



## Forthcoming Grand Chamber judgment concerning the liability of an Internet news portal for offensive online comments

The European Court of Human Rights will be delivering a **Grand Chamber** judgment<sup>1</sup> in the case of **Delfi AS v. Estonia** (application no. 64569/09) at a public hearing on **16 June 2015 at 2.30 p.m.** in the Human Rights Building, Strasbourg.

### Principal facts and complaints

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.

At the request of the lawyers of the owner of the ferry company, Delfi removed the offensive comments about six weeks after their publication in March 2006.

The owner of the ferry company 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 in damages (around 320 euros).

An appeal by Delfi was dismissed by Estonia's Supreme Court in June 2009. In particular, the Supreme Court rejected the portal's argument that, under EU Directive 2000/31/EC on Electronic Commerce, its role as an information society service provider or storage host was merely technical, passive and neutral, finding that the portal exercised control over the publication of comments.

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

### Procedure

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

In its Chamber [judgment](#) of 10 October 2013 the Court held, unanimously, that there had been no violation of Article 10 (freedom of expression) of the European Convention. It found that the finding of liability by the Estonian courts had been a justified and proportionate restriction on the portal's right to freedom of expression, in particular, because: the comments were highly offensive; the portal had 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 had not been excessive.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their 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).

On 9 January 2014 Delfi asked for the case to be referred to the Grand Chamber in accordance with Article 43 of the Convention<sup>2</sup> (referral before the Grand Chamber). On 17 February 2014 the Grand Chamber Panel [accepted](#) Delfi's request. A hearing was held on the case in Strasbourg on 9 July 2014.

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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.

<sup>2</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.