Thematic factsheet [1]
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FREEDOM OF EXPRESSION AND THE INTERNET

Content

The Internet is an essential tool for communication and a major source of news for the public. At the same time, the potential for harm caused by defamatory speech, hate speech and incitement to violence, increases commensurately with the amounts, the speed and the worldwide outreach of the dissemination on the Internet.

The exercise and enjoyment of freedom of expression on the Internet must therefore comply with the requirements set by Article 10 (freedom of expression) of the Convention. In interpreting the Convention, the European Court of Human Rights has ruled in accordance with the principles applied to print, radio and audiovisual media, but it has worked out specifics that are linked to the technical architecture, features and capabilities of the Internet. The Court has found that as an essential consequence of the freedom of expression, the right to receive and impart information implies an access to the Internet even in situations such as imprisonment. Liability for content published on the Internet, in particular with regard to the respect for private life, primarily binds the author of the publication, but the question has arisen with regard to intermediaries (news portals, blogs publishers, social media, content moderators, self-regulatory bodies, etc.) who intervene in the publication process on the Internet. Similar to the seizure of press products or sanctions applied to broadcasters, the regulation and prosecution of prohibited speech on the Internet may require public authorities or private actors to block, filter and take down content. According to the Court, any measure to block, filter or remove Internet content, or any request by public authorities to carry out such actions must comply with the requirements of 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

[1] 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.

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 .

In addition, the Court evaluates other relevant ECHR articles in comparison, to be able to strike a fair balance between other affected human rights as opposed to freedom of expression.

Access to the Internet

Prisoners' right to receive information via the Internet
Kalda v. Estonia, application No. 17429/10, judgment 19 January 2016

This case concerned a prisoner's complaint about the authorities' refusal to grant him access to three Internet websites, containing legal information, run by the State and by the Council of Europe. The applicant complained in particular that the ban under Estonian law on his accessing of these specific websites had breached his right to receive information via the Internet and prevented him from carrying out legal research for court proceedings in which he was engaged.

The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that Contracting States are not obliged to grant prisoners access to Internet. However, if a State is willing to allow prisoners access, as is the case in Estonia, it has to give reasons for refusing access to specific sites. In the specific circumstances of the case, the reasons, namely the security and costs implications, for not allowing the applicant access to the websites in question had not been sufficient to justify the interference with his right to receive information. Notably, the authorities had already made security arrangements for prisoners' use of Internet via computers specially adapted for that purpose and under the supervision of the prison authorities and had borne the related costs. Indeed, the domestic courts had undertaken no detailed analysis as to the possible security risks of access to the three additional websites in question, bearing in mind that they were run by an international organisation and by the State itself.

Denial of use of a computer and Internet access to prisoners for education purposes
Mehmet Reşit Arslan and Orhan Bingöl v. Turkey, application No. 47121/06, 13988/07 and 34750/07, judgment 18 June 2019

The applicants, who were convicted in 1992 and 1995, respectively, and were both serving sentences of life imprisonment, complained of being prevented from using a computer and accessing the Internet. They submitted that these resources were essential in order for them to continue their higher education and improve their general knowledge. Their appeals to the courts had been unsuccessful.

The European Court of Human Rights held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** of the Convention, finding that it was not persuaded by the grounds put forward to justify the Turkish authorities' denial of the requests by the applicants to use audio-visual materials and computers and to have Internet access and found that the domestic courts had failed to strike a fair balance between their right to education on the one hand and the imperatives of public order on the other. The Court reiterated in particular that the importance of education in prison had been acknowledged by the Committee of Ministers in its recommendations on education in prison and in its European Prison Rules.

Refusal to allow a prisoner to consult Internet sites on legal matters
Ramazan Demir v. Turkey, application No. 68550/17, judgment 9 February 2021

This case concerned the prison authorities' refusal to grant access to certain Internet sites to a lawyer in the course of his pre-trial detention. He wished to access the Internet sites of the European Court of Human Rights, the Constitutional Court and the Official Gazette, with a view to preparing his own defence and following his clients' cases. He considered that there had been an interference with his right to receive information and ideas.

