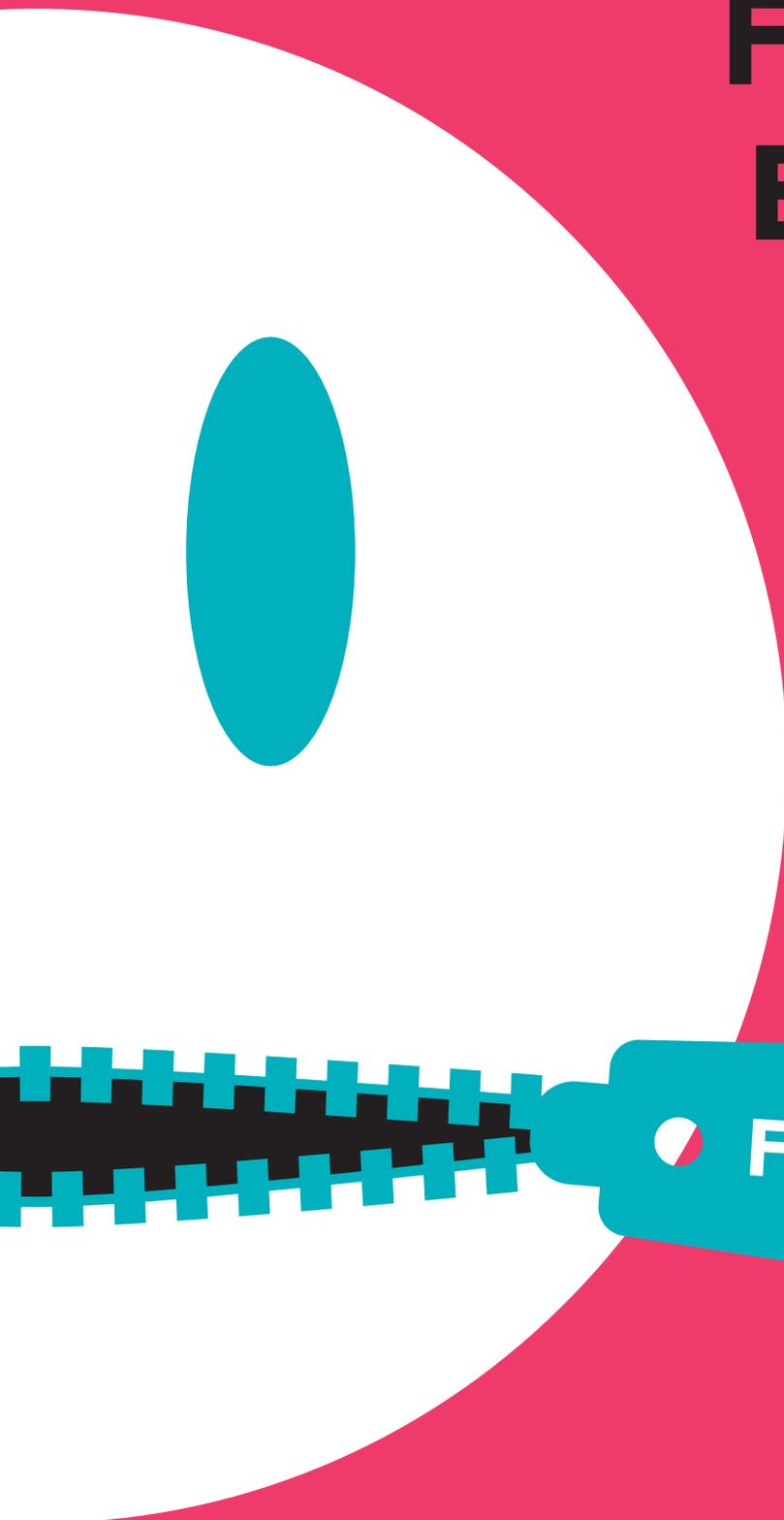


First steps in understanding

Freedom of Expression online and offline

based on current case law from European Court of Human Right



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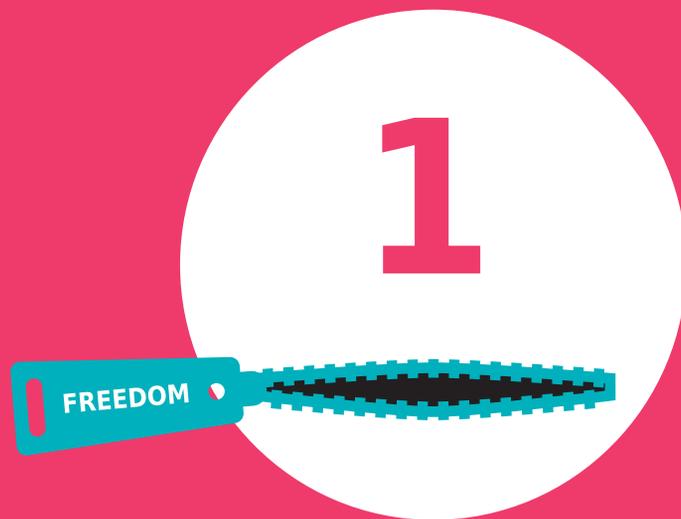
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Introduction

1.1. Why this brochure on Internet and Freedom of Expression?

The Internet has significantly changed our lives in the past years in many areas, including the way we access and publish information. But most importantly, it has enhanced the exercise of our freedom of expression rights both by allowing access to various sources of information but also by significantly democratizing the open publishing of any kind of information.

“In the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general.”

Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2), ECtHR, 2009

Consequently, this has turned the freedom of expression – especially in the online environment – in a subject that concerns us all. Not just the journalists or the NGOs dealing with freedom of expression.

“User-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression.”

Delfi AS v. Estonia 2015 [Grand Chamber], ECtHR, 2015

Also it has become essential that the information explaining the basic concepts around freedom of expression and the relevant court’s jurisprudence are simplified and explained to a large audience that could be interested in the subject.

“the function of bloggers and popular users of the social media may be also assimilated to that of “public watchdogs” in so far as the protection afforded by Article 10 is concerned.”

Case Magyar Helsinki Bizottság v. Hungary [Grand Chamber], ECtHR, 2016

While many books and legal studies for judges or other legal practitioners have been published on the subject matter, we believe there is now even greater need to simplify and explain the fundamentals of freedom of expression, especially as applied to the digital world. All this is presented through the lens of the current jurisprudence of the European Court of Human Rights (ECtHR), that should be the main reference point for all European Internet users.

The idea of this brochure emerged also as a result of a few personal experiences in dealing with freedom of expression in the past years:

First, the subject seems to be interesting not only for professional journalists, but also for various other kinds of Internet users who have very diverse educational backgrounds, and, in general, not too much legal knowledge. Nevertheless, they all engage in communicating information on the Internet and sometimes claim the breach of their freedom of expression rights.

Secondly, the policy decision making process surrounding freedom of expression often seems to be hasty, without enough time being allowed for lengthy public debates or for the use of detailed or comprehensive reports, as basis for the decisions. This is especially true for certain countries in South and Eastern Europe. Therefore excerpts of ECtHR arguments and conclusions can be widely accepted points of reference and, as a consequence, a useful advocacy tool in a debate.

Thirdly, in front on the information flow available today many users are looking for easy to understand, distilled information in order to shape their opinion (and not for blocks of legalese text that could look far away or from another century).

But we believe most of the decisions and arguments for freedom of expression in the ECtHR jurisprudence are easily understandable for a wider audience, if presented properly.

“Article 10 of the Convention guarantees freedom of expression to “everyone”. No distinction is made in it according to whether the aim pursued is profit-making or not.”

[Neij and Sunde Kolmisoppi v. Sweden, ECtHR, 2013](#)

1.2. Freedom of expression. Where do we start from?

Freedom of expression is a widely used, many times abused, and yet insufficiently understood fundamental right.

When we don't like what someone else says, we want them silenced and admonished.

When we want to say something, ostensibly under the same lines as the speech we disagree with, we think we are entitled to freely do so.

But why do we have a fundamental right to freedom of expression, what is it useful for and why and when and how shall this right be limited, we rarely consider.

Freedom of expression *“is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.*

[Axel Springer v. Germany \[Grand Chamber\], ECtHR, 2012](#)

There is no agreed line of thinking answering to the above statements. The good news is that there are plenty of political philosophy thinkers, legal documents and court decisions that give us some guidance. And the even better news is that since the legal and juridical implementation of this right in various contexts is always dynamic, anyone could have a say and influence the way policy is implemented. To do so, we need to better understand the basic fundamentals of this right.

A summary of some of the key concepts behind the right to freedom of expression is listed below.

What is freedom of expression?

“Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment.”

[Axel Springer v. Germany \[Grand Chamber\], ECtHR, 2012](#)

- It is an important instrument of freedom of conscience
- It allows for conscient choices based on adherence to certain values, and therefore grants individual autonomy and defines each person's identity
- It contributes to knowledge and understanding, by debating about social and moral values and allowing for a marketplace-of-ideas
- It allows for the communication of political ideas, and therefore contributes to democracy
- It builds tolerance by allowing the others to express themselves
- It contributes to the artistic development, and it facilitates academic and scientific progress¹

What does freedom of expression consist of?

- the right to disseminate information, in all forms and shapes, and;
- the right of the others to receive it.

Freedom of expression “*applies not only to the content of information but also to the means of dissemination, since any restriction imposed on the means necessarily interferes with the right to receive and impart information*”.

Özturk vs Turkey [Grand Chamber], ECtHR, 1999

Why are we limiting freedom of expression?

- Because it is harming the exercise of other rights (the right to privacy, the right to a fair trial, the right to freedom of thought, conscience and religion) or it is overstepping fundamental human rights boundaries (the prohibition of discrimination and the prohibition of abuse of rights)
- Because it is not done in good faith (publication of insufficiently verified facts, pure offensive language that serves no public interest debate, etc.)
- Because it is harmful and it is not of public interest
- Because it is endangering the safeguarding of democracy or the law and order (divulging state secrets, risking a breach of peace, etc.)

“As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.”

Axel Springer v. Germany [Grand Chamber], ECtHR, 2012

How should these limits be?

