



Journalist reporting on sexual abuse case should not have been found guilty of defamation

In today's Chamber judgment¹ in the case of [Erla Hlynsdóttir v. Iceland \(No. 2\)](#) (application no. 54125/10) 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

The case concerned the complaint by a journalist of having been found liable for defamation following the publication in 2007 of an article about a high-profile criminal case involving the director of a rehabilitation centre and his wife, who were suspected of sexual abuse.

The Court found in particular that the Icelandic courts had not based their judgment on relevant and sufficient grounds demonstrating that Ms Hlynsdóttir had acted in bad faith. In particular, they had rejected the defamation claim in respect of a number of statements concerning the activities of the claimant (the director's wife), leaving it unclear why the statement found to be defamatory could be read as an allusion to a crime.

Principal facts

The applicant, Erla Hlynsdóttir, is an Icelandic national who was born in 1978 and lives in Reykjavik. She is a journalist who worked for the newspaper *DV*.

The case concerned defamation proceedings against Ms Hlynsdóttir following the publication, in 2007, of an article about a high-profile criminal case which was being investigated at the time, involving the director of a Christian rehabilitation centre for people with drug, alcohol and gambling addictions. Both the director of the rehabilitation centre and his wife were suspects of having sexually abused female patients. The director was later convicted of having had sexual relations with patients, while his wife was not indicted. Among other things the article published by Ms Hlynsdóttir included a number of statements by a former female patient, describing how the director's wife had been involved in the sexual abuse and criticising the fact that the wife was at the time working as a teaching assistant in a school.

In proceedings brought by the director's wife, Ms Hlynsdóttir was found liable for defamation as regards one of the statements attributed to the former patient and ordered to pay the claimant compensation. The judgment was upheld by the Supreme Court in February 2010 as regards one part of the statement in question. While the court rejected the libel claim in respect of a series of statements describing the wife's participation in sexual activities with patients and in respect of the statement questioning "what she is doing in this school", it upheld the claim only with regard to the statement that it was "... not appropriate that the one who hunts for him works in a primary school." The Supreme Court was of the view that those words, which had not been proven to be true, "indicated that [the director's wife] was guilty of criminal conduct."

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.

Complaints, procedure and composition of the Court

Ms Hlynsdóttir complained that the Icelandic Supreme Court's judgment was in breach of her rights under Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 17 August 2010.

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

Guido **Raimondi** (Italy), *President*,
Işıl **Karakaş** (Turkey),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),

and also Abel **Campos**, *Deputy Section Registrar*.

Decision of the Court

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

The Court observed that Ms Hlynsdóttir's article had been published in the context of a high-profile criminal investigation into accusations of sexual offences which had been the subject of previous TV reports. There was no doubt that, as a whole, it related to an issue of serious public concern in Iceland.

The Court further noted that the conclusion of the Icelandic courts that the sentence which was found to be defamatory contained an insinuation about a criminal act was not derived explicitly from the sentence itself but was the result of an interpretation. However, the courts had not explained how the word "hunt" in the statement "the one who hunts for him" would be perceived by the reader as an allusion to a criminal act, nor had they referred to any legal provision in that context. This would have been all the more necessary considering that the courts had rejected the libel action in respect of a series of other statements included in the article referring to the active participation of the wife of the rehabilitation centre's director in sexual activities with female patients. The Court was therefore not convinced that the reasons on which the Icelandic courts had relied were relevant to the legitimate aim of protecting the wife's rights and reputation.

The statement in question included a factual element, namely that the director's wife had taken part in sexual activities with patients together with her husband in the rehabilitation centre. However, that element had been considered an established fact by the Icelandic Supreme Court in its judgment rejecting the libel action in respect of most other statements, noting in that context also the director's conviction. The words "hunts for him" could thus be understood as a value-based characterisation of established factual events rather than a pure factual assertion.

The patient who had been interviewed, in her pleadings before the courts, had submitted that she was unable to recall whether she had made the statements in question when speaking to the journalist Ms Hlynsdóttir. However, the Court was satisfied that there was a sufficient factual basis for the allegation in question when viewed in the context of the article as a whole.

Moreover, Ms Hlynsdóttir had repeatedly attempted to interview the director of the rehabilitation centre. She had interviewed the couple's legal representative – who stated that he advised them not to speak to the media – and an officer of the police department in charge of the investigation – who confirmed that the director's wife was a suspect. She had thus sought to achieve a balance in her reporting.

In that light, the Court found that the Icelandic Supreme Court had not based its judgment on relevant and sufficient grounds demonstrating that Ms Hlynisdóttir had acted in bad faith or without the due diligence. Moreover, it had not balanced her right to freedom of expression as a journalist and the right of the director's wife to her reputation.

The Court concluded that there had been a violation of Article 10.

Article 41 (just satisfaction)

The Court held that Iceland was to pay Ms Hlynisdóttir 2,500 euros (EUR) in respect of pecuniary damage – this being the amount Ms Hlynisdóttir had been ordered to pay the director's wife – and EUR 5,500 in respect of non-pecuniary damage.

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.