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**PUBLIC FIGURE STATUS AND FAILURE TO REQUEST
RETRACTIONS IN DAMAGE COMPENSATION DISPUTES
AGAINST TABLOIDS****

Summary

This paper explores the legal complexities surrounding public figures and the request of retractions in damage compensation disputes against tabloids. The study focuses on two primary legal questions: whether the heightened scrutiny public figures face justifies a more lenient approach to media liability, particularly in the context of tabloids, and whether the failure to request a retraction by the harmed individual should serve as a mitigating factor for the media in legal disputes.

Through a detailed analysis of both theoretical perspectives and relevant case law from the European Court of Human Rights and the U.S. Supreme Court, the paper examines the balance between the public's right to be informed and the protection of individual rights, such as privacy and reputation. The discussion highlights how tabloids, as a specific subset of the media, frequently violate journalistic standards in their pursuit of sensationalism, often resulting in significant harm to public figures.

The paper argues that while public figures are required to tolerate a higher degree of criticism, this does not inherently reduce the accountability of tabloids for their actions. Moreover, the non-issuance of a retraction should not automatically mitigate the tabloid's liability, especially when the retraction process could exacerbate the harm suffered by the individual. Ultimately, the paper calls

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for stricter legal standards in cases involving tabloids, emphasizing the need to protect public figures from disproportionate harm while maintaining the integrity of free speech and the press.

Keywords: *Public Figures, Damage Compensation, Media Retractions, Media Liability, Freedom of Speech.*

1. Introduction

This paper analyzes two key legal requests regarding compensation for damage to reputation and honor in lawsuits against tabloids. The first request is whether the widely recognized principle that public figures must endure a greater degree of public criticism necessarily implies a mitigating factor for the media, particularly tabloids, in such cases. The second request concerns whether the failure of an individual, whose reputation has been harmed, to exercise their right of retraction always constitutes a mitigating circumstance for the tabloid.

In addition to the introduction, the paper provides both theoretical and practical frameworks, considering academic perspectives and relevant case law from the European Court of Human

Rights, as well as the U.S. Supreme Court. The third, central section of the paper delves into and critiques these contentious requests within judicial practice, followed by concluding remarks.

The paper specifically emphasizes analysis in lawsuits for damages against tabloids rather than the media in general. While tabloids are indeed part of the media landscape, they represent a darker side, as they often breach journalistic standards and intentionally cause harm to the individuals they cover. The aim of the paper is to shed light on this narrower aspect of damage compensation litigation.

2. Theoretical and Practical Framework

Before discussing the aforementioned legal requests, it is essential to first define and situate the concept of tabloids within both theoretical and terminological frameworks. This includes the relationship between public interest and privacy, the role of public figures in facing public criticism, as well as the distinction between material and non-material damages in lawsuits involving the media.

There are numerous definitions of tabloids. Initially, the term was linked to printed newspapers. One of the most frequently cited definitions describes tabloids as: “*newspapers that emphasize sensationalism, gossip, and*

entertainment over factual news reporting and often breach journalistic standards for accuracy and objectivity."¹ The very concept of tabloidization extends to other media. The phenomenon of tabloidization stands out, as it is noted, "*not only of media scholars but also of media industries themselves.*"²

It is actually a phenomenon that has surpassed the media within which it originated and has become a kind of cultural phenomenon, so we can talk about a culture of tabloidization.³

For the purposes of this paper, it is important for us to focus on and theoretically define tabloids as media that consistently violate journalistic standards among the various phenomenological aspects of tabloids. We are actually dealing with elements that are not disputed when we talk about tabloids, which are characterized by their emphasis on sensationalism over substantive news reporting, often prioritizing entertainment and scandal over accuracy and journalistic integrity. These elements can be undeniably found in the theoretical works of M. Conboy,⁴ J. Langer⁵ and F. Esser.⁶

It is undeniable that the role of journalism lies in protecting the public interest, whereas in tabloids, sensationalism consistently and daily takes precedence over the public interest.⁷

The subject of this paper is disputes for the protection of honor and reputation that are filed against tabloids. Highlighting tabloids is important to understand that these are media outlets that violate journalistic (media) standards. In disputes against the media, there is a balance between two important interests: the public interest and the protection of privacy. In this sense, it is necessary for the media to assess the significance of publishing certain news for the public. In this process, what is known as the public interest test is conducted, while also evaluating the proportionality of publishing

¹ J. L. Sullivan, *Media Audiences: Effects, Users, Institutions, and Power*, Sage Publications, 2007.