- Provided by law
- Pursue a legitimate aim (protect other rights or interests)
- Necessary in a democratic society (there has to exist a pressing social need)
- Proportional

Expression can take various forms: spoken and written words, art works, films, theatre music, other performing arts or happenings, including the destruction of property, when such an act has a “speech” content (real-life examples would include the burning of the national flag, throwing a paint can on a statue). Refraining from expression is also a form of the right to freedom of expression (the right to be silent).

Freedom of expression encompasses a wide spectrum of communications, from political expression, to academic, artistic or commercial communication, each of these being afforded different levels of protection. Freedom of expression includes the right to access information, which in the case of journalists could mean being granted access in a public institution, including courts, or to a public document, including data of secret services. Whereas in the case of citizens, it could mean no censorship on access to information on the Internet.

Expression can be communicated via various channels: print media, books, letters, posters, broadcasting channels, and – of course, in the past years - mostly via the Internet.

1.3. Freedom of expression as a fundamental right

As a fundamental human right, the right to freedom of expression is guaranteed by a number of relevant international law documents and treaties.

The Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 guarantees the right to freedom of speech in Article 19, and so does the International Covenant on Civil and Political Rights

adopted by the same body in 1966; it guarantees this right, also under Article 19.

The Charter of Fundamental Rights of the European Union was adopted in 2000 by the European Parliament, the Council of Ministers and the European Commission, and came into force in 2009, and it is considered the 'Constitution' of the European Union. It also safeguards the right to freedom of expression under its Article 11.

Of special relevance is the European Convention on Human Rights (ECHR) of the Council of Europe, opened for signature in 1950 that has included freedom of expression in Article 10. It came into force in 1953 and was amended, during the years, by the adoption of 16 Protocols². Some protocols to the Convention are not yet ratified by each country. The European Court of Human Rights is the body that oversees the implementation of the Convention in the 47 Council of Europe member states.

As the European Convention on Human Rights represents the main human rights instrument for the Council of Europe states, this brochure focuses mainly on the jurisprudence developed by the European Court of Human Rights.



Article 10 of the European Convention on Human Rights Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

1.4. How to understand this brochure

The scope of the right to freedom of expression is based on changing philosophical, political and legal concepts. It has to be analyzed bringing in the specific geographical, legal, and social contexts. Most of the times it involves a balancing exercise with other rights and fundamental values.

Therefore, the cases presented in this brochure should only be given a reference value. Such jurisprudence as that of the ECtHR is ever-changing, and sometimes conflicting in itself. It can even be sometimes left to criticism as it results every now and then in disappointing outcomes for those who promote the fundamental rights to freedom of expression and access to information. Moreover, the technical developments of the Internet might change certain assumptions that we have today and that could be included in future decisions.

Nevertheless, such jurisprudence as that of ECtHR can be visionary many times, and it has the important value of promoting the basic standards in legally granting the rights to freedom of expression and access to information.

The distillation of the entire ECtHR current jurisprudence comes at a cost that it is well worth pointing. First of all, the information in this brochure may not constitute in any case legal advice. Second, the editors of the brochure had to limit the information to be presented, a choice that for certain legal professionals might be a shortcoming. Also, the selection of the domains and cases forced us to leave certain important aspects covered very briefly – such as the issues of “hate speech” or “protection of journalistic sources”.

In order to simplify the text in the brochure version, certain quotes have been stripped down from internal references to other ECtHR cases or documents. Also, the name of the case is indicated at a minimum, as “Name of plaintiffs v. Country, year”. The cases decided by the Grand Chamber are marked as such. All the bolding of the text in the quotes belongs to the editors in order to highlight the main keywords relevant for the reader. Footnote text references are included at the end of the brochure.

More details are included in the web version, available at <https://cases.internetfreedom.blog>, that includes a short summary of each case, and links to the actual text of the judgement/decision or to legal summaries.

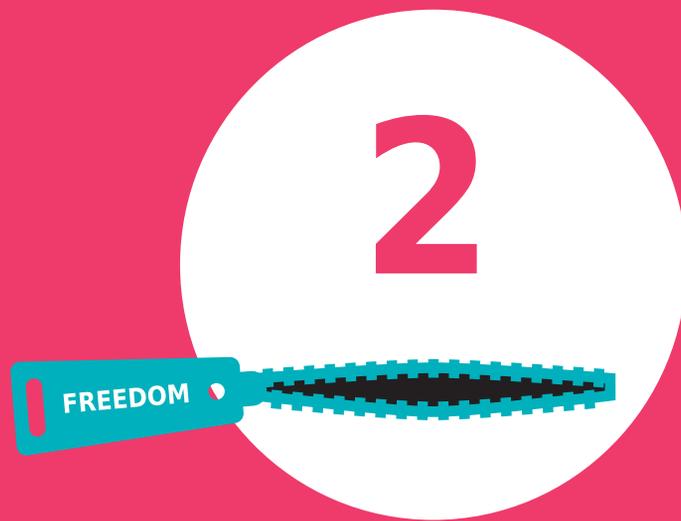
We would also have to acknowledge that our work has been helped not only by the fact that all information related to the case-law of the ECtHR is publicly available on the Internet, but also due to the existence of various other projects and publications – all available online – that have systematized or analyzed in more detail a lot of the ECtHR jurisprudence related (also to) Article 10.

We list here the most important ones, especially for users that might like or need to go into more detail on certain specificities of freedom of expression:

- The factsheets by theme on the Court’s case-law and pending cases compiled by the Press Service of the Court³
- Fundamental Rights Agency – Case-law Database provides a compilation of Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECtHR) case-law with direct references to the Charter of Fundamental Rights of the European Union⁴
- Internet: case-law of the European Court of Human Rights (2015)⁵
- Freedom of expression in Europe Case-law concerning Article 10 of the European Convention on Human Rights (2007)⁶
- Freedom of Expression, the Media and Journalists. Case-law of the European Court of Human Rights – published by the European Audiovisual Observatory (2015)⁷
- A guide to the implementation of Article 10 of the European Convention on Human Rights - (2004)⁸
- Freedom of expression and defamation - A study of the case-law of the European Court of Human Rights (2016)⁹
- Media Regulatory Authorities and Hate Speech (2017)¹⁰
- Strasbourg Observers Blog of the Human Rights Centre of Ghent University in Belgium¹¹
- Global Freedom of Expression – Columbia University – database of over 1027 cases worldwide¹²

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

<https://cases.internetfreedom.blog>



Content Regulation

Freedom from censorship is the most poignant claim done in the name of freedom of expression, maybe even the ground zero action for which the right is claimed. Nevertheless, censorship can take legally accepted forms. Prior restraints (court injunctions forbidding publication of certain material) and seizure of publications can be found to be acceptable forms of content regulation, even if they are many times debatable or controversial.

Censorship represents the system of control over the publishing of books, movies, letters, etc. It could include even user comments on the Internet. There can be state censorship (enforced through its agencies, based on its laws and regulations), but it can also take the form of private censorship, where a private actor decides not to allow certain speech reach into the public arena. Private censorship is more difficult to prove and more challenging. For example, a journalist whose article is not published by a private media outlet will be given by her/his editors the argument of freedom of editorial policy. A user publishing a comment on a website will probably be presented with the argument of the comments policies and regulations.

Concepts such as:

- the need for granting a fair trial,
 - the need for the protection of children, or health and morals,
 - the need for the protection of the reputation or rights of others,
 - the need for preventing the disclosure of information received in confidence, or
 - national security
- are all used as arguments and legal grounds in regulating content.

In preventing the excessive use of punitive measures aimed at regulating content and, consequently leading to free expression being discouraged, the European Court of Human Rights has developed a vast jurisprudence. Some guiding principles can be found below.

🔑 Key aspects from relevant ECtHR cases:

• Seizure of publications and prior restraint - only under strict court scrutiny

*"(...) **the dangers inherent in prior restrictions are such that they call for the most careful scrutiny** on the part of the Court. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest."*

Observer and Guardian v. the United Kingdom, 1991

*"**The effect of the injunction was... partly to censor** the applicant's work and substantially to reduce his ability to put forward in public views which have their place in a public debate whose existence cannot be denied. It matters little that his opinion is a minority one and may appear to be devoid of merit since, in a sphere in which it is unlikely that any certainty exists, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas."*

Hertel v. Switzerland, 1998

*"... however, observe that **prior restraints may be more readily justified in cases which demonstrate no pressing need for immediate publication** and in which there is no obvious contribution to a debate of general public interest. (...) The limited scope under Article 10 for restrictions on the freedom of the press to publish material which contributes to debate on matters of general public interest must be borne in mind."*

Mosley v. UK, 2011

• Political speech is the most protected form of speech

*"(...) **freedom of political debate is at the very core of the concept of a democratic society which***

prevails throughout the Convention. The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues”.

Lingens v. Austria, 1986

“The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media”.

Castells v. Spain, 1992

- **Media have special protection under the Convention**

“As the Court remarked in its Handyside judgment, freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10, it is applicable **not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population** (...). These principles are of particular importance as far as the press is concerned.”

Sunday Times v. The United Kingdom, 1979

“Whilst the press must not overstep the bounds set, inter alia, for the “protection of the reputation of others”, it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them (...). In this connection, the Court cannot accept the opinion, expressed in the judgment of the Vienna Court of Appeal, to the effect that the task of the press was to impart information, the interpretation of which had to be left primarily to the reader (...). **Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.**”

Lingens v. Austria, 1986

“In the present case, the applicant expressed his views by having them published in a newspaper. Regard must therefore be had to the pre-eminent role of the press in a State governed by the rule of law. (...) Were it otherwise, **the press** would be unable to play its vital **role of “public watchdog”.**”

Thorgeirson v. Iceland, 1992

- **Expression limitations - only if necessary in a democratic society**

“It is open to question whether the information in the report was sufficiently sensitive to justify preventing its distribution. [...] In this latter connection, the Court points out that it has already held that it was **unnecessary** to prevent the disclosure of certain information seeing that it had already been made public or had ceased to be confidential. [...] **In short, as the measure was not necessary in a democratic society, there has been a breach of Article 10.**”

Vereniging Weekblad Bluf! v. The Netherlands, 1995

“(...) a limitation of free expression in the interests of national security should not be regarded as necessary unless there was a **“pressing social need”** for the limitation and it was **“proportionate to the legitimate aims pursued”.**

Observer and Guardian v. the United Kingdom, 1991

“The adjective **“necessary”**, within the meaning of Article 10 para. 2, implies the existence of a **“pressing social need”**.”

