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## The chilling effect of liability for online reader comments

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[Delfi AS v Estonia \(64569/09\) \[2015\] E.M.L.R. 26 \(ECHR \(Grand Chamber\)\)](#)

[Magyar Tartalomszolgáltatók Egyesülete v Hungary \(22947/13\) 42 B.H.R.C. 52 \(ECHR\)](#)

[Pihl v Sweden \(Admissibility\) \(74742/14\) \(2017\) 64 E.H.R.R. SE20 \(ECHR\)](#)

**\*E.H.R.L.R. 387 Abstract**

*This article assesses how the European Court of Human Rights has responded to the argument that holding online news media liable for reader comments has a chilling effect on freedom of expression. The article demonstrates how the Court first responded by dismissing the argument, and focused on the apparent lack of evidence for any such chilling effect. The article then argues that the Court has moved away from its initial rejection, and now accepts that a potential chilling effect, even without evidence, is integral to deciding whether online news media should be liable for reader comments. Finally, the article argues that this latter view is consistent with the Court's precedent in other areas of freedom of expression law where a similar chilling effect may also arise.*

### Introduction

During the 1990s, journalists argued before the former European Commission of Human Rights, and the European Court of Human Rights, that court orders compelling journalists to disclose their sources had a "chilling effect" on freedom of expression.<sup>1</sup> The argument was that potential sources would be "deterred" from assisting the press. Both the Commission,<sup>2</sup> and the Court,<sup>3</sup> ultimately accepted this argument, and the Court fashioned a legal test to ensure that such orders would only be issued against journalists in rare circumstances where it was "justified by an overriding requirement in the public interest".<sup>4</sup> This was the Court attempting to protect the media from a chilling effect.

Following the establishment of the permanent Court in 1998,<sup>5</sup> broadcasters, newspapers and journalists began to argue that prosecutions for criminal defamation,<sup>6</sup> and prison sentences in particular,<sup>7</sup> had a chilling effect on freedom of expression. The argument was that a fear of such prosecutions and sentences would "inhibit" or "chill" journalists from reporting on matters of public interest.<sup>8</sup> In 2004, the 17-judge Grand Chamber of the Court accepted the argument around prison sentences, and held that such sanctions may only be imposed in "exceptional circumstances".<sup>9</sup> Again, the Court was seeking to protect the media from a chilling effect. **\*E.H.R.L.R. 388**

Today, it is the turn of online news media, which is making a new, but similar, argument before the Court: claiming that holding online news media liable for reader comments has a chilling effect on freedom of expression.<sup>10</sup> The Court has issued a number of judgments, and a decision, on this question since 2013,<sup>11</sup> and yet, the Court's response has arguably not been uniform. Therefore, the purpose of this article is to explore how the Court has responded, and how the arguments now being made concerning the chilling effect on online news media relate to the Court's previous jurisprudence on protection of journalistic sources and criminal defamation.

## Grand Chamber majority seeks evidence of a chilling effect

The Court first tackled the issue of online news media and reader comments in the well-known *Delfi v Estonia* case, which was ultimately decided by the Grand Chamber in 2015.<sup>12</sup> It all began when an Estonian news website, Delfi.ee, published an article criticising a ferry company operating on the Estonian coast. A number of readers posted comments under the article, targeting a board member of the company, which included, "burn in your own ship, sick Jew", "into the oven", and "kill this bastard".<sup>13</sup> Six weeks later, the board member asked Delfi to remove the reader comments, and sought over 500,000 Estonian kroons (around €30,000) in damages. Delfi immediately removed the comments, but refused to pay any damages. The board member then initiated civil proceedings against Delfi for violation of his "personality rights", and the Estonian Supreme Court ultimately upheld his claim, awarding €320. The Supreme Court found Delfi "should have prevented the publication" of the comments, as they were "clearly unlawful contents", which was "obvious to a sensible reader", and Delfi had a duty under Estonia's Obligations Act to "avoid causing harm".<sup>14</sup> Delfi was also liable under the Obligations Act for failing to remove the comments "on its own initiative".<sup>15</sup> It did not matter that Delfi had removed the comments when notified.

