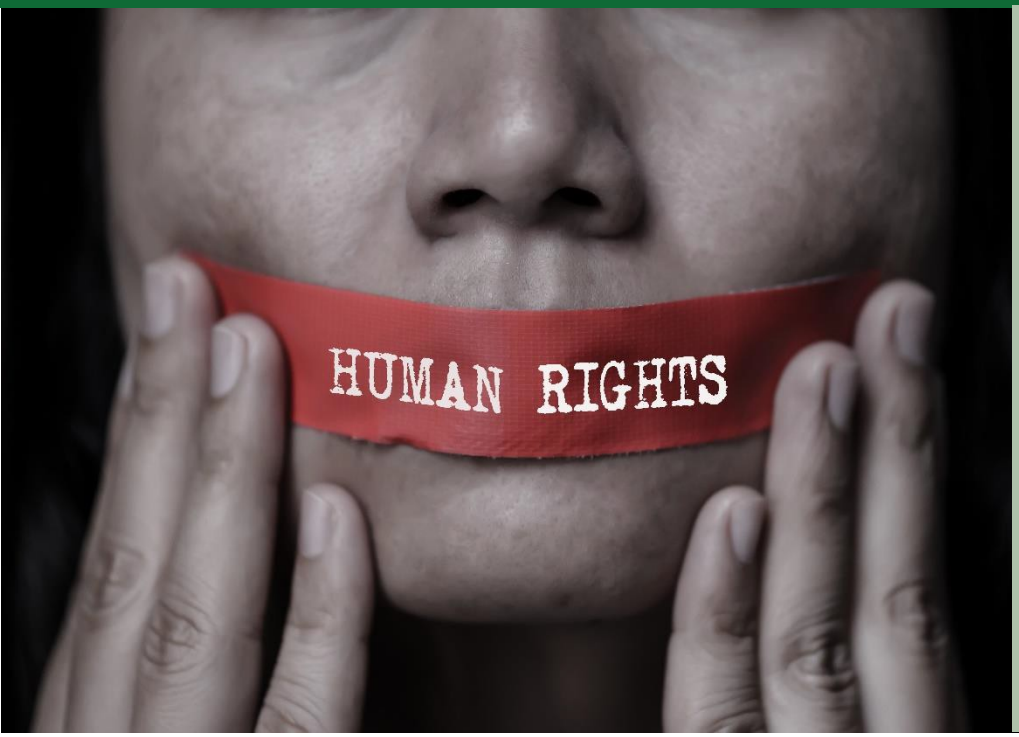
FREEDOM OF EXPRESSION



DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

April 2021

FREEDOM OF EXPRESSION

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

According to the established case-law of the European Court, freedom of expression is one of the essential foundations of a democratic society, one of the primary conditions for its progress and for the development of each individual. It applies not only to "information" and "ideas" that are favourably received, regarded as inoffensive, or which leave one indifferent, but also to those that offend, shock or disturb - it implies pluralism, tolerance and openness, without which there is no "democratic society".

The Court has emphasised that freedom of expression is subject to exceptions, but these must be interpreted narrowly, as the need to restrict it must be convincingly established. The adjective "necessary" in Article 10 § 2 implies a "pressing social need". This provision leaves little room for restrictions on freedom of expression in two areas: political speech and matters of public interest. Contracting States have a certain margin of appreciation in judging the existence of such a need, but this is coupled with European supervision of both the law and the decisions applying it, even when they emanate from an independent court.

This factsheet sets out a number of examples of general and, where appropriate, individual measures adopted and reported by States, in the context of the execution of judgments of the European Court, to safeguard and protect freedom of expression, including safety of journalists, freedom of the press and protection of journalistic sources, media pluralism and broadcasting licences, freedom of commercial and artistic expression, dissemination of information for electoral purposes, protection of the reputation and rights of others and proportionality in the application of the law and sanctions, freedom of expression in the context of national security, public safety and anti-terrorism, and the reception of information from prisoners in penal institutions

1. SAFETY OF JOURNALISTS

In 2000, the European Court found that the authorities had failed to protect the life of the applicant's husband. The applicant's husband, a journalist known for his criticism of those in power, had been threatened by unknown persons before being abducted and found dead. The Court also found that there was no effective remedy for the journalist's disappearance and death for over four years.

UKR / Gongadze (34056/02)

Judgment final on 08/02/2006

Interim Resolution CM/ResDH(2009)74

After the European Court ruling, three police officers were convicted in 2008 for the kidnapping and murder of the journalist. In addition, in 2019, parliamentary hearings on the safety of journalists took place. The parliamentary hearings recommended the creation of a national rapid response mechanism for the protection of journalists, including a government hotline. The modalities of such a mechanism, including an online platform, were discussed at two online events in 2020.

In addition, a draft law broadening the definition of "journalist" and increasing the liability for offences against journalists was registered in Parliament in 2020. Specialised training for judges, prosecutors and police officers on the protection of journalists has been developed jointly by the National School of Magistrates, the Prosecutors' Training Centre and the National Academy of the Interior, and with the support of the Council of Europe.