Observer and Guardian v. the United Kingdom, 1991

- **Offensive speech is protected speech**

“In the Court’s view, the applicant’s article, and in particular the word Trottell [“idiot”], may certainly be considered polemical, but they did not on that account constitute a gratuitous personal attack as the author provided an objectively understandable explanation for them derived from Mr Haider’s speech, which was itself provocative. (...) It is true that calling a politician a Trottell in public may offend him. In the instant case, however, the word does not seem disproportionate to the indignation knowingly aroused by Mr Haider. As to the polemical tone of the article, which the Court should not be taken to approve, **it must be remembered that Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed.**”

Oberschlick v. Austria, 1997

“The Court agrees that describing S.P.’s conduct as that of a **“cerebral bankrupt”** (...), was indeed extreme and could legitimately be considered offensive. However, it is noted that the impugned remark was a value judgment, as acknowledged by the Government. It is true that in the absence of any factual basis even value judgments can be considered excessive. Nevertheless, in the present case the facts on which the impugned statement was based were outlined in considerable detail; (...) In the context of what appears to be an intense debate in which opinions were expressed with little restraint (...), **the Court would interpret the impugned statement as an expression of strong disagreement, even contempt for S.P.’s position, rather than a factual assessment of his intellectual abilities.** Viewed in this light, the description of the parliamentarian’s speech and conduct can be regarded as a sufficient foundation for the author’s statement. (...) the Court considers that even offensive language, which may fall outside the protection of freedom of expression if its sole intent is to insult, may be protected by Article 10 when serving merely stylistic purposes. (...) the Court considers that the statement did not amount to a gratuitous personal attack on S.P. “

Mladina D.D. Ljubliana v. Slovenia, 2014

“(...) both articles were framed in particularly strong terms. However, having regard to their purpose and the impact which they were designed to have, the Court is of the opinion that the language used cannot be regarded as excessive. (...) the conviction and sentence were capable of discouraging open discussion of matters of public concern.”

Thorgeirson v. Iceland, 1992

- **Limited restrictions on public interest information, published in good faith**

“The Court reiterates that **there is little scope** under Article 10 § 2 **for restrictions on freedom of expression in the area of political speech or debate - where freedom of expression is of the utmost importance - or in matters of public interest.**”

Eon v. France, 2013

“(...) the pre-eminent role of the press in a State governed by the rule of law must not be forgotten. Although it must not overstep various bounds set, inter alia, for the prevention of disorder and the protection of the reputation of others, **it is nevertheless incumbent on it to impart information and ideas on political questions and on other matters of public interest.**”

Castells v. Spain, 1992

“The articles in issue concerned a matter of public interest: the management of State assets and the manner in which politicians fulfil their mandate. (...) In addition, the **Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.** (...) In the instant case the Court, like the Commission, observes that **there is no proof that the description of events**

given in the articles was totally untrue and was designed to fuel a defamation campaign (...)."

Dalban v. Romania, 1999

"Article 10 "protects journalists' rights to divulge information of general interest provided that they are acting in good faith and on an accurate factual basis and provide reliable and precise information in accordance with the ethics of journalism".

Fressoz and Roire v. France [Grand Chamber], 1999

"In situations where on the one hand a statement of fact is made and insufficient evidence is adduced to prove it, and on the other hand the journalist is discussing an issue of genuine public interest, verifying whether the journalist has acted professionally and in good faith becomes paramount."

Ghiulfer Predescu v. Romania, 2017

- **The sanctionatory measures that are taken have to be proportional**

"(...) although **the penalty imposed** on the author did not strictly speaking prevent him from expressing himself, it nonetheless **amounted to a kind of censure, which would be likely to discourage him from making criticisms of that kind** again in future (...). [...] From the various foregoing considerations it appears that the interference with Mr. Lingens' exercise of the freedom of expression was not "necessary in a democratic society ... for the protection of the reputation ... of others"; it was disproportionate to the legitimate aim pursued. There was accordingly a breach of Article 10 (art. 10) of the Convention."

Lingens v. Austria, 1986

- **A high amount of moral damages might be disproportionate**

"having regard to the **size of the award¹³ in the applicant's case in conjunction with the lack of adequate and effective safeguards at the relevant time against a disproportionately large award**, the Court finds that there has been a violation of the applicant's right under Article 10 of the Convention".

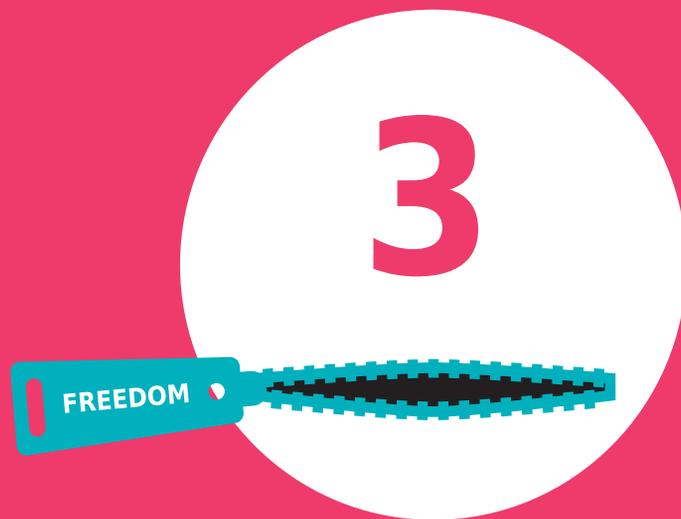
Tolstoy Miloslavsky v. the United Kingdom, 1995

"... the Court reiterates that, under the Convention, **an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered.** (...) The Court notes that the amount the applicant was ordered to pay was extremely high. It was thus, in the Court's view, capable of **having a "chilling", dissuasive effect on the applicant's freedom of expression.**"

Ghiulfer Predescu v. Romania, 2017

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

<https://cases.internetfreedom.blog>



Duties and Responsibilities online and offline

As stated in paragraph 2 of Article 10, the exercise of freedom of expression comes with duties and responsibilities. When expressing publicly, one should act in good faith, provide, in as much as possible, reliable and accurate information, and pursue the public interest.

The media and the NGOs (when acting as public or social watchdogs) are given more protection under the Convention, but only when respecting the conditions above, as there are greater expectations from them in promoting responsible messages to the public. The protection (as well as the special responsibilities) extends to the individuals in these two types of organizations, namely the journalists and the NGO activists and workers. Especially journalists might be expected to maintain the same professional duties and obligations, even when publishing in their own name.

Any private individual expressing publicly should respect the same conditions in order to benefit from the safeguards afforded by Article 10, even if the expectations for providing accurate information are obviously lower in their case. A private individual has limited means of verifying an information, other than sources publicly and easily available. At the same time, while opinions should be freely expressed, it is expected that they have a factual basis. Attribution of facts, such as, let's say, corruption facts, should not be done careless, as it can lead to the loss of Article 10 safeguards.

The speech of public servants and members of the armed forces is protected, but they also have to give away some of their free speech rights, in interests such as keeping the confidentiality of sensitive or even secret state information, maintaining the military authority or the discipline in the police force. Public employees have a “duty of loyalty, reserve and discretion to their employer” (Guja v. Moldova [Grand Chamber], 2008, ECtHR).

Online expression carries with it even more duties and responsibilities, as the Internet nature gives a potentially permanent existence to all published information and makes it world wide accessible. Analyzing on the matter, the ECtHR considered that a notice about a pending lawsuit can be published online next to litigious articles without being a disproportionate interference with the right to freedom of expression. On the other hand, ECtHR considered that the obligation to remove articles from the Internet, in defamation cases, violates Article 10.

Hate speech as well as incitement to violence, when a violent act is likely to occur, are not protected under the Convention, as they interfere with the principles of the “prohibition of abuse of rights” (Article 17 ECHR) and the “general prohibition of discrimination” (Protocol no. 12 to ECHR, Article 1). This again has a strong impact on the online expression. Nevertheless, hate speech should be differentiated from offensive speech (details about offensive speech in the “Content Regulation” chapter).

Article 17 of the European Convention on Human Rights Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 1 to the Protocol no. 12 of the European Convention on Human Rights General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion,

national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

🔑 Key aspects from relevant ECtHR cases:

- **Act in good faith, provide reliable information, and pursue the public interest**

“The crucial watchdog role of the press in a democratic society has been positively asserted and defended by this Court in the course of a large corpus of cases concerning freedom of expression which have stressed not only the right of the press to impart information but also the right of the public to receive it. In so doing the Court has played an important role in laying the foundations for the principles which govern a free press within the Convention community and beyond. However, for the first time the Court is confronted with the question of how to reconcile the role of newspapers to cover a story which is undoubtedly in the public interest with the right to reputation of a group of identifiable private individuals at the centre of the story. In our view the fact that a strong public interest is involved should not have the consequence of exonerating newspapers from either the basic ethics of their trade or the laws of defamation.”

By reason of the “duties and responsibilities” inherent in the exercise of the freedom of expression, **the safeguard** afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the provision that they are **acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism...**

In the view of the Court, **the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research.** Otherwise, the vital public-watchdog role of the press may be undermined.”

Bladet Tromsø and Stensaas v. Norway [Grand Chamber], 1999

*“(...) it is not clear whether the applicant intended to post these statements in his capacity as a journalist providing information to the public, or whether he simply expressed his personal opinions as an ordinary citizen in the course of an Internet debate. Nevertheless, it is clear that, (...) the applicant, being a popular journalist, did not hide his identity and that he publicly disseminated his statements by posting them on a freely accessible popular Internet forum, a medium which in modern times has no less powerful an effect than the print media. (...) **directly accusing specific individuals of a specific form of misconduct entails an obligation to provide a sufficient factual basis for such an assertion (...).**”*

Fatullayev v. Azerbaijan, 2010

- **NGOs have been recognized a public watchdog role**

*“(...) when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press and **may be characterised as a social “watchdog”** warranting similar protection under the Convention as that afforded to the press.”*

Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina [Grand Chamber], 2017

*“(...) an **NGO performing a public watchdog role is likely to have greater impact when reporting on irregularities of public officials,** and will often dispose of greater means of verifying and corroborating the veracity of criticism than would be the case of an individual reporting on what he or she has observed personally.”*

Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina [Grand Chamber], 2017

- **Public servants and members of the armed forces - limited speech protection**

“(…) Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed. The same is true when the persons concerned are members of the armed forces, because Article 10 applies to them just as it does to other persons within the jurisdiction of the Contracting States. (…)
the national authorities must ensure that disproportionate penalties do not dissuade trade union representatives from seeking to express and defend their members’ interests (…).”

