

## HUNGARY: Due Satisfaction in Hungarian Law

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1. The Hungarian legal system – like the Belgian one – recognizes ‘court-ordered apologies’ (in the Hungarian Civil Code<sup>1</sup>: ‘due satisfaction’) as a possible sanction for the violation of personality rights. In a similar situation to the case at hand, the Hungarian courts could easily have reached a similar conclusion to the Belgian courts. It should be noted, however, that, under Hungarian law, the party liable to give due satisfaction (*amende honorable*) is always the same as the party who committed the infringement (in the case of a legal person, it is the representative who actually provides due satisfaction), so the Prime Minister could only be obliged to provide satisfaction in the event of an infringement committed by the Government (as a legal person), and the head of the secret service only in the event of an infringement committed by the body under his/her command. It is also important to note that in Hungarian law, the name of the sanction similar to ‘apologies’ is ‘due satisfaction’, hence the name does not refer to an apology (i.e., a moral category) but to the reparation of the harm (i.e., the removal of the consequences of the infringement). However, because of the similarities in regulation, let us consider this as a difference in terminology only. Below we present the Hungarian regulation and court practice regarding satisfaction as a private law sanction.

### 1. The Function of Due Satisfaction

2. Pursuant to Article 2:51, paragraph 1, point c of the Hungarian Civil Code: ‘Any person whose personality rights have been violated may claim, based on the fact of violation, within the limitation period and according to the circumstances of the case ... c) that the person committing the violation shall give appropriate satisfaction, and provide for its publicity at his own expense’. Satisfaction is an objective sanction for violating personality rights, independent of the fault (attribution of liability) of the party who has committed the infringement, whereby the injured party may request moral reparation, usually the publication of a statement that makes the group of people before whom the infringement occurred aware that the infringement has occurred.

The moral nature of the sanctions imposed for the violation of a personality right is very much in evidence in the obligation to give satisfaction. The essence of the sanction is that the court obliges the infringer to acknowledge the unlawfulness of his/her action, and at the same time to express his/her remorse and to apologize

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1 Act V of 2013.

to the victim. The essence of the claim for satisfaction is to remedy, as far as possible, the wrongful impression, false pretence and untrue image of the person wronged by the infringement. The purpose of the sanction is to ensure that the person whose rights have been infringed maintains or regains the recognition and social image that he or she had before the infringement, and that the circumstances surrounding the infringement are clarified in terms of his or her person.<sup>2</sup> Under the sanction of satisfaction, the injured party may claim moral reparation, usually the publication of a statement that makes the group of people before whom the infringement occurred aware that the infringement has occurred.<sup>3</sup>

## **2. The Members of the Public Affected by Due Satisfaction**

3. The purpose of satisfaction as an objective legal sanction of an infringement of personality right is to eliminate or mitigate the infringement among those people who have become aware of the infringement. Therefore, the court may order that the satisfaction is given via a statement or other appropriate means before the public, and the costs of the disclosure shall be borne by the infringer. Satisfaction – depending on the circumstances of the case – may be given orally, in writing, and towards a wider or narrower public, as the court may decide. Publicity can also mean press publicity, in which case the satisfaction will not be much different from a press correction, although of course the rules of the procedure are different.

4. Since the satisfaction fulfils its reparatory function if it reaches the same public before which the infringement occurred, if the infringement was committed via a press statement, the statement used as the means of satisfaction must also appear in the same place and in the same form as the infringing press statement.<sup>4</sup> In the specific case, where an Internet site is now only available in an archived version but still contains the offending article, the defendant has the possibility to publish the statement of satisfaction in the same place as the article. However, the website containing archived writings is visited by fewer people, and therefore other ways of disclosing the provisions of the judgment declaring the infringement are acceptable in order to ensure adequate publicity to provide moral reparation.<sup>5</sup>

## **3. The ‘Appropriate’ Nature of Satisfaction**

5. The reparative function of personality protection sanctions is mainly manifested in the act of giving appropriate satisfaction, since it is hoped that this will

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2 Zoltán CSEHI, ‘Elévülés a személyiségi jogok rendszerében, az új Ptk.-ra tekintettel’, *In Medias Res* 2016(1), p 14.