² A. Biressi, H. Nunn, "Introduction", *The Tabloid Culture Reader*, 2007, 1.

³ *Ibid.*

⁴ M. Conboy, *Tabloid Britain: Constructing a Community through Language*, Routledge, 2006, 4–7.

⁵ J. Langer, *Tabloid Television: Popular Journalism and the 'Other News'*, Routledge, 1998, 13–14.

⁶ F. Esser, "Tabloidization of News: A Comparative Analysis of Anglo-American and German Press Journalism", *European Journal of Communication* 14(3)/1999, 291–324.

⁷ K. Williams, *Get Me a Murder a Day! A History of Media and Communication in Britain*, Bloomsbury Publishing, 2010, 90–93.

such news. It is generally accepted in theory that the public interest can prevail if the news is published in a manner that is proportional and justified.⁸

It is a well-established legal principle that public figures are required to tolerate a higher degree of criticism, which courts consider in defamation cases involving the media. This standard is particularly significant in defamation law, where public figures must demonstrate “actual malice” to succeed in a lawsuit. This requirement is designed to safeguard freedom of speech and the press, recognizing that public figures, due to their prominence and societal roles, are naturally subject to more intense public scrutiny.⁹ The same undisputed stance is also held by E. Barendt,¹⁰ and Schauer.¹¹

In addition to theoretical perspectives, this undisputed principle is also prominently upheld in the practice of the most relevant courts. The U.S. Supreme Court has consistently advocated this stance in several of its rulings. In the landmark case *New York Times Co. v. Sullivan* (1964), the Court emphasized that public figures must prove that the media acted with “actual malice” in order to win defamation lawsuits. As stated in the ruling: “A profound national commitment to the principle that debate on public requests should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”¹²

This case set a significant precedent, establishing the principle that public figures are subject to a higher threshold in defamation cases, thereby protecting freedom of speech and ensuring that public debate remains open and robust.¹³ This is emphasized in the case *Gertz v. Robert Welch, Inc.* (1974).¹⁴ This case particularly highlighted the distinction between public figures and private citizens. The ruling made it clear that public figures, due to their influence and role in public life, are expected to demonstrate that defamatory statements were made with knowledge of their falsity or with reckless disregard for the truth. This standard is not required for private individuals, who enjoy greater protection under defamation law.

⁸ R. Posner, “The Right of Privacy”, *Georgia Law Review* 12(3)/1978. D. Morrison, M. Svennevig, *The Public Interest, the Media and Privacy*, Institute for public policy research, 2002. R. Wacks, *Privacy and Media Freedom*, Oxford University Press, 2013.

⁹ P. N. Amponsah, *Libel law, political criticism, and defamation of public figures: the United States, Europe, and Australia*, LFB Scholarly Publishing, 2004.

¹⁰ E. Barendt, *Freedom of Speech*, Oxford University Press, 2005.

¹¹ F. Schauer, “Public Figures”, *William & Mary Law Review* 1/1984, 91-128.

¹² *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

¹³ *Ibid.*

¹⁴ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

This differentiation underscores the legal recognition that public figures, by virtue of their position and access to means of countering false statements, are in a better position to address and refute defamatory claims than private individuals.¹⁵ In the case *Hustler Magazine v. Falwell* (1988), the U.S. Supreme Court further reinforced the principle that the First Amendment prohibits public figures from recovering damages for the tort of intentional infliction of emotional distress without demonstrating that the publication contained a false statement of fact made with “actual malice”. The Court’s ruling highlighted the importance of protecting free speech, particularly when it comes to satire and parody, which often target public figures and may cause emotional distress. The decision underscored that public figures must meet the “actual malice” standard to prevail in such cases, ensuring that freedom of expression is not unduly limited.¹⁶

The practice of the European Court of Human Rights, which is followed within the European constitutional framework, also emphasizes the need for greater openness of public figures in relation to media scrutiny. In the case *Lingens v. Austria* (1986), the Court specifically highlighted politicians as public figures who must endure higher levels of criticism. The judgment stated: “The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance”.¹⁷ Among more recent rulings, the case of *Von Hannover v. Germany (No. 2)* (2012) is notable for its stance on the balance between privacy and freedom of expression concerning Princess Caroline of Monaco.¹⁸ The European Court of Human Rights reiterated that “the right to respect for private life must be balanced against the freedom of expression guaranteed by Article 10 of the Convention”.¹⁹

However, in the case of public figures, the requirements of privacy must be balanced more leniently, in favor of freedom of expression, especially when the information contributes to a debate of general interest.²⁰ In the case of *Axel Springer AG v. Germany*, the European Court of Human Rights

¹⁵ *Ibid.*

¹⁶ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).