Delfi made an application to the European Court, arguing that imposing liability for the reader comments violated its right to freedom of expression under art.10 of the European Convention on Human Rights. Following an initial judgment from the First Section of the Court finding, unanimously, that there had been no violation of art.10,<sup>16</sup> the case was referred to the Court's 17-judge Grand Chamber. In June 2015, the Grand Chamber delivered its judgment, and by a majority, also held that there had been no violation of art.10.<sup>17</sup> The Grand Chamber laid down a four-step test for assessing whether imposing liability on Delfi was consistent with art.10: (a) the context of the comments, (b) the measures applied by the applicant company in order to prevent or remove defamatory comments, (c) the liability of the actual authors of the comments as an alternative to the applicant company's liability, and (d) the consequences of the domestic proceedings for the applicant company.<sup>18</sup>

The Grand Chamber basically classified the comments as "hate speech" and "clearly unlawful contents",<sup>19</sup> and on this basis, held that it was consistent with art.10 to impose liability for failing to remove this type of expression "without delay", and, most importantly, "even without notice".<sup>20</sup> Notably, the Court was *\*E.H.R.L.R. 389* not quite clear as to its classification of the comments, failing to cite any specific comments in its judgment, and variously describing the case as concerning "liability for defamatory or other types of unlawful speech",<sup>21</sup> "clearly unlawful contents",<sup>22</sup> "clearly unlawful speech, which infringes the personality rights of others",<sup>23</sup> "mainly" hate speech, and "speech that directly advocated acts of violence".<sup>24</sup> However, the purpose of this article is not to discuss the correctness of the Grand Chamber's judgment generally, but rather focus on its treatment of the argument surrounding a chilling effect on free expression.

Delfi's argument was that imposing liability had a chilling effect on freedom of expression. At this juncture, it is worth teasing out exactly what Delfi meant by a chilling effect: Delfi argued that imposing liability meant that it would be forced to employ an "army of highly trained moderators to patrol" comments, and this would lead to them removing, "just in case", any "sensitive comments", and all comments would be moderated so they were "limited to the least controversial issues".<sup>25</sup> Otherwise, Delfi argued, it could "avoid such a massive risk" by closing the reader comment altogether.<sup>26</sup> Thus, Delfi's basic chilling effect argument was that the "risk" of liability meant it could either limit reader comments to the least controversial, or close reader comments completely. This mirrors a classic chilling effect principle established by the Court in *Akcam v Turkey*,<sup>27</sup> where a chilling effect arises from a legal rule where the "risk" of "being directly affected" by the rule "discourage[s]" a person from engaging in similar expression "in the future",<sup>28</sup> or forces a person to display "self-restraint" in their expression to avoid liability.<sup>29</sup>

Curiously, the majority in *Delfi* nowhere mentions a chilling effect, even though the Estonian government addressed the argument,<sup>30</sup> as did the dissent.<sup>31</sup> But while the majority did not mention a chilling effect explicitly, it did in a sense address it. First, the Court examined the broader impact of the Estonian Supreme Court's judgment, and said that while Estonian courts were imposing liability on other websites, "no awards have been made for non-pecuniary damage".<sup>32</sup> The Court also noted that the number of comments on Delfi "has continued to increase".<sup>33</sup> Finally, the Court admitted that *Delfi* had set up a "team of moderators" to monitor comments, but did not think this a major consequence to Delfi's "business model".<sup>34</sup> Of course, the fine of €320 was "by no means" disproportionate.<sup>35</sup> Thus, and in fairness to the majority, while it did not mention the chilling effect explicitly, it did in a way engage with the chilling effect argument, considering there was no evidence of a chilling effect, as no fines were being imposed, and comments were actually increasing.