Szima v. Hungary, 2012

“(…) the Court will consider the extent to which the right to freedom of expression of a member of the police force can be restricted in order to prevent disorder within the police, a hierarchically organised body where discipline is quintessential for the carrying out of its functions. (…)
The Court notes that, **by entering the police, the applicant should have been aware of the restrictions that apply to staff in the exercise of their rights.**”

Szima v. Hungary, 2012

“Article 10 applies also to the workplace, and that civil servants, such as the applicant, enjoy the right to freedom of expression (…). At the same time, the Court is mindful that employees have a duty of loyalty, reserve and discretion to their employer. (…)
In addition, in view of the very nature of their position, civil servants often have access to information which the government, for various legitimate reasons, may have an interest in keeping confidential or secret. Therefore, **the duty of discretion owed by civil servants will also generally be a strong one.**”

Guja v. Moldova [Grand Chamber], 2008

- **Internet archives have an important role within freedom of expression**

“In the light of its accessibility and its capacity to store and communicate vast amounts of information, **the Internet plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general. The maintenance of Internet archives is a critical aspect of this role.**”

Times Newspapers Limited v. UK (nos 1 and 2), 2009

- **Updating an article, as required by a court decision, in an Internet archive, can be an acceptable interference with freedom of expression**

“(…) while the primary function of the press in a democracy is to act as a “public watchdog”, it has a **valuable secondary role in maintaining and making available to the public archives containing news which has previously been reported.** However, the margin of appreciation afforded to States in striking the balance between the competing rights is likely to be greater where news archives of past events, rather than news reporting of current affairs, are concerned. In particular, the duty of the press to act in accordance with the principles of responsible journalism by ensuring the accuracy of historical, rather than perishable, information published is likely to be more stringent in the absence of any urgency in publishing the material.

(…) the Court (…)
does not consider that the requirement to publish an appropriate qualification to an article contained in an Internet archive, where it has been brought to the notice of a newspaper that a libel action has been initiated in respect of that same article published in the written press, constitutes a disproportionate interference with the right to freedom of expression.”

Times Newspapers Limited v. UK (nos 1 and 2), 10 March 2009

- **Removal of articles from the Internet archives might breach Freedom of Expression**

“The Court further notes the finding made by the Warsaw Regional Court that the article in question had been published in the print edition of the newspaper. That court expressed the view that it was not for the courts to order that the article be expunged as if it had never existed. The Court accepts **that it is not the role of judicial authorities to engage in rewriting history by ordering the removal from the public domain of all traces of publications which have in the past been found, by final judicial decisions, to amount to**

unjustified attacks on individual reputations. Furthermore, it is relevant for the assessment of the case that the legitimate interest of the public in access to the public Internet archives of the press is protected under Article 10 of the Convention.

The Court is of the view the alleged violations of rights protected under Article 8 of the Convention should be redressed by adequate remedies available under domestic law. In this respect, it is noteworthy that in the present case the Warsaw Court of Appeal observed that **it would be desirable to add a comment to the article on the website informing the public of the outcome of the civil proceedings** in which the courts had allowed the applicants' claim for the protection of their personal rights claim. The Court is therefore satisfied that the domestic courts were aware of the significance which publications available to the general public on the Internet could have for the effective protection of individual rights. In addition, the courts showed that they appreciated the value of the availability on the newspaper's website of full information about the judicial decisions concerning the article for the effective protection of the applicant's rights and reputation."

Węgrzynowski and Smolczewski v. Poland, 2013

- **Hate speech as well as incitement to violence - not protected speech**

"(...) the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention **only in exceptional circumstances**, notably where other fundamental rights have been seriously impaired, as, **for example, in cases of hate speech or incitement to violence.**"

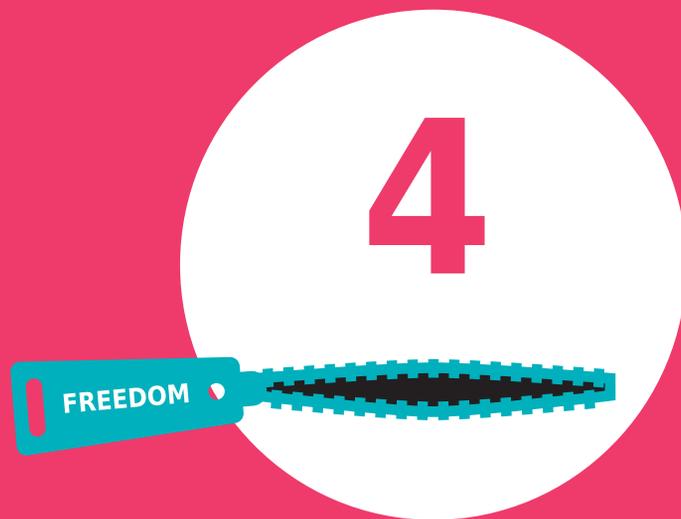
Fatullayev v. Azerbaijan, 2010

"the impugned comments in the present case, as assessed by the Supreme Court, **mainly constituted hate speech and speech that directly advocated acts of violence.** Thus, the establishment of their unlawful nature did not require any linguistic or legal analysis since the remarks were on their face manifestly unlawful."

Delfi AS v. Estonia [Grand Chamber], 2015

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

<https://cases.internetfreedom.blog>



Intermediary liability for Internet services

One of the crucial roles of the actors on the Internet has been developed by the Internet services, called intermediaries that do not directly create online content, but rather process it in various ways, becoming thus the gatekeepers of what is being published online.

If we are thinking about the current most popular Internet services – such as Facebook, Google, Twitter, Instagram or Youtube – they are all based on hosting and making available information produced by other Internet users (user-generated content), thus they are usually called “Internet intermediaries”.

But the range of Internet intermediaries is not only very diverse, but also rapidly changing – both in terms of activity and size on the Internet market, but also in their services, functions or business models. However, on several niches the market is dominated by one or two very large players, which may put them in a position of holding a communication control, that creates additional challenges as a result of their actions on human rights in general and freedom of expression in particular.

*“the Court accepts that **YouTube is a unique platform** on account of its characteristics, its accessibility and above all its potential impact, and **that no alternatives were available** to the applicants.”*

Cengiz and Others v. Turkey, 2015

Moreover, the Internet intermediaries have adopted their own rules – known usually as terms and conditions – for the use of the platform, that include policies on content, but also rules for its blocking or removal. In the past years, these rules have constantly come into conflict with Internet users actions, that portrayed the activity of these intermediaries as censorship measures – raising questions on new systems of privatized law enforcement models that are put in place.¹⁴

In this context, the role of the Internet intermediaries is becoming increasingly complex, torn between their current business models, respecting human rights and receiving complaints on very diverse issues mixed up with different legislative obligations diverging from one jurisdiction to another.

While the ECtHR jurisprudence on the matter is still in the beginning (and all the cases focus on just a specific situation – comments left by other users on other websites), it is worth pointing out the work of the Council of Europe Committee of experts on Internet Intermediaries¹⁵ that has prepared standard setting proposals on the roles and responsibilities of Internet intermediaries, including a study on human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications.

Key aspects from relevant ECtHR cases:

- **Online platforms have duties and responsibilities on freedom of expression, but their role is different from a traditional publisher**

“In the recent Recommendation of the Committee of Ministers to the member States of the Council of Europe on a new notion of media, this is termed a “differentiated and graduated approach [that] requires that each actor whose services are identified as media or as an intermediary or auxiliary activity benefit from both the appropriate form (differentiated) and the appropriate level (graduated) of protection and that responsibility also be delimited in conformity with Article 10 of the European Convention on Human Rights and other relevant standards developed by the Council of Europe”.

*Therefore, the **Court considers that because of the particular nature of the Internet, the “duties and responsibilities” that are to be conferred on an Internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher, as regards third-party content.**”*

Delfi AS v. Estonia [Grand Chamber], 2015

- **The commercial nature and the public impact/ audience of the intermediaries**

needs to be taken into account

“The Court considers that the case concerns the “duties and responsibilities” of Internet news portals, under Article 10 § 2 of the Convention, when they provide for economic purposes a platform for user-generated comments on previously published content and some users – whether identified or anonymous – engage in clearly unlawful speech, which infringes the personality rights of others and amounts to hate speech and incitement to violence against them. **The Court emphasises that the present case relates to a large professionally managed Internet news portal run on a commercial basis which published news articles of its own and invited its readers to comment on them.**”

Accordingly, **the case does not concern other fora** on the Internet where third-party comments can be disseminated, **for example an Internet discussion forum or a bulletin board** where users can freely set out their ideas on any topics without the discussion being channelled by any input from the forum’s manager; **or a social media platform** where the platform provider does not offer any content and where the content provider may be a private person running the website or a blog as a hobby.”

Delfi AS v. Estonia [Grand Chamber], 2015

“the second applicant is the **owner of a large media outlet which must be regarded as having economic interests**, the first applicant is a non-profit self-regulatory association of Internet service providers, with no known such interests.”

MTE and Index.hu v. Hungary, 2016

“the Court **attaches importance to the fact that the association is a small non-profit association, unknown to the wider public**, and it was thus unlikely that it would attract a large number of comments or that the comment about the applicant would be widely read.”

Pihl v. Sweden, 2017

- **The nature of the material that needs to be taken down has to be taken into consideration**

“**the impugned comments** in the present case, as assessed by the Supreme Court, **mainly constituted hate speech and speech that directly advocated acts of violence**. Thus, the establishment of their unlawful nature did not require any linguistic or legal analysis since the remarks were on their face manifestly unlawful.”

Delfi AS v. Estonia [Grand Chamber], 2015

“Furthermore, **the expressions used in the comments were offensive, one of them being outright vulgar**. As the Court has previously held, offence may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example where the sole intent of the offensive statement is to insult; but the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the content of the expression.

