Thematic factsheet[1]
Updated: June 2018

HARASSMENT AND INTIMIDATION OF JOURNALISTS

This note presents a non-exhaustive selection of the case law of the European Court of Human Rights and of the Council of Europe instruments that are relevant for the Category C of Alerts on the Platform ("Harassment and intimidation of journalists"). This category mainly refer to judicial intimidation; opportunistic, arbitrary or vexatious use of legislation, including defamation, anti-terrorism, national security, hooliganism or anti-extremism laws; issuing bogus or fabricated charges; political intimidation, including hate speech and use by public figures of abusive or demeaning language against journalists or media outlets; violence or interference causing damage or destruction of journalists' equipment or other property; punitive or vindictive exercise of investigatory tax or administrative powers; arbitrary denial of access for journalistic coverage; threats to journalists' privacy, threats to employment status, psychological abuse, bullying, online harassment and cyber-bullying; other forms of intimidation and harassment.

JUDICIAL INTIMIDATION

Unreasonably high damages for defamation claims: lack of adequate and effective safeguards in legislation and practice

Independent Newspapers (Ireland) Limited v. Ireland - 28199/15
Judgment 15.6.2017

The applicant company is the publisher of the Irish daily newspaper, the *Herald*, previously known as the *Evening Herald*. In 2004 the *Evening Herald* published a series of articles about a public relations consultant, Ms L., reporting on rumours of an intimate relationship between her and a Government minister. Ms L. successfully sued the applicant company for defamation, and a jury awarded her damages of 1,872,000 euros (reduced to 1,250,000 euros by the Supreme Court on appeal). The applicant company complained to the European Court that the award had been excessive and had violated its right to freedom of expression.

According to the European Court, unreasonably high damages for defamation claims can have a chilling effect on freedom of expression, and therefore there must be adequate domestic safeguards so as to avoid disproportionate awards being granted. The Court found that the safeguards had not proved effective in this case. At first instance, this was because domestic law prevented the judge from giving

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the jury sufficiently specific instructions about an appropriate amount of damages for the libel. On appeal, although the award had been overturned and replaced with a lower amount after a fresh assessment, the Supreme Court had not given sufficient explanations as to how the new amount had been calculated, and it had not addressed the domestic safeguard at first instance and, in that context, the strict limits on judicial guidance to juries.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Arbitrary application of anti-terrorism legislation to convict a newspaper editor

Fatullayev v. Azerbaijan - 40984/07
Judgment 22.4.2010

The applicant, a newspaper editor, was sentenced to a total of eight and a half years' imprisonment for having criticised in his articles the Azeri Government's foreign and domestic political moves. The Court noted that, as a journalist, the applicant had clearly not been in a position to influence or exercise any degree of control over any of the hypothetical events discussed in the articles. Nor had he voiced any approval or argued in favour of any such attack. It had been his task, as a journalist, to impart information and ideas on the relevant political issues and to express opinions about the possible future consequences of specific decisions taken by the Government. The domestic courts' finding that the applicant had threatened the State with terrorist acts had thus been arbitrary. There had thus been a grossly disproportionate restriction on the applicant's freedom of expression.

Conclusion: violation of Article 10 of the Convention (freedom of expression). Journalist to be released immediately

See, for more examples of case law on abusive/inappropriate use of anti-terrorism legislation against journalists,

- ***Gözel and Özer v. Turkey*** 43453/04 and 31098/05, Judgment 6.7.2010 [Virtually automatic conviction of media professionals for publishing written material of banned organisations]: violation of Article 10 of the Convention
- ***Sık v. Turkey and Nedim Şener v. Turkey*** -53413/11 and 38270/11 Judgments 8.7.2014 [Journalists accused of aiding and abetting a criminal organization]: violation of Article 10 of the Convention.