The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the government had not shown that the reasons adduced by the authorities to justify the refusal had been relevant and sufficient, or that this interference had been necessary in a democratic society. The Court considered in particular that since prisoners' access to certain sites containing legal information had already been granted under domestic law for the purposes of training and rehabilitation, the restriction of the applicant's access to the sites, which contained only legal information that could be relevant to the applicant's development and rehabilitation in the context of his profession and interests, had constituted an interference with his right to receive information. The Court noted that the domestic courts had not provided sufficient explanations as to why the applicant's access to

the Internet sites of the Court, the Constitutional Court or the Official Gazette could not be considered as pertaining to the applicant's training and rehabilitation, for which prisoners' access to the Internet was authorised by the law, nor on whether and why the applicant ought to be considered as a prisoner posing a certain danger or belonging to an illegal organisation, in respect of whom Internet access could be restricted. Furthermore, neither the authorities nor the government had explained why the contested measure had been necessary in the present case, having regard to the legitimate aims of maintaining order and safety in the prison and preventing crime.

Blocking, filtering and take down of online content

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

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 there had been a **violation of Article 10** (freedom of expression) of the Convention, finding 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 European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) 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 user access to the applicant's news websites
OOO Flavus and Others v. Russia, application No. 12468/15, judgment 23 June 2020

This case concerned the complaint of the owners of online media outlets, 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** (freedom of expression) of the Convention, restating 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

This case concerned the applicant's website being 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** (freedom of expression) of the Convention, finding 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 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

This case concerned the obligation of the applicant 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** (freedom of expression) of the Convention, finding 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.

See further: Factsheet on blocking, filtering and take down of online content

Liability for online publications

Domestic rules under which a new cause of action in libel proceedings accrues each time defamatory material on the Internet is accessed
Times Newspapers Ltd v. the United Kingdom, application No. 3002/03 and 23676/03, judgment 10 March 2009

The applicant company, owner and publisher of The Times, claimed that the rule under British law, whereby a new cause of action in libel proceedings accrues each time defamatory material on the Internet is accessed ("the Internet publication rule"), constituted an unjustifiable and disproportionate restriction on its right to freedom of expression. In December 1999 The Times published two articles that were allegedly defamatory of a private individual. During the subsequent libel proceedings, the newspaper was required to add a notice to both articles in the Internet archive announcing that they were subject to libel litigation and were not to be reproduced or relied on without reference to the applicant company's legal department.

The European Court of Human Rights held that there had been **no violation of Article 10** (freedom of expression) of the Convention, underlying that, given 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. In the present case, it found that, since the archives were managed by the newspaper itself and the domestic courts had not suggested that the articles be removed altogether, the requirement to add an appropriate qualification to the Internet version had not been disproportionate.

Conviction for defaming and publicly insulting a mayor on a website
Renaud v. France, application No. 13290/07, judgment 25 February 2010

This case concerned the applicant's complaint of his conviction for defaming and publicly insulting a mayor on the website of the association of which he was president and webmaster.

The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention, considering that a fair balance had not been struck between the need to protect the applicant's right to freedom of expression and the need to protect the rights and reputation of the complainant. The Court found that, while the reasons provided by the domestic courts to justify the applicant's conviction could be regarded as relevant, they were not sufficient and therefore did not correspond to any pressing social need. It recalled the general interest of ensuring the free play of political debate, which is at the very heart of the concept of a democratic society that dominates the Convention. With regard to the sums charged to the applicant, the Court considered that their relatively moderate amount could not, in itself, justify the interference with the latter's right to freedom of expression. It further pointed out that an attack on freedom of expression could risk having a chilling effect on the exercise of this freedom. The Court found that the applicant's conviction had been disproportionate to the legitimate aim of protecting the reputation and rights of others.

No pre-notification requirement in domestic law on news websites to enable legal action for interim measures
Mosley v. the United Kingdom, application No. 40009/08, judgment 10 May 2011

This case concerned the publication of articles, images and video footage in the News of the World newspaper and on its website that disclosed details of Max Mosley's sexual activities. The applicant complained about the state's failure to impose a legal duty on the newspaper to notify him in advance of further publication of the material so that he could seek an interim injunction.