¹⁷ *Lingens v. Austria*, No. 9815/82, Judgment of 8 July 1986, para. 42.

¹⁸ *Von Hannover v. Germany (No. 2)*, Nos. 40660/08 and 60641/08, Judgment of 7 February 2012.

¹⁹ *Ibid.*

²⁰ *Ibid.*

emphasized the critical role of the press in a democratic society, stating: “The Court considers that the press plays a vital role as a public watchdog in a democratic society. The limits of acceptable criticism are wider with regard to a private individual who is a public figure than with regard to a private individual, since the former inevitably and knowingly lays himself open to close scrutiny of his actions, particularly by journalists, and must consequently display a greater degree of tolerance.”²¹

The subject of this paper focuses on civil lawsuits against tabloids, rather than criminal proceedings. In civil disputes, aside from certain other demands such as the publication of corrections or the obligation to publish the court’s ruling, the primary demand most often involves compensation for damages.

Damage is generally understood as any loss or harm that results from a breach of duty or an unlawful act. This includes both material damage, such as economic losses like property damage or financial loss, and non-material damage, which covers emotional distress, pain and suffering, and loss of enjoyment of life.²² There is a clear distinction between material and non-material damage. Material damage includes tangible, economic losses such as property damage, financial loss, or lost income. Non-material damage, on the other hand, refers to intangible harms like emotional distress, pain and suffering, loss of reputation, and diminished quality of life. This distinction is important in legal cases because it affects the type of compensation that can be awarded.

In disputes involving the media, non-material damages are typically awarded. This is a consistent position in comparative judicial practice, as well as in the works of numerous authors, such as W. L. Prosser,²³ E. Barendt,²⁴ R. Smolla,²⁵ and R. Sack.²⁶ Material damages are awarded only in cases where direct financial loss or damage can be proven. Such damages are awarded much less frequently compared to non-material damages.²⁷ In judicial practice, one example of such a case is *Hulk Hogan v. Gawker Media*. In this case,

²¹ *Axel Springer AG v. Germany*, No. 39954/08, Judgment of 7 February 2012.

²² Keeton W.P. *et al.*, *Prosser and Keeton on Torts*, 1984 and John G. Fleming, *The Law of Torts*, 1998.

²³ W. L. Prosser, *Handbook of the Law of Torts*, West Publishing Company, 1971.

²⁴ E. Barendt.

²⁵ R. A. Smolla, *Law of Defamation*, Clark Boardman Callaghan, 2007.

²⁶ R. D. Sack, *Sack on Defamation: Libel, Slander, and Related Problems*, Practising Law Institute, 2010.

²⁷ E. Barendt.

material damages were awarded due to the publication of a private video containing sexual content with a person who was not Hulk Hogan's wife. As a result, Hulk Hogan, whose real name is Terry Bollea, was awarded significant material compensation for the loss of income and professional opportunities.²⁸

3. Discussion of Controversial Legal Requests

3.1. The Status of Public Figures as a Mitigating Factor for Tabloids

The status of a public figure is undeniably recognized in both theory and judicial practice as inherently subjecting individuals to a higher level of criticism, as we discussed in the section providing the theoretical framework. It is also important to note that in theory, it is undisputed that the status of a public figure can be considered a mitigating factor for the media when reporting on matters that infringe upon the personal rights of well-known individuals. Public figures are expected to meet higher standards when proving that a violation of their honor and reputation has occurred. This view is also upheld by the U.S. Supreme Court in the landmark case *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), which established the "actual malice" standard. This position is also widely accepted among many theorists, including M. Collins²⁹ and R. Keeble.³⁰ Among newer generation authors, there is a group that argues that the standards for public figures should not necessarily differ from those for private individuals.

It is indisputable that media law is characterized by a constant tension between freedom of speech and public interest, on the one hand, and the protection of personal dignity, on the other. Public figures are part of the public sphere, and the public undoubtedly has a legitimate interest in being informed about them. However, this does not mean that violations of their honor and dignity should be interpreted in such a way that their status as public figures constitutes a mitigating circumstance for tabloids.

It is important to emphasize why this paper insists on using the term "tabloid" as an undisputed subset of the media. Tabloids are media outlets that consistently violate journalistic standards and frequently infringe upon the privacy of public figures. This behavior is often driven by sensationalism aimed at generating profit, as well as by disagreements with the views of certain individuals whose rights are violated.