2. PRESS AND JOURNALISTIC FREEDOM

Amendment of the Constitution to facilitate the direct application by domestic courts of the principles laid down by the European Court

NOR / Tønsbergs Blad AS and Haukom (510/04)

Judgment final on 01/06/2007

Final Resolution CM/ResDH(2009)7

In response to the European Court's findings in this case, concerning a private criminal conviction for defamation in which the applicants (the publishing company of the regional daily newspaper *Tønsberg Blad*) were punished for publishing press articles about an alleged breach of the permanent residence requirement, the authorities stated that the applicants' criminal records did not contain any reference to the conviction.

In addition, measures to facilitate the direct application by the courts of the European Court's principles on freedom of expression have been adopted. The European Convention was introduced into Norwegian law by the 1999 Act, which states that the Convention takes precedence over domestic law. In 2004, after the facts of this case, the article in the Constitution on freedom of expression was amended to the effect that no one can be held responsible for communicating or receiving information or ideas on the grounds of freedom of expression, the search for truth, the defence of democracy and the freedom of all persons to form their own opinions. According to the authorities, the application of the Constitution in the light of the case law of the Supreme Court and the European Court will ensure a proper balance between the right to freedom of expression and other rights.

Enactment of a law to clarify the conditions on the obligation to obtain authorisation for a publication or citation

POL / Wizerkaniuk (18990/05)

Judgment final on 05/10/2011

Final Resolution CM/ResDH(2019)98

In relation to a criminal conviction of an editor and co-owner of a local newspaper for publishing an interview with a local MP without obtaining his prior permission, a 2017 law amended the provisions challenged by the European Court. The most important change is the clarification of the requirement for permission to publish or quote.

According to the law, publishing or quoting without permission is no longer a crime but a misdemeanour subject to a fine. Thus, a journalist may not be punished for publishing a statement in full compliance with the original statement, even if he or she does not fully meet the permission requirements. In addition, the rules that a journalist cannot prevent the interviewee from giving permission for the dissemination of a statement and the exception that permission is not required if the statement has already been published have been retained.

Change in domestic case law towards a balance between freedom of information and opinion, and the right to honour, name and reputation

PRT / Medipress-Sociedade Jornalística e Editorial, Lda (55442/12)

Judgment final on 30/11/2016

Final Resolution CM/ResDH(2019)201

Following the Court's judgment in the civil suit against the applicant press company for damage to the reputation of the then Prime Minister as a result of the publication of a press article in a magazine owned by the applicant, the authorities pointed to a development in domestic case-law. This development concerns the balance between the right to freedom of information and opinion and the individual right to honour and reputation. In this way, Supreme Court judgments reproduce considerations taken from the case law of the European Court, and reject claims for damages if the Supreme Court considers that the challenged press articles represent

opinions (value judgments) formulated in the context of a public debate of general interest, while respecting the limits of reasonable criticism.

Legislative reform on access to court files and softening of the notion of "secrecy".

In order to prevent a recurrence of a violation of the Convention concerning the sentencing of a journalist to a fine or an alternative sentence of 86 days imprisonment for violation of the "secrecy of investigation" or "secrecy of justice" (*segredo de justiça)*, the 2007 law amended the Code of Criminal Procedure by authorising the revision of judgments that had become *res judicata*. Revision can be requested by the public prosecutor and by the convicted person.

The Criminal Procedure Code applicable during the period of the facts provided that all parties and other persons having access to the file were bound by the *segredo de justiça* as long as the case was pending before the investigating judge. With the entry into force of the 2007 law, the "*segredo de justiça*" is no longer applied automatically for the pre-trial period, but only upon a specific decision taken by the investigating judge or by the public prosecutor under the supervision of the investigating judge. The authorities point out that, in practice, prison sentences for defamation are not handed down.

PRT / Colaço Mestre and Sociedade Independente de Comunicação (11182/03+)

Judgment final on 26/07/2007

Final Resolution CM/ResDH(2015)115

Changing case law to analyse and balance freedom of expression and protection of reputation

In response to the European Court's findings on the balance between the right of a publisher (weekly newspaper *Mladina*) to freedom of expression, due to the publication of a polemical journalistic article, and the right of a parliamentarian to the protection of his reputation, the Constitutional Court changed its case law with the aim of striking a fair balance between the two rights in question. Thus, in a 2014 decision on a similar case, the Constitutional Court found a violation of freedom of expression and therefore referred the case back to the judge of the previous instance so that a new decision could be adopted in line with the European Court's ruling.

SVN / Mladina d.d. Ljubljana (20981/10)

Judgment final on 17/07/2014

Final Resolution CM/ResDH(2017)111

Legislative amendments and changes in case law on the seizure, prohibition and obstruction of publications

Following the European Court ruling on the closure of a newspaper for a period of 30 days, the authorities indicated that the warrants for the seizure and closure of the newspaper had been revoked.

In addition, legislative amendments were adopted in 2012, providing that previous decisions on seizure, prohibition, obstruction of distribution and sale of printed publications became *ipso facto* null and void. The provisions of the 2004 Press Act, which entered into force after the facts of the case, require objective and impartial assessment criteria for the seizure of publications and must be based on a judicial decision. In addition, the Criminal Procedure Code, which was enacted after the facts of this case, provides that confiscation warrants can only be issued in cases of strong suspicion or concrete evidence of a crime.

