

## FREEDOM OF EXPRESSION, THE INTERNET AND NEW TECHNOLOGIES

In the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. At the same time, the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is higher than that posed by the traditional press. Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated worldwide and may sometimes remain persistently available online. Therefore, bearing in mind the need to protect the values underlying the Convention, and considering that the rights under Article 10 (freedom of expression) and 8 (respect for private life) of the Convention deserve equal respect, a balance must be struck that retains the essence of both rights. According to the European Court of Human Rights, 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. They must in particular be prescribed by a law which is accessible, clear, unambiguous and sufficiently precise to enable individuals to regulate their conduct. They must at the same time be necessary in a democratic society and proportionate to the legitimate aim pursued.

### BLOCKING, FILTERING AND REMOVING ONLINE CONTENT

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

**Ahmet Yıldırım v. Turkey - [3111/10](#)**

**Judgment 18.12.2012**

The applicant owns and runs a website on which he publishes material including his academic work. It was set up using the Google Sites website creation and hosting service. Following the blocking of another website as a preventive measure, a domestic court had subsequently, further to a request by

---

<sup>1</sup> This document presents a non-exhaustive selection of the European Court of Human Rights' relevant case law and of the other CoE instruments. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to amount to a hindrance of Articles 8 and 10 of the Convention. This information is not a legal assessment of the alerts and should not be treated or used as such.

the Telecommunications Directorate, ordered the blocking of all access to Google Sites, which also hosted the applicant's site. This had entailed a restriction amounting to interference with the applicant's right to freedom of expression.

The European Court of Human Rights held that such 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. In addition, one of the applicant's main arguments in his application of 1 July 2009 to set the blocking order aside was that to prevent other sites from being affected by the measure in question, a method should have been chosen whereby only the offending site became inaccessible. However, there was no indication that the judges considering his application had sought to weigh up the various interests at stake. 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 interference had therefore not been foreseeable and had not afforded the applicant the degree of protection to which he was entitled by the rule of law in a democratic society. 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 to ensure that a blocking order concerning a specified site was not used as a means of blocking access in general.

Conclusion: violation of Article 10 of the Convention

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

**Cengiz and Others v. Turkey** [38870/02](#)

**Judgment 1 December 2015**

This case concerned the blocking of access to *YouTube*, a website enabling users to send, view and share videos. The applicants 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 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.

Conclusion: violation of Article 10 of the Convention

## **Blocking of access to two websites for streaming music without respecting copyright legislation**

---

**Akdeniz v. Turkey** [20877/10](#)

**11 March 2014 (decision on the admissibility)**

This case concerned the blocking of access to two websites on the grounds that they streamed music without respecting copyright legislation. The applicant, who had applied to the European Court of Human Rights as a user of the websites in question, complained in particular of a violation of his freedom of expression. The European Court of Human Rights declared the application **inadmissible** (incompatible *ratione personae*), finding that the applicant could not claim to be a “victim” in the sense of Article 34 (right of individual application) of the Convention. While stressing that the rights of internet users are of paramount importance, the Court nevertheless noted that the two music streaming websites had been blocked because they operated in breach of copyright law. As a user of these websites, the applicant had benefited from their services, and it was observed that he had at his disposal many means to access to a range of musical works, without thereby contravening the rules governing copyright.

Conclusion: inadmissible

## **Proportionality of a wholesale blocking of access to all websites sharing the same IP address**

---

**Kharitonov v. Russia** [10795/14](#)

**Application communicated to the Russian Government on 27 April 2017**

The applicant alleged in particular that the blocking of a third party’s website located on the same IP address as his own had the disproportionate effect of blocking access to his website. The European Court of Human Rights gave notice of the application to the Russian Government and put questions to the parties under Article 10 (freedom of expression) and Article 13 (right to an effective remedy) of the Convention.

