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His Excellency
Arturo Laclaustra Beltrán
Badeniho 401/4
170 00 Praha 7

Odpověď na dopis značky

ze dne

Naše značka

Praha

ZO 2/2010

5. 1. 2010

Association of Internet Users v. Society of Authors Composers and Publishers

Your Excellency,

The Supreme Court of the Kingdom of Spain has dismissed at the end of the year 2009 the cassation in a case from 2004; according to the judgment the Spanish Association of Internet Users (Asociación de Internautas, AI) has to pay for an encroachment upon the right to protection of personality of the Spanish Society of Authors Composers and Publishers (Sociedad General de Autores y Editores, SGAE) and Eduardo Bautista García the compensation of 36 000 Euros (about a million CZK).

The Czech Pirate Party is concerned that the argumentation of the court had not dealt with the freedom of speech and without a further examination favored the protection of personality of a legal person. The court's rationale did not deal with art. 20 par. 1 let. a of the Constitution of Spain, which guarantees the freedom of speech in the sense of the Universal Declaration of Human Rights. The court did not reflect on the fact that societies executing the collecting administration have a character of public law. The court did not take into account the context that the message was not transmitted through media, but it was a part of the global Internet, and it should accustom the argumentation to it. For instance, the words in domain putasgae.org can have a different meaning in a language different from Spanish (as an international domain is concerned), a meaning that cannot be considered improper.

The Society of Authors Composers and Publishers has elements of a public corporation, for it executes certain activities restricted to the state based on the legal empowering; the description of a collecting society also fits in the law of the European Union. The authorization must be granted by the Ministry of Culture and it includes wide powers, e.g. according to art. 20 par. 4 let. c of the Intellectual Property Law it enforces the rights of intellectual property holders, who have not yet expressed their interest.

Because of the public character the court should decrease the protection of personality: According to the Convention for the Protection of Human Rights and Fundamental Freedoms the freedom of speech can be limited only in necessary cases and from the established practice of the court it follows that a person that decided to enter into the public (for instance political) life has to take in account a decreased protection of personality; aforesaid holds for natural persons, as well as legal persons, including a collecting society. Czech Pirate Party does not concur with the interpretation, in which the public corporations (and thus the states as well) enjoy the protection of personality

because the meaning of human rights is primarily the protection from wantonness of the state. The reflected interpretation by transferring human rights onto public institutions does not adhere to the substance and purpose of human rights. We find the imposition of a liquidating fine on the Association of Internet Users for its resistance against an institution of public law unacceptable.

Czech Pirate Party would welcome the dismissal of the judgment through recurso de amparo of the Constitutional Court or through the European Court of Human Rights. Czech Pirate Party is like the other pirate parties concerned that Spain does not respect the Convention, which damages not only those whose freedom of speech against a public institution it curtails, but also the other states – contractual parties.

We kindly request that this letter be handed over to the government of the Kingdom of Spain.

Yours sincerely,

Jakub Michálek

International Relations Executive of the Czech Pirate Party

Reference

Law on Intellectual Property, Royal Legislative Decree 1/1996

Cassation (Civil Chamber) No. 773/2009

<http://www.alfa-redi.org/ar-dnt-documento.shtml?x=13147>

The judgment of the first instance

<http://www.alfa-redi.org/ar-dnt-documento.shtml?x=13139>