As regards domestic case law, and following the Court's judgment, the respondent State provided concrete examples of effective application of the Press Law by the courts of first instance.

TUR / Saygılı and Bilgiç (33667/05)

Judgment final on 20/08/2010

Final Resolution CM/ResDH(2019)26

Legislative developments to ensure the implementation of the right to unhindered freedom of expression

UKR / Ukrainian Media Group (72713/01)

Judgment final on 12/10/2005

Final Resolution CM/ResDH(2007)13

In order to remedy the damage caused by a civil defamation conviction in 2000, following the publication of two press articles criticising political candidates, the authorities have indicated that the defamation legislation was amended by the 2003 Act. Thus, a new section was added to the law allowing for the exemption of value judgements from liability. The term "value judgment" is defined as "*expressions which contain no factual information*" and which "*cannot be proved or disproved*".

Further amendments were introduced by a 2006 law, according to which state bodies and local autonomous governments cannot claim compensation for moral damage for the publication of false information, although they can request to exercise their right of reply. The law provides for the defence of "publication in good faith". As such, journalists and media outlets are exempt from liability for publishing false information, if a court establishes that the journalist acted in good faith and verified the information. In this context, compensation for non-material damage can only be imposed in case of malicious intent on the part of the journalist or the publication. Malicious intent is defined as the dissemination of false information with the aim of destabilising society.

Furthermore, one of the articles amended in the Civil Code in 2005 provides that an individual disseminating information obtained from official sources is not obliged to verify its authenticity and cannot be held responsible if the information is disproved. However, information obtained from official sources must be accompanied by notification of the source.

3. FREEDOM OF EXPRESSION AND PROTECTION OF JOURNALISTIC SOURCES

Promulgation of a law on the protection of journalistic sources

BEL / Ernst and Others (33400/96)

Judgment final on 15/10/2003

Final Resolution CM/ResDH(2010)39

Following the Court's judgment on the searches of the homes and business premises of the applicants, four journalists and two journalists' associations, some of the objects and documents that had been seized were returned, while the rest were no longer of interest to them.

In 2005, a law on the protection of journalistic sources was adopted, after the facts of the case, which prohibits the search for such sources, including through search or seizure. The only exception to this prohibition is provided for by the law, at the request of a judge, is if they are of a nature to prevent the commission of offences constituting a serious threat to the physical integrity of one or more persons and if the information requested is of crucial importance and cannot be obtained in any other way.

Adoption of a law on freedom of expression in the media and protection of journalistic sources

LUX / Roemen and Schmit (51772/99)

Judgment final on 25/05/2003

Final Resolution CM/ResDH(2011)127

In order to remedy the negative consequences of the violation, the document seized during the searches was returned and the judicial investigation was closed.

The 2004 Law on Freedom of Expression in the Media contains a specific section on the protection of journalistic sources, stating that the right to such protection is not limited to cases where a journalist is involved in a procedure as a witness.

In order to resolve the conflict between the right to protection of sources and the obligation to prove the veracity of the alleged facts, in criminal proceedings for defamation or in civil proceedings for injury to a person's honour or reputation, the law provides that the journalist may avoid liability either by proving the veracity of the allegations or by proving that sufficient steps were taken to conclude that the facts reported were true and that the public had an overriding interest in knowing the information in question. The 2004 law aims to bring domestic law into line with the case law of the European Court and with the Committee of Ministers' Recommendation R(2000)7 to member states on the right of journalists not to disclose their sources of information.

Legislative amendment conferring the right to refuse to testify and to disclose sources of information

NLD / Voskuil (64752/01)

Judgment final on 22/11/2001

Final Resolution CM/ResDH(2018)437

In 2018, in order to implement the Court's ruling, the Criminal Procedure Code was amended and a new article providing for the right to refuse to testify or reveal sources of information in the context of professional reporting or the collection of information for this purpose.

In addition, the new amendment allows journalists to refuse to comply with an order to seize journalistic materials if the order violates their obligation to maintain the confidentiality of the sources. A journalist's invocation of this provision may be rejected by the investigating judge if

he or she considers that maintaining confidentiality would be disproportionately prejudicial to a more compelling interest. In this case, the seizure will be subject to the prior assessment of the investigating judge and does not depend solely on the assessment of the investigator.

New legal statute stipulating limits to the use of special powers by intelligence and security services to identify journalistic sources

NLD / Telegraaf Media Nederland Landelijke Media b.v. and Others (39315/06)

Judgment final on 05/01/2018

Final Resolution CM/ResDH(2018)437

As the European Court ruled on the violation of the freedom to receive and impart information due to surveillance measures against two journalists with the aim of forcing them to reveal their sources of information, in order to prevent a recurrence of a violation of the Convention, a new Intelligence and Security Services Act came into force in 2018.

This Act stipulates, that if intelligence and security services intend to use special powers against journalists in order to identify their journalistic sources directly or indirectly, they must first obtain the approval of the District Court in The Hague.

