

Court of Appeals

Judgment Wednesday, December 20, 2023.

Case No. 812/2023:

Anti Defamation-League

(Sigurður Kári Kristjánsson, attorney)

Vs.

1984 ehf.

(Ólafur Örn Svansson, attorney)

Court of Appeals Decision

The Court of Appeals judges Eiríkur Jónsson and Jóhannes Sigurðsson and Kjartan Bjarni Björgvinsson, appointed Court of Appeals judge, pronounce the decision in this case.

Case Procedure and Parties' Claims

1. The plaintiff appealed the case to the Court of Appeals with a complaint on November 22, 2023. The defendant's statement was received by the court on December 13, 2023. The appeal is against the decision of the District Court of Reykjavik on November 8, 2023, in case no. K-3162/2023, where the plaintiff's request for an injunction against certain actions of the defendant was denied. The right of appeal is under paragraph 1 of Article 35 of Law no. 31/1990 on attachment, injunctions, etc., as per paragraph 4 of Article 91 of Law no. 90/1989 on enforcement.

2. The plaintiff requests that the decision of the magistrate in the capital area on May 3, 2023, to refuse an injunction against the actions of the defendant be overturned. The plaintiff seeks an order for the magistrate to impose an injunction on “the defendant's hosting of the website <https://mapliberation.org>, whether or not ‘www.’ precedes the website name, as well as the data, content, and information published on the website,” and against the defendant providing access to the website and “distributing the data, content, and information published on it.” The plaintiff also seeks legal costs in the district court and costs of the appeal.

3. The defendant requests confirmation of the appealed decision and costs of the appeal.

Conclusion

4. In the plaintiff's application dated April 26, 2023, to the magistrate in the capital area for the injunction in question, it is stated that the plaintiff is a free and non-profit organization with the objective of combating defamation against Jews and ensuring fair treatment for all. The plaintiff's declared policy is to fight against anti-Semitism and all forms of racial hatred and hate speech wherever it occurs. The organization operates offices in 25 locations in the United States, where representatives respond to anti-Semitism and hate speech, advocate their policies to elected representatives, and offer education in schools and workplaces in accordance with this purpose.

5. The plaintiff's injunction request is based on the content of the website in question, which allegedly bears obvious signs of hate speech and anti-Semitism. The hate speech in question is directed against individuals, companies, and institutions associated with the Jewish community in Boston, USA, and its vicinity. The website's homepage also blatantly encourages actions against institutions, companies, and individuals claimed by the website's

administrators to be connected with the Jewish community in Boston and its vicinity, in such a way that they be "dismantled" or their activities be "disrupted" or "disturbed."

6. Additionally, the plaintiff points out that they are among the entities mentioned on the website and targeted by its content. All 25 board members of the plaintiff's national organization are listed on the website, along with dozens of individuals working for the plaintiff. The website also contains false and untrue discussions about the plaintiff's activities, including claims that they engage in espionage against certain activists. The purpose of this coverage is to foster hatred and malice towards the plaintiff and encourage the site's readers to take action and even violence against them, the individuals associated with or working for the plaintiff, or against the Jewish community in Boston and its vicinity and the individuals, institutions, and companies named on the website and connected in the manner seen there.

7. The facts of the case and the parties' arguments are otherwise described in the appealed decision.

8. According to paragraph 1 of Article 24 of Law no. 31/1990, an injunction can be imposed on an ongoing or imminent action of an individual or a representative of a company or institution if the applicant proves or makes it probable that the action violates or will violate their legally protected rights, that the defendant has already started or will start the action, and that the applicant's rights will be irreparably harmed or significantly damaged if they are forced to wait for a court decision on the matter. This provision implies that the applicant bears the burden of demonstrating that the positive conditions for an injunction as stated are met.

9. Both parties refer to the human rights provisions of the constitution to support their claims, somewhat considering the interests of others than themselves in whether the injunction is imposed or rejected. The plaintiff refers to Article 71 of the constitution, including the privacy interests of individuals associated with them, and the defendant to Article 73 of the constitution, particularly the freedom of expression of those associated with the website.

10. It is reasonable for both parties to base their arguments on such grounds. It should be kept in mind that too narrow a definition of the interests considered when resolving issues of privacy and freedom of expression may diminish the effective and practical protection of such rights in court. Moreover, judicial precedent has shown that the constitutionally protected rights of others than the parties themselves have been considered in this context, see for example the Supreme Court's decision on May 3, 2002, in case no. 177/2002, published in the court's collection that year on page 1639, and the Supreme Court's decision on March 22, 2019, in case no. 29/2018.

11. The plaintiff's claim in this case involves imposing an injunction against the defendant's hosting of the website <https://mapliberation.org>, whether or not 'www.' precedes the website name, as well as the data, content, and information published on the website. It is also demanded that an injunction be imposed against the defendant providing access to the website and distributing the data, content, and information published on it.

12. There is no dispute in the case that the defendant hosts the aforementioned site and that it is published at the specified URL. Considering this, it must be assumed that the condition in paragraph 1 of Article 24 of Law no. 31/1990 is met, that the action the plaintiff

has sought an injunction against has both started and is imminent.

13. Article 73 of the constitution, in conjunction with Article 10 of the European Convention on Human Rights, provides extensive protection of freedom of expression, and the constitutional provision has been interpreted to include the right of individuals to disseminate information in all forms of expression. This freedom thus extends to both printed and spoken language, as well as expression that may be involved in other types of activities, see, for example, the aforementioned Supreme Court decision in case no. 29/2018 for comparison. In the jurisprudence of the European Court of Human Rights, it has also been established that the dissemination and storage of information on websites enjoy the protection of Article 10 of the Convention, as restrictions on such activities necessarily involve interference with freedom of expression, see, for example, the European Court of Human Rights decision on November 16, 2020, in case no. 10795/14 *Kharitonov vs. Russia* for comparison.