3 Pécs Court of Appeal Pf.VI.20.107/2018/4.

4 Szeged Court of Appeal Pf.II.20.595/2015/4.

5 Budapest Court of Appeal 2.Pf.21.384/2017/5.

bring about a change in the consciousness of both the infringer and the social environment that has been negatively affected by the offence. Therefore, satisfaction that may risk a further negative change (i.e., which aggravates the situation) is not legally appropriate and hence may not be used. Both the injured party and the court must take particular care regarding the issue of determining ‘appropriateness’ and in the choice of the method of satisfaction. It is also important to note that the sanction is only effective if there is not too much time between the satisfaction being given and the infringement itself.<sup>6</sup>

6. Satisfaction may also be given by private letter, especially when the public disclosure of the reparative communication constituting the satisfaction, and also including the offending statements, does not sufficiently remedy the harm suffered by the plaintiff.<sup>7</sup> However, according to practice, it is accepted that the plaintiff, as the addressee of the private letter, is entitled by the court – at its discretion – to disclose the letter publicly.<sup>8</sup> In the case of an infringement of the right to privacy, the requirement that the defendant shall apologize to the plaintiff in a private letter for the infringement found may be particularly appropriate to the aim pursued. In such a case, the involvement of the public is not justified, as the satisfaction will inevitably identify the infringing conduct as well, which will reduce the compensation achieved by the satisfaction and may also lead to a repeated violation of the privacy protected by this personality right.<sup>9</sup> If the parties agree to apologize for their offensive statements made to each other and then make these mutual apologies in public, the infringement of the personality right can be considered remedied by the act of satisfaction. Once satisfaction has been given, there is no need to apply the objective sanction imposed for the infringement in an action brought by one of the parties subsequently for the same infringement, nor is there any basis for obliging the infringer to pay aggravated damages (compensation for injury to feelings) in the absence of any compensable harm.<sup>10</sup>

#### 4. Content of the Text of the Statement of Due Satisfaction

7. The court must decide on the content of the statement of satisfaction and include the text of the statement of satisfaction in the operative part of the judgment. If the infringement was made via a press statement, the statement used as the means of satisfaction must also appear in the same place and in the same form as the infringing press statement.<sup>11</sup> In certain cases, such as upon

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6 CSEHI, *In Medias Res* 2016(1), p 14.

7 Regional Court of Budapest 65.P.24.155/2017/10.

8 Example, Regional Court of Budapest 70.P.24.872/2017/9.

9 Budapest Court of Appeal 32.Pf.20.634/2018/5.; Curia Pfv.IV.20.089/2019/7.

10 ÍH2019. 12.

11 BDT2010. 2231.

enforcing a communication that is aimed to remedy an infringement violating the rights of communities but ‘n certain c’ onto the plaintiff (by association), the statement of satisfaction is expected to exclude the infringing content.<sup>12</sup> However, in the case of an untrue statement of fact, it is essential that the communication makes it clear which statement of fact was untrue and which is the true statement of fact.<sup>13</sup> Satisfaction can also be achieved solely by publishing the court’s order – in which case, the given disclosure must include the detailed circumstances of the infringement of the personality right.<sup>14</sup>

8. There is some inconsistency in judicial practice regarding the provisions requiring the defendant to apologize. According to some court decisions, the court has no statutory option to order the defendant to acknowledge the infringement or to express regret (to make an apology) – the public disclosure of the judgment establishing the infringement usually provides the injured party with sufficient redress. If so requested, the defendant may be obliged to make the disclosure – and the plaintiff may be entitled to claim this – regardless of whether the defendant agrees to the establishment of the infringement or whether the defendant regrets the conduct underlying the infringement, since no one can be obliged by a judgment to feel regret.<sup>15</sup> This is particularly true in cases where the defendant is a legal person: regret or remorse – being subjective human emotions – cannot, by their very nature, be expressed by a legal person.<sup>16</sup>