Change in case law on the protection of journalistic sources

NOR / Becker (21272/12)

Judgment final on 22/02/2013

Final Resolution CM/ResDH(2018)366

The European Court found a violation with regard to a judicial order concerning the obligation to testify in criminal proceedings and to reveal journalistic sources. The authorities stated that the European Convention was introduced into Norwegian law by the 1999 Act which states that the Convention takes precedence over domestic law. The general principles laid down in the judgments of the European Court are the main sources of law when the courts interpret the Convention. The authorities have stated that when equal or similar issues arise before the domestic courts, the courts will apply the general principles set out in this Court's judgment.

In a 2015 decision, the Supreme Court relied heavily on the Court's Article 10 jurisprudence even before the European Court's final ruling. The case also concerned the protection of journalistic sources. The Supreme Court found in its judgment that the Criminal Procedure Act provided for "almost absolute" protection of journalistic sources. The Supreme Court found in its judgment that the Criminal Procedure Act provided for "almost absolute" protection of journalistic sources.

4. MEDIA PLURALISM AND BROADCASTING LICENCES (RADIO, TV)

Amendment to the Law on Radio and Television Broadcasting

ARM / Meltex and Mesrop Movsesyan (32283/04)

Judgment final on 17/09/2008

Final Resolution CM/ResDH(2011)39

Following the Court's judgment on the violation of the applicant company's freedom of expression due to the refusal of the National Television and Radio Commission (CNTR) to issue the applicant with a broadcasting licence between 2002 and 2003, an amendment to the Law on Broadcasting was approved in 2010. According to this law, the decisions of the National Commission for Radio and Television Broadcasting (CNTR) are adopted on the basis of the results of the vote by its members, and this decision must be duly motivated and substantiated. The authorities undertook that any decision of the CNTR would be taken in accordance with the European Convention and the case law of the European Court.

In addition, in July 2010, a tender for digital broadcasting on 25 national and local frequencies was announced. The applicant company participated in this tender for one frequency and submitted its bid in accordance with the requirements of the law. The results of the tender were announced in December 2010. The applicant company received a reasoned decision from the CNTR and had the possibility to challenge the results of the competition before the domestic courts.

Adoption of a law on cable and satellite broadcasting

AUT / Informationsverein Lentia and Others (13914/88)

Judgment final on 24/11/1993

Final resolution DH(98)142

In 1997, following the European Court's ruling on the unavailability of licences to operate radio and television stations, the licensing of private broadcasting was transferred to the Regional Radio and Cable Authority. This Authority must ensure that regional broadcasts can be received by at least 70% of the population of a province. The content of regional and local radio broadcasts must respect the principles of objectivity and diversity of opinion, the fundamental rights of others, and not incite hatred based on race, religion, ethnic origin or nationality.

In addition, in 1997, the Law on Cable and Satellite Broadcasting was adopted. According to this law, satellite broadcasting can be carried out with the permission of the competent regional authority for both radio and cable broadcasting. Licences are granted to all applicants who meet the official requirements. The broadcasts must adequately represent the public, cultural and economic life of the area covered.

Decisions under the Regional Broadcasting Act and the Cable and Satellite Broadcasting Act are subject to judicial review.

Legislative amendment to establish rules on the reasoned granting or refusal of licences and judicial review

BGR / Glas Nadezhda EOOD and Anatoliy Elenkov (14134/02)

Judgment final on 11/01/2008

From 2001, following the facts of this case which concerned an unjustified refusal to grant a broadcasting licence and the lack of adequate judicial review of this decision, the authorities reported legislative changes in the area of broadcasting licences since 2001 and the creation of the Electronic Media Council (EMC) which regulates radio and television activity. The law provides for a tender procedure for the issuance of licences for analogue radio and television

broadcasting, and a licence application procedure for digital terrestrial radio and television broadcasting.

Final Resolution CM/ResDH(2019)335

For the first of these procedures, the EMC decides, providing the reasoning behind the decision, which applicant should be granted a licence on the basis of the documents provided, the evaluation criteria and a complex assessment of compliance with competition requirements. With regard to digital radio or television licences, the number of which is unlimited, the decision to grant a licence is based on the criteria of guaranteeing the right to receive and impart information, creating the conditions for media diversity, pluralism and the preservation of national identity.

The administrative justice system fully examines the validity and justification of the decisions of the EMC , including the competence of the body, the form, the issuance, the factual and legal grounds, the compliance with the procedural rules and its conformity with national and Community law.

Digital television and its contribution to the mitigation of a monopoly in the television broadcasting sector

ITA / Centro Europa 7 S.R.L. and Di Stefano (38433/09)

Judgment final on 07/06/2012

Final Resolution CM/ResDH(2017)104

The Court found a violation of Article 10 concerning the impossibility for a company to engage in the audiovisual sector (between 1999 and 2009) due to the deficiencies of the legislative framework to remedy the problem of monopoly in the television broadcasting sector and to ensure effective pluralism in the media.

Firstly, the authorities pointed out that the company in question had been able to use its frequencies and transmit its channel since 2009. Furthermore, the legislative framework that had set a favourable transitional regime for surplus channels was no longer applicable since the switchover to digital television in 2012. Digital television has changed the audiovisual market, opening the door to a multiplicity of operators.

