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Q & A

Delfi AS v. Estonia, Grand Chamber judgment¹

Commercially-run Internet news portal was liable for
the offensive online comments of its readers

This document is a tool for the press, issued in the context of notification of the above judgment. It does not bind the Court.

What is the difference between the Grand Chamber and the Chamber judgment, which both found a no violation of Article 10?

➤ Nature of the examination by the Grand Chamber

The Grand Chamber has the task of deciding **afresh, fully and freely**, on the complaints raised in the cases referred to it. Where a case is sent to the Grand Chamber after a Chamber judgment, the work of the Chamber and the Grand Chamber are by definition different; the first worked from a blank page, while the second must necessarily take a position on a judgment already delivered.

The questions raised thus lead to an in-depth examination by the Grand Chamber, within which the debate evolves in relation to the Chamber's findings, particularly having regard to the observations of the parties, whether in writing or in oral argument during the hearing, and bearing in mind that the composition of the bench will be different (17 judges instead of 7 in the Chamber).

Unlike the Chamber judgment, this Grand Chamber judgment is final and not subject to appeal.

➤ Focus of the *Delfi* Grand Chamber judgment

The difference between the Chamber and the Grand Chamber judgments in the *Delfi* case is in the focus. The Grand Chamber focused its examination ("narrowed the scope of its inquiry") of the case on the **nature of Delfi and of the comments**.

As concerned the nature of *Delfi*, the Grand Chamber saw no reason to call into question the distinction made by the Estonian Supreme Court between a portal operator and a traditional publisher of printed media and considered that their duties and responsibilities might differ. The Grand Chamber also emphasised that *Delfi* was one of the biggest professionally managed Internet portals in Estonia, run on a commercial basis, and which sought to attract a large number of comments on news articles published by it. *Delfi* was not therefore, as it had argued, a simple intermediary for third-party comments with a merely passive, purely technical role.

As concerned the nature of the comments, the Grand Chamber found that the expressions of hatred and blatant threats to the owner of the ferry company by *Delfi*'s readers were manifestly unlawful. This meant that the comments – amounting to hate speech – did not require any further linguistic or legal analysis.

¹ Application no. 64569/09

Is this the first case before the ECtHR concerning Internet?

This is the first case in which the Court was called upon to examine a complaint with regard to the liability of an Internet news portal for user-generated comments.

The Court has however decided on other cases concerning Internet which the Court refers to in its Delfi Grand Chamber judgment, notably:

[K.U. v. Finland \(no. 2872/02\)](#) of 2 December 2008 concerning an advertisement of a sexual nature posted about a 12-year old boy on an Internet dating site. Under Finnish legislation in place at the time, the police and the courts could not require the Internet provider to identify the person who had posted the ad.

[Violation of Article 8 \(right to respect for private and family life\) of the European Convention on Human Rights](#)

[Times Newspapers Ltd v. the United Kingdom \(nos. 1 & 2\)](#) of 10 March 2009 concerning a complaint about a rule under UK law ("the Internet publication rule") whereby each time an article is accessed in electronic archives, a new cause of action in defamation arises.

[No violation of Article 10 \(freedom of expression\) of the Convention](#)

[Editorial Board of Pravoye Delo and Shtekel v. Ukraine](#) of 5 May 2011 concerning the lack of adequate safeguards in Ukrainian law for journalists' use of information obtained from the Internet.

[Two violations of Article 10 \(right to freedom of expression and information\) of the Convention](#)

[Mosley v. the United Kingdom](#) of 10 May 2011 concerning the publication of articles, images and video footage in the *News of the World* newspaper and on its website which disclosed details of Max Mosley's (the former president of the International Automobile Federation, the governing body for Formula One) sexual activities. Mr Mosley complained about the authorities' failure to impose a legal duty on the newspaper to notify him in advance of further publication of the material so that he could seek an interim injunction.

[No violation of Article 8 \(right to respect for private and family life\) of the Convention](#)

[Ahmet Yıldırım v. Turkey](#) of 18 December 2012 concerning a court decision to block access to Google Sites, which hosted an Internet site whose owner was facing criminal proceedings for insulting the memory of Atatürk.

[Violation of Article 10 \(freedom of expression\) of the Convention](#)

See the factsheet on [New Technologies](#).

Does the ECtHR differentiate between types of Internet fora in this judgment?

Yes. The Court decided that the **case concerned** the duties and responsibilities of **Internet news portals** which provided on a commercial basis a platform for user-generated comments on previously published content and some users – whether identified or anonymous – engaged in clearly unlawful speech which infringed the personality rights of others. The case **did not concern other fora on the Internet** where third-party comments could be disseminated, for example an Internet discussion forum, a bulletin board or a social media platform.

Does the ECtHR examine the liability of the authors of the comments posted on Delfi's news portal?

No.

The Court pointed out that the question before the Grand Chamber was not whether the freedom of expression of the authors of the comments had been breached but whether holding Delfi liable for comments posted by third parties was in breach of its freedom to impart information.

The question examined before the Grand Chamber was more **whether Delfi had ensured a realistic prospect of the authors of the comments being held liable**. The owner of the ferry company could have attempted to sue the specific authors of the offensive comments as well as Delfi itself. However, Delfi allowed readers to make comments without registering their names, and the measures to establish the identity of the authors were uncertain. Nor had Delfi put in place any instruments to identify the authors of the comments making it possible for a victim of hate speech to bring a claim.

Does the ECtHR examine European Union law in this case?

No. The Grand Chamber did not address the issue under EU law. Though Delfi had argued that an EU directive on Electronic Commerce, as transposed into Estonian law, had made it exempt from liability, the Grand Chamber – like the Chamber – found that it was for national courts to resolve issues of interpretation and application of domestic law.

This is in line with the Court's established case-law according to which it is not for it to express a view on the appropriateness of methods chosen by the legislature of a State to regulate a given field. Its task is limited to determining whether the methods adopted and the resulting effects are in conformity with the Convention.

Was Delfi required to carry out prior monitoring of comments?

No. According to the Grand Chamber's reading of the Supreme Court's judgment in the Delfi case, the subsequent removal of the comments without delay after their publication would have sufficed for it to escape liability under domestic law.

What have been the consequences of the Delfi case for other similar cases before the Estonian courts?

The tangible result for Internet operators in post-Delfi cases before the national courts has been that they have taken down offending comments but have not been ordered to pay compensation.

What are the consequences of this judgment for Internet news portals in other countries?

The Court looks at applications brought before it on a case by case basis. In the Delfi case the Court does not set any new rules/requirements for other countries concerning the liability of Internet news portals for user-generated comments. The Grand Chamber simply accepted that **where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, the member States may be entitled to impose liability on Internet news portals if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties**.

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