

Comments on the country report regarding Estonia of the Comparative Study on blocking, filtering and take-down of Internet content

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Thank you very much for the opportunity to comment this very useful comparative study. Estonia has the following comments:

1. Page 189 – analysis on the Personal Data Protection Act is inaccurate. Although the text provides that processing of personal data is permitted only with the consent of the data subject (§ 12 para. 1), it does not bring out § 14, which provides a limited list of exceptions to the consent rule. Hence, § 14 of the PDPA provides that processing of personal data is permitted without the consent of a data subject if the personal data are to be processed: 1) on the basis of law; 2) for performance of a task prescribed by an international agreement or directly applicable legislation of the Council of the European Union or the European Commission; 3) in individual cases for the protection of the life, health or freedom of the data subject or other person if obtaining the consent of the data subject is impossible; 4) for performance of a contract entered into with the data subject or for ensuring the performance of such contract unless the data to be processed are sensitive personal data. These rules are derived from article 7 of Directive 95/46/EC.
2. Page 190 – Information received in confidence is protected in addition to the Media Services Act also pursuant to clause 3¹ of subsection 1 of § 72 of the Code of Criminal Procedure. The latter provides that journalists have the right to refuse to give testimony as witnesses concerning the circumstances which have become known to them in their professional or other activities. More specifically, such right extends to persons processing information for journalistic purposes regarding information which enables identification of the person who provided the information, except in the case when gathering evidence through other procedural measures is precluded or especially complicated. In addition, such right may only be used if the object of the criminal proceeding is a criminal offence for which at least up to eight years' imprisonment is prescribed as punishment, there is predominant public interest for giving testimony and the person is required to give testimony at the request of a prosecutor's office based on a ruling of a preliminary investigation judge or court ruling. Thus, it clearly influences any blocking or filtering of internet content which has been published for journalistic purposes, as such content cannot be removed in the context of criminal proceedings without meeting a strict legal criteria.
3. Page 206, paragraph 4 – The introductory sentence of this paragraph should be amended as the current text does not correspond to the facts. Although the author of the report has noted that the Grand Chamber judgment has had certain practical consequences, in reality, all four practical consequences mentioned, existed also before the Grand Chamber rendered its judgment. Namely, these amendment were made already after the (Estonian) Supreme Court judgment came into force in 2009 and the Government referred to these amendments already in their Observations submitted to the Chamber; thus before the Court had rendered any judgments in this case.