In addition, the Communications Regulatory Authority (AGCOM), which is an independent administrative authority, has powers to regulate, control and sanction the audiovisual media, while guaranteeing information pluralism and the right to competition. Since 2014, a new regulation specifies the modalities of licensing, transfer and assignments of ownership of broadcasting companies.

5. FREEDOM OF COMMERCIAL AND ARTISTIC EXPRESSION

Legislative amendment to regulate the restriction of advertising using religious symbols

LIT / Sekmadienis Ltd. (69317/14)

Judgment final on 30/04/2018

Final Resolution CM/ResDH(2019)3

In order to remedy the consequences of the disproportionate restriction of freedom of expression for advertisements using religious symbols and in line with the European Court's decision, the authorities informed that the applicant company's advertisements were allowed and used to promote the designers' clothing line.

In addition, in 2013, the Advertising Act was amended thus removing the 'public morality' criterion and stipulating that advertisements can only be banned if they express contempt for the religious symbols of religious communities.

New legislation establishing rules for film and theatre presentations

MLT / Unifaun Theatre Productions Limited and Others (37326/13)

Judgment final on 15/08/2018

Action plan

Status of execution: pending

Following the European Court's ruling, the authorities indicated that the play, which had originally been banned from being performed, could finally be presented in September 2018.

In addition, the 'Film and Stage' Act of 2015 has been amended so that a complete ban is no longer possible and theatrical performances are now classified according to age rating, based on the *Theatre Guidance Board*. The Board is competent to receive complaints from any member of the public who feels aggrieved or offended by a dramatic or theatrical production. It may decide to reject the applications; recommend an alternative age classification; or recommend that notices about the content be drawn up and communicated to the public. If an interested party feels aggrieved by a decision of the Committee, he or she may bring an action before the Civil Court Chamber to challenge the decision.

---

6. DISSEMINATION OF INFORMATION FOR ELECTORAL PURPOSES

Improved dissemination of information from small political parties and access to a new television channel

NOR / TV Vest As and Rogaland Pensjonistparti (21132/05)

The European Court found that a television broadcasting company (TV Vest As) and a political party for retired pensioners the Pensioners' Political Party (the *Rogaland Pensioners Party*) had suffered a violation of their freedom of expression when they were being fined by the National Media Authority for having violated legislation prohibiting the broadcasting of political advertisements. Paid television advertising was the only way for the small party to get its message across to the public.

Judgment final on 11/03/2009

Action Report

Final Resolution CM/ResDH(2011)234

In 2009, following the Court's ruling, the authorities cancelled the fine issued by the National Media Authority. In addition, legislative amendments were passed in 2009 that required the national television station (NRK) to provide broad and balanced election coverage and to ensure that small political parties be also included in NRK's editorial coverage. These parties also now have access to the new television channel "*Frikanalen*". Thus, the authorities have noted that, in the September 2009 parliamentary elections, the political party in this case and other similar political parties were effectively included in the election coverage of NRK and "*Frikanalen*".

Improving the rules on publication and advertising during election periods and establishing administrative fines instead of prison sentences

TUR / Erdoğan Gökçe (31736/04)

The European Court ruled on the violation of freedom of expression in relation to the criminal sanction of a candidate in the municipal elections for issuing a press release before the election period. As a result, the authorities reported that the criminal court had erased the conviction from the candidate's criminal record.

Judgment final on 14/01/2015

Final resolution CM/ResDH(2017)92

The violation stemmed from the application of the provisions of the Law on "Basic Provisions Governing Elections and Voter Registration", which prohibited candidates from campaigning prior to ten days before the elections. The authorities pointed out that this law was amended in 2008, after the events of this case, establishing that sanctions for disobeying election rules could only include administrative fines and no longer prison sentences. In 2010, an amendment established that there are no time limits for initiating or ending electioneering and that candidates could advertise their election campaigns by means of television, the Internet or the press.

Promulgation of a law concerning the restriction of communication and election advertising expenses

UK. / Bowman (24839/94)

The European Court found a violation of Article 10 in relation to an offence based on a 1983 Act which prohibited an unauthorised person from spending more than five pounds sterling (GBP) on providing information to voters to promote or secure the election of a candidate during the pre-election period. Thus, the maximum expenditure was so low that it constituted an obstacle to the publication of information by the applicant.

Judgment final on 19/02/1998

Final resolution CM/ResDH(2007)14

The authorities asked the 'Neill Committee' (an independent body) to examine the implications of the Court's ruling and to consider general measures. The recommendations led to the adoption of a new law on the financing of political parties in December 2000, which came into force in 2001. In this law, the spending limit, which the European Court had found to be very low, was increased from £5 to £500 for a candidate in a parliamentary election and to £50 for a candidate in a local election.

