



## A self-regulatory body and an Internet news portal were not liable for the offensive online comments of their readers

In today's Chamber judgment<sup>1</sup> in the case of [Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary](#) (application no. 22947/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.**

The case concerned the liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments posted on their websites.

The applicant self-regulatory body (Magyar Tartalomszolgáltatók Egyesülete) and news portal (Index.hu Zrt) both complained that they had been held liable by the national courts for online comments posted by their readers following the publication of an opinion criticising the misleading business practices of two real estate websites.

The Court reiterated that, although not publishers of comments in the traditional sense, Internet news portals had to, in principle, assume duties and responsibilities. However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants' case, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites.

It is to be noted that the applicants' case was different in some aspects from a recent case decided by the Court ([Delfi AS v. Estonia](#), application no. 64569/09) in which it had held that a commercially-run Internet news portal had been liable for the offensive online comments of its readers. The applicants' case was notably devoid of the pivotal elements in the *Delfi AS* case of hate speech and incitement to violence. Although offensive and vulgar, the comments in the present case had not constituted clearly unlawful speech. Furthermore, while Index is the owner of a large media outlet which must be regarded as having economic interests, MTE is a non-profit self-regulatory association of Internet service providers, with no known such interests.

### Principal facts

The applicants are two legal entities registered under Hungarian law, Magyar Tartalomszolgáltatók Egyesülete ("MTE") and Index.hu Zrt ("Index"), both based in Budapest. MTE, an association, is the self-regulatory body of Hungarian Internet content providers, and Index, a company, is the owner of one of the major Internet news portals in Hungary. At the relevant time both MTE and Index allowed users to comment on the publications appearing on their portals. In that context, both applicants had a disclaimer in their General terms and conditions stipulating that the writers of comments – rather than the applicants – were accountable for their contents. In addition, both had a notice-and-

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its 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).

take-down system in place, whereby anybody could indicate unlawful comments to the service provider so that they could be removed.

On 5 February 2010 MTE published an opinion on its webpage criticising the business practice of two real estate websites for misleading their clients into using a 30-day advertising service free of charge, which on expiry became subject to a fee without prior notification. Index subsequently wrote about the opinion, publishing the full text on its website. The opinion attracted offensive and vulgar comments both on the websites of MTE and Index.

On 17 February 2010 the company operating the real estate websites brought a civil action against the applicants, complaining that the opinion and subsequent comments had damaged its reputation. On learning of the court action, the applicants immediately removed the comments in question. In their counterclaims they argued that, as intermediary publishers, they were not liable for the user comments, and that, in any event, their criticism was justified given the numerous consumer complaints and proceedings which had been brought against the real estate websites' business practices.

The national courts subsequently found that the comments had been offensive, insulting and humiliating and went beyond the acceptable limits of freedom of expression, stressing that the applicants, by enabling readers to make comments on their websites, had assumed liability for readers' injurious or unlawful comments. The *Kúria* (the highest judicial body in Hungary) thus imposed 75,000 Hungarian forints (approximately 250 euros) on each applicant in costs. The applicants' constitutional complaint was dismissed in May 2014.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicants complained about the Hungarian courts' rulings against them, which had effectively obliged them to moderate the contents of comments made by readers on their websites, arguing that that had gone against the essence of free expression on the Internet.

The application was lodged with the European Court of Human Rights on 28 March 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. **de Gaetano** (Malta), *President*,  
András **Sajó** (Hungary),  
Boštjan M. **Zupančič** (Slovenia),  
Nona **Tsotsoria** (Georgia),  
Krzysztof **Wojtyczek** (Poland),  
Egidijus **Kūris** (Lithuania),  
Gabriele **Kucsko-Stadlmayer** (Austria),

and also Françoise **Elens-Passos**, *Section Registrar*.