The European Court of Human Rights found that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It observed that, although the dissemination of the private lives of those in the public eye was generally for the purposes of entertainment rather than education, it undoubtedly benefitted from the protection of Article 10 (freedom of expression). It recalled that the Article 10 protection afforded to publications might cede to the requirements of Article 8 where the information was of a private and intimate nature and there was no public interest in its dissemination. Looking beyond the facts of the case, and having regard to the chilling effect to which a pre-notification requirement risked giving rise, to the doubts about its effectiveness and to the wide margin of appreciation afforded to the state in that area, the Court held that the Convention did not require media to give prior notice of intended publications to those who feature in them to give them an opportunity to prevent such publications by seeking an interim court injunction. The absence of such a requirement in British law did therefore not violate the Convention.

Lack of adequate safeguards in domestic law for journalists' use of information obtained from the Internet
Editorial Board of Pravoye Delo and Shtekel v. Ukraine , application No. 30014/05, judgment 5 May 2011

This case concerned defamation proceedings against a local newspaper and its editor-in-chief following their publication of a letter downloaded from the Internet alleging that senior local officials were corrupt and involved with the leaders of an organised criminal gang. The domestic courts had ordered the applicants to publish an apology and pay damages.

The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the order to publish an apology had not been issued in accordance with the law. It further held that, having regard to the role the Internet plays in the context of professional media activities and its importance for the exercise of the right to freedom of expression generally, the absence of a sufficient legal framework at the domestic level allowing journalists to use information obtained from the Internet without fear of incurring sanctions seriously hinders the exercise of the vital function of the press as a 'public watchdog'.

Conviction for copyright infringement following publication on the Internet without authorisation
Ashby Donald and Others v. France, application No. 36769/08, judgment 10 January 2013

This case concerned the conviction of fashion photographers for copyright infringement following the publication on the website of a fashion company run by two of the applicants, without the authorisation of the fashion houses concerned, of photos taken by the other applicant at fashion shows in 2003.

The European Court of Human Rights held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found that there had been interference with the photographers' right to freedom of expression as they had been convicted of copyright infringement for disseminating or representing intellectual works in breach of the authors' rights under the Intellectual Property Code. The interference pursued the legitimate aim of protecting the rights of others, namely the authors' rights of the fashion houses whose creations were featured in the disputed photographs. The Court observed that the applicants' approach had essentially been a commercial one, as it could not be said that they had taken part in a debate on a topic of general interest by simply publishing photographs of fashion shows, and hence the domestic authorities had a particularly wide margin of appreciation. With regard to the claim that the applicants' conviction for copyright infringement was not "necessary", the Court held that the domestic court had not overstepped its margin of appreciation in privileging respect for the fashion designers' property over the applicants' right to freedom of expression. With regard to the claim that the sentences served on the applicants had been disproportionately harsh, it found that the domestic court had fixed these sums following adversarial proceedings, the fairness of which was not in dispute, and had given adequate reasons for its decision.

The Court concluded, in the circumstances of the case and regard being had to the particularly wide margin of appreciation open to the domestic authorities, that the nature and gravity of the penalties imposed on the applicants were not such that it could find that the interference in issue was disproportionate to the aim pursued.

No obligation for media to have online archive material about a crime anonymised at the request of its perpetrators
M.L. and W.W. v. Germany, applications Nos. 60798/10 and 65599/10, judgment 28 June 2018

The applicants, who in 1993 had been convicted of murder and sentenced to life imprisonment, requested several media to have archive documents from the time of the trial, which were accessible on their websites, anonymised, In 2009 and 2010, while acknowledging that the applicants had a considerable interest in no longer being confronted with their conviction, domestic courts ruled in favour of the media. The applicants considered that this approach failed to take account of the power of search engines.

The European Court of Human Rights held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It concluded that the refusal to grant the applicants' request had not been in breach of the German State's positive obligations to protect the applicants' private lives. In view (i) of the national authorities' margin of appreciation in such matters when weighing up divergent interests, (ii) of the importance of maintaining the availability of reports whose lawfulness had not been contested when they were initially published, and (iii) of the applicants' conduct vis-à-vis the press, the Court discerned no strong reasons which would require it to substitute its view for that of the Federal Court of Justice.