It is worth noting that the Curia has changed its legal position and, according to its current judicial practice, it is possible to require the infringer to apologize for the infringement and to express regret as a form of satisfaction. Indeed, the obligation to make amends to the injured party is a form of moral reparation that is justified in the event of similar infringements, even if the injury was caused by a legal person.<sup>17</sup> Given that satisfaction is one of the most important means of redressing an injury to personality rights, it has partly restorative and partly reparatory characteristics. The acknowledgement of the infringement is not in itself sufficient to provide satisfaction. The satisfaction given by the party must, in addition to acknowledging the infringement, also contain – if so requested – a certain additional element: a necessary and essential element is that the infringer condemns his or her own act, expresses regret and remorse, and, if appropriate, apologizes for what has happened.<sup>18</sup>

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12 Debrecen Regional Court 6.P.20.750/2015/9.

13 Veszprém Regional Court 7.P.20.522/2014/13.

14 Debrecen Court of Appeal Pf.I.20.329/2015/3.

15 Debrecen Court of Appeal Pf.I.20.413/2018/4.

16 Pécs Court of Appeal Pf.III.20.103/2015/4., published as BDT2016. 3519.

17 Budapest Court of Appeal 17.Pf.20.868/2020/5.

18 Budapest Court of Appeal 2.Pf.20.590/2018/4.

## 5. The Place of the Statement of Due Satisfaction

9. In any event, in order to ensure enforceability, it is necessary to specify in the operative part of the judgment where the defendant is obliged to publish the statement of satisfaction. If publicity is to be ensured through the press and the defendant is a media content provider of some sort, there is no obstacle to imposing this obligation on the defendant. In other cases, the court must ascertain, before passing the judgment, whether press publicity can be provided at all, namely whether there is a media content provider that will undertake to publish the statement, even for a fee, at the defendant's expense. If the article with the contested content was published on the front page of a daily newspaper together with a photograph published in an unlawful manner, the plaintiff's request for the notice containing the statement of satisfaction to appear on the front page of the newspaper as well is justified.<sup>19</sup>

10. The infringer is usually required to give adequate publicity to the statement of satisfaction at his/her own expense. However, for example, in the case of an infringement committed due to statements made at a press conference, repeating the press conference would be difficult, because the defendant would be obliged to ensure that the same persons would attend the repeated press conference as the previous one. The implementation of such a requirement may be influenced or even prevented by circumstances beyond the control of the defendant, so this requirement cannot be lawfully imposed.<sup>20</sup>

11. A characteristic of online news portals is that readers primarily select from the news feed on the home page, which is constantly updated, and only in exceptional cases do they revisit previously published content that is no longer visible on the home page. This means that the only way to achieve publicity similar to that of an offending communication is to draw readers' attention to the statement of satisfaction by placing a notice on the home page. In the absence of such a notice, the possibility that those who have knowledge of the original infringing and untrue communication will become aware of the defendant's unlawful conduct is essentially lost.<sup>21</sup>

A simple clickable notice displayed on the front page may be a necessary and also sufficient form for achieving the objective of the satisfaction, while the judgment of the court declaring the infringement should also be displayed in the infringing article for the period corresponding to the period of availability of the original article. It is necessary to refer to the linked content with a title that allows those likely to have read the original article to read the notice of infringement.<sup>22</sup>

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19 BDT2010. 2231.

20 Budapest Court of Appeal 32.Pf.20.319/2019/4.

21 Budapest Court of Appeal 32.Pf.20.118/2019/5.

22 Budapest Court of Appeal 32.Pf.21.235/2018/3.

The practice is different if the court decision contains an obligation on a party who was not a party to the litigation. Some judgments have held that the satisfaction sought in an action is not enforceable if there is no guarantee that the defendant will have the opportunity to publish the notice in the online press product.<sup>23</sup> In such a case, the media outlet concerned must be invited to declare whether it is possible to publish the statement of satisfaction.<sup>24</sup> Ordering the publication of a statement of satisfaction in an issue of a county daily newspaper by means of a paid advertisement is in all respects in accordance with the requirements of proportionality and enforceability if, in the case of an infringement committed in the form of leaflets, it is not possible for objective reasons to publish the statement in the same medium.<sup>25</sup> The court of second instance also did not find it objectionable that the court of first instance did not invite the plaintiffs to verify whether there was any obstacle to the publication of the statement of satisfaction in the county daily newspaper; however, the court of appeal also considered that this invitation was unnecessary, since there was no reasonable doubt that the operative part of the final and enforceable judgment could be published as a paid advertisement in the printed press.<sup>26</sup>