Pending

## **FREEDOM OF EXPRESSION ONLINE**

### **Criminal conviction for publishing obscene articles on the Internet**

---

**Perrin v. the United Kingdom** [5446/03](#)

**18 October 2005 (decision on the admissibility)**

The case concerned the conviction and sentencing to 30 months’ imprisonment of a French national based in the United Kingdom – and operating a United States-based Internet company with sexually explicit content – for publishing obscene articles on Internet. The European Court of Human Rights rejected the applicant’s **complaint under Article 10** (freedom of expression) of the Convention as **inadmissible** (manifestly ill-founded). It was satisfied that the criminal conviction was necessary in a democratic society in the interests of the protection of morals and/or the rights of others and that the sentence was not disproportionate.

### **Domestic rules regarding access to defamatory material on the Internet**

---

**Times Newspapers Ltd v. the United Kingdom (nos. 1 & 2)** [3002/03 and 23676/03](#)

**Judgment 10 March 2009**

The applicant company, owner and publisher of *The Times* newspaper, alleged that the rule under United Kingdom 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 applicant newspaper published two articles that were allegedly defamatory of a private individual. Both articles were uploaded onto *The Times'* website on the same day as they were published in the paper version of the newspaper. During the subsequent libel proceedings against the applicant newspaper, it 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.

In this judgment the European Court of Human Rights underlined that, in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. In the present case, it found that there had been **no violation of Article 10** (freedom of expression) of the Convention: 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.

Conclusion: no violation of Article 10 (freedom of expression)

---

**Conviction for defaming and publicly insulting a mayor on the Internet**

**Renaud v. France** [13290/07](#)

**Judgment 25 February 2010**

The applicant complained of his conviction for defaming and publicly insulting a mayor on the Internet site 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. It considered that the applicant's conviction had been disproportionate to the legitimate aim of protecting the reputation and rights of others.

Conclusion: violation of Article 10 (freedom of expression)

---

**No pre-notification requirement in domestic law on newspapers to make possible seek for interim measures**

**Mosley v. the United Kingdom** [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 which disclosed details of Max Mosley's sexual activities. The applicant complained about the authorities' 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 held in particular that the European Convention on Human Rights did not require media to give prior notice of intended publications to those who feature in them.

Conclusion: **no violation of Article 8** (right to respect for private life) of 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** [30014/05](#)

**Judgment 5 May 2011**

This case mainly concerned the lack of adequate safeguards in Ukrainian law for journalists' use of information obtained from the Internet. In particular, defamation proceedings had been brought 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 ruled against the applicants and ordered them to publish an apology and pay 15,000 Ukrainian hryvnias (approximately EUR 2,394), eventually waived via a friendly settlement.

The European Court of Human Rights held that the order to the editor-in-chief to apologise had not been done in accordance with the law, and had, therefore, been in **violation of Article 10** (freedom of expression) of the Convention. It further held that there had been a **violation of Article 10** because of the lack of adequate safeguards for journalists using information obtained from the Internet. Notably, "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 Court consider[ed] that 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'".

Conclusion: violation of Article 10 (freedom of expression)

---

#### **Conviction for copyright infringement following publication on the Internet without authorization**

**Ashby Donald and Others v. France** [36769/08](#)

Judgment 10 January 2013

This case concerned the conviction of fashion photographers for copyright infringement following the publication on the Internet site 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. In the circumstances of the case and regard being had to the particularly wide margin of appreciation open to the domestic authorities, the nature and gravity of the penalties imposed on the applicants were not such that the Court could find that the interference in issue was disproportionate to the aim pursued.

Conclusion: no violation of Article 10 (freedom of expression)

---

#### **Protecting copyright on Internet**

**Neij and Sunde Kolmisoppi v. Sweden** [40397/12](#)

**19 February 2013 (decision on the admissibility)**

This case concerned the complaint by two of the co-founders of "The Pirate Bay", one of the world's largest websites for sharing torrent files, that their conviction for complicity to commit crimes in violation of the Copyright Act had breached their freedom of expression.