The assessment criteria applied by the Court in this case were (i) the contribution to a debate of general interest, and the issue of anonymisation on request; (ii) the degree to which the person concerned was well known and the subject of the report; (iii) the prior conduct of the person concerned with regard to the media; (iv) the content, form and consequences of the publication, and (v) the circumstances in which the

photos were taken. The Court first specified that the applicants were not requesting the deletion of the material, objectively describing a judicial decision, but its anonymisation. It observed that the approach to covering a given subject was a matter of journalistic freedom, and it was left to journalists to decide what details ought to be included to ensure the credibility of a publication, provided that these decisions corresponded to the profession's ethical and deontological norms. It then noted that the obligation to assess at a later stage the lawfulness of a report following a request from the individual concerned would entail a risk that the press would prefer to refrain from preserving such reports in their online archives or to omit the identifying elements that were likely to be concerned by any such request.

The Court noted that certain of the articles in question provided details about the defendants' lives, but held that such details formed part of the information that criminal-law judges were regularly required to take into consideration in assessing the circumstances of the crime and the elements of individual guilt, and in consequence generally formed part of the deliberations during public hearings. In addition, these articles did not reflect an intention to present the applicants in a disparaging way or to harm their reputation.

Liability on news outlet for inserting a hyperlink with a potential defamatory content into a news article
Magyar Jeti Zrt v. Hungary, application No. 11257/16, judgment 4 December 2018

This case concerned the attribution of liability on the applicants company operating the popular news website 444.hu, which covers a wide range of topics and which was called into the defamation proceedings brought by the political party Jobbik against eight defendants and other media outlets that had provided links to the impugned video, arguing that by using the term "Jobbik" to describe the football supporters and by publishing a hyperlink to the YouTube video, the defendants had infringed its right to reputation.

The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that hyperlinks, as a technique of reporting, are essentially different from traditional acts of publication. It observed that the following features distinguished hyperlinks from acts of dissemination of information: they do not present the linked statements to the audience or communicate its content, but only serve to call readers' attention to the existence of material on another website; the person referring to information through a hyperlink does not exercise control over the content of the website to which a hyperlink enables access, and which might be changed after the creation of the link; the content behind the hyperlink has already been made available by the initial publisher on the website to which it leads, providing unrestricted access to the public.

The Court considered that the issue of whether the posting of a hyperlink may justifiably, from the perspective of Article 10, give rise to such liability requires an individual assessment in each case, regard being had to a number of elements: (i) did the journalist endorse the impugned content; (ii) did the journalist repeat the impugned content (without endorsing it); (iii) did the journalist merely include a hyperlink to the impugned content (without endorsing or repeating it); (iv) did the journalist know or could he or she reasonably have known that the impugned content was defamatory or otherwise unlawful; (v) did the journalist act in good faith, respect the ethics of journalism and perform the due diligence expected in responsible journalism.

In the instant case, the Court noted that nowhere in the article did the author imply in any way that the statements accessible through the hyperlink were true, or that he approved of the hyperlinked material or accepted responsibility for it. Neither did he use the hyperlink in a context that, in itself, conveyed a defamatory meaning. It therefore concluded that the impugned article did not amount to an endorsement of the impugned content.

Liability under civil law for having kept on a news website and not having de-indexed an article reporting the facts of a criminal case instituted against private individuals
Biancardi v. Italy, application No. 77419/16, judgment 25 November 2021

This case concerned the complaint by the editor-in-chief of an online newspaper, who was held liable under civil law for having kept on his newspaper's website and not having de-indexed an article reporting the facts of a criminal case instituted against private individuals.

The European Court of Human Rights held that there had been **no violation of Article 10** (freedom of expression) of the Convention, distinguishing between, on the one hand, the requirement to de-list (or "de-index", as in the present case) and, on the other hand, the permanent removal or erasure of news articles published by the press. The Court noted that, in the instant case, the applicant was found to be liable solely on account of the requirement to de-list, and that anonymisation of the online article was not at issue.

