



## The domestic courts' refusal to impose liability on an Internet forum for anonymously posted comments was not in breach of Article 8

In today's Chamber judgment<sup>1</sup> in the case of [Høiness v. Norway](#) (application no. 43624/14) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights.

The case concerned the domestic courts' refusal to impose civil liability on an Internet forum host after vulgar comments about Ms Høiness had been posted on the forum.

The Court found in particular that the national courts had acted within their discretion ("margin of appreciation") when seeking to establish a balance between Ms Høiness's rights under Article 8 and the opposing right to freedom of expression under Article 10 of the news portal and host of the debate forums. Moreover, the domestic courts' rulings on litigation costs being awarded to the defendants had not as such violated Article 8.

### Principal facts

The applicant, Mona Høiness, is a Norwegian national who was born in 1958 and lives in Oslo (Norway).

Ms Høiness, who is a well-known lawyer, began civil proceedings before the Oslo City Court in May 2011 against the Hegnar Media AS company and Mr H., an editor working for the Internet portal *Hegnar Online*, for defamation. She stated that her honour had been infringed because of sexual harassment in three comments made anonymously in *Hegnar Online's* forum, which was incorporated into Hegnar Media AS. The defendants argued that they had not been aware of the comments and that they had been removed as soon as they had become aware of them. In January 2012 the City Court ruled in favour of the defendants. It held that the comments in question had not amounted to unlawful defamation as they had been incapable of offending either Ms Høiness's honour or her reputation.

Ms Høiness appealed. The High Court held in October 2013 that Ms Høiness's claim for compensation could not succeed unless the defendants had acted with sufficient culpability. In that regard it noted, amongst other things, that there were "warning buttons" on the website, which readers could click on in order to react to comments. The High Court also upheld the City Court's decision on litigation costs and awarded the defendants 183,380 Norwegian kroner (approximately 20,050 euros). Ms Høiness appealed but leave to appeal to the Supreme Court was refused.

### Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), Ms Høiness complained that the Norwegian authorities had violated her rights under the Convention by not sufficiently protecting her right to

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](http://www.coe.int/t/dghl/monitoring/execution).

protection of her reputation and by requiring her to pay litigation costs to the extent seen in her case.

The application was lodged with the European Court of Human Rights on 3 June 2014.

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

Robert **Spano** (Iceland), *President*,  
Paul **Lemmens** (Belgium),  
Julia **Laffranque** (Estonia),  
Valeriu **Grițco** (the Republic of Moldova),  
Stéphanie **Mourou-Vikström** (Monaco),  
Arnfinn **Bårdsen** (Norway),  
Darian **Pavli** (Albania),

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court reiterated that a person's right to protection of his or her reputation was encompassed by Article 8.

It further observed that what was at issue in the case was not an act by the State but the alleged inadequacy of the protection afforded by the domestic courts to Ms Høiness's private life. In addition to a negative obligation there might be positive obligations inherent in effective respect for private life.

As concerns competing interests under Article 8 and Article 10, the Court had established general principles, as summarised in *Delfi AS v. Estonia*. The Court would usually afford a wide margin if the State was required to strike a balance between competing interests or competing Convention rights. In making this proportionality assessment, the Court had also identified specific aspects of freedom of expression as being relevant, such as the context of the comments, the measures applied by the company in order to prevent or remove defamatory comments, the liability of the actual authors of the comments as an alternative to the intermediary's liability, and the consequences of the domestic proceedings for the company.

The Court noted that the comments made about Ms Høiness had been found by the City Court not to constitute defamation under national law, while the High Court had deemed it unnecessary to take a stand on whether they were defamatory or not. The Court also considered that it was not obliged to examine the nature of the comments in depth as they in any event did not amount to hate speech or incitement to violence.

Secondly, the Court saw no reason to contest Ms Høiness's allegation that she would have faced considerable obstacles in attempting to pursue claims against the anonymous individuals who had written the comments. As to the context in which the comments were made, the Court observed that the debate forums had not been particularly integrated in the presentation of news and thus had not appeared to be a continuation of editorial articles.

With respect to the measures adopted by *Hegnar Online*, there had been an established system of moderators who monitored content. Moreover, readers had the possibility to click on "warning buttons", and warnings by other means, such as email, had also been successful. In the instant case, one of the comments had even been deleted on the moderator's own initiative before receipt of notification by Ms Høiness's counsel. The High Court had found, upon an overall examination and assessment of the measures that had been put in place in order to monitor the forum comments,

and the specific responses to Ms Høiness's notifications, that the news portal company and its editor had acted appropriately.

The Court observed that Ms Høiness's case had been considered on its merits at two levels of domestic jurisdiction. The courts had reviewed all the relevant aspects. In line with the principles set out in *Delfi AS v. Estonia*, there were no reasons for the Court to substitute a different view for that of the national courts.

The Court found accordingly that the domestic courts had acted within their margin of appreciation when seeking to establish a balance between Ms Høiness's rights under Article 8 and the opposing right to freedom of expression under Article 10 of the news portal and host of the debate forums.

The Court further noted the considerable amount of litigation costs imposed on Ms Høiness. However, taking account of the nature of the claim lodged before the national courts and the subject matter, the Court did not consider that it could call into question the domestic courts' assessment on costs. The Court was in any event satisfied that the domestic courts had sufficiently safeguarded Ms Høiness's rights under Article 8 and there had been no violation of that provision.

*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.