The European Court of Human Rights declared the application **inadmissible** as being manifestly ill-founded. It held that sharing, or allowing others to share, files of this kind on the Internet, even copyright-protected material and for profit-making purposes, was covered by the right to "receive and impart information" under Article 10 (freedom of expression) of the Convention. However, it considered that the domestic courts had rightly balanced the competing interests at stake – i.e. the right of the applicants to receive and impart information and the necessity to protect copyright – when convicting the applicants.

**Refusal of leave to serve defamation proceedings outside the jurisdiction on grounds that alleged damage to reputation was minimal**

---

**Tamiz v. the United Kingdom (dec.) - [3877/14](#)**

**Decision 19.9.2017**

The applicant sought to bring a claim in libel following the publication of a number of comments on a blog, which he regarded as defamatory. The blog was hosted by an Internet 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 concluded that the claim should not be allowed to proceed because both the damage and any eventual vindication would be minimal and the costs of the exercise would be out of all proportion to what would be achieved; in other words there had been no “real and substantial” tort as required to serve defamation proceedings outside the jurisdiction. Before the European Court the applicant argued that in refusing him permission to serve a claim form on Google Inc., the respondent State had been in breach of its positive obligation under Article 8 to protect his right to reputation.

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. That threshold test was important. The reality was that millions of Internet users posted comments online every day and many of those users expressed themselves in ways that might be regarded as offensive or even defamatory. However, the majority of comments were likely to be too trivial in character, and/or the extent of their publication was likely to be too limited, for them to cause any significant damage to another person’s reputation. The Court agreed with the national courts that while the majority of comments about which the applicant complained were undoubtedly offensive, for the large part they were little more than “vulgar abuse” which was common in communication on many Internet portals.

Although the applicant had ultimately been prevented from serving proceedings on Google Inc., that was not because such an action was inherently objectionable to the national 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, to a significant extent, on the courts’ finding that Google Inc. could only, on the most generous assessment, 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 approach of the national courts had been entirely in keeping with the position in 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 respondent State’s margin of appreciation in the applicant’s case was necessarily a wide one. Furthermore, having discerned no “strong reasons” which would justify substituting its own view for those of the national courts, it found that they 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.

Conclusion: inadmissible (manifestly ill-founded).

See, also, *Nix v. Germany* - [35285/16](#), Decision 13.3.2018, Conviction of blogger for publishing post using unconstitutional (Nazi) symbol: **inadmissible**

## INTERNET ACCESS

### **Prisoners' access to Internet websites**

---

**Kalda v. Estonia** [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 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. It found in particular 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 applicant's case, the reasons, namely the security and costs implications, for not allowing him access to the Internet sites 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.

Conclusion: violation of Article 10 (freedom of expression)

*See also: Jankovskis v. Lithuania*, judgment of 17 January 2017.

### **Refusal to prohibit media outlets Internet users' access to criminal files**

---

**M.L. v. Germany and W.W. v. Germany** [60798/10 and 65599/10](#)

**Applications communicated to the German Government on 29 November 2012:** Pending

This case concerns the refusal of the Federal Court of Justice to prohibit three different media outlets from allowing Internet users to continue to view files relating to the applicants' conviction for murder in which their full names were given. The applicants, who were released from prison in 2007 and 2008 respectively, complain that they were confronted again with their criminal acts at a time when they had just been released from prison and were trying to reintegrate into society. The European Court of Human Rights gave notice of the application to the German Government and put questions to the parties under Article 8 (right to respect for private life) of the Convention.

## INTERMEDIARIES' LIABILITY FOR OFFENSIVE COMMENTS ONLINE

### **Liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments**

---

**Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary** [1803011](#)

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 Hungarian 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. It reiterated in particular that, although not publishers of comments in the traditional sense, Internet news portals had to, in principle, assume duties and responsibilities. However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants' case, 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.

