

Helsinki Information Law Moot Court 2020 Problem

The Newtonian Gazette is a newspaper in Newtonland, a Member State of the European Union and a signatory of the European Convention on Human Rights. The Gazette prides itself on its staff of award-winning journalists and its high ethical standards, as well as its strong record of accurate and fair reporting on current affairs and breaking news stories.

In the summer of 2016, The Gazette published a story about a family who had recently emigrated from the United States. T.J. McIvor, a journalist for The Gazette, interviewed the father of the family, Bill Robson, and his two children. The main focus of the story was Robson's recent win on the local talent show Cupperhill's Got Talent, where he played the blues harp and sang in Newtonian. He is quoted as saying: "Singing is a great way to learn a foreign language, and I love it. Newtonland is a wonderful country that is really welcoming to foreigners—I feel blessed that I am able to be here, rather than being stuck in Trump's America!" A photo in the article depicts Robson, his wife and two children (8 and 14 years) in their apartment in Cupperhill, a cheap suburb in the capital of Newtonland. The children's names (Faith and Thunder) were mentioned in the article, as was the fact that they live in Cupperhill.

At the time, McIvor checked all quotations with Robson and received a signed consent from him stating: "I hereby consent that my name and photo may be used for journalistic purposes." No such consent was sought or received from the rest of the family.

The article was published in September 2016 in both the paper and online version of The Gazette. It was met with some interest at the time, but was quickly lost in the news cycle when a corruption scandal involving Newtonland's MEPs was exposed. However, in 2019, the story resurfaced on a number of prominent immigration blogs and internet forums located in both the EU (including Newtonland) and the United States. Along with the new interest, many anonymous commentators criticised Robson's anti-Trump stance. One participant wrote: "Typically Cupperhill, full of hipsters. What kind of idiot gives their children such stupid names?" Another commenter posted: "Don't bother coming back to the US. Anyone else think this kind of thing should be considered treason?"

Robson now fears that the controversy may mean that he would be unable to get a job if future employers were to search for his name. He is also afraid that angry commentators might come to Cupperhill and destroy his property, or even attack him and his family. He therefore asks The Gazette to remove the article from its online archive.

As part of his request, Robson—

- refers to "the right to be forgotten and other rights under the General Data Protection Regulation", alleging that such rights give him the ability to demand that the story be taken down;
- revokes all consents and states that subsequent use of the data is illegal;
- states that, as his children were minors at the time, the publication was illegal at least to the degree his children were mentioned;
- argues that, while freedom of expression is important, data protection is too. Robson claims that the story is no longer relevant for the public as it is over 3 years old. In particular, the talent competition (which Robson describes as "the leading elements of the piece") takes place every year and there is no reason for anyone to know who won a local competition over 3 years ago;

- claims his interest in having a peaceful life trumps any interests which The Gazette might have. He adds that he might have issues returning to the United States if the article stays online; and
- alleges that, even if Newtonland's law does include exceptions to the rights of individuals, those exceptions violate European law and are therefore invalid and should not be applied.

The Gazette refuses to take the article down and responds, claiming that—

- in 2015, immigration to Newtonland was a hot-button issue. The story depicts the family in a positive light, showing success stories of immigrants to Newtonland. In 2019, it is still a hot issue and therefore remains of public interest;
- if The Gazette was to change its articles every time that someone responded angrily on the internet, it would have to hire a lot of extra staff or simply remove the archives altogether. The online archive represents an objective record and changing it would mean changing history;
- The Gazette is willing to fix any incorrect information, but notes that Robson has not alleged that there are any such errors in the article;
- the law of Newtonland (see annex) includes very wide exceptions to the rights of individuals under the GDPR. The law protecting journalists, the Newtonian Journalistic Act, is valid under the GDPR in accordance with the subsidiary principle; and
- even if the law of Newtonland is not valid, the GDPR contains sufficient journalistic and freedom of speech exceptions for them to keep the story online.

Mooters are instructed to prepare statements before the Newtonian Court of First Instance, focusing on the substantive law at dispute.

The Newtonian Journalistic Code

Chapter 205: Specific data processing situations

Section 1 Processing of personal data for journalistic purposes:

- a. To guarantee the freedom of expression and information, the following provisions of the GDPR do not apply to the processing of personal data performed solely for journalistic purposes: points (c)–(e) of Article 5(1), Articles 6 and 7, Articles 9 and 10, Article 11(2), Articles 12–22, Article 30.
- b. To guarantee the freedom of expression and information, the following provisions of the GDPR only apply where appropriate to the processing of personal data performed solely for journalistic purposes: points (a) and (b) of Article 5(1), Article 5(2), Articles 24–26, Article 31, Articles 39 and 40.

Note on citations: References to the Newtonian Code should be made in the following way:

[Chapter number] N.C. § [section number and paragraph]

e.g.:

205 N.C. § 1(a).