²⁸ *Bollea v. Gawker Media, LLC*, No. 12012447-CI-011 (Fla. Cir. Ct., Mar. 18, 2016).

²⁹ M. Collins, *The Law of Defamation and the Internet*, Oxford University Press, 2010.

³⁰ R. Keeble, *Media Law and Ethics*, Routledge, 2009.

Particularly when tabloids repeatedly infringe upon the rights of certain public figures, for example, by publishing highly offensive or malicious comments that aim not to critique but to disparage a specific public figure, it is entirely incorrect to interpret the status of a public figure as a mitigating factor for tabloids. Such actions by tabloids can be intended to diminish the public influence of public figures, such as politicians. Allowing a more lenient legal process for tabloids would be completely contrary to the purpose of legal protection. On the contrary, stricter criteria should be applied when determining damages against tabloids, as public figures hold their status precisely because of their public reputation.

In essence, if a standard were to be defined, it is undeniable that public figures must endure a higher level of criticism. However, the fact that they hold the status of public figures should not only refrain from becoming a mitigating circumstance for tabloids, but in cases where a significant and permanent violation of a public figure's reputation and honor by a tabloid is proven, it should be specially protected. For private individuals, damage to reputation and honor is generally focused within their private circle, whereas for public figures, this damage extends to the public sphere, and in cases of non-material damage, represents a more intense violation compared to the harm suffered by private individuals.

3.2. Failure to Request a Retraction as a Mitigating Circumstance for Tabloids

A retraction, also referred to as a correction, is an official statement requested by a media outlet to deny or rectify previously published false or misleading information. It is typically requested when an individual or organization believes that inaccurate statements have been disseminated, potentially causing reputational harm. A retraction serves both to correct the record and to mitigate any damage caused by the initial publication. The effectiveness and necessity of a retraction can have significant legal implications, particularly in defamation cases, where the presence or absence of such a corrective measure may influence the determination of liability and the calculation of damages.³¹

What can be raised as a contentious legal request is whether, in cases where a retraction is not requested by the individual whose rights have been violated, this can be considered a mitigating circumstance for tabloids. The failure to request a retraction can be used as an argument to reduce the amount of damages, or as a defense argument.

³¹ E. Wager, and P. Williams, "Why and How Do Journals Retract Articles? An Analysis of Medline Retractions", *Journal of Medical Ethics* 37(9)/2011, 567–570.

The right to a retraction is important, and it can indeed provide an opportunity to mitigate the damage. However, as Smoll³² points out, the failure to request a retraction should not necessarily and automatically reduce the media's liability. Moreover, in certain situations, retractions can further increase the harm suffered by the individual. This can occur when the retraction increases the visibility of the previous news, if publishing the retraction creates additional confusion, or if it only partially corrects the news, especially when the original news was presented in a highly negative context. It is conceivable that an individual who does not wish for certain aspects of their personal life to be discussed, such as their private life, financial status, or religious beliefs, could be placed in an unwanted context by issuing a retraction of a particular news story. While it is undeniable that public figures must endure media coverage of aspects of their lives they might prefer not to highlight, it would be absurd to force an individual who is already suffering harm to inflict additional harm on themselves.

This perspective is particularly understandable considering that by commenting on or denying a negative news story, the negative aspects of the retracted falsehood can often further damage the public reputation of the individual. A good example of this is the so-called "pig rumor".

The "pig rumor" strategy in politics refers to a smear tactic where false and outrageous claims are spread about an opponent to force them to deny it, regardless of the truth. This strategy thrives on the notion that even denying a ridiculous accusation causes lasting damage. One example of this is the "Pig Fucker Politics" tactic, which has been used in various political smear campaigns to undermine opponents by making them deny absurd accusations, thus keeping the rumor alive. Although there is no specific documented case of a politician spreading a rumor about their opponent engaging in inappropriate behavior with a pig, the concept remains a notorious example of political mudslinging.

In academic discussions on political strategies, there's an oft-cited anecdote that exemplifies the use of smear campaigns. The story goes that a political strategist once advised a candidate to spread the false rumor that their opponent had engaged in an inappropriate act with a pig. The idea behind this tactic was not to make voters believe the claim, but to force the opponent into the uncomfortable position of having to publicly deny it, thereby giving the rumor more attention than it would otherwise receive.

