

Press release issued by the Registrar

CHAMBER JUDGMENT
TIMES NEWSPAPERS LTD (Nos. 1 and 2) v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Times Newspapers Limited (Nos. 1 and 2) v. the United Kingdom* (applications no. 3002/03 and no. 23676/03).

The Court held unanimously that there had been **no violation of Article 10** (freedom of expression) of the European Convention on Human Rights, because the domestic court's finding that the Times Newspapers Ltd had libelled G.L. by the continued publication on its Internet site of two articles had not represented a disproportionate restriction on the newspaper's freedom of expression ([The judgment is available only in English.](#))

1. Principal facts

The applicant, Times Newspapers Ltd, is the owner and publisher of *The Times* newspaper, registered in England. It published two articles, in September and October 1999 respectively, reporting on a massive money-laundering scheme carried out by an alleged Russian mafia boss, G.L., whose name was set out in full in the original article. Both articles were uploaded onto *The Times* website on the same day as they were published in the paper version of the newspaper.

In December 1999, G.L. brought proceedings for libel against the Times Newspapers Ltd, its editor and the two journalists who signed the two articles printed in the newspaper. The defendants did not dispute that the articles were potentially defamatory but contended that the allegations were of such a kind and seriousness that they had a duty to publish the information and the public had a corresponding right to know.

While the first libel action was underway, the articles remained on *The Times* website, where they were accessible to Internet users as part of the newspaper's archive of past issues. In December 2000, G.L. brought a second action for libel in relation to the continuing Internet publication of the articles. Following this the defendants added a notice to both articles in the Internet archive announcing that they were subject to libel litigation and were not to be reproduced or relied on without reference to Times Newspapers Legal Department.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The defendants subsequently argued that only the first publication of an article posted on the Internet should give rise to a cause of action in defamation and not any subsequent downloads by Internet readers. Accordingly, they submitted, the second action had been commenced after the limitation period for bringing libel proceedings had expired. The court disagreed, holding that, in the context of the Internet, the common law rule according to which each publication of a defamatory statement gave rise to a separate cause of action meant that a new cause of action accrued every time the defamatory material was accessed (“the Internet publication rule”).

The defendant appealed, arguing that the application of the common law rule to Internet publications gave rise to ceaseless liability of newspapers and could ultimately have a chilling effect on their readiness to provide Internet archives and thus limit their freedom of expression. The court, dismissing the appeal, stated that the maintenance of archives was a relatively small aspect of the freedom of expression, and that it need not be inhibited by the law of defamation as the publication of a notice warning readers against treating potentially defamatory material as truth would normally remove any sting from the material.

2. Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 28 October 2002 and 28 July 2003 and declared partly inadmissible on 11 October 2005.

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

Lech **Garlicki** (Poland), *President*,
Nicolas **Bratza** (the United Kingdom),
Giovanni **Bonello** (Malta),
Ljiljana **Mijović** (Bosnia and Herzegovina),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro), *judges*,

and also Lawrence **Early**, *Section Registrar*.

3. Summary of the judgment²

Complaint

Relying on Article 10 (freedom of expression) of the Convention, the Times Newspapers Ltd complained that the Internet publication rule breached its freedom of expression by exposing them to ceaseless liability for libel.

Decision of the Court

Article 10

The Court noted that while Internet archives were an important source for education and historical research, the press had a duty to act in accordance with the principles of responsible

² This summary by the Registry does not bind the Court.

journalism, including by ensuring the accuracy of historical information. Further, the Court observed that limitation periods in libel proceedings were intended to ensure that those defending actions were able to defend themselves effectively and that it was, in principle, for contracting States to set appropriate limitation periods.

The Court considered it significant that although libel proceedings had been commenced in respect of the two articles in question in December 1999, no qualification was added to the archived copies of the articles on the Internet until December 2000. The Court noted that the archive was managed by the applicant itself and that the domestic courts had not suggested that the articles be removed from the archive altogether. Accordingly, the Court did not consider that the requirement to publish an appropriate qualification to the Internet version of the articles constituted a disproportionate interference with the right to freedom of expression. There was accordingly no violation of Article 10.

Having regard to this conclusion, the Court did not consider it necessary to consider the broader chilling effect allegedly created by the Internet publication rule. It nonetheless observed that, in the present case, the two libel actions related to the same articles and both had been commenced within 15 months of the initial publication of the articles. The applicant's ability to defend itself effectively was therefore not hindered by the passage of time. Accordingly, the problems linked to ceaseless liability did not arise. However, the Court emphasised that while individuals who are defamed must have a real opportunity to defend their reputations, libel proceedings brought against a newspaper after too long a period might well give rise to a disproportionate interference with the freedom of the press under Article 10 of the Convention.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.