7. PROTECTION OF THE REPUTATION AND RIGHTS OF OTHERS - PROPORTIONALITY IN THE APPLICATION OF THE LAW AND SANCTIONS

7.1 Criminal proceedings for infringement of the reputation and rights of others

Legislative changes stipulating that insult cannot lead to imprisonment

BGR / Raichinov (47579/99)

Judgment final on 20/07/2006

Final Resolution CM/ResDH(2011)5

As a result of a fine and a public reprimand for insulting a senior official, the European Court found a violation of Article 10 of the Convention. In order to remedy the negative consequences, the authorities indicated that the public reprimand was never implemented due to the statute of limitations. Moreover, following the European Court's judgment, in 2007, the Supreme Court of Cassation granted the reopening of the criminal proceedings, quashed the conviction and pronounced an acquittal. It based its judgment on the findings of the European Court.

Furthermore, following the amendments to the Penal Code adopted in 2000, insult is no longer punishable by imprisonment. Furthermore, case law is constantly developing in the direction of taking better account of the Convention and the case law of the European Court.

Case law balancing the right to freedom of expression and the protection of honour

ESP / Otegi Mondragon (2034/07)

Judgment final on 15/09/2011

Final Resolution CM/ResDH(2017)251

The European Court found a violation of Article 10 in relation to a one-year prison sentence for serious defamation of the King. The authorities indicated that no sentence of deprivation of liberty had been served, the execution of the conviction had been suspended by a court order of 2006 and the mention of the conviction had been erased from the applicant's criminal record.

As regards domestic case law, in 2015, the Constitutional Court established that the article on defamation in the Criminal Code should be applied in line with the case law of the European Court. The Court recalls the need to strike a proper balance between the right to freedom of expression and the protection of honour. Indeed, free expression must be adequately measured in order to determine whether it expresses critical thought against the monarchy and the king's deserving of constitutional protection, or, on the contrary, whether it is an act that promotes violence or hatred against the Crown and the monarch.

Case law developments on the limits and proportionality of the application of criminal law in defamation cases

ESP / Rodriguez Ravelo (48074/10)

Judgment final on 12/04/2016

Action Report

Status of execution: pending

In response to the findings of the European Court, regarding a sentence to serve detention that could be imposed in case of non-payment of a fine, no deprivation of liberty took place because the detention measures foreseen were never implemented. The applicants' criminalconvictions no longer appear in the criminal record and the application for review submitted was accepted.

Furthermore, the authorities indicated that the domestic case law of the Constitutional Court and the Supreme Court in 2015 and 2016 incorporated the principles, arguments and criteria adopted by the European Court on the protection of the right to freedom of expression. In this way, the Supreme Court considers that there is neither insult nor slander when it comes to the legitimate exercise of the right to freely express and disseminate truthful information, thoughts, ideas and opinions. This Court has concluded that criminal law is too harsh an instrument and that other legal remedies may be more appropriate.

Legislative reform on non-defamatory expression

FIN / Nikula (31611/96)

Judgment final on 21/06/2002

Final resolution ResDH(2006)51

The European Court ruled that there had been a violation of Article 10 in respect of a disproportionate criminal conviction for defamation for remarks the applicant had made as a lawyer during a pleading. As a result of the European Court's judgment, no mention of the conviction appears in the applicant's criminal record.

Moreover, legislative measures were taken in 2000, after the events that gave rise to this case and before the European Court had found a violation, to prevent similar violations in the future, notably with the reform of the Penal Code by the 2000 Act. According to the legislation, as amended, criticism of a person's conduct in the exercise of his or her political or professional activities, public functions or titles, scientific or artistic activities, is not considered to be defamation when the criticism does not manifestly exceed the limits of acceptable conduct.

Repeal of the offence of insulting the Head of State

FRA / Eon (26118/10)

Judgment final on 14/06/2013

Final Resolution CM/ResDH(2014)10

The European Court found a violation of Article 10 in relation to a suspended fine for offending the Head of State. In order to prevent similar violations, the authorities have indicated that the 2013 law, providing for adaptation provisions in the field of justice in application of EU law, repealed the article of the 1881 law relating to the offence of insulting the Head of State.

Change in case law on the offence of publishing information about civil claims

FRA / Du Roy and Malaurie (34000/96)

Judgment final on 03/01/2001

Final Resolution CM/ResDH(2008)9

Following the European Court's judgment on a criminal conviction for the offence of "publication of information relating to civil claims", the conviction no longer appears in the applicants' criminal record.

In addition, in two successive judgments in 2001, the Criminal Division of the Court of Cassation held that the 1931 Act, by its general and absolute prohibition, restricts the protection of the legitimate interests enumerated in Article 10 and, being incompatible with that provision, cannot be used as a basis for a criminal conviction. The authorities argued that the provisions of the 1931 Act prohibiting the publication of any information relating to civil claims prior to a court decision were no longer effective in domestic law.

Developments in case law incorporating the European Court's freedom of expression concepts and criteria in ruling on the proportionality of sanctions

FRA / Jean-Jacques Morel Group (25689/10+)

Judgment final on 10/01/2014

In order to remedy the negative consequences of the violation following the criminal defamation convictions, two cases were reopened, and the convictions quashed by the Court of Cassation on the basis of the European Court's judgments. In the other three cases in which the applicants did not seek to have the criminal proceedings reopened, they were nevertheless able to apply for an amendment to their criminal records.