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

---

#### **Liability for user-generated comments on an Internet news portal**

**Delfi AS v. Estonia** [64569/09](#)

**Judgment 16 June 2015**

This was the first case in which the Court had been called upon to examine a complaint about liability for user-generated comments on an Internet news portal. The applicant company, which runs a news portal on a commercial basis, complained that it had been held liable by the national courts for the offensive comments posted by its readers below one of its online news articles about a ferry company. At the request of the lawyers of the owner of the ferry company, the applicant company removed the offensive comments about 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 Estonian courts' finding of liability against the applicant company had been a justified and proportionate restriction on the portal's freedom of expression, in particular because of the following reasons: 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; the steps taken by the applicant to remove the offensive comments without delay after their publication had been insufficient; and the 320 euro fine had by no means been excessive for the applicant, one of the largest Internet portals in Estonia.

Conclusion: no violation of Article 10 (freedom of expression) of the Convention

---

#### **Liability for the third-party offensive comment published anonymously on a blog**

**Pihl v. Sweden** [74742/14](#)

**7 February 2017 (decision on the admissibility)**

The applicant had been the 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** as being 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. **Inadmissible**

## SECRET INTERCEPTION OF ONLINE COMMUNICATIONS

### **Adequate and effective guarantees against arbitrariness**

---

**Roman Zakharov v. Russia** [47143/06](#)

**Judgment 4 December 2015**

This case concerned the system of secret interception of mobile telephone communications in Russia. The applicant, an editor-in-chief of a publishing company, complained in particular that mobile network operators in Russia were required by law to install equipment enabling law-enforcement agencies to carry out operational-search activities and that, without sufficient safeguards under Russian law, this permitted blanket interception of communications.

The Court held that there had been a **violation of Article 8** (right to respect for private life and correspondence) of the Convention, finding that the Russian legal provisions governing interception of communications did not provide for adequate and effective guarantees against arbitrariness and the risk of abuse which was inherent in any system of secret surveillance, and which was particularly high in a system such as in Russia where the secret services and the police had direct access, by technical means, to all mobile telephone communications. In particular, the Court found shortcomings in the legal framework in the following areas: the circumstances in which public authorities in Russia are empowered to resort to secret surveillance measures; the duration of such measures, notably the circumstances in which they should be discontinued; the procedures for authorising interception as well as for storing and destroying the intercepted data; the supervision of the interception. Moreover, the effectiveness of the remedies available to challenge interception of communications was undermined by the fact that they were available only to persons who were able to submit proof of interception and that obtaining such proof was impossible in the absence of any notification system or possibility of access to information about interception.

Conclusion: violation of Article 8 (right to respect for private life and correspondence)

### **Access to information obtained via electronic surveillance**

---

**Youth Initiative for Human Rights v. Serbia** [48135/06](#)

**Judgment 25 June 2013**

This case concerned access to information obtained via electronic surveillance by the Serbian Intelligence Agency. The applicant NGO complained that the intelligence agency's refusal to provide it with the information it had requested – it had requested to be provided with information on how many people the agency had subjected to electronic surveillance in 2005 – prevented it from exercising its role as “public watchdog”.

The European Court of Human Rights found that the agency's obstinate reluctance to comply with a final and binding order to provide information it had obtained was in defiance of domestic law and was tantamount to being arbitrary.

## PENDING APPLICATIONS

### Blanket interception, storage and exploitation of communications

**Bureau of Investigative Journalism and Alice Ross v. the United Kingdom** [62322/14](#)  
**Communicated to the UK Government on 5 January 2015**

This case concerns the allegations of the applicants – the Bureau of Investigative Journalism and an investigative reporter who has worked for the Bureau – regarding the interception of both internet and telephone communications by government agencies in the United Kingdom, and, in particular, by the Government Communication Headquarters (GCHQ), as revealed by Edward Snowden, a former systems administrator with the United States National Security Agency (the NSA). The applicants mainly complain that the blanket interception, storage and exploitation of communication amount to disproportionate interference with journalistic freedom of expression.