For the Court, the expressions used in the comments, albeit belonging to a low register of style, are common in communication on many Internet portals – a consideration that reduces the impact that can be attributed to those expressions.”

MTE and Index.hu v. Hungary, 2016

“the Court considers that **the comment, although offensive, certainly did not amount to hate speech or incitement to violence**”

Pihl v. Sweden, 2017

- **The criteria that needs to be considered to distinguish the responsibilities for online intermediaries as regards freedom of expression:**

a) the context of the comments

*“the Court considers that it was sufficiently established by the Supreme Court that **the applicant company’s involvement in making public the comments on its news articles** on the Delfi news portal **went beyond that of a passive, purely technical service provider.**”*

Delfi AS v. Estonia [Grand Chamber], 2015

*“The Court is therefore satisfied that the comments triggered by the article can be regarded as going to a matter of public interest. Moreover, against this background, **the article cannot be considered to be devoid of a factual basis or provoking gratuitously offensive comments.**”*

MTE and Index.hu v. Hungary, 2016

*“**the Court observes that the comment about the applicant did not concern his political views and had nothing to do with the content of the blog post.** It could therefore hardly have been anticipated by the association.”*

Pihl v. Sweden, 2017

b) the measures applied by the applicant company in order to prevent or remove defamatory comments

*“**If accompanied by effective procedures allowing for rapid response, this system (i.e. a notice and take down procedure) can in the Court’s view function in many cases as an appropriate tool for balancing the rights and interests of all those involved.** However, in cases such as the present one, where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, (...) the Court considers that the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties.”*

Delfi AS v. Estonia [Grand Chamber], 2015

c) the liability of the actual authors of the comments as an alternative to the intermediary’s liability; anonymity needs to be respected

*“In connection with the question whether the liability of the actual authors of the comments could serve as a sensible alternative to the liability of the Internet news portal in a case like the present one, **the Court is mindful of the interest of Internet users in not disclosing their identity. Anonymity has long been a means of avoiding reprisals or unwanted attention. As such, it is capable of promoting the free flow of ideas and information in an important manner, including, notably, on the Internet.**”*

Delfi AS v. Estonia [Grand Chamber], 2015

d) the consequences of the domestic proceedings for the applicant company

*“The Court also observes that it does not appear that the applicant company had to change its business model as a result of the domestic proceedings. According to the information available, the Delfi news portal has continued to be one of Estonia’s largest Internet publications and by far the most popular for posting comments, the number of which has continued to increase. Anonymous comments – now existing alongside the possibility of posting registered comments, which are displayed to readers first – are still predominant and the applicant company has set up a team of moderators carrying out follow-up moderation of comments posted on the portal. In these circumstances, **the Court cannot conclude that the interference with the applicant company’s freedom of expression was disproportionate on that account either.**”*

Delfi AS v. Estonia [Grand Chamber], 2015

“the Court is of the view that the decisive question when assessing the consequence for the applicants is not

the absence of damages payable, **but the manner in which Internet portals such as theirs can be held liable for third-party comments**. Such liability may have foreseeable negative consequences on the comment environment of an Internet portal, for example by impelling it to close the commenting space altogether. For the Court, **these consequences may have, directly or indirectly, a chilling effect on the freedom of expression on the Internet. This effect could be particularly detrimental for a non-commercial website such as the first applicant.**"

MTE and Index.hu v. Hungary, 2016

Additionally there have been several decisions of the European Court of Justice that mostly focus on clarification of different services if they qualify for the regime of intermediary liability as established by the Articles 12 to 14 of the EU Directive 2000/31/EC.

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

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Right to information

The right to information is part of the right to freedom of expression as a right to access relevant information that would allow us to pursue further in developing and forming opinions and ideas.

Article 10 of the European Convention on Human Rights Freedom of expression

...This right shall include freedom... to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Accessing public interest information (that allows citizens to be updated about the activity of public bodies), is a small, but important part of the right to access information, and it is seen as means for citizens to be informed about the activities performed by the states, and therefore as means of securing democracy.

There are several European Constitutions that state a right to information, both as a human right as well as a general right of access to public interest information, both for individuals as well as for various types of organizations.

There are also specific laws that establish the conditions for accessing public interest information and the obligations of state authorities of putting forward such information, even without a request being made by a citizen or another interested party. These laws contain definitions and lists of what constitutes public interest information, institutions that are circumvented by the law, and means of legal remedies in case of denial of such information.

In its case-law ECtHR has developed **four threshold criteria for assessing whether a denial of access to State-held information engages Article 10 of the Convention (detailed below).**

Also, the Court stated that national authorities should not discourage the right through measures limiting the access to public interest information, more precisely by allowing “arbitrary restrictions which may become a form of indirect censorship should the authorities create obstacles to the gathering of information.” (TASZ v. Hungary, 2009). Such could be the case of intelligence agencies. The Court said that they might be the subject to the same provisions regarding access to information as any other public body (Case Youth Initiative for Human Rights v. Serbia, 2013). Also, the Court has included the Internet among the protected means of accessing information.

🔑 Key aspects from relevant ECtHR cases:

- **Definition of the freedom to receive information**

“(...) the right to receive and impart information explicitly forms part of the right to freedom of expression under Article 10. That right basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him.”

TASZ v. Hungary, 2009, citing Leander v. Sweden, 1987

- **Four threshold criteria for assessing if the freedom of expression is breached by the state not providing the public information requested**

a) The purpose of the information request (contributing to a public debate)

“(...) the Court has placed emphasis on whether the gathering of the information was a relevant preparatory step in journalistic activities or in other activities creating a forum for, or constituting an essential element of, public debate (...). For the Court, obtaining access to information would be considered

necessary if withholding it would hinder or impair the individual's exercise of his or her right to freedom of expression (...), including the freedom "to receive and impart information and ideas", in a manner consistent with such "duties and responsibilities" as may follow from paragraph 2 of Article 10."

Magyar Helsinki Bizottság v. Hungary [Grand Chamber], 2016

b) The nature of the information sought (it must be information of public interest)

"the Court considers that the **information, data or documents to which access is sought must generally meet a public interest test in order to prompt a need for disclosure** under the Convention. Such a need may exist where, *inter alia*, disclosure provides transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance by the public at large.

The Court has emphasized that the definition of **what might constitute a subject of public interest will depend on the circumstances of each case**. The public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about. The public interest cannot be reduced to the public's thirst for information about the private life of others, or to an audience's wish for sensationalism or even voyeurism. In order to ascertain whether a publication relates to a subject of general importance, it is necessary to assess the publication as a whole, having regard to the context in which it appears."

Magyar Helsinki Bizottság v. Hungary [Grand Chamber], 2016

c) The role of the applicant (social watchdogs - including bloggers and social media users):

"(...) in assessing whether the respondent State had interfered with the applicants' Article 10 rights by denying access to certain documents, **the Court has previously attached particular weight to the applicant's role as a journalist (...) or as a social watchdog or non-governmental organisation whose activities related to matters of public interest** (...).

While Article 10 guarantees freedom of expression to "everyone", it has been the Court's practice to recognise the essential role played by the press in a democratic society (...)."

Magyar Helsinki Bizottság v. Hungary [Grand Chamber], 2016

"The function of the press includes the creation of forums for public debate. However, the realisation of this function is not limited to the media or professional journalists. In the present case, the preparation of the forum of public debate was conducted by a non-governmental organisation. The purpose of the applicant's activities can therefore be said to have been an essential element of informed public debate. **The Court has repeatedly recognised civil society's important contribution to the discussion of public affairs** (...)."

TASZ v. Hungary, 2009

"(...) the function of creating forums for public debate is not limited to the press. That function may also be exercised by non-governmental organisations, the activities of which are an essential element of informed public debate. The Court has therefore accepted that **non-governmental organisations, like the press, may be characterised as social "watchdogs"**. In that connection their activities warrant similar Convention protection to that afforded to the press."

Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land - und forstwirtschaftlichen Grundbesitzes v. Austria, 2013

"The Court would also note that given the important role played by the Internet in enhancing the public's access to

news and facilitating the dissemination of information (...), **the function of bloggers and popular users of the social media may be also assimilated to that of “public watchdogs”** in so far as the protection afforded by Article 10 is concerned.”

Magyar Helsinki Bizottság v. Hungary [Grand Chamber], 2016

d) The information requested was ready and available

“(...) the Court has previously had regard to the fact that the **information sought was “ready and available” and did not necessitate the collection of any data by the Government** (...). On the other hand, the Court dismissed a domestic authority’s reliance on the anticipated difficulty of gathering information as a ground for its refusal to provide the applicant with documents, where such difficulty was generated by the authority’s own practice (...).”

Magyar Helsinki Bizottság v. Hungary [Grand Chamber], 2016

- **No arbitrary restrictions in accessing public information**

“The most careful scrutiny on the part of the Court is called for when the measures taken by the national authority are capable of discouraging the participation of the press, one of society’s “watchdogs”, in the public debate on matters of legitimate public concern (...), even measures which merely make access to information more cumbersome.

In view of the interest protected by Article 10, the law cannot allow arbitrary restrictions which may become a form of indirect censorship should the authorities create obstacles to the gathering of information.”