The authorities have set up numerous training courses for judges on freedom of expression. Recent case law from the Court of Cassation shows a more explicit appropriation of the criteria of the European Court's case law on freedom of expression in order to assess the proportionality of sanctions for statements made. Thus, in rulings handed down in 2015, 2016 and 2017, the Court of Cassation refers to the distinction between "statements of fact" and "value judgments" and to the notion of "debate of general interest". It therefore incorporated into its reasoning one of the essential criteria used by the European Court to determine whether the impugned remarks were part of a debate of general interest, in order to take a more openview on remarks that could be made in this context. The Court of Cassation examines these statements, checking that they have sufficient factual basis and that they do not exceed the admissible limits of freedom of expression. Finally, it considers that it is up to the trial judge to check the proportionality of the sentence in the light of Article 10.

Final Resolution CM/ResDH(2019)88

Declaration of unconstitutionality of a legal provision prohibiting a person sued for defamation from exonerating himself from responsibility for facts that date back more than ten years

FRA / Mamère (12697/03)

Judgment final on 07/02/2007

The European Court found that the criminal conviction for defamation to pay a fine and damages was contrary to the Convention. In 2011, the authorities indicated that the Constitutional Council declared that the 1881 legislative provision on freedom of the press, which prohibits a person prosecuted for defamation from exonerating himself or herself from liability when the accusation refers to facts that date back to more than ten years, was contrary to the Constitution. The Constitutional Council specified that this declaration of unconstitutionality is applicable to all defamatory allegations that have not been finally judged on the day of publication of its decision.

Final Resolution CM/ResDH(2011)104

Case law developments concerning the acceptable level of criticism of public figures

SER / Lepojić and Filipović (13909/05)

Judgment final on 31/03/2008

The European Court found unjustified interference with the freedom of expression of the applicants, local politicians, who were convicted in criminal proceedings for defamation or contempt, and then ordered in civil proceedings to pay substantial damages in compensation to the same plaintiff, a mayor, who was also the director of a state company.

In 2008, the Supreme Court issued a legal opinion, allowing the direct application of the European Court's case law in domestic law. In this way, the degree of acceptable criticism is much wider for public figures than for individuals. This opinion is legally binding on all lower courts in the country. The authorities have also provided information on a judgment delivered by the Court of First Instance in 2008. The judgment refers to Article 10 of the European Convention and states that public office holders must accept criticism, even if it exceeds the limits of common decency.

Final Resolution CM/ResDH(2009)135

7.2 Criminalization of insult and defamation

Decriminalisation of prison sentences for defamation

CRO / Slava Jurišić (79584/12)

Judgment final on 08/02/2018

In response to the European Court's findings of a violation of Article 10 due to a criminal conviction for defamation, the authorities indicated that, in order to put an end to the violation, the applicant's criminal record no longer contained the conviction. Furthermore, in 2013, following the facts of the case, a new Criminal Code was adopted. This abolished the penalty of

imprisonment for defamation and therefore a person convicted of defamation can only be sentenced to a fine. The authorities have emphasised that this legislative change is also in line with Resolution 1577 (2007) of the Parliamentary Assembly of the Council of Europe.

Final Resolution CM/ResDH(2018)377

Decriminalisation of defamation and civil liability

MKD / Makraduli (64659/11)

Following the European Court's ruling on the criminal defamation convictions involving a senior state official and a politician, the criminal sanction was removed from the applicant's criminal record.

Judgment final on 19/10/2018

In 2012, the Law on Civil Liability for Insult and Defamation was adopted, thus abolishing criminal defamation and insult. The decriminalisation of defamation was effected in accordance with Council of Europe documents, including Parliamentary Assembly Resolution 1577 (2007). The law concerns civil liability for damage to the honour and reputation of natural and legal persons, due to insults or defamation. It provides that any restriction on freedom of expression must be in accordance with the European Convention and the case law of the European Court. As defamation is no longer a criminal offence, the authorities consider that this measure is likely to prevent similar violations.

Final Resolution CM/ResDH(2019)190

Decriminalisation of defamation and criminal insult

MON / Šabanović (5995/06)

In response to the European Court's findings of a suspended prison sentence for defamation against a public official for responding to allegations of contaminated drinking water, the trial was reopened in 2012 and an acquittal was handed down. The reference to the sanction was removed from the applicant's criminal record.

Judgment final on 31/08/2011

Furthermore, in order to prevent similar violations, in 2011, amendments were introduced to the Criminal Code. These amendments abolished defamation and the notion of criminal insult. Their decriminalisation was effected in line with the provisions of European documents, including Resolution 1577 (2007) of the Parliamentary Assembly of the Council of Europe.

Final Resolution CM/ResDH(2016)44

Decriminalisation of insult and defamation

ROM / Dalban (28114/95)

Following the Court's ruling on a criminal conviction for publishing articles critical of the authorities for actions taken in the exercise of their duties, the 2002 Emergency Regulations and the 2005 Act abolished prison sentences for insult and defamation.

