

## OOO Regnum v. Russia: extending reputational rights to legal entities?

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On 8 September 2020, the Third Section of the European Court of Human Rights delivered its judgment in [OOO Regnum v. Russia](#) (application no. 22649/08), a freedom of expression case concerning reputational rights of a legal person. The Court found that OOO Regnum, an electronic news outlet, had suffered a violation of its right to freedom of expression when the domestic courts declared it had published news which amounted to defamation against the claimant company, a private corporation. The judgment adds up to a number of cases where the ECtHR is unclear as to the place of the right to corporate reputation under the European Convention on Human Rights. *OOO Regnum* sheds no light on this question: the Court's reasoning adds to confusion about the matter while leaving the door open for the recognition of reputational rights of legal persons.

### **Facts and judgment**

OOO Regnum, the applicant company, is an electronic news outlet which published on its website three news items informing about the presence of mercury globes in a commercialized juice drink. More specifically, the applicant company informed that a consumer had been hospitalized following consumption of the drink, that an official investigation had been opened, that the prosecutor had opened a criminal case, and that public officials had confirmed these pieces of information. A few months after the publication of the news items, one of the legal entities that produced the drink brought a defamation claim against the applicant company. The lower commercial courts dismissed the claim, but the commercial Court that heard a cassation appeal ruled against the applicant company, finding that the news items contained untruthful statements which had tarnished the claimant's business reputation. OOO Regnum complained before the ECtHR that the Commercial Court's ruling constituted a disproportionate interference with its right to freedom of expression. The case thus concerns the question of whether the domestic Court's judgment constituted a disproportionate interference with the applicant company's right to freedom of expression as guaranteed by art. 10 ECHR. The Court, after checking that the interference was prescribed by law and pursued a legitimate aim, namely the protection of the reputation or rights of others, goes on to the necessity test and seeks to strike a balance between the applicant's right to freedom of expression and the commercial company's reputation under article 8. This fair balance test is resolved in favour of the applicant company.

In line with established case law (see, for example, [Axel Springer v Germany](#), paragraphs 89 - 95), the Court weighs up the two competing rights using four criteria [para. 67 – 79]:

- the subject matter of the impugned publications, that is, whether they concerned a matter of public interest;
- the content, form and consequences of the publications;
- the way in which the information was obtained and its veracity;
- and the gravity of the penalty imposed on the applicant company.

The interference with the applicant company's freedom of expression is assessed against these four criteria. The Court finds that the domestic courts failed to establish that there had been a pressing need for such interference and that, consequently, it amounted to a disproportionate interference with the applicant company's right to freedom of expression, in violation of art. 10 ECHR. This assessment is of no surprise – as mentioned above, the ECtHR is applying established case law.

According to such case law, when domestic courts fail to balance the right taking into account the four criteria mentioned above, as they did in the present case, the ECtHR may substitute its view for that of the domestic courts. Equally in line with its practice in fair balance tests involving reputational interests, the Court assesses the origin and veracity of the pieces of information published by the applicant company. These are deemed statements of fact rather than value judgments, the existence of which at the time of reporting had been demonstrated. The ECtHR finds that the information communicated by OOO Regnum originated from official sources of information, reiterating that *"the extent to which an applicant can reasonably regard a source of information as reliable is to be determined in the light of the situation as it presented itself to the applicant at the material time, rather than with the benefit of hindsight"* [paragraph 75].

### Comments

In OOO Regnum, the Court faces yet another case dealing with the right to reputation concerning a private commercial company. As recognized by the ECtHR in 2004, the right to reputation is guaranteed by Article 8 ECHR as part of the right to respect for private life ([Axel Springer v Germany](#), paragraph 83, [Pfeifer v Austria](#) paragraph 35). However, the right to respect for private life, and by extension the right to reputation, are aimed at protecting individuals, and the Court has not extended the latter to legal persons. The only case brought before the ECtHR claiming a violation of the right to reputation of a legal person under article 8 is the inadmissibility decision in [Firma EDV für Sie, Efs Electronic Datenverarbeitung Dienstleistungs GmbH \[EDV\] v. Germany](#). In that case, which also involved a conflict of art. 8 and 10 ECHR, the Court expressly left open the question whether the reputation of a company falls under the notion of private life under art. 8 and assumed that the provision applied to the case (EDV v Germany, paragraph 23). In follow-up cases (see, for example, [Petro Carbo Chem S.E. v Romania](#), paragraph 63), the Court has kept assuming that the right to reputation applied to the legal persons concerned, without further explanation and, more importantly, without explicit recognition of that scope.