TASZ v. Hungary - 2009

- **Intelligence agencies have to grant access to public interest information**

“The exercise of freedom of expression may be subject to restrictions, but any such restrictions ought to be in accordance with domestic law. **The Court finds that the restrictions imposed by the intelligence agency in the present case did not meet that criterion.”**

Youth Initiative for Human Rights v. Serbia, 2013

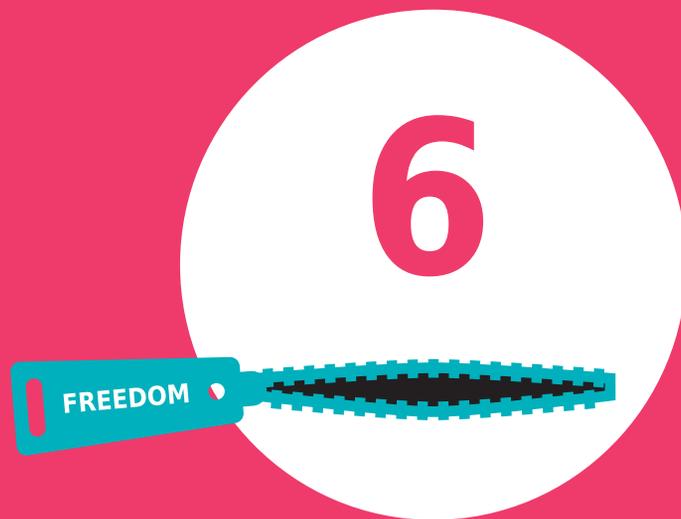
- **Access to certain Internet sites is part of the right to access information**

“It considers that **Article 10 cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners. However**, it finds that in the circumstances of the case, since access to certain sites containing legal information is granted under Estonian law, **the restriction of access to other sites that also contain legal information constitutes an interference with the right to receive information.”**

Kalda v. Estonia, 2016

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

<https://cases.internetfreedom.blog>



Internet blocking

The Internet blocking of a web page via Internet Service Providers (ISPs) that provide access to the Internet is a form of limitation of access to content.

While Internet blocking often seems a simple and easy solution for some policy makers to deal with illegal content, in fact it raises some very complicated technical¹⁶ and legal issues¹⁷ - among which the conflict between Internet blocking and freedom of expression.

In the past years, different solutions for Internet blocking have been implemented by many states worldwide. There are several reports produced by NGOs such as OpenNet Initiative¹⁸, Reporters Without Borders¹⁹ or Freedom House²⁰, that provide in-depth analyses of different countries' practices on Internet censorship that often includes blocking.

There is a wide range of reasons why countries decide to block content, the most common ones being: child abuse images, unauthorized online gambling, intellectual property rights or national security. Besides the Internet blocking obligations for ISPs, that are mandated by a law or a court decision, there is an on-going trend of determining or allowing ISPs to implement similar voluntary measures, that raise also other kinds of problems from a legal standpoint.

🔑 Key aspects from relevant ECtHR cases:

- **Blocking a website is an interference with Freedom of Expression**

***“blocking access to the applicant’s website amounted to an interference with his Article 10 rights to receive and impart information “regardless of frontiers”.*”**

Ahmet Yıldırım v. Turkey, 2012

- **Blocking a website affects the right of the public to receive information**

“the applicants may legitimately claim that the decision to block access to YouTube affected their right to receive and impart information and ideas even though they were not directly targeted by it.”

Cengiz and Others v. Turkey, 2015

“the Court reiterates that Article 10 of the Convention guarantees “everyone” the freedom to receive and impart information and ideas and that no distinction is made according to the nature of the aim pursued or the role played by natural or legal persons in the exercise of that freedom. Article 10 applies not only to the content of information but also to the means of dissemination, since any restriction imposed on such means necessarily interferes with the right to receive and impart information. Likewise, the Court reaffirms that Article 10 guarantees not only the right to impart information but also the right of the public to receive it.”

Cengiz and Others v. Turkey, 2015

- **Prior restraints are not necessarily incompatible with the Convention as a matter of principle, but a clear legal framework is required to be in place**

“Such prior restraints were not incompatible with the Convention as a matter of principle but had to form part of a legal framework ensuring both tight control over the scope of the ban and effective judicial review to prevent any abuses.”

Cengiz and Others v. Turkey, 2015

- **Over-blocking and collateral effects must be considered**

“in the Court’s view, they should have taken into consideration, among other elements, the fact that such a measure, by rendering large quantities of information inaccessible, substantially restricted the

rights of Internet users and had a significant collateral effect.”

Ahmet Yıldırım v. Turkey, 2012

“the measure in question produced arbitrary effects and could not be said to have been aimed solely at blocking access to the offending website, since it consisted in the wholesale blocking of all the sites hosted by Google Sites.”

Ahmet Yıldırım v. Turkey, 2012

- **Effective judicial review measures must be in place**

“Furthermore, **the judicial review procedures concerning the blocking of Internet sites are insufficient to meet the criteria for avoiding abuse**, as domestic law does not provide for any safeguards to ensure that a blocking order in respect of a specific site is not used as a means of blocking access in general.”

Ahmet Yıldırım v. Turkey, 2012

Relevant cases from the European Court of Justice:

Installing a filtering system in order to block illegal use of file sharing is unlawful and would infringe “the fundamental rights of that ISP’s customers, namely their right to protection of their personal data and their freedom to receive or impart information, which are rights safeguarded by Articles 8 and 11 of the Charter respectively.”

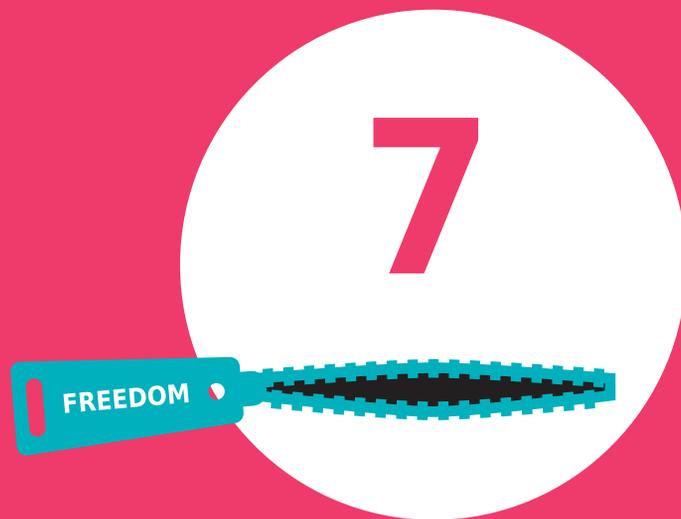
Scarlet vs SABAM, C-70/10

Other relevant cases implying blocking or filtering:

C -610/15 - Stichting Brein vs Ziggo BV & XS4ALL Internet BV, 2017

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

<https://cases.internetfreedom.blog>



Freedom of expression versus privacy

One of the most complicated limitations of the right to freedom of expression is when the other party is also claiming that they have their own fundamental rights breached, and especially the right to privacy – or as the European Convention defines it in Article 8 – the right to respect for private and family life.

Article 8 of the European Convention on Human Rights Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

One of the reasons for which the notion of private life creates so many problems is that the concept is rather broad and can not have a very strict definition, even according to the ECtHR's jurisprudence.

*Thus private life “extends to **aspects relating to personal identity**, such as a person's name, photograph, or physical and moral integrity. This concept also includes **the right to live privately, away from unwanted attention**. The guarantee afforded by Article 8 of the Convention in this regard is primarily intended **to ensure the development, without outside interference, of the personality of each individual** in his or her relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life.”*

Couderc and Hachette Filipacchi Associés v. France [Grand Chamber], 2015

ECtHR considers that both rights (freedom of expression and the right to privacy) have equal respect and, therefore, it is irrelevant on what article was based an application, as a case assessment that leads to a good solution is one that should respect both.

Attempting to find a proper solution in giving priority to one of the two rights is called “balancing” in the jargon of the ECtHR and it is very often linked to the particularities of every case.

*“When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the “protection of the reputation or rights of others”, **the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases**, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8.”*

MTE and Index.hu v. Hungary, 2016

The conflicts between the right to freedom of expression and the right to privacy have appeared well before the Internet existed, so the ECtHR has already a significant jurisprudence in this respect. However, the digital world has also brought into this debate the particularities of the way privacy and personal data are managed (or should we better say mismanaged?) into the online sphere – that is more personal data being collected by digital means and used in so many ways, it is even hard to imagine.²¹

This chapter will not include the cases that only relate to the right to privacy in the digital world, as that will fall

beyond the scope of the current brochure. And they would probably deserve a dedicated analysis and comment.²²

🔑 Key aspects from relevant ECtHR cases:

- **There are differences between Internet and print media as regards their potential in breaching of privacy**

“The risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press. Therefore, the policies governing reproduction of material from the printed media and the Internet may differ. The latter undeniably have to be adjusted according to the technology’s specific features in order to secure the protection and promotion of the rights and freedoms concerned.”

Editorial Board of Pravoye Delo and Shtekel v. Ukraine, 2011

🔑 Key Factors to be considered in the balancing of the two rights²³:

a) contribution to a debate of public interest

“the Court emphasises that the definition of what might constitute a subject of public interest will depend on the circumstances of each case.”

The Court “took into account a number of factors in ascertaining **whether a publication disclosing elements of private life also concerned a question of public interest.** Relevant factors include the importance of the question for the public and the nature of the information disclosed.”

Couderc and Hachette Filipacchi Associés v. France [Grand Chamber], 2015

“A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions.”

Von Hannover v. Germany (no. 2) [Grand Chamber], 2012

b) the subject of the report

“The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection **a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures.** Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures.”

Von Hannover v. Germany (no. 2) [Grand Chamber], 2012

“Although **in certain special circumstances the public’s right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned,** this will not be the case – despite the person concerned being well known to the public – where the published photos and accompanying commentaries relate exclusively to details of the person’s private life and have the sole aim of satisfying public curiosity in that respect private life, however well-known that person might be, cannot be deemed to contribute to any debate of general interest to society.”

Von Hannover v. Germany (no. 2) [Grand Chamber], 2012

c) The way in which the information was obtained and its veracity

“The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism (...) It observes in the present case that although the parties referred to different sources, they nonetheless agreed in substance that the use of a hidden camera was not absolutely prohibited in domestic law, but could be accepted subject to strict conditions. It was not disputed among the parties that the use of this technique was permitted only where there was an overriding public interest in the dissemination of the relevant information, provided that such information could not be obtained by any other means. The Court has already established that the report concerned a matter of public interest.”

Haldiman and others v. Switzerland, 2015

“As regards the method used for producing the documentary, the Court considered that the use of hidden cameras should be restricted as a matter of principle, since that technique is highly intrusive and flouts the right to respect for private life. Nevertheless, the Court is aware of the importance of covert investigative methods for the production of certain types of documentaries. In some cases, journalists are obliged to use hidden cameras, for instance where information is difficult to obtain by any other means. However, this facility must be used as a last resort, sparingly, and in compliance with the relevant codes of ethics.”

Bremner v. Turkey, 2015

d) the prior conduct of the person concerned

“The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration. However, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the photo at issue.”

