# European Court of Human Rights: Høiness v. Norway

**IRIS 2019-5:1/2**

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The European Court of Human Rights (ECtHR) has delivered a new judgment with regard to the liability of an Internet portal for offensive content allegedly tarnishing one's reputation (see also Delfi v. Estonia (Grand Chamber), IRIS 2015-7/1; Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary, Iris 2016-3/2 and Pihl v. Sweden, Iris 2017-5/3). The ECtHR agreed with the findings by the Norwegian courts that although some anonymous comments were inappropriate and tasteless, the expeditious removal of the offensive comments upon actual knowledge by the media company and the editor exempted the Internet portal from liability. Therefore, the dismissal by the Norwegian courts of the applicant's complaint against the Internet portal for alleged violation of her right to privacy and reputation was not in breach of Article 8 of the European Convention on Human Rights (ECHR).

The applicant in this case, Ms Mona Høiness, is a well-known lawyer in Norway who was formerly a talk show host and active participant in public debate. The Internet portal Hegnar Online published articles concerning her role and relationship with a wealthy, elderly widow from whom she had inherited. The inheritance case was covered extensively by some media, and the Hegnar Online website featured a forum - at a separate web address, but to which access was given via the online newspaper - where readers could start debates and submit comments. There was no editorial content in the forum: all content was user-generated, and it was possible for users to comment anonymously, without the requirement to register. After a few readers had posted some vulgar and sleazy comments about Ms Høiness, she initiated civil proceedings against the Hegnar Media AS company and Mr H., an editor working for Hegnar Online. Ms Høiness complained that her honour had been infringed, particularly because of sexual harassment in three comments on the Hegnar Online's forum. The defendants argued that they had not been aware of the comments and that the offensive comments had been removed as soon as they had become aware of them. It was recognised by the Norwegian High Court that each of the three comments were 'inappropriate, unserious and tasteless', but that was, in itself, not sufficient. Ms Høiness' claim for compensation could only succeed if 'sufficient culpability' could be demonstrated by Hegnar Online and Mr H. for not having done enough to discover and thereafter remove the impugned comments. As two comments had been rapidly removed after the notification by Ms Høiness, and one comment had been deleted on the portal staff's own motion, there was no reason to consider

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Hegnar Online liable in this case. Furthermore, the Norwegian courts awarded the defendants for their litigation costs, to be paid by Ms Høiness for a total of approximately EUR 45 000.

Before the ECtHR, Ms Høiness complained that the Norwegian authorities, by not sufficiently protecting her right to respect for her private life and requiring her to pay the defendants' litigation costs, had acted contrary to Article 8 of the European Convention on Human Rights (ECHR). The ECtHR observed that what was at issue in the present case was not an act by the state, but the alleged inadequacy of the protection afforded by the domestic courts to Ms Høiness' private life. While the essential object of Article 8 ECHR was to protect the individual against arbitrary interference by public authorities, it did not merely compel the state to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may also involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The ECtHR reiterated that in order for Article 8 ECHR to come into play, however, the attack on personal honour and reputation must attain a certain level of seriousness and must have been carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life, while the rights guaranteed under Articles 8 and 10 ECHR deserved equal respect. Thus, the question was whether the state had struck a fair balance between Ms Høiness' right to respect for her private life under Article 8 ECHR and the online news agency and forum host's right to freedom of expression guaranteed by Article 10 ECHR. In this regard, the ECtHR first and foremost emphasised that the impugned comments had not amounted to hate speech or incitement to violence. In balancing the conflicting rights at issue, the ECtHR referred to the specific aspects of freedom of expression as being relevant for the concrete assessment of the interference in question: the context of the comments, the measures applied by the company in order to prevent or remove defamatory comments, the liability of the actual authors of the comments as an alternative to the intermediary's liability, and the consequences of the domestic proceedings for the company.

The ECtHR agreed that Ms Høiness would have faced considerable obstacles in attempting to pursue claims against the individuals behind the anonymous comments, while it also took account of the fact that Hegnar Online was a large, commercially run news portal and that the debate forums were popular. It did not appear, however, that the debate forum was particularly integrated in the presentation of news and thus could be taken to be a continuation of the editorial articles. Most importantly, the ECtHR referred to the measures adopted by Hegnar Online: it had an established system of moderators who monitored content, and readers could click on 'warning' buttons in order to notify their reaction to comments. In the present case, the news portal company and its editor had acted

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appropriately by rapidly removing the offensive comments upon notification. The ECtHR saw no reason to substitute a different view for that of the domestic courts, and it found that the Norwegian courts had acted within their margin of appreciation when seeking to establish a balance between Ms Høiness' rights under Article 8 ECHR and the news portal and host of the debate forum's opposing right to freedom of expression under Article 10 ECHR.

The ECtHR finally noted that a considerable amount of litigation costs had been imposed on Ms Høiness, but it agreed with the Norwegian courts that there had been no reason to deviate from the starting point which had established that the winning party be awarded compensation for their fees and expenses. Taking account of the nature of the claim lodged before the national courts, the subject matter and the 'welfare and relative strength' of the applicant, the ECtHR did not consider that it could call into question the domestic courts' assessment as to the imposition of costs. Unanimously, the ECtHR held that there had been no violation of Article 8 ECHR.

***Judgment by the European Court of Human Rights, Second Section, case of Høiness v. Norway, Application no. 43624/14, 17 March 2019***

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