



Journalists should not have been ordered to pay damages for quoting criticism of strip club owners

In today's Chamber judgments in the cases of [Björk Eidsdottir v. Iceland](#) (application no. 46443/09) and [Erla Hlynsdottir v. Iceland](#) (application no. 43380/10), which are not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights in both cases.

The cases concerned defamation proceedings against two Icelandic journalists for their articles about the working conditions in a strip club and an alleged assault at another strip club, respectively.

The court held in particular that the articles had contributed to a public debate and that the journalists had balanced the statements in question by also presenting the strip club owners' respective accounts of the situation.

Principal facts

The applicants, Björk Eidsdottir and Erla Hlynsdottir, are two Icelandic nationals who were born in 1974 and 1978, respectively, and live in Reykjavík. Both of them are journalists who worked at the time for the weekly magazine *Vikan* and the newspaper *DV*, respectively.

In 2007 there was a debate in the media in Iceland on whether the regulations pertaining to strip clubs should be made stricter or whether such clubs should be banned. In that context, an article in a magazine discussed the links between such clubs and prostitution and maintained that the conditions of strip club dancers from Eastern Europe were comparable to human trafficking.

In August 2007, *Vikan* published an article about the working conditions in a strip club called *Goldfinger* based on an interview, conducted by Ms Eidsdottir, with a former strip dancer who had contacted the magazine following its publication of interviews with three other dancers which had given favourable accounts of their work at the club. The August 2007 article quoted statements by the former employee alleging that the club's owner had organised prostitution for his own profit on the premises of the club, that he had threatened the women working there and that he had effectively kept them under house arrest. The club's owner brought defamation proceedings against Ms Eidsdottir, the magazine's editor and the former employee. In the course of the proceedings, he concluded a judicial settlement agreement with the former employee whereby he withdrew his action against her. In April 2008, the district court found that, while several statements made by the former dancer quoted in the article were defamatory, Ms

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Eidsdottir and the editor could not be held liable. On appeal, the Supreme Court, in March 2009, allowed the club owner's claims concerning Ms Eidsdottir as regards some of the statements. It ordered her to pay him 3,000 euros (EUR) in compensation.

In February 2009, *DV* published an article by Ms Hlynsdottir concerning accusations by the owner of another strip club, called *Strawberries*, that he had been attacked at his club by a customer. The article included statements by that customer, whom Ms Hlynsdottir had contacted as part of her research, to the effect that the strip club owner had spread the rumour that he had "the Lithuanian mafia" in his club. It also contained a subheading "rumour about the mafia". The strip club owner instituted defamation proceedings, requesting that the statement and subheading be declared null and void and seeking damages. In December 2009, the district court found for him, holding that those elements of the article would give readers the impression that the club owner was "in charge of an organised, international criminal organisation". The court ordered Ms Hlynsdottir to pay him EUR 1,100 in damages. In March 2010, the Supreme Court refused her leave to appeal.

Complaints, procedure and composition of the Court

Ms Eidsdottir and Ms Hlynsdottir complained that the decisions by the Icelandic courts ordering them to pay compensation and damages, respectively, for the articles in question violated their rights under Article 10 (freedom of expression).

The application in the case *Björk Eidsdottir* was lodged with the European Court of Human Rights on 20 August 2009. The application in the case *Erla Hlynsdottir* was lodged on 21 June 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Lech **Garlicki** (Poland), *President*,
David Thór **Björgvinsson** (Iceland),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro),
Vincent A. **de Gaetano** (Malta),

and also Lawrence **Early**, *Section Registrar*.

Decision of the Court

Article 10

In both cases, the Court considered that the decisions by the Icelandic courts constituted an interference with the applicants' rights under Article 10 and that that interference had a legal basis in Icelandic law. Furthermore, it had pursued the legitimate aim of protecting the reputation or rights of others for the purpose of Article 10.

However, the Court was not convinced by the argument, advanced by the Icelandic Government, that Ms Eidsdottir's portrayal of the strip club owner and the subject matter of Ms Hlynsdottir's article had not been necessary contributions to a public debate. It noted that well before the publication of the two articles there had been a public debate in the Icelandic media on the tightening of strip club regulations or the banning of such clubs. There was thus no doubt that the articles, seen as a whole, related to a matter of serious public concern. That consideration, however, had not carried any sway in the reasoning of the Icelandic courts.

In the **case of Björk Eidsdottir**, the Court agreed with the Icelandic Supreme Court in its assessment that the allegations quoted in Ms Eidsdottir's article constituted factual statements, not value judgments, and that they imputed criminal conduct to the strip club owner. Those accusations had been capable of causing considerable harm to his reputation. However, according to the findings of the Supreme Court, the article accurately rendered the substance of the statements by the former employee of the strip club who had been interviewed in the article.

The club owner's interest in protecting himself against the accusations had moreover been preserved by the possibility to lodge defamation proceedings, of which he had made use. The Court noted that he had subsequently withdrawn his action against his former employee and that, as a result of that settlement, Ms Eidsdottir's possibility to substantiate the allegations had been considerably reduced.

Nevertheless, she had provided evidence in support of the disputed statements, including a report on human trafficking in Iceland by the US embassy, which described how one of its employees had been offered sexual services at the strip club's restaurant when conducting research for the report. The Supreme Court had omitted to take those arguments into consideration. Moreover, Ms Eidsdottir had provided information showing that the strip club owner's requests in proceedings against journalists of another magazine concerning allegations about prostitution at his club had been dismissed by the Icelandic courts. The Court was therefore unable to accept the Government's argument that she had failed to ascertain whether there was a factual basis for the former employee's accusations.

Furthermore, Ms Eidsdottir could not be criticised for not having distanced herself from the contents of the interviewee's statements or for not having counterbalanced them. In particular, she had offered the club owner an opportunity to comment and her article had quoted his reply. The article had also referred to interviews published in the magazine a few weeks earlier giving a favourable account of the working conditions at the club.

In the **case of Erla Hlynsdottir**, the Court found that the district court had failed to explain how the statements quoted in the article could be understood as suggesting that the strip club owner was in charge of an international criminal organisation. In particular, the phrase "he had the Lithuanian mafia in there" could be understood as a simple description of who was present on the premises of the club. There was no clear implication of the owner being *in charge* of a criminal organisation.

While the district court had failed to address the issue of whether the statements in question constituted factual allegations or value judgments, the Court considered that they had in any event been capable of harming the club owner's reputation. However, those statements had not originated from Ms Hlynsdottir but from the customer whom she had interviewed after having heard the club owner's version of the alleged assault. The club owner's interest in protecting himself against the accusations had been preserved by the possibility to lodge defamation proceedings. Moreover, it had been him who had contacted Ms Hlynsdottir in the first place, which had prompted her to write the article. It ought to have been clear to the club owner that his remarks would be shown to the customer and that the latter would be given an opportunity to present his version of the events. However, that consideration had not played any role in the district court's reasoning.

In both cases, the Court underlined that the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview seriously hampered the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so. The Court was not convinced that there were any such strong reasons in either of the two

cases. The reasons relied on by the Icelandic Government were thus not sufficient to show that the interference with the applicants' rights had been necessary in a democratic society. There had accordingly been a violation of Article 10 in both cases.

Just satisfaction (Article 41)

The court held that Iceland was to pay Ms Eidsdottir 7,790 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 25,000 in respect of costs and expenses. It held that Iceland was to pay Ms Hlynsdottir EUR 4,000 in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 12,500 in respect of costs and expenses.

The judgments are available only in English.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.