European Court of Human Rights: Delfi AS v. Estonia

IRIS 2014-4:1/1

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In IRIS 2014-1/2 it was reported that the First Section of the European Court of Human Rights found no violation in the case of Delfi AS v. Estonia (ECtHR 10 October 2013), which concerns the liability of an Internet news portal for offensive comments that were posted by readers below one of its online news articles. The Chamber's judgment, however, did not become final, as on 17 February 2014 the panel of five judges, in application of Article 43 of the Convention, decided to refer the case to the Grand Chamber of the European Court of Human Rights.

In its judgment of 10 October 2013, the European Court found that one of Estonia's largest news portals on the Internet, Delfi, was not exempt from liability for grossly insulting remarks in its readers' online comments. The news portal was found liable for violating the personality rights of the plaintiff, although it had expeditiously removed the grossly offending comments posted on its website as soon as it had been informed of their insulting character. In particular, the domestic courts rejected the portal's argument that, under EU Directive 2000/31/EC on Electronic Commerce, its role as an Internet society service provider or storage host was merely technical, passive and neutral, finding that the portal exercised control over the publication of comments. The First Section of the European Court was unanimously of the opinion that the finding of liability by the Estonian courts was a justified and proportionate restriction on the portal's right to freedom of expression, in particular, because the comments were highly offensive, while the portal failed to prevent them from becoming public and allowed their authors to remain anonymous. Furthermore the award of damages (EUR 320) imposed by the Estonian courts was held to be not excessive.

The panel of five judges has decided however, upon requests from Delfi AS, that the case raises a serious question affecting the interpretation or application of the Convention, or concerns a serious issue of general importance, on which the Grand Chamber is now to deliver a final judgment. In its request for referral, Delfi argued that EU law, as well as other international reports and policy documents of the Council of Europe, reflect the principle that in order to safeguard the right to freedom of expression and information on the Internet, there should be no obligation for Internet service providers to proactively monitor user generated content. Delfi was supported in its request for a referral to the Grand Chamber by a coalition of media-organisations, NGOs and civil society organisations advocating for freedom of expression on the Internet. The hearing in the case before the 17 judges of the Grand Chamber will take place on 9 July 2014.

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Decision by the Panel to refer the case of Delfi AS v. Estonia, Appl. No. 64569/09 of 10 October 2013, to the Grand Chamber (Hearing on 9 July 2014), 17 February 2014

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