The Court held that, in assessing the proportionality of the impugned interference with the applicant's right to freedom of expression, it must examine whether the domestic courts' finding of civil liability was based on relevant and sufficient grounds, given the particular circumstances of the case. Special attention

should be paid in this case to (i) the length of time for which the article was kept online – particularly in the light of the purposes for which the data was originally processed; (ii) the sensitiveness of the data at issue and (iii) the gravity of the sanction imposed on the applicant.

The Court was of the belief that the circumstances in which information concerning sensitive data is published constitutes a factor to be taken into account when balancing the right to disseminate information and the right of a data subject to respect for his or her private life. Therefore, it concluded that the finding by the domestic jurisdictions that the applicant had breached V.X.'s right to respect for his reputation by virtue of the continued presence on the Internet of the impugned article and by his failure to de-index it constituted a justifiable restriction of his freedom of expression – all the more so given the fact that no requirement was imposed on the applicant to permanently remove the article from the Internet.

Order to pay compensation for the publication of comments on a Facebook page
Ponta v. Romania, application No. 44652/18, judgment 14 June 2022

This case concerns the applicant's order to pay compensation for the publication of comments, posted on his Facebook page, deemed by the domestic courts to be defamatory.

The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the persons involved in the present case, former ministers, were acting in a public context and that the offending message could be read as contributing to the debate of general interest relating to corruption in the political class. The margin of appreciation available to the authorities in judging the "necessity" of the penalty imposed in the present case was therefore particularly limited.

The Court considered that by requiring the applicant to prove the truth of his statements, while denying him an effective opportunity to produce evidence in support of his defence, the domestic courts exceeded the margin of appreciation available to them. Accordingly, the domestic courts had not established that there was a pressing social need to place the protection of the human rights of a public figure above the applicant's right to freedom of expression and the public interest in defending such freedom when matters of public interest are at stake. The Court therefore held that the interference with the applicant's exercise of his right to freedom of expression was not "necessary in a democratic society".

Intermediaries' liability for online publications

Liability for user-generated comments on an Internet news portal
Delfi AS v. Estonia [GC], application No. 64569/09, judgment 16 June 2015

The applicant company, running a news portal on a commercial basis, complained that it had been held liable by the domestic courts for the offensive comments posted by its readers below one of its online news articles about a ferry company. It had removed the offensive comments at the request of the owner of the ferry company within six weeks after their publication.

The European Court of Human Rights held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the domestic courts' finding of liability against the applicant company had been a justified and proportionate restriction on the portal's freedom of expression, therefore the interference with the applicant's freedom of expression was lawful within the meaning of Article 10.

As to whether the interference was necessary in a democratic society, (i) the article that had given rise to the defamatory comments concerned a matter of public interest and (ii) the applicant company could have foreseen the negative reactions and exercised a degree of caution in order to avoid being held liable for an infringement of others' reputations. The comments in question had been extreme and had been posted in reaction to an article published by the applicant on its professionally managed news portal run on a commercial basis and the steps taken by the applicant to remove the offensive comments without delay after their publication had been insufficient. Since the applicant company was able to exercise a substantial degree of control over readers' comments, it was in a position to predict the nature of the comments a particular article was liable to prompt and to take technical or manual measures to prevent defamatory statements from being made public, therefore the 320 € fine had by no means been excessive for the applicant.

Liability of a self-regulatory body of Internet content providers and a news website for vulgar and offensive online comments
Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary, application No. 22947/13, judgment 2 February 2016

This case concerned the liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments posted on their websites following the publication of an opinion criticising the misleading business practices of two real estate websites. The applicants complained about the domestic courts' rulings against them, which had effectively obliged them to moderate the contents of comments made by readers on their websites, arguing that that had gone against the essence of free expression on the Internet.

The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention, reiterating that, although not publishers of comments in the traditional sense, Internet news portals had to assume duties and responsibilities. In the instant case, the Court considered that the domestic courts, when deciding on the notion of liability, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites.

Liability for the third-party offensive comment published anonymously on a blog
Pihl v. Sweden, application No. 74742/14, decision 7 February 2017

This case concerned the applicant being subject of a defamatory online comment, which had been published anonymously on a blog. He made a civil claim against the small non-profit association which ran the blog, claiming that it should be held liable for the third-party comment. The claim was rejected by the Swedish courts and the Chancellor of Justice. The applicant complained to the Court that by failing to hold the association liable, the authorities had failed to protect his reputation and had violated his right to respect for his private life.

