



Making an Internet news portal liable for the offensive online comments of its readers was justified

In today's Chamber judgment in the case of [Delfi AS v. Estonia](#) (application no. 64569/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the liability of an Internet news portal for offensive comments that were posted by readers below one of its online news articles. The portal complained that being held liable for the comments of its readers breached its right to freedom of expression.

The Court held that the finding of liability by the Estonian courts was a justified and proportionate restriction on the portal's right to freedom of expression, in particular, because: the comments were highly offensive; the portal failed to prevent them from becoming public, profited from their existence, but allowed their authors to remain anonymous; and, the fine imposed by the Estonian courts was not excessive.

Of particular interest was the Court's finding on the issue of the lawfulness of the interference with the portal's right to freedom of expression. Though the portal had argued that an EU Directive on Electronic Commerce, as transposed into Estonian law, had made it exempt from liability, the Court found that it was for national courts to resolve issues of interpretation of domestic law, and therefore did not address the issue under EU law.

Principal facts

The applicant, Delfi AS, is a public limited company registered in Estonia. It owns one of the largest internet news sites in the country.

In January 2006, Delfi published an article on its webpage about a ferry company. It discussed the company's decision to change the route its ferries took to certain islands. This had caused ice to break where ice roads could have been made in the near future. As a result, the opening of these roads – a cheaper and faster connection to the islands compared to the ferry services – was postponed for several weeks. Below the article, readers were able to access the comments of other users of the site. Many readers had written highly offensive or threatening posts about the ferry operator and its owner.

The owner sued Delfi in April 2006, and successfully obtained a judgment against it in June 2008. The Estonian court found that the comments were defamatory, and that Delfi was responsible for them. The owner of the ferry company was awarded 5,000 kroons (EEK) in damages (around 320 euros [EUR]). An appeal by Delfi was dismissed by Estonia's Supreme Court in June 2009. In particular, the domestic courts rejected the portal's argument that, under EU Directive 2000/31/EC on Electronic

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

Commerce, its role as an Internet society service provider or storage host was merely technical, passive and neutral, finding that the portal exercised control over the publication of comments.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Delfi complained that the Estonian civil courts found it liable for comments written by its readers.

The application was lodged with the European Court of Human Rights on 4 December 2009.

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

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”),
Julia **Laffranque** (Estonia),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\)](#)

Firstly, the Court considered Delfi’s argument that EU Directive 2000/31/EC on Electronic Commerce, when transposed into Estonian law, had limited its liability for the defamatory comments of its readers. It found that it was for the domestic courts to resolve issues of interpretation of domestic law and did not address the position under EU law. The national courts had relied on the provisions of the civil code to find Delfi liable and sanction it; the interference with the portal’s right to freedom of expression had therefore been lawful and complied with the “prescribed by law” requirement under the Convention.

The Court further noted that Article 10 allowed freedom of expression to be interfered with by member States in order to protect a person’s reputation, as long as the interference was proportionate in the circumstances. The essential question was therefore whether this interference was proportionate, given the facts of the case.

In assessing this question, the Court assessed four key issues. First, the context of the posts. The comments had been insulting, threatening and defamatory. Given the nature of the article, the company should have expected offensive posts, and exercised an extra degree of caution so as to avoid being held liable for damage to an individual’s reputation.

Second, the steps taken by Delfi to prevent the publication of defamatory comments. The article’s webpage did state that the authors of comments would be liable for their content, and that threatening or insulting comments were not allowed. The webpage also automatically deleted posts that contained a series of vulgar words, and users could tell administrators about offensive comments by clicking a single button, which would then lead to the posts being removed. However, the warnings failed to prevent a large number of insulting comments from being made, and they were not removed in good time by the automatic-word filtering or by the notice-and-take-down notification system.

Third, whether the actual authors of the comments could have been made liable for them. The owner of the ferry company could, in principle, have attempted to sue the specific authors of the

offensive posts rather than Delfi. However, the identity of the authors would have been extremely difficult to establish, as readers were allowed to make comments without registering their names. Therefore many of the posts were anonymous. Making Delfi legally responsible for the comments was therefore practical; but it was also reasonable, because the news portal received commercial benefit from comments being made.

Finally, the court addressed the consequences of Delfi being made liable. The sanctions imposed by the Estonian courts against the company had been fairly small. Delfi was required to pay a EUR 320 fine, and the courts did not make any orders about how the portal should protect third party rights in the future in a way that might limit free speech.

Taking into account all of these points, the Court held that making Delfi liable for the comments was a justified and proportionate interference with its right to freedom of expression. There had therefore been no violation of Article 10.

The judgment is available only in English.

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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.