Unnecessary and disproportionate use of criminal law in defamation cases

Colombani and Others v. France – 51279/99
Judgment 25.6.2002

In the context of the examination of Morocco's application for membership of the European Communities, Le Monde published an article under the headline "Morocco: leading world hashish exporter", with the sub-heading "A confidential report casts doubt on King Hassan II's entourage". Following a complaint by the King of Morocco, criminal proceedings were brought against the first applicant, publishing director of Le Monde, and the author of the article. They were found guilty of insulting a foreign head of state on the basis of the law on the freedom of the press.

The Court noted that, when the press contributed to public debate on issues giving rise to legitimate concern, it should in theory be able to rely on official reports without having to carry out independent

research. In the instance case, the information provided by the applicants was of legitimate public interest and they acted in good faith in supplying precise and credible information based on an official report whose accuracy did not require checking on their part. Under domestic law, the offence of insulting a foreign head of state, unlike the ordinary offence of defamation, did not provide for any exemption from criminal liability in the event of the truth of the allegations being proved. The unavailability of the defence of truthfulness (*exceptio veritatis*) constituted an excessive measure for protecting a person's reputation and rights, even if that person was a head of state or government. The ordinary offence of defamation was sufficient to protect any head of state from attacks on his honour or reputation. On the other hand, the offence provided for under the domestic law tended to confer on heads of state a status going beyond the general law and shielding them from criticism on the sole grounds of their function or status, without taking any account of the interest that lay in the criticism.

This special protection afforded to foreign heads of state under the law, which gave them an inordinate privilege at variance with current political practices and ideas, did not satisfy any "overriding social need".

Conclusion: violation of Article 10 of the Convention

See, for more examples of case law on unnecessary/disproportionate use of criminal or civil law in defamation cases,

- ***Milisavljević v. Serbia*** no. 50123/06 Judgment 4.4.2017 [Disproportionate reaction of the Serbian authorities to an article written about a well-known human rights activist]: violation
- ***Kapsis and Danikas v. Greece*** - 52137/12 Judgment 19.1.2017 [Civil liability for newspaper article describing holder of public office as a "total unknown"]: violation
- ***Ali Çetin v. Turkey*** no. 30905/09 Judgment 19.6.2017 [Criminal conviction for insulting a civil servant as a result of comments made by Mr Çetin in a letter relating to a professional conflict]: violation
- ***Niskasaari and Others v. Finland*** no. 37520/07 [Criminal convictions for defamation after publication of an article about a Ombudsman's removal from her functions]: violation
- ***Mariapori v. Finland*** no. 37751/07 [Criminal convictions of a journalist for defamation following the publication of a book accusing a tax expert of perjury in tax fraud proceedings]: violation
- ***Otegi Mondragon v. Spain*** –no. 2034/07, Judgment 15.3.2011 [Criminal conviction for insulting the King]: violation
- ***Tuşalp v. Turkey*** no. 32131/08, Judgment 21.2.2012 [Criminal conviction for defamation for having published two articles criticising the Prime Minister]: violation
- ***Cumpănă and Mazăre v. Romania*** - 33348/96, Judgment 17.12.2004 [Unnecessary and disproportionate use of criminal law in a classic defamation case]: violation
- ***Murat Vural v. Turkey*** –no. 9540/07 Judgment 21.10.2014 [Thirteen years' imprisonment for pouring paint over statues of Atatürk]: violation

Unappropriated use of national security grounds to curtail freedom of expression

Vereniging Weekblad Bluf! v. the Netherlands - 16616/90
Judgment 9.2.1995

The applicant association submitted that the seizure and withdrawal of issue no. 267 of the weekly magazine Bluf! containing a six-year-old confidential report were not necessary for protecting national security. The Government argued that it was for the State to decide whether it was necessary to impose

and preserve such confidentiality, the State being in the best position to assess the use that might be made of the information to the detriment of national security.