14. According to the foregoing, if the plaintiff's request were granted, it would imply a limitation on the freedom of expression as understood in Article 73 of the constitution and Article 10 of the European Convention on Human Rights. According to paragraph 3 of Article 73 of the constitution, in conjunction with paragraph 2 of Article 10 of the Convention, such a right can only be restricted if the conditions stated therein are met, meaning that restrictions must be legally justified and aim at a legitimate objective. Moreover, they must be necessary and not exceed what is essential in a democratic society.

15. Although it is accepted that freedom of expression can be restricted in this way, such limitations must not amount to censorship or other similar impediments to freedom of expression, as per the latter part of paragraph 2 of Article 73 of the constitution. The aforementioned provision does not prevent the use of injunctions to hinder expression under certain circumstances, as exemplified in the Supreme Court's decision on June 1, 2006, in case no. 541/2005, published in the court's collection that year on page 2759. However, the European Court of Human Rights' jurisprudence has established that increased justification is required for such interventions, as well as clarity and predictability in their legal basis. An injunction represents a more substantial interference than subsequent restrictions on freedom of expression, and thus higher standards of necessity must be demonstrated for such intervention.

16. The plaintiff primarily argues that their request for an injunction against the defendant's actions is based on section 233a of the General Penal Code no. 19/1940 regarding hate speech, which falls outside the protective scope of Article 73 of the constitution and Article 10 of the European Convention on Human Rights. The plaintiff contends that the content of the website targeted by their claims bears all the hallmarks of hate speech, as it is no coincidence that its content, the mapping it presents, and the call to action by its administrators are exclusively directed against Jews and legal entities associated with the Jewish community in Boston and its vicinity.

17. Based on the information about the website's content provided by the plaintiff, it presents varied criticism of the plaintiff's activities. This criticism mainly argues that the plaintiff should not be equated with traditional rights organizations but that their activities are largely political in nature. According to the criticism, the plaintiff's interests align predominantly with the authorities in the United States and Israel, often at the expense of oppressed social groups, particularly concerning the Israel-Palestine conflict. The website

alleges that the plaintiff uses various means to achieve its goals, including espionage against activists and leveraging its influence in politics and business. The plaintiff is accused of targeting activists of Palestinian and Arab origin, as well as those showing solidarity with the Palestinian freedom struggle. The criticism also claims that the plaintiff itself promotes racial discrimination through its policies and that it would be appropriate to dissolve the plaintiff just like other organizations that support oppression and subjugation.

18. With section 233a of the General Penal Code, the Parliament has imposed restrictions on freedom of expression by prescribing punishment for mocking, defaming, or threatening an individual or a group of people, including on the basis of national origin or religion. Although the term 'hate speech' is not explicitly mentioned in the provision, it has been interpreted in jurisprudence as encompassing the mockery, defamation, humiliation, or threat punishable under the law, serving as a measure of the severity of the expression required. Therefore, the expression must demonstrate such hostility, animosity, contempt, or condemnation that it can be considered hate speech directed at the target, as per the Supreme Court's decision on December 14, 2017, in case no. 354/2017.

19. When evaluating whether the expression on the website hosted by the defendant falls under the provision of section 233a, it is essential to consider that this provision simultaneously allows for the restriction of freedom of expression and designates certain behavior as punishable under paragraph 1 of Article 69 of the constitution. This necessitates caution in the interpretation of the provision to ensure that its application is predictable, especially when it forms the basis for restricting freedom of expression through an injunction. Generally, the provision should not be applied to halt the publication of statements simply because they are presumed to contain hate speech. Instead, it must be demanded that such hate speech either be directly evident in the content or clearly inferred from the context of the discussion.

20. In this context, it is also imperative not to overlook that the plaintiff's injunction requests are not limited to specific aspects of the content on the website hosted by the defendant. Instead, they broadly target the defendant's hosting of the website and all data, content, and information published there, without further specification. The requests also encompass the injunction against the defendant "providing access to the website and distributing data, content, and information published on it."

21. Therefore, according to the above, the plaintiff's demands extend to all content on the site, regardless of whether it pertains to the plaintiff or other parties, and regardless of the nature of the content. Consequently, the plaintiff's request is exceedingly broad and would constitute a significant infringement on freedom of expression if granted. It should also be noted that while legal entities have been granted certain rights under Article 71 of the constitution, they do not possess a private life like individuals and do not enjoy constitutionally protected rights to personal honor, as per the Court of Appeals decision on February 3, 2023, in case no. 724/2021. Additionally, the plaintiff has not demonstrated in the case that the website contains information about individuals that would justify granting their request based on Article 71 of the constitution.

22. In light of these considerations, and otherwise referring to the reasons of the appealed decision, it is confirmed that the plaintiff has neither demonstrated nor made sufficiently probable that the condition for an injunction according to paragraph 1 of Article 24 of Law no. 31/1990 is met. Specifically, the plaintiff has not shown that the act of the defendant

hosting the website in question, and thereby providing access to it, violates or will violate their legally protected rights.

23. The plaintiff is ordered to pay the defendant's costs for the appeal, as detailed in the judgment.

Judgment:

The appealed decision is affirmed.

The plaintiff, Anti Defamation-League, is ordered to pay the defendant, 1984 ehf., 500,000 Icelandic Krona in costs for the appeal.