

Thematic factsheet<sup>1</sup>  
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## BLOCKING, FILTERING AND TAKE DOWN OF ONLINE CONTENT



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### Introduction

Given its accessibility and its capacity to store and communicate vast amounts of information, the Internet provides an unprecedented platform for public access to news and for the dissemination of information, especially user-generated information. At the same time, the risk of harm posed by online content to the exercise and enjoyment of human rights is significantly higher than with traditional media.

This factsheet provides an overview of the case-law of the European Court of Human Rights on sanctions taken by domestic authorities in the prosecution of defamatory and other types of unlawful online speech, including hate speech and speech inciting violence. According to the Court, any measure taken by State authorities or private-sector actors to block, filter or remove Internet content, or any request by State authorities to carry out such actions must comply with the requirements set by Article 10 of the Convention.

In assessing interferences with a right protected under the Convention, the Court carries out a three-fold test, by which it determines whether the interference:

⇒ is “prescribed by law”, i.e. sufficiently accessible, clear, unambiguous and precise to enable individuals to regulate their conduct;

⇒ “pursues one or more of the legitimate aims” set out in the provision, and

⇒ is “necessary in a democratic society” in order to achieve the legitimate aims.

### ECHR Case Law

#### Interim court order blocking access to host and third-party websites in addition to website concerned by proceedings

*Ahmet Yıldırım v. Turkey*, application No. [3111/10](#), judgment 18 December 2012

<sup>1</sup> This document presents a non-exhaustive selection of relevant provisions of the European Convention on Human Rights, related case-law of the European Court of Human Rights (source: [HUDOC](#) database), and other relevant Council of Europe instruments. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to impair relevant provisions of the Convention and applicable instruments. It is not a legal assessment of Platform alerts and should not be treated or used as such.

*The case concerned a court decision to block access to Google Sites, which hosted an Internet site whose owner was facing criminal proceedings for insulting the memory of Atatürk. As a result of the decision, access to all other sites hosted by the service was Blocked, thus the applicant being unable to access his own site.*

The European Court of Human Rights held that prior restraints were not, in principle, incompatible with the Convention, but they had to be part of a legal framework ensuring both tight control over the scope of bans and effective judicial review to prevent possible abuses. However, in ordering the blocking of all access to Google Sites, the Criminal Court of First Instance had simply referred to the Telecommunications Directorate's opinion that this was the only possible way of blocking the offending site, without ascertaining whether a less severe measure could be taken. This shortcoming was merely a consequence of the wording of the law itself, which did not lay down any obligation for the domestic courts to examine whether the wholesale blocking of Google Sites was necessary, having regard to the criteria established and applied by the Court under Article 10 of the Convention.

Such wholesale blocking had rendered large amounts of information inaccessible, thus substantially restricting the rights of Internet users and having a significant collateral effect. The measure in issue had had arbitrary effects and could not be said to have been designed solely to block access to the offending site. Furthermore, the judicial-review procedures concerning the blocking of Internet sites were insufficient to meet the criteria for avoiding abuses; domestic law did not provide for any safeguards in this regard, therefore amounting to a violation of Article 10 of the Convention.

### **Court order blocking access to YouTube**

*Cengiz and Others v. Turkey*, application No. [38870/02](#), judgment 1 December 2015

*This case concerned the wholesale blocking of access to YouTube, a website enabling users to send, view and share videos. The applicants, who were active users of the website, complained in particular of an infringement of their right to freedom to receive and impart information and ideas.*

The Court held that there had been a violation of Article 10 of the Convention, finding that the interference resulting from the application of the impugned provision of the law in question did not satisfy the requirement of lawfulness under the Convention and that the applicants had not enjoyed a sufficient degree of protection. The Court noted in particular that the applicants, all academics in different universities, had been prevented from accessing *YouTube* for a lengthy period of time and that, as active users, and having regard to the circumstances of the case, they could legitimately claim that the blocking order in question had affected their right to receive and impart information and ideas.

The Court also observed that *YouTube* was a single platform which enabled information of specific interest, particularly on political and social matters, to be broadcast and citizen journalism to emerge. The Court further found that there was no provision in the law allowing the domestic courts to impose a blanket blocking order on access to the Internet, and in the present case to *YouTube*, on account of one of its contents.