## Fourth Section worries about future risk of a chilling effect

A little over seven months after the Grand Chamber's *Delfi* judgment, the seven-judge Fourth Section of the Court was called upon to consider the issue again, this time by a Hungarian news website, Index.hu. The case was *MTE v Hungary*,<sup>36</sup> and first concerned the Hungarian self-regulatory body for internet content \*E.H.R.L.R. 390 providers MTE.<sup>37</sup> On its website, MTE.hu, the association published an opinion criticising a property website, and a reader posted a comment saying the property website was a "sly, rubbish, mug company". The Hungarian news website, Index.hu, published a news article on the association's opinion. Under this article, another user commented that "people like this should go and shit a hedgehog". A week later, the property website sued MTE and Index.hu for defamation, and both immediately removed the comments following the initiation of court proceedings. However, the Hungarian Constitutional Court ultimately held that MTE and Index were liable for defamation, as by "enabling readers to make comments" they had "assumed objective liability".<sup>38</sup> The Hungarian courts did not impose damages, but ordered both MTE and Index.hu to pay the property company's court fees and legal costs.

Both MTE and Index.hu made an application to the European Court, arguing that imposing liability for defamatory reader comments violated their right to freedom of expression under art.10. The European Court's Fourth Section reviewed the finding of liability, and applied a modified five-step test based on *Delfi*.<sup>39</sup> However, unlike *Delfi*, the Fourth Section concluded that there had been a violation of art.10. The Court classified the comments as only "vulgar", and "free of the pivotal element of hate speech".<sup>40</sup> The Court held that imposing liability on MTE and Index, "reflected a notion of liability which effectively precludes the balancing of competing rights", namely freedom of expression under art.10, and protection of reputation under art.8.<sup>41</sup> Crucially, the Court held that the "notice-and-take-down" system operated by MTE and Index was a "viable avenue" to protect reputation, where individuals "could indicate unlawful comments to the service provider so that they be removed".<sup>42</sup>

For the purposes of the present discussion, it is worth highlighting how the Fourth Section dealt with the chilling effect argument. Similar to *Delfi*, the applicants argued that the imposition of liability would have an "undue chilling effect" on freedom of expression.<sup>43</sup> Notably, and unlike the majority judgment in *Delfi*, the Fourth Section in *MTE and Index* directly relied upon the chilling effect argument. The Fourth Section held that imposing liability "may" have "foreseeable negative consequences" on the comment environment, and these consequences "may have, directly or indirectly", a "chilling effect on the freedom of expression on the Internet".<sup>44</sup> The Court elaborated on these negative consequences, giving the example of "impelling" the closure of comment sections "altogether".<sup>45</sup> The Court also said that while no fines were imposed on MTE and Index, "it cannot be excluded" that imposing liability "might produce legal basis for a further legal action resulting a (*sic*) damage award".<sup>46</sup>

It is worth pausing for a moment to compare how the *Delfi* majority and Fourth Section in *MTE and Index* treated the chilling effect argument. First, for the *Delfi* majority, there was no evidence of a chilling effect on the comment environment, as comments had "continued to increase", even after liability had been imposed.<sup>47</sup> In contrast, the Fourth Section in *MTE and Index* did not investigate whether the comments had actually been affected, but instead held that it "may" require closure of the comment space altogether.<sup>48</sup> Second, for the *Delfi* majority, there was no evidence of awards being made in domestic courts for "non-pecuniary damage", following the imposition of liability. In contrast, the Fourth Section in \*E.H.R.L.R. 391 *MTE and Index* admitted that "no awards were made for non-pecuniary damage", but held that it "cannot be excluded" there might be a "further legal action resulting a (*sic*) damage award".<sup>49</sup>

Thus, there seemed to be two radically different approaches in the *Delfi* majority and the Fourth Section in *MTE and Index* on how to respond to the chilling effect argument. For the Fourth Section in *MTE*, it was not so much concerned about looking for evidence, but instead about future risk, where fines might later be imposed, or comment sections might be closed down altogether. And it contrasts very sharply with the *Delfi* majority's treatment of the chilling effect, where it was focused on, what it considered, was evidence that comments were increasing, and no fines were being imposed in later cases.

