

## Grand Chamber Panel's decisions

At its last meeting (17 February 2014), the Grand Chamber panel of five judges decided to refer one case and to reject requests to refer 16 other cases<sup>1</sup>.

The following case has been referred to the Grand Chamber of the European Court of Human Rights:

**Delfi A.S. v. Estonia** (application no. 64569/09), which concerns the liability of an Internet news portal for offensive comments that were posted by readers below one of its online news articles.

### Referral accepted

#### [Delfi A.S. v. Estonia \(application no. 64569/09\)](#)

The applicant, Delfi AS, is a public limited company registered in Estonia. It owns one of the largest internet news sites in the country.

In January 2006, Delfi published an article on its webpage about a ferry company. It discussed the company's decision to change the route its ferries took to certain islands. This had caused ice to break where ice roads could have been made in the near future. As a result, the opening of these roads – a cheaper and faster connection to the islands compared to the ferry services – was postponed for several weeks. Below the article, readers were able to access the comments of other users of the site. Many readers had written highly offensive or threatening posts about the ferry operator and its owner.

The owner sued Delfi in April 2006, and successfully obtained a judgment against it in June 2008. The Estonian court found that the comments were defamatory, and that Delfi was responsible for them. The owner of the ferry company was awarded 5,000 kroons in damages (around 320 euros). An appeal by Delfi was dismissed by Estonia's Supreme Court in June 2009. 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.

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, Delfi complained that the Estonian civil courts had found it liable for comments written by its readers.

In its Chamber [judgment](#) of 10 October 2013 the European Court of Human Rights held, unanimously, that there had been no violation of Article 10 (freedom of expression) of the Convention. It found 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; the portal failed to prevent them from becoming public, profited from their existence, but allowed their authors to remain anonymous; and, the fine imposed by the Estonian courts was not excessive.

<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

On 17 February 2014 the case was referred to the Grand Chamber at the request of the applicant company.

## Requests for referral rejected

Judgments in the following 16 cases are now final<sup>2</sup>.

### Requests for referral submitted by the applicants

**Fernandez Kerr v. Belgium** (application no. 19328/09), [judgment](#) of 26 September 2013

**H.W. v. Germany** (no. 17167/11), [judgment](#) of 19 September 2013

**Von Hannover (no. 3) v. Germany** (no. 8772/10), [judgment](#) of 19 September 2013

**K.A.B. v. Sweden** (no. 886/11), [judgment](#) of 5 September 2013

**Roduit v. Switzerland** (no. 6586/06), [judgment](#) of 3 September 2013

**Ibrahim Güler v. Turkey** (no. 1942/08), [judgment](#) of 15 October 2013

### Requests for referral submitted by the Government

**Stojanović v. Croatia** (no. 23160/09), [judgment](#) of 19 September 2013

**Aslanis v. Greece** (no. 36401/10), [judgment](#) of 17 October 2013

**Arapkhanov v. Russia** (no. 2215/05), [judgment](#) of 3 October 2013

**Dovletukayev and Others v. Russia** (nos. 7821/07, 10937/10, 14046/10 and 32782/10), [judgment](#) of 24 October 2013

**Gakayeva and Others v. Russia** (nos. 51534/08, 4401/10, 25518/10, 28779/10, 33175/10, 47393/10, 54753/10, 58131/10, 62207/10 and 73784/10), [judgment](#) of 10 October 2013

**Kasparov and Others v. Russia** (no. 21613/07), [judgment](#) of 3 October 2013

**Keller v. Russia** (no. 26824/04), [judgment](#) of 17 October 2013

**Klyukin v. Russia** (no. 54996/07), [judgment](#) of 17 October 2013

**Yandiyev and Others v. Russia** (nos. 34541/06, 43811/06 and 1578/07), [judgment](#) of 10 October 2013

**Dembele v. Switzerland** (no. 74010/11), [judgment](#) of 24 September 2013

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<sup>2</sup> Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

**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.