



Journalist should not have been found liable for defamation for article on criminal case

In today's **Chamber** judgment¹ in the case of [Hlynsdóttir v. Iceland \(no. 3\)](#) (application no. 54145/10) 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 defamation proceedings against a journalist following publication of an article about a major criminal case in which the defendant was eventually acquitted.

The Court found in particular that it was clear from the article that the proceedings were pending and had not been concluded at the time. The statement in question used the exact wording from the indictment, and there was no reason for Erla Hlynsdóttir to believe that the indictment was not a source on which she could rely.

Principal facts

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

In July 2007, the newspaper *DV* published an article by Erla Hlynsdóttir about an ongoing set of criminal proceedings against a man suspected of importing a large quantity of cocaine into Iceland. On the newspaper's front page there was a large headline "Scared cocaine smugglers". On page two, the article included one passage which revealed part of the description of the facts contained in the indictment, stating that the cocaine had been hidden in a car.

Following his acquittal, the accused brought defamation proceedings against Erla Hlynsdóttir and the editor of the newspaper. After the first-instance court had initially found for Erla Hlynsdóttir, the Supreme Court, in March 2010, overturned the judgment and declared null and void the words "cocaine smugglers" and the statement "...believing that the cocaine was still in the vehicle". It also ordered her and the editor to pay the claimant compensation.

Complaints, procedure and composition of the Court

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

The application was lodged with the European Court of Human Rights on 31 August 2010.

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

András Sajó (Hungary), *President*,
Nebojša Vučinić (Montenegro),
Helen Keller (Switzerland),
Paul Lemmens (Belgium),

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.

Egidijus Kūris (Lithuania),
Robert Spano (Iceland),
Jon Fridrik Kjølbro (Denmark),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 10

The Court considered that Erla Hlynsdóttir's being held liable and pay compensation for the two statements in question had entailed an interference with her rights under Article 10. It was satisfied that the interference had a legal basis in Icelandic law and that it pursued the legitimate aim of protecting "the reputation or rights of others" within the meaning of article 10.

The Court agreed with the findings of the Icelandic Supreme Court to the effect that the words "cocaine smugglers" in the newspaper's headline and the statement in the article in question contained an insinuation that the defendant in the trial was guilty of the offence of which he was accused. The Court also agreed that the Supreme Court's reasoning was relevant to the legitimate aim of protecting the rights and reputation of the man suspected of the offence but later acquitted from the charge of importing drugs.

As regards the question of whether the reasons relied on had been sufficient to show that the interference with Erla Hlynsdóttir's rights had been "necessary in a democratic society" for the purpose of Article 10, the Court took into account the overall background of the statements. It observed that the criminal case in question had been one of the largest cocaine cases in Iceland and the offence for which the defendant had been indicted was a serious one. The Court therefore agreed with Erla Hlynsdóttir that the public had a legitimate interest in being informed of those criminal proceedings. In the Court's view, a journalist's good faith should be assessed on the basis of the knowledge and information which was available to him or her at the time of writing the articles in question. Thus it was not decisive for the purpose of the case that the defendant in the drug case was later acquitted of the charges brought against him.

As regards the statement "...believing that the cocaine was still in the vehicle", the Court found it significant that the article in which it was included, written by Erla Hlynsdóttir, reported on the trial. It was clear from the article that the proceedings were pending and had not been concluded. The statement rendered the exact wording from the indictment, and there was no reason for Erla Hlynsdóttir to believe that the indictment was not a source on which she could rely. Moreover the preceding passage of the article had referred specifically to the indictment, reporting on the sentence requested by the Public Prosecutor. The statement in question could thus reasonably be understood as continuing to refer to the text of the indictment. Against that background, the Court found that Erla Hlynsdóttir could not be reproached for having failed to specify the official source.

Concerning the words "cocaine smugglers" in the newspaper's headline, the Court considered that they were not sufficiently connected to the passage which referred to the indictment to enable the reader to understand that it was based on that text. However, the words in the headline were not attributed to Erla Hlynsdóttir but to the editor who was also found liable of defamation. The Court was unable to agree with the Icelandic Supreme Court's finding that the two statements in question were linked to the extent that it was justified to make Erla Hlynsdóttir responsible as well for paying compensation to the defendant in the drug case.

In conclusion, the reasons relied on by the Icelandic Supreme Court had not been sufficient to show that the interference with Erla Hlynsdóttir's rights had been "necessary in a democratic society". There had accordingly been a violation of Article 10.

Just satisfaction (Article 41)

The Court held that Iceland was to pay Erla Hlynsdóttir 450 euros (EUR) in respect of pecuniary damage and EUR 4,000 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.