The European Court of Human Rights gave notice of the application to the UK Government and put questions to the parties under Articles 8 (right to respect for private life) and 10 (freedom of expression) of the Convention. **Pending**

*Similar application pending: 10 Human Rights Organisations and Others v. the United Kingdom (no. 24960/15):* communicated to the UK Government on 24 November 2015. **Pending**

### Safeguard for protecting journalist sources in mass surveillance legislation: pending

**Association confraternelle de la presse judiciaire v. France et 11 autres requêtes (nos. 49526/15, 49615/15, 49616/15, 49617/15, 49618/15, 49619/15, 49620/15, 49621/15, 55058/15, 55061/15, 59602/15 and 59621/15)**

Communicated to the French Government on 26 April 2017

These applications, which were lodged by lawyers and journalists, as well as legal persons connected with these professions, concern the French Intelligence Act of 24 July 2015. The Court gave notice of the applications to the French Government and put questions to the parties under Articles 8 (right to respect for private life and correspondence), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention. **Pending**

*Similar applications pending: Follorou v. France (no. 30635/17) and Johannes v. France (no. 30636/17)*

On 4 July 2017 The Court gave notice of the applications to the French Government and put questions to the parties under Articles 6 § 1 (right to a fair trial), 8 (right to respect for private life), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention. **Pending**

**See also, regarding secret surveillance of mobile phones' communications,**

➤ **Breyer v. Germany** [50001/12](#) : communicated to the German Government on 21 March 2016

The application concerns the legal obligation of telecommunication providers to store personal details of all their customers. The Court gave notice of the application to the German Government and put questions to the parties under Articles 8 (right to respect for private life and correspondence) and 10 (freedom of expression) of the Convention. **Pending**

- **Ćalović v. Montenegro** [18667/11](#) : communicated to the Government of Montenegro on 31 March 2016

The applicant complains about the powers of the police to access directly all data of the mobile telecommunication provider to which she is subscribed, therefore including her own, in an uncontrolled manner. The Court gave notice of the application to the Government of Montenegro and put questions to the parties under Articles 8 (right to respect for private life), 34 (right of individual petition) and 35 (admissibility criteria) of the Convention. **Pending**

## ELECTRONIC DATA STORAGE DEVICES

### **Search by the police of a well-known journalist's home and seizure of data storage devices**

**Nagla v. Latvia** [73469/10](#)  
**Judgment 16 July 2013**

The applicant's home was searched following a broadcast she had aired in February 2010 informing the public of an information leak from the State Revenue Service database. The applicant complained that the search of her home meant that she had been compelled to disclose information that had enabled a journalistic source to be identified, violating her right to receive and impart information. The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It emphasised that the right of journalist's not to disclose their sources could not be considered a privilege, dependent on the lawfulness or unlawfulness of their sources, but rather as an intrinsic part of the right to information that should be treated with the utmost caution. In this case the investigating authorities had failed to properly balance the interest of the investigation in securing evidence against the public interest in protecting the journalist's freedom of expression.

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

### **Custom's search of a journalist's laptop and electronic storage devices**

**Ivashchenko v. Russia** [61064/10](#)  
**Communicated to the Russian Government on 5 October 2011. Pending**

The applicant is a photojournalist. When returning to Russia after a travel to Abkhazia where he had taken several photographs concerning, as he described it, "the life of this unrecognised Republic", his belongings, including a laptop and several electronic storage devices, were subjected to an inspection. The applicant complains in particular that the customs authorities unlawfully and without valid reasons examined the data contained on his laptop and storages devices. He further alleges that the actions of the customs authorities also amounted to a violation of his right to impart information. He argues in particular that no sufficient procedural safeguards were in place to protect him from unjustified interference or to protect journalistic sources. The European Court of Human Rights gave notice of the application to the Russian Government and put questions to the parties under Articles 8 (right to respect for private life and correspondence), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention. **Pending**