In *OOO Regnum*, the Court again implicitly assumes that a private commercial company holds a reputational right. After observing that the domestic courts had dealt with the case through a reputation claim, the ECtHR does not carry out any assessment of or make an explicit statement on the personal scope of the right to reputation (paragraphs 55 and 56). The Court does, however, recognize that dignitary interests of legal persons differ from those of natural persons:

*"The Court emphasizes that there is a difference between the reputational interests of a legal entity and the reputation of an individual as a member of society. Whereas the latter may have repercussions on one's dignity, the former are devoid of that moral dimension"* (paragraph 66).

But the opportunity to explain the potential consequences of this difference is again missed, like in previous judgments concerning reputational interests of legal entities. Moreover, there is no reference in the Court's reasoning to a seriousness threshold to be attained by statements deemed to go against the reputational rights of a private company. In its case-law on reputation cases under art. 8, the Court has consistently held that attacks on reputation must attain a certain level of gravity and in a manner causing prejudice to the personal enjoyment of the right to respect for private life (see, again, [Axel Springer v Germany](#), paragraph 83). The judgment in *OOO Regnum* lacks any reference to a degree of prejudice that the reputational attacks against a legal person must attain to fall under the protection awarded under the right to private life. The attainment of a seriousness threshold in this case, may be implied by the Court finding that the private corporation holds reputational rights. Nevertheless, there is no reference to such threshold, and it remains unclear how such threshold operates in cases

involving legal persons. It seems as if this aspect is only present in the ECtHR's assessment of reputational rights when it concerns natural persons.

In a somewhat contradictory way, the reasoning of the Court goes in two different ways: on the one hand, the right to reputation of a legal entity is implicitly assumed, on the other hand, the different nature of the reputation of legal entities is explicitly acknowledged. Its nature is a consequence of the material scope of the right to respect for private life under article 8 ECHR, which contains the right to reputation. It is established case law that the right to private life, while not susceptible to exhaustive definition, covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's identity. In this sense, acknowledging the right to reputation of legal entities would entail a deviation of the Court's conception of private life, a conception which is linked with human dignity and personal identity. Dignity and personal identity are substantially linked with natural persons since they belong to the sphere of human personality; in principle, it wouldn't be possible to meaningfully allocate them to legal persons, who lack such personality. The ECtHR would, to some extent, create a new aspect of the concept 'private life' necessarily devoid of the moral dimension – at least if the recognition of reputational rights of legal persons is not accompanied by an explicit expansion of the conception of private life. There is one final aspect of the judgment worth mentioning. At the end of the necessity test, when the gravity of the penalty imposed on the applicant company is being assessed, the Court notes that

*"when faced with the task of balancing the reputational interests of a commercial company against the general interests of society in protecting public health and in being informed of potential health hazards, as well as the corresponding interest (and duty) of members of the media in reporting on such hazards, domestic courts ought to demonstrate convincingly the existence of a pressing social need capable of justifying an interference with freedom of the media" (paragraph 78).*

With this, the ECtHR seems to suggest that, even if corporate reputational rights were to be considered to fall within the scope of article 8, it could only exceptionally serve to justify an interference with art. 10 ECHR. The exceptionality introduced in this quote can be seen as a sort of final or overarching requirement in a fair balance test between corporate reputational rights and the right to freedom of expression.

This judgment does not bring any novelty to the ECtHR's approach to the reputational rights of legal entities. However, it does show one thing: that the Court, while avoiding an explicit recognition of reputational rights to legal persons, is showing signs that the extension of the right to reputation to legal entities under the ECHR remains possible. If the Court would explicitly extend the scope of the right to reputation under art. 8, allocating reputational rights to legal persons, this extension would have relevant consequences: States would be subject to obligations to protect that right (positive obligations), and companies would have the right to apply to the ECtHR alleging a violation of article 8 by a member state. Clarity on the question would be welcome – it remains to be seen which direction will the Court take.