Discussion

Even though today there are quite a few scientific works and precedents in judicial practice on defamation, there remain many problems that do not have sufficient regulation and coverage in the scientific literature. In particular, Skoropysova (2021) believes that there are no rules of law that measure moral suffering in monetary terms today. It raises several issues which require specific attention from lawyers. First, it concerns a more evident clarification of moral damages, which is perceived differently by different courts. Therefore, it is impossible to predict the outcome of the case. Also, there are no criteria that allow for an objective assessment of the number of moral damages on this issue. Also, insufficiently regulated to date is the case of solving the problem of defamation via the Internet. In particular, while it is possible to control the actions of websites activities, such activities remain unregulated in social networks.

Kravchenko (2020) conducted similar studies to ours, which provided a classification of ways to protect business reputation. To these, the author includes general means of protection, including compensation for damages and stopping wrongdoing. Unique forms of protection are written refutation of information. The author emphasizes that it is essential for Ukraine because published information in the media about the nasty business reputation of companies can provoke a decrease in its business activity.

Rubtsova (2020), in her study, shows the problem of interpreting information that is seen as damaging the business reputation of a person or a company. Since there are no standards for interpreting information, controversial issues cannot be resolved without a court of law.

Lapshin (2017) also considers the issue of protecting business reputation in Russia in the context of safeguarding corporate rights. The author identifies several essential protection methods, which in Russian jurisprudence use more often. It refers to the refutation of information about bad business reputation, as such publications create financial difficulties for companies that cooperate with the financial sector. A similar study was conducted by Yaroshevskaya & Murtazaeva (2021). They denote that business reputation is formed not only based on the evaluation of the company's performance but also under the influence of other factors, including the activity of media companies on the Internet.

6 Conclusions

Business reputation is essential for public individuals or government officials, legal companies, the public, and the state. Damage to business reputation today can lower the social status of individuals, and legal entities can reduce their business activity level.

Protecting business reputation in the EU countries is based on the case law. The principal judicial body that allows solving this nature's issue is the European Court of Human Rights, which is based on the Convention for the Protection of Human Rights and Fundamental Freedoms, which is taken into account in resolving disputes in all courts of the EU.

The European Court of Human Rights has elaborated several provisions based on past litigation related to the protection of human rights. The basis of these decisions is freedom of speech and the security of personal information. The court's main task is to find a balance between these values in society.

The main ways to protect business reputation in the EU countries are rejection, modification, apology – as a form of refutation. The second most popular solution is compensation for material or non-material damage. An analysis of judicial practice shows that it is pretty difficult for legal companies to prove material losses based on non-material actions. At the same time, if the loss issue is empirically proven, it is possible to obtain pecuniary compensation. In this case, future losses are not taken into account. The third way is the information extraction from the publication, which has become especially relevant in the period of digitalization and the work of the mass media on the Internet.

The practical value of the research is formed for practicing lawyers and attorneys who work on protecting business reputation. A further field of study will include the issue of legal approaches to the assessment of moral damages.

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