## Third Section also worries about the future

While *MTE and Index* was delivered in February 2016, exactly 12 months later in February 2017,

another section of the Court, the Third Section, was also called upon to consider the chilling effect argument over liability for online reader comments. The case was *Pihl v Sweden*,<sup>50</sup> and concerned a blog post published in September 2011 on a Swedish non-profit association's website. The post included an allegation that a 25-year-old man named Rolf Pihl was involved in a Nazi party. A reader commented under the blog saying Pihl was "a real hash-junkie". A week later, Pihl asked that the blog and comment be removed, and the next day the association removed it, and published a clarification and apology. Nevertheless, Pihl sued the association for defamation. However, the Swedish courts dismissed the claim regarding the blog post, as it was "covered" by a regulation in Sweden's Fundamental Law on Freedom of Expression.<sup>51</sup> In relation to the reader comment, the courts found that while the comment was defamatory, there were no legal grounds for holding the association liable for failing to remove the comment "sooner than it had done".<sup>52</sup>

Unlike in *Delfi* and *MTE and Index*, it was not the website which made an application to the European Court, but rather Pihl, arguing that Sweden had violated his art.8 right to protection of reputation,<sup>53</sup> by failing to hold the website liable for the defamatory reader comment. In *Pihl*, the Third Section applied the five-step test set out in *MTE and Index*, and held that there had been no violation of art.8. The Court held that although the comment was "offensive", it certainly did not amount to hate speech or incitement to violence (unlike in *Delfi*).<sup>54</sup> Importantly, the Third Section held that expecting the website to assume some comments might be in breach of the law would require "excessive and impractical forethought capable of undermining the right to impart information via internet".<sup>55</sup> The Court noted that the comment was removed one day after being notified, and a new blog post was published with an explanation for the error and an apology.<sup>56</sup> In light of this, the Court concluded that the Swedish courts acted within their "margin of appreciation" and "struck a fair balance" between the Pihl's rights under art.8 and the association's right to freedom of expression under art.10.<sup>57</sup>

Notably, the Third Section, on its own motion (neither the applicant nor the government argued the point), brought up the chilling effect, even though it admitted that "the domestic proceedings had no consequences for the association in the present case".<sup>58</sup> Nonetheless, referring to *MTE and Index*, the Third *\*E.H.R.L.R. 392* Section stated if liability was imposed, it "may have negative consequences on the comment-related environment", and thus a "chilling effect on freedom of expression via internet".<sup>59</sup> This chilling effect "could be particularly detrimental for a non-commercial website".<sup>60</sup> Thus, the Third Section in *Pihl* considered it crucial to take account of a potential chilling effect that may arise in other cases, even in a case where there had been "no consequences" for the website at issue. The approach in *Pihl* is arguably an extension of how the Fourth Section approached the chilling effect argument, and a rejection of the approach adopted by the *Delfi* majority.

### Consistency with freedom of expression jurisprudence

The differing treatment of the chilling effect argument by the *Delfi* majority, and the Fourth Section in *MTE and Index* and Third Section in *Pihl*, raises the question of whether either approach is consistent with how the Court has responded to chilling effect arguments in other areas of art.10 law. Without seeking to be overly simplistic, the *Delfi* majority sought evidence for a chilling effect, and concluded there was none; while in *MTE and Index* and *Pihl*, the Court was more worried about future risk of a chilling effect (using terms such as "may have", "might produce", and "could be").