## SATELLITE DISHES

### **Inappropriate requirement to remove a satellite dish used to receive television programmes**

**Khurshid Mustafa and Tarzibachi v. Sweden** [23883/06](#)  
**Judgment 16 December 2008**

This case concerned a court decision not to prolong a private tenancy agreement owing to the refusal by the tenants, a married couple of Iraqi origin with three minor children, to remove a satellite dish used to receive television programmes from their country of origin. The landlord offered to allow the applicants to stay if they agreed to remove the satellite dish, but they refused and had to move out. The applicants complained of a violation of their freedom to receive information.

The Court held that there had been a **violation of Article 10** (freedom of expression – freedom to receive information) of the Convention. It observed in particular that the satellite dish had enabled the applicants and their children to receive television programmes in Arabic and Farsi from their native country and region. That information – which included political and social news and, almost equally importantly, cultural expression and entertainment – was of particular interest to them as an immigrant family who wished to maintain contact with the culture and language of their country of origin. It had not been claimed that the applicants had any other means of receiving such programmes at the time or that they could have placed the satellite dish elsewhere. Nor could news obtained from foreign newspapers and radio programmes in any way be equated with information available via television broadcasts. The landlord's concerns about safety had been examined by the domestic courts, who had found that the installation did not pose any real safety threat. Moreover, the fact that the applicants had effectively been evicted from their home with their three children had been disproportionate to the aim pursued.

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

## HIDDEN CAMERAS

### **Disproportionate conviction of journalists for having recorded and broadcast an interview using a hidden camera**

**Haldimann and Others v. Switzerland** [21830/09](#)

**24 February 2015**

conviction of four journalists for having recorded and broadcast an interview of a private insurance broker using a hidden camera This case concerned the conviction of four journalists for having recorded and broadcast an interview of a private insurance broker using a hidden camera, as part of a television documentary intended to denounce the misleading advice provided by insurance brokers.

The applicants complained that their sentence to payment of fines had amounted to a disproportionate interference in their right to freedom of expression.

In this case, the Court was for the first time called on to examine an application concerning the use of hidden cameras by journalists to provide public information on a subject of general interest, whereby the person filmed was targeted not in any personal capacity but as a representative of a particular professional category. The Court held that, in the applicants' case, there had been a **violation of Article 10** (freedom of expression) of the Convention, considering in particular that the interference in the private life of the broker, who had turned down an opportunity to express his views on the interview in question, had not been serious enough to override the public interest in information on malpractice in the field of insurance brokerage. The Court further also asserted that the applicants deserved the benefit of the doubt in relation to their desire to observe the ethics of journalism as defined by Swiss law, citing the example of their limited use of the hidden camera.

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

## Other Council of Europe's relevant instruments

### Committee of Ministers

#### Recommendations

- [Recommendation CM/Rec\(2016\)5\[1\] of the Committee of Ministers to member States on Internet freedom](#) and its Appendix which set the

#### **Internet freedom indicators:**

1. An enabling environment for Internet freedom
2. The right to freedom of expression
  - a) Freedom to access the Internet
  - b) Freedom of opinion and the right to receive and impart information
  - c) Freedom of the media
  - d) Legality, legitimacy and proportionality of restrictions
3. The right to freedom of peaceful assembly and association
4. The right to private and family life
  - e) Personal data protection
  - f) Surveillance
5. Remedies

- [Recommendation Rec \(2001\) 8 of the Committee of Ministers to member states on self-regulation concerning cyber content \(self-regulation and user protection against illegal or harmful content on new communications and information services\)](#)
- [Recommendation Rec \(2001\) 7 of the Committee of Ministers to member states on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment](#)
- [Recommendation No. R \(99\) 14 of the Committee of Ministers to member states on universal community service concerning new communication and information services](#)
- [Recommendation No. R \(97\) 21 of the Committee of Ministers to member states on the media and the promotion of a culture of tolerance](#)
- [Recommendation No. R \(97\) 20 of the Committee of Ministers to member states on "hate speech"](#)
- [Recommendation No. R \(97\) 19 of the Committee of Ministers to member states on the portrayal of violence in the electronic media](#)
- [Recommendation Rec \(2004\) 16 of the Committee of Ministers to member states on the right of reply in the new media environment](#)