## 6. The Relationship Between Due Satisfaction and Right of Correction (Right of Reply)

12. According to a rule of the right of correction (right of reply) widely known in Europe, the media outlet is obliged to publish a communication from a party whose rights have been infringed, provided certain conditions are met, typically when untrue statements of fact are published in the media outlet concerned. The defendant in this case will therefore in any case be the media outlet that committed the infringement. European countries regulate the issue differently, differing, for example, in the scope of the right and the possible content of the reply communication. The right of rectification or correction usually provides for a brief correction of false or inaccurate statements of fact, hence it does not enable the publication of any further content other than this; the statement calls the attention of the public, in formal and bland terms, to the falsehood of the published facts and indicates what the true facts are instead.<sup>27</sup> The Hungarian legal system also allows correction against the media outlet in such a narrow sense.

According to the established judicial practice, the satisfaction that can be claimed in a procedure related to the protection of personality rights and the press

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23 Regional Court of Budapest 70.P.22.395/2017/11.

24 Budapest Court of Appeal 2.Pf.20.381/2015/6.

25 Budapest Court of Appeal 18.Pf.21.306/2016/6.

26 Győr Court of Appeal Pf.IV.20.084/2018/3.

27 See András KOLTAY, 'The Right of Reply in a European Comparative Perspective', *Acta Juridica Hungarica – Hungarian Journal of Legal Studies* 2013(1), pp 73–89, doi: 10.1556/AJur.54.2013.1.6.

correction procedure are separate legal institutions and can therefore be applied in parallel. In view of this, the various claims in the proceedings can be enforced under different procedural and substantive laws, so the press correction ordered does not exclude the possibility for the injured party to make a claim for the protection of personality rights and enforce aggravated damages (compensation for injury to feelings) for the violation of his or her reputation.<sup>28</sup> The statement claimed under the legal title of satisfaction is not a press correction, even if the condemned defendant is otherwise a media content provider. The right of correction is a special legal instrument for a party whose rights have been infringed by the press. The person whose personality rights have been violated cannot request correction under the legal title of satisfaction – in the event of failure to comply with the strict substantive and procedural law conditions applicable in terms of the right of correction.<sup>29</sup>

13. It also follows from the above that a final and enforceable judgment passed on a press correction issue does not constitute a judgment for the purposes of a personality right-related action because, although it has the same factual basis, the enforcement of the claim is based on a different legal basis. Therefore, in a personality right-related action, an order for appropriate satisfaction may be sought even if the court has already ordered the media outlet to publish corrections on the basis of the same statement of fact.<sup>30</sup> In view of the parallel nature of the two proceedings, it is irrelevant whether the plaintiff has made use of the possibility of a press correction, since the party whose rights have been infringed can decide for himself/herself whether he/she wishes to take action against the infringer in a personality rights action or in a special procedure for a press correction.<sup>31</sup>

The difference between the press correction procedure and the satisfaction that can be sought in a personality right-related action is that while in the former case the aim is to correct the facts, in the latter case the aim is to remedy the harm caused by the violation of personality rights. A press correction is obviously able to ensure a certain level of compensation, but it does not annul the application of sanctions that may be sought in a personality right-related lawsuit.<sup>32</sup> A previous press correction (if any) does not trigger the sanction of moral satisfaction, which is a sanction independent of fault (attribution of liability).<sup>33</sup> Moreover, since there is no possibility of expressing regret in a press correction lawsuit, the press lawsuit does not render such satisfaction unnecessary.<sup>34</sup>

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28 BDT2022. 4506.

29 BDT2011. 2441.

30 BH2022. 240.

31 Pécs Court of Appeal Pf.VI.20.107/2018/4.

32 Budapest Court of Appeal 32.Pf.20.691/2018/6.

33 Budapest Court of Appeal 2.Pf.21.018/2017/6.

34 Budapest Court of Appeal 32.Pf.20.662/2018/4.