First, when reference is made to the Court's jurisprudence on the right to protection of journalistic sources, it seems that the Court is also concerned about a future chilling effect, and not about searching for evidence. In the seminal protection of journalistic sources judgment in *Goodwin v United Kingdom*, the Court had regard to the "potentially" chilling effect a source-disclosure order had on freedom of expression.<sup>61</sup> This is in contrast to the US Supreme Court in its *Branzburg v Hayes* judgment on a similar issue, where the Supreme Court's majority had sought evidence for a chilling effect, and noted that the estimates of the chilling effect of disclosure orders were "widely divergent and to a great extent speculative".<sup>62</sup> The European Court's concern for a future chilling effect continues in the Grand Chamber's most recent protection of journalistic sources judgment in *Sanoma Uitgevers BV v Netherlands*.<sup>63</sup> In *Sanoma*, the Court was faced with the question of whether a threatened police search of a Dutch magazine's offices to obtain footage of an illegal street race violated the right to protection of journalistic sources. Notably, even though the Court admitted that "it is true that no search or seizure took place in the present case", the Court nonetheless found that a chilling effect will arise wherever journalists are seen to assist in the identification of anonymous sources.<sup>64</sup> Secondly, a similar trend is arguably evident in the Court's jurisprudence on criminal defamation. Take the Grand Chamber's unanimous judgment in *Cumpana v Romania*,<sup>65</sup> where the



Court found that the "fear" of prison sentences for defamation has a chilling effect on freedom of expression.<sup>66</sup> Notably, similar to [Sanoma](#) in that no search took place, the Court in [Cumpana](#) admitted that the journalists "did not serve their prison sentence" as they had been granted a presidential pardon, but the Court nevertheless held that such a sanction will "inevitably have a chilling effect".<sup>67</sup>

Thirdly, the Court's approach in its protection of journalistic sources ([Goodwin](#) and [Sanoma](#)) and criminal defamation ([Cumpana](#)) jurisprudence all mirror the classic chilling effect principle reiterated by the Court in [Akçam v Turkey](#).<sup>68</sup> A chilling effect arises from a legal rule where the "risk" of being affected \*[E.H.R.L.R. 393](#) by the rule discourages a person from engaging in similar expression "in the future",<sup>69</sup> or forces a person to display "self-restraint" in their expression to avoid liability.<sup>70</sup> In [Akçam](#), the Court found that Turkey's art.301 insult law violated art.10 due to its "unacceptably broad terms", and found that it had a chilling effect on the applicant, even though the applicant "was not prosecuted and convicted of the offence".<sup>71</sup> What concerned the Court was the chilling effect on freedom of expression, because in the "future an investigation could potentially be brought" and the "future risk of prosecution".<sup>72</sup> Thus, it is arguable that the [Delfi](#) majority's rejection of the chilling effect argument was inconsistent with the Court's treatment of similar chilling effect arguments in other areas of the Court's freedom of expression jurisprudence. Indeed, it is arguable that the Fourth Section's approach in [MTE and Index](#) and the Third Section's approach in [Pihl](#), is more in line with the art.10 precedent discussed.

## Conclusion

In light of the above, it seems that the Court's jurisprudence has moved away from the initial rejection of the chilling effect argument put forward in [Delfi](#). It is not exactly clear why the [Delfi](#) majority seemed to reject the chilling effect argument in the manner that it did.<sup>73</sup> Notably, in [160] and [161], where it attempts to describe the lack of evidence for a chilling effect, there is no reference to any prior authority. Indeed, there is no engagement by the [Delfi](#) majority with any of the case law concerning the chilling effect.

However, the Court now seems to accept that the potential chilling effect arising from imposing liability on online news media is an integral aspect in art.10 analysis. It seems that the Court has moved away from the empirical-type analysis it engaged in in [Delfi](#), to a more risk-based approach about the future in [MTE and Index](#) and [Pihl](#). This reflects the seminal principle established in [Cumpana](#) by the unanimous 17-judge Grand Chamber that a chilling effect on freedom of expression "works to the detriment of society as a whole", and not just the individual applicant.<sup>74</sup> It is hoped that the [Delfi](#) majority's treatment of the chilling effect was an aberration in art.10 jurisprudence, and the Court will instead continue on the path laid in [MTE and Index](#) and [Pihl](#).