### **Blocking of the applicant's social networking account and of three entries on his Internet blog**

*Kablis v. Russia*, application No. [48310/16](#) and [59663/17](#), judgment 30 April 2019

*This applicant's social networking account and of three entries on his blog calling for participation in an unauthorised public event. The applicant complained in particular of an infringement of his right to freedom of expression by preventing him to express his opinions on matters of public interest.*

The Court reiterated that exceptions to freedoms of association and assembly must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive. It noted that, unlike some other Articles of the Convention, neither Article 10 nor Article 11 allows for restrictions aimed at maintenance, or protection, of public order. The Court had already found that enforcement of rules governing public assemblies cannot become an end in itself. The Court further noted that in the present case the blocking measure taken by the VKontakte administrator following an order by the Federal Service for Supervision of Communications, Information Technology and Mass Media and a deputy Prosecutor General of the Russian Federation, was taken before a judicial decision was issued on the illegality of the published content. It therefore amounted to a prior restraint. The Court reiterated in this connection that Article 10 does not prohibit prior restraints on publication as such.

The Court was of the opinion that it ought to have been possible to obtain judicial review of the blocking measures before the event in question took place. The information contained in the posts was deprived of any value and interest after that date, and the annulment of the blocking measure on judicial review at that stage would therefore be meaningless. It follows that the fact that the applicant breached a statutory prohibition by calling for participation in a public event held in breach of the established procedure is not sufficient in itself to justify an interference with his freedom of expression. The Court noted that the

breach of the procedure for the conduct of public events in the present case was minor and did not create any real risk of public disorder or crime. Nor did it have a potential to lead to harmful consequences for public safety or the rights of others.

### **Blocking of the applicant's social networking account**

*Elvira Dmitriyeva v. Russia*, application No. [60921/17](#) and [7202/18](#), judgment 30 April 2019

*The applicant sought to hold a meeting to demand the resignation of the Prime Minister. The Kazan Town Administration refused to approve the venues she had suggested. She later posted a message on VKontakte criticising that refusal, which she had challenged before the courts, and announcing that the meeting would take place. The courts allowed her claim in part, finding that the administration's failure to propose an alternative venue was unlawful. The applicant subsequently held the meeting but was arrested and found guilty of organising and calling for participation in an unauthorised public event.*

The European Court of Human Rights held that there had been a violation of Article 10 of the Convention, interpreted where appropriate in the light of Article 11, finding in particular that if people were forbidden by domestic law to "campaign" for participation in an unauthorised demonstration, the domestic courts had not explained how her VKontakte message had amounted to campaigning. The Court also found that her message had concerned a matter of public interest – allegations of high-level corruption – and expression on such matters attracted strong protection. Also, whereas authorities had to show tolerance for unlawful but peaceful gatherings, the demonstration had been banned on purely formal grounds rather than because of a risk of disorder, crime, or possible harm to public safety and the rights of others. In the Court's view, there had been no proper justification for interfering with her freedom of expression by convicting her for calling on people to take part in an event on an issue of public interest, particularly because her breach of the law had only been minor and there had never been a threat of disorder. There had therefore been no "pressing social need" for the interference with her freedom of expression.

The Court also found a violation of Article 5§1 of the Convention as her being escorted to the police station and being put under administrative arrest had not complied with Russian law and had not been "lawful" within the meaning of that provision.

### **Blocking of an internet site as the automatic consequence of a blocking order against another site with the same IP address**

*Vladimir Kharitonov v. Russia*, application No. [10795/14](#), judgment 23 June 2020

*The applicant, the owner and administrator of an Internet site, had it blocked as an automatic consequence of a blocking order against another site with the same IP address. The national authorities' decision to block access to the offending website by blacklisting its IP address had had the disproportionate collateral effect of blocking access to his website, in particular of an infringement of his right to impart information.*

The European Court of Human Rights held that there had been a violation of Article 10 (freedom of expression) of the Convention, finding in particular that the applicant, because of a blocking decision taken by the Russian telecoms regulator (Roskomnadzor), was unable to share the latest developments and news about electronic publishing, while visitors to his website were prevented from accessing the entire website content. It follows that the blocking measure in question amounted to "interference by a public authority" with the right to receive and impart information, since Article 10 guarantees not only the right to impart information but also the right of the public to receive it. The Court noted that this measure had had a significant collateral effect, by rendering large quantities of information inaccessible, and had thus substantially restricted the rights of Internet users.

The Court found that the applicant was in no way affiliated with the owners of the offending website or responsible for the allegedly illegal content and the interference in issue could not therefore have been grounded on the provision that was supposed to have formed its legal basis. Reiterating that the wholesale blocking of access to an entire website is an extreme measure which has been compared to banning a newspaper or television station, the Court considered that a legal provision giving an executive agency so broad a discretion carries a risk of content being blocked arbitrarily and excessively. The Court reiterated that when exceptional circumstances justify the blocking of illegal content, a state agency making the blocking order must ensure that the measure strictly targets the illegal content and has no arbitrary or excessive effects, irrespective of the manner of its implementation. Any indiscriminate blocking measure which interferes with lawful content or websites as a collateral effect of a measure aimed at illegal content or websites amounts to arbitrary interference with the rights of owners of such websites.

