

*Delfi AS v. Estonia*  
(application no.64569/09)  
Judgment 16.06.2015 [GC]

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**Article 10**

**Article 10-1**

**Freedom to impart information**

Award of damages against internet news portal for offensive comments posted on its site by anonymous third parties: *no violation*

**Facts:** The applicant company owned one of the largest Internet news portals in Estonia. In 2006, following the publication of an article on the applicant's portal concerning a ferry company, a number of comments containing personal threats and offensive language directed against the ferry-company owner were posted under the article. Defamation proceedings were instituted against the applicant company, which was ultimately ordered to pay EUR 320 in damages.

In a judgment of 10 October 2013, a Chamber of the Court found unanimously that there had been no violation of Article 10.

On 17 February 2014 the case was referred to the Grand Chamber at the applicant company's request.

**Law:** Article 10

This was the first case in which the Court had to examine a complaint concerning user-generated expressive activity on the Internet. Acknowledging important benefits that could be derived from the Internet in the exercise of freedom of expression, the Court reiterated that liability for defamatory or other types of unlawful speech must, in principle, be retained and constitute an effective remedy for violations of personality rights. Moreover, the Court observed that, in the present case, the impugned comments constituted hate speech and direct incitement to violence, that the applicant company's news portal was one of the biggest Internet media in the country and that there had been public concern about the controversial nature of the

comments it attracted. Therefore, the scope of examination of the case was limited to the assessment of the “duties and responsibilities” of Internet news portals, in the light of Article 10 § 2, when they provided for economic purposes a platform for user-generated comments on previously published content and some users engaged in clearly unlawful forms of speech.

First of all, the Court was satisfied that domestic legal instruments made it foreseeable that a media publisher running an Internet news portal for an economic purpose could, in principle, be held liable under domestic law for the uploading of clearly unlawful comments on its news portal. As a professional publisher, the applicant company was in fact in a position to assess the risks related to its activities and must have been able to foresee the legal consequences which these could entail. Therefore, the interference in issue was “prescribed by law” within the meaning of Article 10 of the Convention.

As regards the necessity of the interference with the applicant company’s freedom to impart information, the Court attached particular weight to the professional and commercial nature of the applicant’s news portal, and to the fact that it had an economic interest in the posting of comments. Moreover, only the applicant company had the technical means to modify or delete the comments published on the news portal. Against this background, the applicant company’s involvement in making public the comments on its articles on the portal went beyond that of a passive, purely technical service provider.

As to whether the liability of the actual authors of the comments could serve as an alternative to the liability of the Internet news portal, the Court recalled that anonymity on the Internet, although an important value, had to be balanced against other rights and interests. In reaching this conclusion, it was mindful of the interest of Internet users in not disclosing their identity, but also pointed to the sometimes very negative effects of an unlimited dissemination of information on the Internet. In this regard, the Court referred to a judgment in which the Court of Justice of the European Union found that the individual’s fundamental rights, as a rule, overrode the economic interests of the search engine operator and the interests of other Internet users. Moreover, the Internet allowed for different degrees of anonymity, with providers sometimes being the only ones able to identify Internet users that wished to remain anonymous *vis-à-vis* the public. In the present case, the uncertain effectiveness of measures

allowing the establishment of the identity of the authors of the comments, coupled with the lack of instruments put in place by the Internet portal with a view to making it possible for a victim of hate speech to effectively bring a claim against the authors of the comments, supported the domestic courts' view that the injured person had to have the choice of bringing a claim against the applicant company or the authors of the comments.

As to the measures taken by the applicant company to tackle the publication of unlawful comments on its portal, an obligation for large news portals to take effective measures to limit the dissemination of hate speech and speech inciting violence could not be equated to "private censorship". In fact, the ability of a potential victim of such speech to continuously monitor the Internet was more limited than the ability of a large commercial Internet news portal to prevent or remove unlawful comments. Notwithstanding certain mechanisms to deal with comments amounting to hate speech or speech inciting to violence actually in place on the applicant company's website, which could function in many cases as an appropriate tool for balancing the rights and interests of all involved, they had been insufficient in the specific circumstances of the case, as the unlawful comments had remained online for six weeks.

Finally, a sanction of EUR 320 imposed on the applicant company could by no means be considered disproportionate to the breach established by the domestic courts. It also did not appear that the applicant company had had to change its business model as a result of the domestic proceedings. It followed from the above that the domestic courts' imposition of liability on the applicant company had been based on relevant and sufficient grounds and had not constituted a disproportionate restriction on its right to freedom of expression.

*Conclusion: no violation (fifteen votes to two).*