The Court noted that there were not sufficient reasons under the Convention to justify the seizure and withdrawal of the publication. Because of the nature of the duties performed by the internal security service, the Court accepted that such an institution must enjoy a high degree of protection with regard to disclosure of information about its activities. Nevertheless, it found open to question whether the information in the report made public in the weekly magazine was sufficiently sensitive to justify preventing its distribution. The Court noted that the document in question was six years old at the time of the seizure. Furthermore, it was of a fairly general nature, the head of the security service having himself admitted that the various items of information, taken separately, were no longer State secrets. Lastly, the report was marked simply "Confidential", which represents a low degree of secrecy at national level.

Conclusion: violation of Article 10 of the Convention

See also, for more examples of case law on restrictions to freedom of expression on the grounds of national security,

- ***Stoll v. Swizerland***, no. 69698/01, Judgment 10.12.2007 [Conviction to a fine for having disclosed in the press a confidential report by the Swiss ambassador to the Unites States on the subject of compensation due to Holocaust victims]: no violation
- ***Pakso v. Russia*** no. 69519/01, Judgment 10.5.2010 [Conviction of treason through espionage for having collected and kept information of a military nature classified as State secret with the intention of transferring it to a foreign national]: no violation
- ***Ibrahim Aksoy v. Turkey***, n°28635/95, 30171/96 and 34535/97, Judgment 10.01.2001 [Conviction for separatist propaganda by means of press articles]: violation

LOSS OF EMPLOYMENT

Three-year ban on practising journalism and prison sentence for promoting extremism in the context of Chechen conflict

Stomakhin v. Russia - 52273/07
Judgment 9.5.2018

The applicant, a journalist and civil activist, published his own newsletter and, therein, made a number of statements concerning the Chechen conflict. In 2006 he was sentenced to five years imprisonment and banned from practising journalism for three years on account of statements appealing to violence and extremist activities and inciting hatred and enmity on the ethnic, religious and social grounds, contrary to the Suppression of Extremism Act.

(a) Aims pursued – According to the European Court of Human Rights, the applicant's conviction pursued several legitimate aims: protecting the rights of others (such groups as the Russian people, Orthodox believers and Russia's servicemen and law-enforcement officers), as well as protecting national security, territorial integrity, public safety, and preventing disorder and crime.

While national security or public safety had to be interpreted restrictively, the matters relative to the conflict in the Chechen Republic had been of a very sensitive nature at the material time, which required particular vigilance on the part of the authorities.

(b) Necessity in a democratic society

(i) Pressing social need – The impugned statements were part of a debate on a matter of general and public concern (the conflict in the Chechen Republic), a sphere in which restrictions on freedom of expression are to be strictly construed. They had been made against the background of the separatist tendencies in the region that had led to serious disturbances between Russia's federal armed and security forces and the Chechen rebel fighters, resulting in a heavy loss of life and deadly terrorist attacks in other regions of Russia.

(ii) Severity of the penalty – The Court left open the question whether a ban on the exercise of journalistic activities, as such, was compatible with Article 10. A deprivation of liberty coupled with a ban on practising journalism for speech – even if criminal – was an extremely harsh measure, particularly when imposed for such a long period. In that respect, the domestic courts had referred to the applicant's "personality" and the "social danger" posed by his offence. While those were "relevant" considerations, the Court was unable to conclude that the applicant's sentence was rendered necessary by any particular circumstances of his case. The applicant had never been convicted of any similar offence (otherwise, the choice of a harsh sentence would have been more acceptable). Moreover, the potential impact of the impugned statements was reduced. They had been printed in a self-published newsletter with a very low number of copies and an insignificant circulation. The copies had been distributed by the applicant in person or through his acquaintances at public events in Moscow only to those individuals who had expressed their interest. The applicant's punishment had therefore not been proportionate to the legitimate aims pursued.