#### Declarations

- [Declaration of the Committee of Ministers on the Internet Corporation for Assigned Names and Numbers \(ICANN\) human rights and the rule of law](#)
- [Declaration of the Committee of Ministers on the World Summit on the Information Society \(WSIS\) +10 review and the extension of the mandate of the Internet Governance Forum \(IGF\)](#)

- [Declaration of the Committee of Ministers on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies](#)
- [Declaration of the Committee of Ministers on Public Service Media Governance \(Adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers' Deputies\)](#)
- [Declaration of the Committee of Ministers on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, adopted on 7 December 2011](#)
- [Declaration by the Committee of Ministers on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings, adopted on 21 September 2011](#)
- [Declaration by the Committee of Ministers on Internet governance principles, adopted on 21 September 2011](#)
- [Declaration of the Committee of Ministers on the management of the Internet protocol address resources in the public interest, adopted on 29 September 2010](#)

See also, political declaration and resolutions [Freedom of Expression and Democracy in the Digital Age Opportunities, rights, responsibilities](#), Belgrade (2013) and [texts adopted](#) by European Ministerial Conferences on Mass Media Policy & Council of Europe Conferences of Ministers responsible for Media and new Communication Services.

### Parliamentary Assembly

- [Recommendation 2098 \(2017\) and Resolution 2144 \(2017\) Ending cyber discrimination and online hate](#)
- [Recommendation 2089 \(2016\) and Resolution 2110 \(2016\) Intellectual property rights in the digital era](#)
- [Recommendation 2077 \(2015\) and Resolution 2070 \(2015\) Increasing co-operation against cyberterrorism and other large-scale attacks on the Internet](#)
- [Recommendation 2075 \(2015\) and Resolution 2066 \(2015\) Media responsibility and ethics in a changing media environment](#)
- [Recommendation 2067 \(2015\) and Resolution 2045 \(2015\) Mass surveillance](#)
- [Recommendation 2048 \(2014\) and Resolution 2001 \(2014\) Violence in and through the media](#)
- [Recommendation 2041 \(2014\) and Resolution 1986 \(2014\) Improving user protection and security in cyberspace](#)
- [Recommendation 2033 \(2014\) and Resolution 1970 \(2014\) Internet and politics: the impact of new information and communication technology on democracy](#)
- [Recommendation 2024 \(2013\) and Resolution 1954 \(2013\) National security and access to information](#)
- [Recommendation 1998 \(2012\) and Resolution 1877 \(2012\) The protection of freedom of expression and information on the Internet and online media](#)
- [Recommendation 1984 \(2011\) and Resolution 1843 \(2011\) The protection of privacy and personal data on the Internet and online media](#)
- [Recommendation 1882 \(2009\) The promotion of Internet and online media services appropriate for minors](#)

See also, a global view of the Parliamentary Assembly's [resolutions and recommendations](#) in the field of media and information society.

### Other tools

- [Filtering, blocking and take-down of illegal content on the internet](#)

Comparative study commissioned to the Swiss Institute of Comparative Law in respect of filtering, blocking and take-down of illegal content on the internet in the 47 member states of the Organisation. This study describes and assesses the legal framework but also the relevant case-law and practice in the field. It is divided in two main parts: country reports and comparative considerations.

- [Internet Freedom: a constant factor of democratic security in Europe, Strasbourg, 9 September 2016](#)

Conference co-organised by the Estonian Chairmanship of the Council of Europe's Committee of Ministers, the German Chairmanship of the OSCE and by the Council of Europe.