³² R. A. Smolla, *Law of Defamation*, 2nd ed., Thomson West, Eagan 2005.

This story is often used to illustrate a key principle of “mudslinging” or “smear tactics”, where the goal is to damage an opponent’s reputation by circulating scandalous or misleading accusations, even if there’s no truth behind them. The very act of responding to such accusations can draw more attention to the rumor, thereby harming the opponent regardless of the truth. By denying such news, certain individuals would obviously inflict additional harm upon themselves.

A retraction is therefore a means by which individuals have the opportunity to mitigate their own harm, but it should by no means be turned into a weapon that forces the harmed party to inflict additional harm on themselves.

4. Conclusion

Tabloids are a specific type of media whose primary characteristic is the frequent violation of media standards in the pursuit of sensationalism, often resulting in severe infringements on the rights of those being reported on. In lawsuits against tabloids, the aggrieved parties typically seek compensation for damages. In such legal disputes, non-material damages are generally awarded, while material compensation is granted only if it can be directly linked to financial losses.

It is undisputed that media disputes involve balancing the public interest and the need to inform the public, on the one hand, and the protection of privacy, honor, and reputation of private individuals, on the other. Public figures, as part of the public sphere, are undeniably subject to criticism and are generally more exposed to public scrutiny. In lawsuits, it is usually required to prove a higher degree of malice when reporting on public figures compared to private individuals. Therefore, the standards for proving media malice are typically higher when it comes to well-known individuals.

In spite of this, it does not mean that the public figure status automatically constitutes a mitigating factor for the media, especially tabloids, which may perpetually violate the rights of public figures in pursuit of sensationalism for greater profit. It is appropriate to apply stricter criteria when assessing the violation of rights; however, once the violation is established, it must be recognized that public figures may suffer greater harm in terms of damage to their reputation and honor. Public reputation and honor are often more pronounced in public figures, making the harm inflicted more significant than in the case of a private individual.

A retraction is a tool that typically serves as a means to mitigate or reduce the damage caused by the media or tabloids. However, the failure to

use a retraction cannot automatically be taken as grounds for reducing the compensation that the aggrieved party may seek. By issuing a retraction of certain news, the individual may in fact inflict further harm on themselves, so it would be contrary to the purpose of this legal instrument to force the aggrieved party to use it. In certain cases, a retraction may continue to bring false and malicious news to public attention or place the individual in a context that harms their personal integrity.

* * *

**POLOŽAJ JAVNIH LIČNOSTI I NEPODNOŠENJE ZAHTEVA
ZA OBJAVLJIVANJE ISPRAVKE U SPOROVIMA ZA NAKNADU ŠTETE
PROTIV TABLOIDA**

Apstrakt

U radu su prikazani pravni izazovi povezani sa javnim ličnostima i nepodnošenjem zahteva za objavljivanje ispravke u sporovima za naknadu štete protiv tabloida. Pažnja je naročito posvećena pitanju da li pojačan nadzor kome su izložene javne ličnosti opravdava blaži pristup medijskoj odgovornosti, posebno u kontekstu tabloida, kao i da li propust od strane oštećenog pojedinca da zahteva objavljivanje ispravke treba da posluži kao olakšavajući faktor za medije u sporovima za naknadu štete.

Kroz analizu kako teorijskih perspektiva, tako i relevantne prakse Evropskog suda za ljudska prava i Vrhovnog suda SAD, rad ispituje balans između prava javnosti da bude informisana i zaštite prava pojedinaca, pre svega prava na privatnost i ugled. Posebno je istaknuto kako tabloidi, kao specifična vrsta medija, često krše novinarske standarde u potrazi za senzacionalizmom, što dovodi do značajne štete koju trpe javne ličnosti.

Rezultati istraživanja su pokazali da, iako se od javnih ličnosti traži da tolerišu veći stepen kritike, odgovornost tabloida ne bi trebalo da bude umanjena. Naprotiv, nepodnošenje zahteva za objavljivanje ispravke ne bi trebalo automatski da ublaži odgovornost tabloida, posebno kada bi objavljivanje ispravke moglo da pogorša štetu koju je pretrpeo pojedinac. Naposletku, rad ukazuje i na potrebu za strožim pravnim standardima u

slučajevima koji uključuju tabloide, naglašavajući potrebu da se javne ličnosti zaštite od nesrazmerne štete uz očuvanje integriteta slobode govora i štampe.

Ključne reči: javne ličnosti, naknada štete, pravo na ispravku, odgovornost medija, sloboda izražavanja.

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