Conclusion: violation of Article 10 (freedom of expression)

Disciplinary penalty imposed on a public broadcaster's journalist for criticizing the programming policy

Wojtas-Kaleta v. Poland - 20436/02
Judgment 16.7.2009

This case raised the issue of how the limits of loyalty of journalists working for public broadcasters should be delineated and what restrictions could be imposed on them in public debate. The applicant was a journalist with a public television company and also the President of the Polish Public Television Journalists' Union. She was reprimanded by the company after criticising – in comments to the press– its decision to take classical music programs off the air.

The obligation of discretion and constraint did not apply to journalists as it is in the nature of their functions to impart information and ideas. A public broadcaster's programming policy is an issue of public interest and concern, allowing of little scope for restrictions on debate. The applicant's employer had been entrusted with a special statutory mission which included assisting cultural development with special emphasis on national intellectual and artistic achievements. The applicant had argued that the changes in its programming policy were not consistent with that mission and had echoed widely shared concerns about the declining quality of music programs. Although she claimed to have done so in her

role as a journalist commenting on a matter of public interest, the company had taken the view that merely participating in the debate was sufficient to establish a breach of her obligations as an employee, without weighing those obligations against the company's role as a public service. Similarly, the domestic courts had endorsed that conclusion without examining whether and how the subject matter and context of her comments could have affected the permissible scope of her freedom of expression.

Conclusion: violation of Article 10 of the Convention

Order prohibiting the applicants from working as journalists for one year in a classic defamation case

Cumpănă and Mazăre v. Romania - 33348/96
Judgment 17.12.2004

The Court noted that the order prohibiting the applicants from working as journalists for one year following the publication of an article about presumed misappropriation on the part of local elected representatives had been particularly severe and could not in any circumstances have been justified by the mere risk of their reoffending. The imposition of such a preventive measure of general scope, albeit subject to a time-limit, had contravened the principle that the press must be able to perform the role of a public watchdog in a democratic society. The Court accordingly considered that, although the interference with the applicants' right to freedom of expression might have been justified, the criminal sanction and the accompanying prohibitions imposed on them by the Romanian courts had been manifestly disproportionate in their nature and severity to the legitimate aim pursued by the applicants' conviction for insult and defamation.

Conclusion: violation of Article 10 of the Convention

For more examples of case law on journalists' dismissals, see also

- ***Fuentes Bobo v. Spain*** no. 39293/98, Judgment on 29.2.2000 [Dismissal of a television programme producer and scriptwriter following an article criticising the various actions of the management] : violation of Article 10 of the Convention
- ***Nenkova-Lalova v. Bulgaria*** no. 35745/05, Judgment on 29.4.2013 [Dismissal of a journalist allegedly as a direct result of the disclosure of unpleasant facts about the then ruling political party]: no violation of Article 10 of the Convention
- ***Matúz v. Hungary*** no. 73571/10, Judgment on 21.10.2014 [Journalist dismissed for publishing a book criticizing his employer in breach of confidentiality clause]: violation of Article 10.

POLITICAL INTIMIDATION

Inadequate legal safeguards against political control of tele-radio Moldova

Manole and Others v. Moldova - 13936/02
Judgment 17.9.2009

According to the applicants, all employed by Teleradio-Moldova (TRM), the only national television and radio station in Moldova at that time, TRM was subjected to political control. This worsened after February 2001 when the Communist Party won a large majority in Parliament. In particular, senior TRM

management was replaced by those loyal to the Government. Only a trusted group of journalists were used for reports of a political nature which were edited to present the ruling party in a favourable light. Journalists were reprimanded for using expressions which reflected negatively on the Soviet period or suggested cultural and linguistic links with Romania. Interviews were cut and programmes were taken off the air for similar reasons. Journalists transgressing these policies were subjected to disciplinary measures and even interrogated by the police.