### **Blocking of access to Internet sites**

*000 Flavus and Others v. Russia*, application No. [12468/15](#), judgment 23 June 2020

*The applicants, owners of online media outlets, complained in particular of an infringement of their right to*

*freedom of media activity by preventing users in Russia from accessing their websites. Access to their online media outlets, internet sites which published articles, opinion pieces and research by opposition politicians, journalists and experts was blocked.*

The European Court of Human Rights held that there had been a violation of Article 10 of the Convention, finding in particular that the applicants, as owners of online media outlets, had been prevented from their right of media activity and having regard to the circumstances of the case, by a request of the Prosecutor General sent to Roskomnadzor to block the applicants' online media websites.

The Court restated that the wholesale blocking of access to a website is an extreme measure which has been compared to banning a newspaper or television station. The Court found that the decision on the illegal nature of the websites' content had been made in the present case on spurious grounds or outright arbitrarily. Any indiscriminate blocking measure which interferes with lawful content or websites as a collateral effect of a measure aimed at illegal content or websites amounts to arbitrary interference with the rights of the owners of such websites.

Lacking any justification for the wholesale blocking orders targeting the applicants' websites, the Court found that the national authorities did not pursue any legitimate aim. The Court estimated that the national law did not provide owners of online media, such as the applicants, with any procedural safeguards capable of protecting them against arbitrary interference, which they were entitled by the rule of law in a democratic society.

### **Blocking of the applicant's website**

*Bulgakov v. Russia*, application No. [20159/15](#), judgment 23 June 2020

*The applicant's website was blocked on account of the presence of forbidden material, as the domestic courts had upheld a measure blocking access to his entire website at the level of the public authority, even after the prohibited content had been taken down.*

The European Court of Human Rights held that there had been a violation of Article 10 of the Convention, finding in particular that the applicant, as the owner of the website, had removed the forbidden material and was still not able to have his website unblocked. The Court held that there had been no legal basis for the blocking order, in that the legislation on which the order was based did not permit the authorities to block access to an entire Internet site. In so far as the blocking measure was imposed by a national court, it did not matter that it was implemented by a public authority rather than the telecoms regulator. Blocking access to a website's IP address has the practical effect of extending the scope of the blocking order far beyond the illegal content which had originally been targeted. The Court had found that there was no legal basis for blocking access to the applicant's entire website when it contained one page of extremist material. The Court also considered that the finding of unlawfulness applied a fortiori to the continued blocking of the website after the prohibited material had been removed. The Court explained that the procedural requirement of Article 10 is ancillary to the wider purpose of ensuring respect for the substantive right to freedom of expression, as well as the right to an effective remedy afforded a procedural safeguard.

### **Obligation to take down information from website to avoid blocking**

*Engels v. Russia*, application No. [61919/16](#), judgment 23 June 2020

*The applicant was obliged to remove information about unfiltered-browsing technologies available from his website which constituted prohibited content, in order to avoid the blocking of the entire website.*

The European Court of Human Rights held that there had been a violation of Article 10 of the Convention, finding in particular that the applicant, as the owner of the website dedicated to the protection of freedom of expression online and digital privacy, had been obliged to remove information prohibited by the domestic courts on filter-bypassing tools, in order to avoid blocking of his entire website. It amounted therefore to "interference by a public authority" with the right to receive and impart information, since Article 10 guarantees not only the right to impart information but also the right of the public to receive it.

The Court noted that the utility of filter-bypassing technologies cannot be reduced to a tool for malevolently seeking to obtain extremist content. Even though the use of any information technology can be subverted to carry out activities which are incompatible with the principles of a democratic society, filter-bypassing technologies primarily serve a multitude of legitimate purposes, such as enabling secure links to remote servers, channelling data through faster servers to reduce page-loading time on slow connections and providing a quick and free online translation. None of these legitimate uses were considered by the national court before issuing the blocking order. The Court noted that all information technologies, from the printing press to the Internet, have been developed to store, retrieve and process information.

As the third-party interveners and the UN Human Rights Committee pointed out, information technologies are content-neutral. They are a means of storing and accessing content and cannot be equated with content itself, whatever its legal status happens to be. The blocking of information about such technologies interferes with access to all content which might be accessed using those technologies. In the absence of a specific legal basis in domestic law, the Court found that such a sweeping measure was arbitrary.