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1. See, e.g. the applicant's argument in [Goodwin v United Kingdom \(App. No. 17488/90\), Commission Decision of 7 September 1993](#) ("the order has a chilling effect on the likelihood of sources communicating information to journalists").
  2. [Goodwin \(App. No.17488/90\), Commission Report of 1 March 1994](#) at [38].
  3. [Goodwin \(1996\) 22 E.H.R.R. 123](#) at [39].
  4. [Goodwin \(1996\) 22 E.H.R.R. 123](#) at [39].
  5. See Protocol No.11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby ETS No.155.
  6. See, e.g. [Pedersen v Denmark \(2006\) 42 E.H.R.R. 24](#) at [93].
  7. See, e.g. [Cumpana v Romania \(2005\) 41 E.H.R.R. 14](#) at [76].
  8. [Cumpana \(2005\) 41 E.H.R.R. 14](#) at [113].
  9. [Cumpana \(2005\) 41 E.H.R.R. 14](#) at [115]. See generally, R. Ó Fathaigh, "Article 10 and the Chilling Effect Principle"

- (2013) E.H.R.L.R. 304.
10. See, e.g. [Delfi AS v Estonia \(2016\) 62 E.H.R.R. 6 \(Grand Chamber\)](#).
  11. See [Delfi AS v Estonia \(2014\) 58 E.H.R.R. 29 \(Chamber judgment\)](#); [Delfi AS v Estonia \(2016\) 62 E.H.R.R. 6 \(Grand Chamber\)](#); [Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary \(App. No.22947/13\), judgment of 2 February 2016](#); and [Pihl v Sweden \(App. No.74742/14\), decision of 7 February 2017](#).
  12. [Delfi \(2016\) 62 E.H.R.R. 6](#). See generally, D. Voorhoof, "Grand Chamber confirms liability of online news portal for offensive comments posted by its readers" (18 June 2015), *Strasbourg Observers*, <https://strasbourgobservers.com/2015/06/18/delfi-as-v-estonia-grand-chamber-confirms-liability-of-online-news-portal-for-offensive-comment> [Accessed 9 July 2017], and L. Brunner, "The Liability of an Online Intermediary for Third Party Content: The Watchdog Becomes the Monitor: Intermediary Liability after Delfi v Estonia" (2016) H.R.L. Rev. 163.
  13. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [18].
  14. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [31].
  15. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [31].
  16. [Delfi \(2014\) 58 E.H.R.R. 29](#).
  17. [Delfi \(2016\) 62 E.H.R.R. 6](#).
  18. [Delfi \(2014\) 58 E.H.R.R. 29](#) at [64].
  19. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [141].
  20. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [159].
  21. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [110].
  22. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [141].
  23. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [115].
  24. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [117].
  25. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [159].
  26. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [72].
  27. [Altug Taner Akçam v Turkey \(2016\) 62 E.H.R.R. 12](#).
  28. [Altug Taner Akçam \(2016\) 62 E.H.R.R. 12](#) at [68].
  29. [Altug Taner Akçam \(2016\) 62 E.H.R.R. 12](#) at [75].
  30. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [92].
  31. [Delfi \(2016\) 62 E.H.R.R. 6](#) (Joint dissenting opinion of Judges Sajó and Tsotsoria at [20]).
  32. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [160].
  33. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [161].
  34. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [161].
  35. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [160].
  36. [Magyar Tartalomszolgáltatók Egyesülete v Hungary \(App. No.22947/13\), judgment of 2 February 2016](#). See generally, T. McGonagle, "Magyar Tartalomszolgáltatók Egyesülete (MTE) and Index.hu Zrt v. Hungary" (2016) E.H.R.C. 140; and E. Weinert, "[MTE v Hungary](#): The first European Court of Human Rights Ruling on Liability for User Comments after [Delfi AS v Estonia](#)" (2016) Ent. L.R. 135.
  37. Magyar Tartalomszolgáltatók Egyesülete (MTE).
  38. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [22].
  39. The Court applied the four steps in [144]–[161] of [Delfi](#), and added a fifth step concerning "consequences of the comments for the injured party" ([Magyar Tartalomszolgáltatók Egyesülete](#) at [84]).
  40. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [70].

41. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [89].
42. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [81].
43. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [36].
44. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [86].
45. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [86].
46. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [86].
47. [Delfi \(2016\) 62 E.H.R.R. 6](#) at [161].
48. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [161].
49. [Magyar Tartalomszolgáltatók Egyesülete \(App. No.22947/13\)](#) at [86].
50. [Pihl v Sweden \(App. No.74742/14\), decision of 7 February 2017](#). See generally, D. Voorhoof, "Pihl v. Sweden: non-profit blog operator is not liable for defamatory users' comments in case of prompt removal upon notice" (20 March 2017), <https://strasbourgobservers.com/2017/03/20/pihl-v-sweden-non-profit-blog-operator-is-not-liable-for-defamatory-users-comments-in-case-of-> [Strasbourg Observers](#), [Accessed 17 July 2017].
51. [Pihl \(App. No.74742/14\)](#) at [9].
52. [Pihl \(App. No.74742/14\)](#) at [12].
53. See [Axel Springer AG v Germany \(2012\) 55 E.H.R.R. 6 \(Grand Chamber\)](#) at [83] ("the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life").
54. [Pihl \(App. No.74742/14\)](#) at [25].
55. [Pihl \(App. No.74742/14\)](#) at [31].
56. [Pihl \(App. No.74742/14\)](#) at [32].
57. [Pihl \(App. No.74742/14\)](#) at [37].
58. [Pihl \(App. No.74742/14\)](#) at [35].
59. [Pihl \(App. No.74742/14\)](#) at [35].
60. [Pihl \(App. No.74742/14\)](#) at [35].
61. [Goodwin \(1996\) 22 E.H.R.R. 123](#) at [39].
62. [Branzburg v Hayes 408 US 665 \(1972\)](#) at 694.
63. [Sanoma Uitgevers BV v Netherlands \(App. No.38224/03\), judgment of 14 September 2010](#).
64. [Sanoma \(App. No.38224/03\)](#) at [71].
65. [Cumpana \(2005\) 41 E.H.R.R. 14](#).
66. [Cumpana \(2005\) 41 E.H.R.R. 14](#) at [114].
67. [Cumpana \(2005\) 41 E.H.R.R. 14](#) at [116]. Similarly, concerning civil defamation, the Court has held that "it is not necessary to rule on whether the present damages' award had, as a matter of fact, a chilling effect on the press: as matter of principle, unpredictably large damages' awards in libel cases are considered capable of having such an effect" ([Independent Newspapers \(Ireland\) Limited v Ireland \(App. No. 28199/05\), judgment of 15 June 2017](#) at [114]).
68. [Altug Taner Akçam v Turkey \(2016\) 62 E.H.R.R. 12](#).
69. [Altug Taner Akçam \(2016\) 62 E.H.R.R. 12](#) at [68].
70. [Altug Taner Akçam \(2016\) 62 E.H.R.R. 12](#) at [75].
71. [Altug Taner Akçam \(2016\) 62 E.H.R.R. 12](#) at [75].
72. [Altug Taner Akçam \(2016\) 62 E.H.R.R. 12](#) at [75]–[76].
73. It could be argued that [Delfi](#) was an exceptional case, given the Court's concern for the "hate speech" which seemed to



be involved. However, it is worth noting that the "domestic post-[Delfi](#) case-law" referred to by the [Delfi](#) majority in dismissing evidence of a chilling effect involved defamation, and not hate speech (see [Delfi \(2016\) 62 E.H.R.R. 6](#) at [43].)

74. [Cumpana \(2005\) 41 E.H.R.R. 14](#) at [116].

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