The European Court of Human Rights declared the application **inadmissible** (manifestly ill-founded). It noted in particular that, in cases such as this, a balance must be struck between an individual's right to respect for his private life, and the right to freedom of expression enjoyed by an individual or group running an internet portal. In light of the circumstances of this case, the Court found that national authorities had struck a fair balance when refusing to hold the association liable for the anonymous comment. In particular, this was because: although the comment had been offensive, it had not amounted to hate speech or an incitement to violence; it had been posted on a small blog run by a non-profit association; it had been taken down the day after the applicant had made a complaint; and it had only been on the blog for around nine days.

Refusal to serve defamation proceedings outside the jurisdiction on grounds that alleged damage to reputation was minimal
Tamiz v. the United Kingdom, application No. 3877/14, decision 19 September 2017

The applicant claimed libel following the publication of comments on a blog, which was hosted by a blog-publishing service run by Google Inc., a corporation registered in the United States. The applicant was granted permission to serve the claim form on Google Inc. in the United States but Google Inc. was subsequently successful in having that permission set aside. The English courts had dismissed the claim because both the damage and any eventual vindication would be minimal, and the costs of the exercise would be out of proportion to what would be achieved, thus lacking "real and substantial" tort as required to serve defamation proceedings outside the jurisdiction. The applicant argued that in refusing him permission to serve a claim form on Google Inc., the state had been in breach of its positive obligation under Article 8 (right to respect for private life) to protect his right to reputation.

The European Court of Human Rights declared the application **inadmissible** (manifestly ill-founded), finding that an attack on personal honour and reputation had to attain a certain level of seriousness and to have been carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life. It concurred with the domestic courts that while the majority of comments about which the applicant complained were offensive, for the large part they were little more than "vulgar abuse", which was common in communication on many Internet portals. It noted that, although the applicant had been prevented from serving proceedings on Google Inc., that was not because such an action was inherently objectionable to the domestic courts. Rather, having assessed the evidence before them, they concluded that the applicant's claim did not meet the "real and substantial tort" threshold required. That conclusion was based on the courts' finding that Google Inc. could only be found responsible in law for the content of the comments once a reasonable period had elapsed after it had been notified of their potentially defamatory nature. The Court found the approach of the domestic courts to be in keeping with international law.

Having particular regard to the important role that information society service providers such as Google

Inc. performed in facilitating access to information and debate on a wide range of political, social and cultural topics, the Court considered that the state's margin of appreciation in the case was necessarily a wide one. It found that the domestic courts had acted within that wide margin of appreciation and had achieved a fair balance between the applicant's right to respect for his private life under Article 8 and the right to freedom of expression guaranteed by Article 10 and enjoyed by both Google Inc. and its end users.

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(2016)4 to Member States on the protection of journalism and safety of journalists and other media actors (13 April 2016)

Recommendation Rec(2016)1 to Member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality (13 January 2016)

Declaration on the Internet Corporation for Assigned Names and Numbers (ICANN), human rights and the rule of law (3 June 2015)

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)

Recommendation Rec(2008)6 to Member States on measures to promote the respect for freedom of expression and information with regard to Internet filters (26 March 2008)

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)

Recommendation Rec(2004)16 to Member States on the right of reply in the new media environment (15 December 2004)

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)

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 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)

Council of Europe

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

Commissioner for Human Rights

The rule of law on the Internet and in the wider digital world, CommDH/IssuePaper(2014)1 (8 December 2014)

Venice Commission

Compilation of opinions and reports concerning freedom of expression and media, CDL-PI(2016)011 (19 September 2016)

European Commission against Racism and Intolerance (ECRI)

General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet (15 December 2000)

European Court of Human Rights

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

Factsheet on access to Internet and freedom to receive and impart information and ideas (March 2022)

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

Harassment and intimidation of journalists (June 2018)

Access to information (June 2018)

Freedom of the press and the protection of one's reputation (June 2018)

Hate speech, apology of violence, promoting negationism and condoning terrorism: the limits to the freedom of expression (July 2018)

Blocking, filtering and take down of online content (June 2022)