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ECHR: Internet News Portals May Be Held Liable for User-generated Comments

On 16 June 2015, in a case of first impression, the Grand Chamber of the European Court of Human Rights ("**ECHR**") issued its final decision regarding the liability of a news portal for offensive comments made by its users. In the case *Delfi AS v. Estonia* (application no. 64569/09, the "**Case**"), the ECHR decided that holding an internet news portal liable for comments made by a third-party commentator to the portal's site is not in breach of the portal's freedom to impart information.



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Background of the Case

In January 2006, the applicant Delfi AS, the owner of one of the biggest commercial internet news portals in Estonia, published an article on its webpage about a local ferry company. Thereafter, some of the site's users wrote highly offensive and threatening comments about the ferry company and its owner. While Delfi AS deleted the comments about 6 weeks after publishing the article, the owner of the ferry company nevertheless successfully sued the news portal. The Estonian courts decided that the limitation of liability for service providers for the distributed content of third parties (stipulated in the local law that transposes Directive 2000/31/EC) was not applicable in this case. Therefore, they found Delfi AS liable for the comments and awarded compensation to the owner of the ferry company in the amount of approx. EUR 320 for non-pecuniary damages.

In 2009, Delfi AS filed an application to the ECHR, complaining that it had been found liable for comments made by third parties. With its judgement of 10 October 2013, the Chamber of the ECHR decided that there had been no violation of article 10 (freedom of expression) of the European Convention of Human Rights. In response, at the beginning of 2014, Delfi AS requested the case be reviewed by the Grand Chamber of the ECHR.

The Conclusions of the ECHR

The Grand Chamber of the ECHR narrowed its assessment to determining the duties and responsibilities, under Article 10 § 2 of the European Convention of Human Rights, of a commercially run internet news portals that provides users the option of generating comments on published content where those comments could include unlawful speech. Finding that there had not been unjustified and disproportional restriction on Delfi AS's freedom of expression, the decisive jury considered the following main aspects of the case:

- Although Delfi AS had not been the actual writer of the unlawful comments, it had full control over its internet platform.
- Delfi AS had not ensured a realistic possibility for any affected third party to hold the actual authors of the unlawful comments liable.
- Delfi AS's efforts in preventing and removing the unlawful comments without delay had been insufficient.
- The awarded compensation (approx. EUR 320) was not only not excessive, but actually modest.

Consequences of the Decision

It is too soon to estimate the consequences of the final decision of the ECHR's Grand Chamber. Nevertheless, it should be expected that there will be a significant increase in the number of claims lodged against commercially-run internet portals and it is advisable for owners of such web-based platforms to revise their policies concerning user-generated comments.

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