

The other side of the story - the right of reply against defamation through internet publications



Introduction

It takes a lifetime to build a good reputation, but a single article to destroy it. As digital platforms have become a significant part of our lives, we use them not just for entertainment purposes, but also to read news, inform ourselves and research various circumstances, and even to form opinions on the relevant topics for our society.

On one hand, online publishers are in great competition for the public's attention, aiming to get as much exposure as possible for their materials. Thus, it is now considered part of the norm to publish online articles with exaggerated titles or content which is unverified, deliberately amplified, or false.

On the other hand, as it is laid down in Article 30 para. (6) of the Romanian Constitution, freedom of expression may not harm honour, dignity, personal life or the right to one's own image.

When faced with such a publication that spreads inaccurate or false information about us or our business, a question arises: can we exercise our right of reply against the online publication spreading misinformation?

This article focuses on the possibility to exercise the right of reply to inaccurate, misleading, or defamatory statements found on online publications.

Right of reply under Romanian Law

Online publications offer significant opportunities for ensuring wide accessibility to information, but also present new challenges for the full security and respect of fundamental human rights, such as honour and reputation.

The right of reply aims to protect any legal or natural person from information presenting inaccurate facts concerning that person and affecting his or her rights.

By offering the opportunity to react in front of the same audience, given that the reply would be published alongside the harmful article, the impact of such a mechanism could be substantial enough to at least partially diminish the damage caused by the publication in question. Notwithstanding, such a right should not by default be assessed as itself threatening press freedoms, since it rather serves as "fact-checking".

Right of reply in Romania was regulated by Law no. 504/2002 on audio-visual ('Audio-visual Law'), when defamatory content mainly took the form of televised or radio programs, leaving it up to the competent body - the

National Audio-visual Council - to draw up the rules for granting this right, as well as the jurisdiction to sanction non-compliance.

However, Audio-visual law did not regulate written press as a form of communication, let alone online publications, such legislative void leaving individuals to be victims of libel.

This void was partly overcome by professional associations in the field of journalism, by developing a set of rules of conduct to guide their work, including guidance in relation to the right of reply.

As these rules of conduct are not legally binding, not granting the right of reply can only have consequences within the professional associations, without any direct impact in the sphere of civil or patrimonial liability. This calls into question the effectiveness of the right of reply provided by the journalistic codes of ethics.

Reputable journalistic publications in the field of written press usually grant the right of reply when requested, yet many other online publications that can reach as much or an even larger public completely ignore such requests.

It is worth mentioning that there is no prescribed format that a right of reply should take. For example, one may offer an interview or request a written statement. Besides, although in Romania such right of reply content is not very common, the publication may be asked to include any evidence and material that is relevant to the allegations.

In the same register, one should know that the reply should normally be reflected in the same content as the allegations (same edition of a series/ same website).

However, if denied the right of reply, the person concerned by the article could bring an action in court to obtain protection, including publication of his/her reply to the defamatory content.

Submitting such a claim may encounter numerous procedural hurdles, as it is not always clear who can be held responsible for the online content and which court has jurisdiction.

Nonetheless, bringing to court a defamation claim has a high risk of media exposure. Therefore, in order to mitigate potential exposure from both reputational and financial point of view, it is important to seek appropriate legal advice, in light of the specific circumstances of each particular case.

In those fortunate cases where procedural difficulties are overcome, when verifying whether the conditions for incurring civil liability are met, most courts take into consideration how the author of the article handled the notification of the existence of inaccurate content in his/her article and whether he allowed a reply from the person concerned by the article.

Therefore, it is noted that granting or not granting the right of reply is not a reason for absolutely presuming the bad faith of publications, yet still plays an important role in the court's assessment of the subjective attitude of the author of the article.

In view of the above, we believe that requesting the publication for such a right of reply, could turn out in many cases as an effective remedy of protecting and defending one's reputation. However, the lack of regulation or clear sanctions leaves the decision to publish the reply to the discretion of the articles' author or, in many cases, to the competent court - when things escalate into the judicial realm.

Comment

The lack of comprehensive and up-to-date regulation of the right of reply to written publications creates major shortcomings in how and to what extent it can be exercised in actual cases.

A clear regulation of this issue, especially when it comes to online publications, might prove to be a useful tool to ensure balance between the right to freedom of expression and information and the protection against disinformation and other forms of harmful content, fostering responsible and diligent action by all digital actors.

In our view, offering a right of reply to those who are the subject of significant criticism or allegations of wrongdoing should be appreciated as justified in the light of the Constitution, hence the main scope of such right must be and remain to reconcile competing social interests and acknowledge each of their values in society.