Von Hannover v. Germany (no. 2) [Grand Chamber], 2012

e) the content, form and consequences of the publication

“the Court reiterates that the approach used to cover a subject is a matter of journalistic freedom. It is not for it, nor for the national courts, to substitute their own views for those of the press in this area. Article 10 of the Convention also leaves it for journalists to decide what details ought to be published to ensure an article’s credibility. In addition, journalists enjoy the freedom to choose, from the news items that come to them, which they will deal with and how they will do so. This freedom, however, is not devoid of responsibilities.

Wherever information bringing into play the private life of another person is in issue, journalists are required to take into account, in so far as possible, the impact of the information and pictures to be published prior to their dissemination. In particular, certain events relating to private and family life enjoy particularly attentive protection under Article 8 of the Convention and must therefore lead journalists to show prudence and caution when covering them.”

Couderc and Hachette Filipacchi Associés v. France [Grand Chamber], 2015

“The way in which the photo or report are published and the manner in which the person concerned is represented in the photo or report may also be factors to be taken into consideration. The extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation.”

Von Hannover v. Germany (no. 2) [Grand Chamber], 2012

f) the gravity of the penalty imposed

“The Court reiterates that in the context of assessing proportionality, irrespective of whether or not the sanction imposed was a minor one, what matters is the very fact of judgment being given against the person concerned,

including where such a ruling is solely civil in nature. Any undue restriction on freedom of expression effectively entails a risk of obstructing or paralysing future media coverage of similar questions.”

Couderc and Hachette Filipacchi Associés v. France [Grand Chamber], 2015

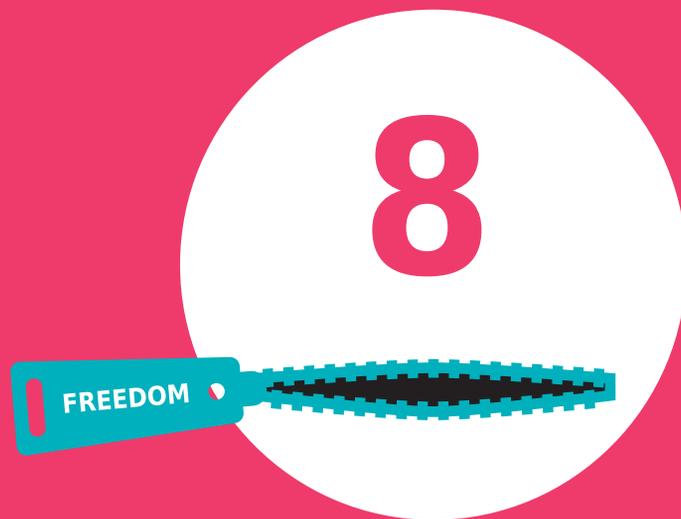
- **Legal persons may not claim they have privacy, but their owners could**

“As the Court has previously held, **legal persons could not claim to be a victim of a violation of personality rights**, whose holders could only be natural persons (...) But it cannot be excluded that the impugned comments were injurious towards the natural person behind the company.”

MTE and Index.hu vs Hungary, 2016

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

<https://cases.internetfreedom.blog>



Freedom of expression versus copyright

Another key subject with which freedom of expression enters in conflict is intellectual property rights, and especially copyright. These tensions tend to be more significant in the digital world, when copying large amounts of works becomes technically easier and the digital copy is identical to the original.

In this specific domain, the ECtHR has had just a few cases and a rather straightforward general line. At the same time, we note that the European Court of Justice has had its share of decisions that touched also on the conflict between freedom of expression and intellectual property rights – as enshrined in the Charter of Fundamental Rights of the European Union.

First, we need to clarify that the ECtHR considers that intellectual property is a form of property and thus is covered by Article 1 of the Protocol no. 1 of the European Convention on Human Rights:

Art. 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

*“In the light of the above-mentioned decisions, the Grand Chamber agrees with the Chamber’s conclusion that **Article 1 of Protocol No. 1 is applicable to intellectual property as such.**”*

Anheuser-Busch Inc. v. Portugal [Grand Chamber], 2007

Similar to the cases of conflict with privacy, in this situation the Court also needs to do a balancing exercise between two rights established by the Convention. In these cases when the exercise has been done by the national courts based on the criteria from the Court jurisprudence, usually the ECtHR intervenes only if there are very strict arguments for the case to be revisited.

Key aspects from relevant ECtHR cases:

- **There is a wide margin of appreciation from the national authorities in these cases**

*“The domestic authorities had a particularly wide margin of appreciation in this case considering **the aim of the interference** and the fact that, as Article 1 of Protocol No. 1 applied to intellectual property, the interference was also aimed at protecting rights safeguarded by the Convention or its Protocols.”*

Ashby Donald and Others v. France, 2013

- **A copyright conviction is an interference with the freedom of expression**

*“In the present case, **the applicants put in place the means for others to impart and receive information within the meaning of Article 10 of the Convention.** The Court considers that the actions taken by the applicants are afforded protection under Article 10 § 1 of the Convention and, consequently, **the applicants’ convictions interfered with their right to freedom of expression.** Such interference breaches Article 10 unless it was “prescribed by law”, pursued one or more of the legitimate aims referred to in Article 10 § 2 and was “necessary in a democratic society” to attain such aim or aims.”*

Neij and Sunde Kolmisoppi v. Sweden, 2013

*“The Court concludes that the **publication of the contentious photographs on a website** dedicated to fashion and publicly offering the images of parades for free or paid and for sale **is the exercise of the right to***

freedom of expression, and that the applicants' conviction for these acts amount to an interference with this right."

Ashby Donald and Others v. France, 2013

- **The safeguards for "commercial" speech are much lower than the ones for political or other public interest speech**

"In this connection, the Court would also underline that the width of the margin of appreciation afforded to States varies depending on a number of factors, among which the type of information at issue is of particular importance. In the present case, although protected by Article 10, the **safeguards afforded to the distributed material in respect of which the applicants were convicted cannot reach the same level as that afforded to political expression and debate**. It follows that the nature of the information at hand, and the balancing interest mentioned above, both are such as to afford the State a wide margin of appreciation which, when accumulated as in the present case, makes the margin of appreciation particularly wide."

Neij and Sunde Kolmisoppi v. Sweden, 2013

"**Contracting states have a wide margin of appreciation when they regulate the freedom of expression in the commercial sphere**, given that the scope of the expression must be relativized when it's not **about the expression strictly "commercial"** of such individual but his participation in a debate concerning the public interest."

Ashby Donald and Others v. France, 2013

- **Criminal copyright conviction and damage could be proportional**

"Finally, the Court reiterates that the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of interference with the freedom of expression guaranteed by Article 10. In the present case, the Court considers that the prison sentence and award of damages cannot be regarded as disproportionate. In reaching this conclusion, the Court has regard to the fact that the domestic courts found that the applicants had not taken any action to remove the torrent files in question, despite having been urged to do so. Instead they had been indifferent to the fact that copyright-protected works had been the subject of file-sharing activities (...)."

Neij and Sunde Kolmisoppi v. Sweden, 2013

European Court of Justice relevant cases:

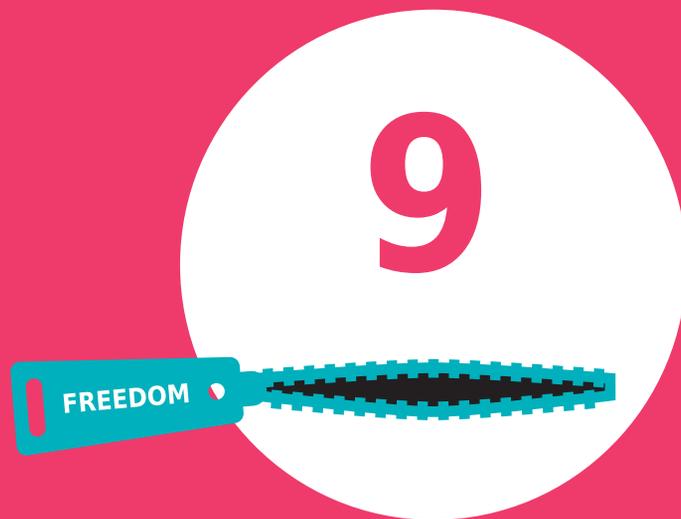
GS Media BV v. Sanoma Media Netherlands BV and Others - C-160/15 (2016) - Hyperlinks giving access to protected works, made accessible on another website without the rightholder's consent

Scarlet vs. SABAM (C360-10) - 2012 - injunction made against an Internet service provider which requires it to install a system for filtering copyrighted works

SABAM vs Netlog (C-70/10) - 2011 injunction made against a hosting provider which requires it to install a system for filtering copyrighted works

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

<https://cases.internetfreedom.blog>



**Other limitations
(national security,
protection of health
or morals, judicial
proceedings)**

Article 10, paragraph 2 of the Convention lists the interests that can be protected when limiting the right to freedom of expression. Besides the interests in the protection of the reputation or rights of others, or the prevention of the disclosure of information received in confidence, that were discussed in the previous chapters, other interests are:

- national security, territorial integrity or public safety; the prevention of disorder or crime;
- the protection of health or morals;
- maintaining the authority and impartiality of the judiciary.

Even if, when reading the paragraph 2 of Article 10, someone might think that the Convention text allows a blanket limitation of the right to freedom of expression, for the listed interests, the jurisprudence of the ECtHR has detailed when such limitation might be “necessary in a democratic society”, as well as when that might not be the case, and the right to freedom of expression prevails.

While there are cases when expression limitations are upheld by the ECtHR, there is also a large array of cases where the member states of the Council of Europe were found in violation of Article 10, when attempting to protect the above listed interests.

For example, the need to protect national security allows for limitations of the right to freedom of expression, but it has to be proved by authorities that these limitations are indeed necessary in a democratic society.

On the other hand, in what regards pornography and blasphemy, these might be more easily limited in the interests of protecting health or morals. Protecting the rights of children is paramount. Child pornography is illegal.

Key aspects from relevant ECtHR cases:

- **National security limitations of freedom of expressions - only if proved necessary in a democratic society**

“While the press must not overstep the bounds set, inter alia, for the protection of vital interests of the State such as national security or territorial integrity against the threat of violence or the prevention of disorder or crime, it is nevertheless incumbent on the press to impart information and ideas on political issues, including divisive ones. Not only has the press the task of imparting such information and ideas; the public has a right to receive them. Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.”