The Court first noted that the Government did not deny the specific examples cited by the applicants of TV or radio programs that had been banned from air because of the language used or their subject-matter. Further, having accepted that TRM maintained a list of prohibited words and phrases, the Government had not provided any justification for it. In addition, given that the authorities had not monitored TRM's compliance with their legal obligation to give balanced air-time to ruling and opposition parties alike, the Court found the relevant data provided by non-governmental organisations significant. The Court thus concluded that in the relevant period TRM's programming had substantially favoured the President and ruling Government and had provided scarce access to the air to the opposition.

The Court further found that during most of the period in question TRM had enjoyed a virtual monopoly over audiovisual broadcasting in Moldova. Consequently, it had been of vital importance for the functioning of democracy in the country that TRM transmit accurate and balanced information reflecting the full range of political opinion and debate. The State authorities were under a duty to ensure a pluralistic audiovisual service by adopting laws ensuring TRM's independence from political interference and control. However, during the period considered by the Court, from February 2001-September 2006, when one political party controlled the Parliament, Presidency and Government, domestic law did not provide a sufficient guarantee of political balance in the composition of TRM's senior management and supervisory body nor any safeguard against interference from the ruling political party in these bodies' decision-making and functioning.

Conclusion: violation of Article 10 of the Convention

Alleged politically-motivated judicial harassment of ten journalists (columnists, journalists and editors) from the daily newspaper *Cumhuriyet*

Sabuncu and Others v. Turkey 23199/17
Pending

Ten journalists from the daily newspaper *Cumhuriyet* ("the Republic") were placed in police custody and subsequently in pre-trial detention in October and November 2016 on suspicion of having committed offences on behalf of terrorist organisations and disseminating propaganda for them. The applicants challenged the relevant detention ordersbefore judges of the peace and applied, unsuccessfully, for release. They also lodged individual petitions before the Constitutional Court; those proceedings are currently pending.

Relying in particular on Article 5 §§ 1, 3 and 4 (right to liberty and security / right to speedy review of the lawfulness of detention), Article 10 (freedom of expression) and Article 18 (limitation on use of restrictions on rights), the ten journalists complained before the ECtHR about their pre-trial detention and its duration, and also submit that there has been a breach of their freedom of expression. They

further allege that their detention is a sanction against them for criticising the government and amounts to politically-motivated judicial harassment.

See, for examples of applications on alleged politically-motivated detention of Turkish journalists,

- Atilla Taş (72/17) and Murat Aksoy v. Turkey (80/17) : communicated
- Mehmet Hasan Altan and Ahmet Hüsrev Altan v. Turkey (13252/17): Judgment 20.3.2018
- Şahin Alpay v. Turkey (16538/17) : Judgment 20.3.2018

OTHER FORMS OF INTIMIDATION AND HARASSMENT

Unreasonable length of court proceedings against a journalist having criticized high-ranking members of the military

Dilipak v. Turkey - 29680/05
Judgement 15.9.2015

In 2003, following an article containing criticisms of high-ranking members of the military, the military prosecutor's office sought Mr Dilipak's conviction under the Military Criminal Code. Six and a half years later, the criminal proceedings were discontinued because the offences with which the applicant had been charged were found to be time-bared. The Court noted that the criminal proceedings against the applicant remained pending for an unreasonable period of time, during which the applicant was at risk of further prosecution if he were to publish other articles on the same theme. That situation was likely to dissuade the applicant and other journalists from commenting critically on a matter of public interest, namely the relationship between the military and the political life of Turkey.

Conclusion: violation of article 6 (lengths of proceedings) and 10 (freedom of expression)

Failure of authorities to take adequate measures to enforce court order allowing journalists access to radio station

Frăsilă and Ciocîrlan v. Romania - 25329/03
Judgment 10.5.2012

The case concerns the enforcement of a court decision giving journalists the right of access to the premises of a local radio station where they were working.

The Court noted that the State was the ultimate guarantor of pluralism and that this role became even more crucial where the independence of the press was at risk as a result of outside pressure from those holding political and economic power. It observed that, according to various reports, the situation of the press in Romania was unsatisfactory at the relevant time and that the local press was directly or indirectly controlled by leading political or economic figures in the region. Furthermore, Mr Frasilă alleged that he had been subjected to political and economic pressure, resulting in the sale of part of his stake in a television company.