## Other relevant Council of Europe instruments

### Committee of Ministers

Recommendation [Rec\(2018\)2](#) to Member States on the roles and responsibilities of internet intermediaries (7 March 2018)

Recommendation [Rec\(2016\)5](#) to Member States on Internet freedom (13 April 2016)

Recommendation [Rec\(2015\)6](#) to Member States on the free, transboundary flow of information on the Internet (1 April 2015)

Recommendation [Rec\(2014\)6](#) to Member States on a guide to human rights and internet users (16 April 2014)

Recommendation [Rec\(2012\)4](#) to Member States on the protection of human rights with regard to social networking services (4 April 2012)

Recommendation [Rec\(2012\)3](#) to Member States on the protection of human rights with regard to search engines (4 April 2012)

[Declaration](#) on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers (7 December 2011)

Recommendation [Rec\(2011\)8](#) to Member States on the protection and promotion of the universality, integrity and openness of the Internet (21 September 2011)

Recommendation [Rec\(2011\)7](#) to Member States on a new notion of media (21 September 2011)

[Declaration](#) on Internet governance principles (21 September 2011)

[Declaration](#) on the management of the Internet protocol address resources in the public interest (29 September 2010)

Recommendation [Rec\(2007\)11](#) to Member States on promoting freedom of expression and information in the new information and communications environment (including Guidelines on protecting freedom of expression and information in times of crisis) (26 September 2007)

[Declaration](#) on freedom of communication on the Internet (28 May 2003)

Recommendation [Rec\(2001\)8](#) to Member states on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services) (5 September 2001)

Recommendation [Rec\(2001\)7](#) to Member States on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment (5 September 2001)

### Parliamentary Assembly

Resolution [2256\(2019\)](#) "Internet governance and human rights" (23 January 2019)

Internet governance and human rights, [Report 14789](#) by Andres Herkel (4 January 2019)

Resolution [2144\(2017\)](#) "Ending cyberdiscrimination and online hate" (25 January 2017)

Ending cyberdiscrimination and online hate, [Report 14217](#) by Marit Maij (13 December 2016)

Resolution [2110\(2016\)](#) "Intellectual property rights in the digital era" (20 April 2016)

Intellectual property rights in the digital era, [Report 14009](#) by Axel Fischer (31 March 2016)

Resolution [2070\(2015\)](#) "Increasing co-operation against cyberterrorism and other large-scale attacks on the Internet" (26 June 2015)

Increasing co-operation against cyberterrorism and other large-scale attacks on the Internet, [Report 13802](#) by Hans Franken (8 June 2015)

Resolution [2066\(2015\)](#) "Media responsibility and ethics in a changing media environment" (24 June 2015)

Media responsibility and ethics in a changing media environment, [Report 13803](#) by Volodymyr Ariev (8 June 2015)

Resolution [2001\(2014\)](#) "Violence in and through the media" (24 June 2014)

Violence in and through the media, [Report 13509](#) by Sir Roger Gale (6 May 2014)

Resolution [1986\(2014\)](#) "Improving user protection and security in cyberspace" (9 April 2014)

Improving user protection and security in cyberspace, [Report 13451](#) by Axel Fischer (21 March 2014)

Resolution [1877\(2012\)](#) "The protection of freedom of expression and information on the Internet and online media" (25 April 2012)

The Protection of freedom of expression and information on the Internet and online media, [Report 12874](#) by Zaruhi Postanjyan (15 February 2012)

## **Council of Europe**

[Comparative study on blocking, filtering and take-down of illegal internet content](#) (January 2017)

## **Commissioner for Human Rights**

Commissioner for Human Rights: The rule of law on the Internet and in the wider digital world, [CommDH/IssuePaper\(2014\)1](#) (8 December 2014)

## **European Court of Human Rights**

[Guide](#) on Article 10 of the European Convention on Human Rights: Freedom of expression (30 April 2021)

## **Conventions**

European Convention of Human Rights and Fundamental Freedoms, [ETS No. 005](#) (4 November 1950), with Protocols 1, 4, 6, 7, and 12 to 16, [ETS No. 009](#) (20 March 1952), [ETS No. 046](#) (16 September 1963), [ETS No. 114](#) (28 April 1983), [ETS No. 117](#) (22 November 1984), [ETS No. 177](#) (4 November 2000), [ETS No. 187](#) (3 May 2002), [CETS No. 194](#) (13 May 2004), [CETS No. 213](#) (24 June 2013) and [CETS No. 214](#) (2 October 2013).

## **Other Factsheets**

[Freedom of Expression, the Internet and New Technologies](#), June 2018.