Sürek and Özdemir v. Turkey [Grand Chamber], 1999

*“The Court has paid particular attention to the terms used in these articles and the context of their publication, taking into account the circumstances surrounding the cases submitted for its consideration, in particular the difficulties related to the fight against terrorism. It finds that **the disputed writings didn’t contain any allusion to the use of violence, armed resistance or uprising, and that they do not constitute hate speech, which in its view is the essential element to be taken into consideration.**”*

Bayar and Gürbüz v. Turkey, 2012

*“the impugned article associated itself with the PKK and expressed a call for the use of armed force as a means to achieve national independence of Kurdistan (...). In such a context **the content of the article must be seen as capable of inciting to further violence in the region.** Indeed the message which is communicated to the reader is that recourse to violence is a necessary and justified measure of self-defence in the face of the aggressor. It is in this perspective that the Court finds that that reasons adduced by the respondent State for the applicant’s conviction are both relevant and sufficient to ground an interference with the applicant’s right to freedom of expression. The Court reiterates that the mere fact that “information” or “ideas” offend, shock or disturb does not suffice to justify that interference (see paragraph 36 above). What is in issue in the instant case, however, is incitement to violence.”*

- **Pornography and blasphemy can be limited for protecting health or morals**

*(...) in the context of religious beliefs, may legitimately be included a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profanatory (...). (...) **a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion.***

Moreover, as in the field of morals, and perhaps to an even greater degree, there is no uniform European conception of the requirements of “the protection of the rights of others” in relation to attacks on their religious convictions. (...).”

Wingrove v. the United Kingdom, 1996

*“The Court further observes that **it would have been possible for the applicant to have avoided the harm and, consequently, the conviction, while still carrying on his business,** by ensuring that none of the [pornographic] photographs were available on the free preview page (where there were no age checks). He chose not to do so, no doubt because he hoped to attract more customers by leaving the photographs on the free preview page.”*

Perrin v. the United Kingdom, 2005

- **Protecting the rights of children is paramount**

*“In the Court’s view, in cases such as the present one where an offence has been committed by a minor who has not reached the statutory age of criminal responsibility and who is not considered responsible for his actions, **a journalist’s right to impart information on a serious criminal offence must yield to the minor’s right to the effective protection of his private life.***

There can be little doubt that his repeated naming in the press in connection with the reprehensible (...) incident was particularly harmful to Mr V.’s stepgrandson’s moral and psychological development and to his private life.

The Court concludes from the above that publication by the applicant of the names of the juvenile offenders and the official positions of their relatives did not make any contribution to a discussion of a matter of legitimate public concern. Although that information had been previously published by other newspapers, the civil liability imposed on the applicant was justified in the circumstances by the need to prevent further airing in the press of the details of the claimants’ private lives.”

Aleksey Ovchinnikov v. Russia, 2010

*“Although **freedom of expression and confidentiality of communications are primary considerations** and users of telecommunications and Internet services must have a guarantee that their own privacy and freedom of expression will be respected, such guarantee cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others.”*

K.U. v. Finland, 2008

- **Judicial proceedings impose stricter obligations on those who report for the public**

“(...) it would be inconceivable to consider that there can be no prior or contemporaneous discussion of the subject matter of judicial proceedings elsewhere, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them.”

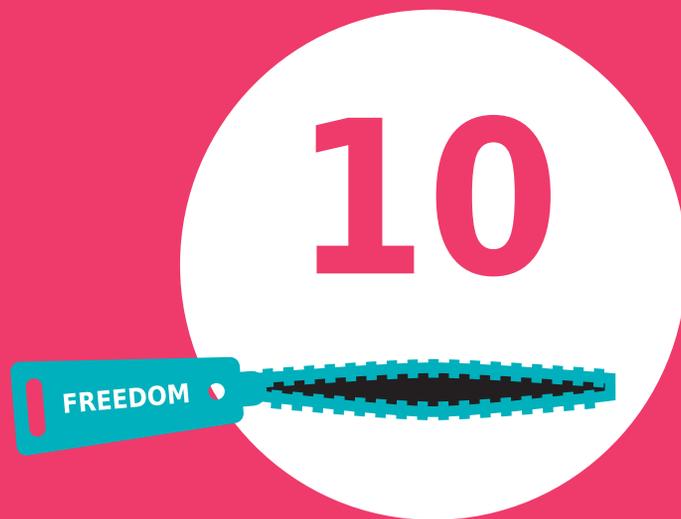
Dupuis and Others v. France, Application no. 1914/02, Judgment of 7 June 2007

“it has to be taken into account that **everyone is entitled to the enjoyment of the guarantees of a fair trial set out in Article 6 § 1 of the Convention**, which in criminal proceedings include the right to an impartial tribunal. (...) As the Court has already had occasion to point out, “[t]his must be borne in mind by journalists **when commenting on pending criminal proceedings** since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice (...)”.”

Dupuis and Others v. France, Application no. 1914/02, Judgment of 7 June 2007

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Licensing

There is a common understanding, reflected in the European legal systems, and the ECtHR jurisprudence, that there should exist no licensing systems for print publications.

States must not have a say in the appearance on the market of a new publication, which definitely includes Internet publications, in all their forms and shapes. This is a basic principle of freedom of the press.

Nevertheless, there also exists an agreement that, for broadcast media, a licensing system should exist. This limitation is argued to come, amongst others, from the practical matter of a limited availability of broadcasting spectrum, and it brings with it further limitations, such as the existence of national broadcasting legislation that settles restrictive conditions for broadcasting (for example, limitative programming requirements). National broadcasting supervision authorities are established in the European states for the implementation of such legislation.

Article 10, Paragraph 1 of the European Convention on Human Rights Freedom of expression

“(...) This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

🔑 Key aspects from relevant ECtHR cases:

- **The denial of registration for a publication has to be an objective and foreseeable measure**

“the relevant law must provide a clear indication of the circumstances where such restraints are permissible, and, a fortiori, when the consequences of the restraint, as in the present case, are to block completely publication of a periodical. This is so because of the potential threat that such prior restraints, by their very nature, pose to the freedom of expression guaranteed by Article 10.”

Gawęda v. Poland, 2002

- **Audiovisual media can be regulated more strictly than the press**

“States are permitted to regulate by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects (...). Technical aspects are undeniably important, but the grant or refusal of a licence may also be made conditional on other considerations, including such matters as the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments.

Case of Informationsverein Lentia and Others v. Austria, 1993

- **Pluralism - key for the free communication of information and ideas**

*(...) The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive (...). Such an undertaking cannot be successfully accomplished unless it is grounded in **the principle of pluralism, of which the State is the ultimate guarantor.** This observation is especially valid in relation to audiovisual media, whose programmes are often broadcast very widely.”*

Case of Informationsverein Lentia and Others v. Austria, 1993

The entire enhanced version of this chapter with links and summaries of the caselaw can be found online at

<https://cases.internetfreedom.blog>

References

¹ David Feldman “Civil Liberties and Human Rights in England and Wales”, Oxford University Press 2002 (p.772 – 766)

² See the full text online at http://www.echr.coe.int/Documents/Convention_ENG.pdf

³ All factsheets are available at <http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets>

⁴ The database is available at <http://fra.europa.eu/en/case-law-database>

⁵ Available at http://www.echr.coe.int/Documents/Research_report_internet_ENG.pdf

⁶ Text available at [http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf)

⁷ Available at <http://www.obs.coe.int/documents/205595/2667238/IRIS+Themes+-+Vol+III+-+Ed+2015+EN.pdf/2f3d578d-2e05-44-2f-8326-917beab7626d#%5B%7B%22num%22%3A98%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C69%2C720%2C0%5D>

⁸ Text available at <https://rm.coe.int/168007ff48>

⁹ Text available at <https://rm.coe.int/16806ac95b>

¹⁰ Text available at <https://rm.coe.int/media-regulatory-authorities-and-hate-speech/16807338f5>

¹¹ Blog available online at <https://strasbourgobservers.com>

¹² Database is available at <https://globalfreedomofexpression.columbia.edu/cases/>

¹³ In this case, by “award” the Court is referring on the moral damages obtained in that specific case.

¹⁴ See https://edri.org/wp-content/uploads/2014/02/EDRi_HumanRights_and_PrivLaw_web.pdf

¹⁵ See for more information the committee website at <https://www.coe.int/en/web/freedom-expression/committee-of-experts-on-internet-intermediaries-msi-net->

The draft text is available at <https://rm.coe.int/draft-recommendation-on-internet-intermediaries-7th-revised-version-/1680770c37>

¹⁶ See ISOC’s Internet Society Perspectives on Internet Content Blocking: An Overview <https://www.internetsociety.org/resources/doc/2017/internet-content-blocking/>

¹⁷ For a much more detailed approach on this subject see the study Internet Blocking: Balancing Cybercrime Responses in Democratic Societies available at <http://www.aconite.com/blocking/study>

¹⁸ See <https://opennet.net/>

¹⁹ See the Enemies of the Internet at <http://surveillance.rsf.org/en>

²⁰ See Freedom of the Net report <https://freedomhouse.org/report-types/freedom-net>

²¹ We are not making this up, just check with Data Detox website if you want to find more - <https://datadetox.myshadow.org/detox>

²² There are already several factsheets produced by the Court’s press unit that cover the right to privacy, such as New technologies - http://www.echr.coe.int/Documents/FS_New_technologies_ENG.pdf Right to the protections of one’s image - http://www.echr.coe.int/Documents/FS_Own_image_ENG.pdf and Personal data protection - http://www.echr.coe.int/Documents/FS_Data_ENG.pdf Mass surveillance - http://www.echr.coe.int/Documents/FS_Mass_surveillance_ENG.pdf , Surveillance at workplace - http://www.echr.coe.int/Documents/FS_Workplace_surveillance_ENG.pdf

²³ The factors are detailed in decisions such as Couderc and Hachette Filipacchi Associés v. France [Grand Chamber], 2016 Von Hannover vs. Germany (no. 2),[Grand Chamber] 2012; and Axel Springer AG vs. Germany [Grand Chamber], 2012

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