In those circumstances, the Court concluded that the national authorities had been under an obligation to take effective steps to assist the two journalists in securing the enforcement of the court decision giving them right of access to the premises of a local radio station where they were working. By refraining from doing so, the national authorities had deprived the provisions of Article 10 of the Convention of all useful effect.

Conclusion: violation of Article 10 of the Convention

Trump-up charges against journalists

Sakit Zahidov v. Azerbaijan - 51164/07
Judgment 12.11.2015

The applicant (an independent Azeri journalist, satirist and poet, working for the newspaper *Azadliq*as) was arrested and taken to local police premises where a search was conducted and drugs were found in one of his pockets. He was later convicted of illegal possession of drugs. Before the domestic courts, the applicant claimed that the drugs had been planted on him by the police officers.

The Court noted a number of concerns regarding the circumstances in which the physical evidence had been obtained. Firstly, the search of the applicant had not been carried out immediately following the arrest, but twenty minutes later, nowhere near the place of arrest. The time lapse between the arrest and search raised legitimate concerns about possible "planting" of the evidence, because the applicant was completely under the police's control during that time. Secondly, the domestic courts had declined to examine a copy of the video-recording of the search. Thirdly, the applicant's arrest was not immediately documented by the police and the applicant was not represented by a lawyer during his arrest or the search. Overall, the quality of the physical evidence on which the domestic courts' guilty verdict was based was questionable because the manner in which it had been obtained cast doubt on its reliability.

Conclusion: violation of Article 10 of the Convention

Expulsion and re-entry ban for controversial statements on Kurdish and Armenian issues

Cox v. Turkey - 2933/03
Judgment 20.5.2010

Even though the right of a foreigner to enter or remain in a country was as such not guaranteed by the Convention, immigration controls were to be exercised consistently with Convention obligations. The applicant was precluded from re-entering the country on grounds of her controversial statements concerning Kurdish and Armenian issues, which continued to be the subject of heated debate, not only in Turkey, but also internationally.

Opinions expressed on such issues by one side might offend the other, but a democratic society required tolerance and broadmindedness in the face of controversial expressions. Moreover, when, as in the applicant's case, the interference with a Convention right consisted of a denial of re-entry to a country, the Court was empowered to examine the grounds for that ban. However, from the domestic courts' reasoning it was impossible to conclude how and why the applicant's views had been deemed harmful to Turkey's national security. Nor could it be accepted that "the situation complained of did not

fall within the ambit of any of the applicant's fundamental rights". Bearing in mind that it had never been suggested that the applicant had committed an offence or shown that she had ever been engaged in any activities which could clearly be seen as harmful to Turkey, the reasons adduced by the domestic courts could not be regarded as sufficient and relevant justification for the interference with her right to freedom of expression.

Conclusion: violation of Article 10 of the Convention

Other relevant Council of Europe instruments

Recommendation of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies

Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies

Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007

Declaration by the Committee of Ministers on the protection and promotion of investigative journalism, adopted on 26 September 2007

Resolution 2035 (2015) and Recommendation 2062 (2015) of the Parliamentary Assembly "Protection of the safety of journalists and of media freedom in Europe" and Doc. 13664_Report 2015 (G. S. FLEGO) "Protection of media freedom in Europe"

Resolution 1577 (2007) and Recommendation 1814 (2007) of the Parliamentary Assembly "Towards decriminalisation of defamation". See also Doc. 11305, report of the Committee on Legal Affairs and Human Rights

Declaration on freedom of expression and information in the media in the context of the fight against terrorism, adopted by the Committee of Ministers on 2 March 2005

Recommendation 1706 (2005) of the Parliamentary Assembly Media and terrorism