## Decision of the Court

It was not in dispute between the parties that the Hungarian courts' rulings had interfered with the applicants' freedom of expression and the Court saw no reason to hold otherwise. Furthermore, the Court was satisfied that a media publisher running a large Internet news portal for an economic purpose and a self-regulatory body of Internet content providers, such as the applicants, were in a position to assess the risks related to their activities and had to have been able to foresee that they could, in principle, be held liable under domestic law – namely the Civil Code – for unlawful comments of third-parties. The Court therefore found that the interference at issue had been

“prescribed by law” and accepted that that interference had pursued the legitimate aim of protecting the rights of others.

However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants’ case, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants’ right to freedom of expression and the real estate websites’ right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites.

It reiterated that, in cases where third-party user comments took the form of hate speech and direct threats to the physical integrity of individuals, the rights and interests of others and of the society as a whole could entitle Contracting States to impose liability on Internet news portals if they had failed to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties. For those reasons in particular, in a recent case by the Court (*Delfi AS*), the Court held that, in view of the “duties and responsibilities” of a large professionally managed Internet news portal, the finding of liability of such portals for the comments of some users – whether identified or anonymous – who engage in clearly unlawful speech which infringes the personality rights of others and amounts to hate speech and incitement to violence against them, is not contrary to the Convention.

The applicants’ case was, however, devoid of the pivotal elements of hate speech and incitement to violence. Although offensive and vulgar, the comments had not constituted clearly unlawful speech. Moreover, while Index is the owner of a large media outlet which must be regarded as having economic interests, MTE is a non-profit self-regulatory association of Internet service providers, with no known such interests.

The Court applied the relevant criteria developed in its established case-law for the assessment of the proportionality of the interference in situations not involving hate speech or call to violence. Namely, it considered:

- *The context and content of the comments*

The Court noted that the comments concerned a matter of public interest (a misleading business practice), which had already generated numerous complaints to the consumer protection services and had prompted various procedures against the company concerned. The content, although offensive and even outright vulgar, was not a defamatory statement of fact but a value judgment or opinion (protected under Article 10 of the Convention) and the expressions used were common in communication on many Internet portals;

- *The liability of the authors of the comments*

The Court noted that the national courts had found against the applicants, because they had enabled readers to make comments on their websites, assuming liability for readers’ injurious or unlawful comments. At no point did the authorities weigh up the liability of the actual authors of the comments against that of the applicants;

- *The steps taken by the applicants and the conduct of the injured party*

The Court noted that the Hungarian courts imposed liability on the applicants, without examining the conduct of either the applicants or the real estate websites and despite the fact that the applicants had taken certain general measures – such as a disclaimer and a notice-and-take-down system – to prevent defamatory comments on their portals or to remove them;

- *Consequences of the comments:*

Firstly, the Court reiterated that what was at stake in this case was the commercial reputation of a private company, which does not have the same moral dimension as the right to reputation of an individual. In that context, the consequences of the comments for the real estate websites had to be put into perspective. Notably, at the time of the publication of the article and the ensuing comments, there were ongoing inquiries into the real estate websites' business conduct. The Court was not therefore convinced that the comments had made any additional or significant negative impact on the attitude of the consumers concerned.

On the other hand, holding the applicants liable could have negative consequences on their comment environment, perhaps even impelling them to close the space altogether. Indeed, the Hungarian courts were hardly concerned with what had been at stake for the applicants as protagonists of the free electronic media and once again had not carried out any balancing at all between the interest of freedom of expression on the Internet and the real estate websites' right to its commercial reputation.

Lastly, the Court found that, if accompanied by effective procedures allowing for rapid response, the notice-and-take-down-system could function in many cases as an appropriate tool for balancing the rights and interests of all those involved. The Court saw no reason to hold that such a system, which was in place on both applicants' websites, could not have provided a viable avenue to protect the commercial reputation of the real estate websites.

The foregoing considerations were therefore sufficient for the Court to conclude that there had been a violation of Article 10.

#### Article 41 (just satisfaction)

The Court held that Hungary was to pay the applicants 5,100 euros (EUR) for costs and expenses.

#### Separate opinion

Judge Kūris expressed a concurring opinion which is annexed to the judgment.

*The judgment is available only in English.*

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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.