Judgment final on 28/09/1999

Subsequently, the 2006 law decriminalised insult and defamation. However, in January 2007, the Constitutional Court declared unconstitutional the decriminalisation of insult and defamation. The decision of the Constitutional Court has created some legal uncertainty as to the effects of decriminalisation. In order to clarify this issue, the Attorney General appealed to the Court of Cassation. In a 2010 ruling, the Court of Cassation confirmed that despite the Constitutional Court's decision, insult and defamation are no longer criminal offences. This ruling is now binding in all domestic courts. The new Criminal Code of 2014 no longer criminalises insult and defamation.

Final Resolution CM/ResDH(2011)73

Decriminalisation of defamation

UKR / Marchenko (4063/04)

The European Court found a violation of Article 10 in relation to the conviction of a civil servant for defamation and a suspended prison sentence for publicly accusing his superior of embezzlement. The authorities have indicated that the 2001 Criminal Code no longer classifies

defamation and insult as criminal offences. In 2009, the Supreme Court changed its jurisprudence regarding the protection of the honour, dignity and reputation of a natural or legal person, considering that defamation cases should be examined in civil proceedings.

Judgment final on 19/05/2009

Final Resolution CM/ResDH(2019)323

7.3 Civil proceedings for damage to reputation and rights of others

Legislative developments towards protecting freedom of expression more in line with the European Convention

GEO / Gorelishvili (12979/04)

Civil proceedings for defamation in 2002 and 2003 against a senior state official and a well-known politician led the Court to declare a violation of Article 10. At the time of the events, the applicable Civil Code did not distinguish between factual statements and value judgments but referred uniformly to "information", and required the truth of any "information" to be proved by the journalist or the person communicating it. Since the facts of the present case, this part of the Civil Code has been amended and no longer refers to the obligation of the defendant to prove the information he or she communicates.

Judgment final on 05/09/2007

Final Resolution CM/ResDH(2010)164

In addition, the Freedom of Speech and Expression Act 2004 replaced the Press and Media Act in force at the time of the facts of this case. The Act defines defamation as "*a statement which contains substantially false facts and which injures an individual, tarnishes his name or reputation*". The law further specifies that everyone, with the exception of public officials, enjoys freedom of expression, which includes freedom of opinion and freedom of political speech and debate. It distinguishes between defamation committed against an individual and defamation committed against a public figure. Thus, in the case of defamation of a public figure, the journalist is only civilly liable if he or she knew that the fact was wrong. The law provides that no one can be convicted of defamation if he or she did not know, or could not have known,that the defamatory statements were being broadcast or were going to be broadcast.

Enactment of a media and defamation law to strengthen the right to freedom of expression

MLT / Falzon (45791/13)

The civil fine for defamation for writing articles criticising Parliament was found to be in violation of Article 10 by the European Court. In order to prevent similar violations, the new Media and Defamation Act 2018 repealed and replaced the law in force at the time, with the main aim of strengthening the right to freedom of expression. Prior to the introduction of the new law, there was no definition of 'defamation' in the legislation. Under the new law, the notion of 'serious harm' to a person's reputation has been introduced into the definition of defamation, which is listed as "*communicating a statement that seriously damages a person's reputation and includes defamation and slander*".

Judgment final on 20/06/2018

Final Resolution CM/ResDH(2019)122

Furthermore, criminal actions for defamation are no longer possible and all criminal proceedings that were pending before the court at the time of the introduction of the law have been discontinued. Therefore, actions against defamatory libel can only be brought before the civil courts.

8. FREEDOM OF EXPRESSION AND NATIONAL SECURITY, PUBLIC SAFETY AND COUNTER-TERRORISM

Legislative amendment on the punishment of acts disturbing the public peace and violating the human dignity of victims of totalitarian systems

HUN / Vajnai (33629/06)

Following the Court's ruling on the criminal convictions of members of a left-wing political party and confiscations for wearing a red star symbol during peaceful and legally organised demonstrations, the trials were reopened before the Supreme Court, which overturned the judgments and issued acquittals. As a result, the convictions were removed from the criminal records.

Judgment final on 08/10/2008

Final Resolution CM/ResDH(2019)346

At the time of the events, the dissemination or public use of a swastika, SS badge, cross arrow, sickle and hammer symbol or red star were punishable offences by fine in the Criminal Code. In February 2013, the Constitutional Court annulled this provision and the Criminal Code was amended in April 2013. The amendment establishes that the dissemination or use of the above-mentioned symbols must be presumed likely to disturb the public peace and offend the human dignity of victims of totalitarian systems or the respect due to the dead. Thus, the ban no longer criminalises the "mere display" of a Red Star symbol in an "indiscriminate" manner. The prohibition thus makes it possible to exclude from its scope of application activities and ideas that clearly belong to those protected by Article 10 of the Convention.

Repeal of an article of the anti-terrorism legislation

TUR / Arslan (23462/94)

The European Court examined criminal convictions by the State Security Courts under the Anti-Terrorism Act in relation to the publication of articles and books and the preparation of messages addressed to the public that were considered terrorist to be propaganda. Section 8 of the Anti-Terrorism Act applicable at the time punished propaganda for terrorism via written material, books or the press. As a consequence of the European Court's ruling, Article 8 of the Anti-Terrorism Act was repealed by Law No. 4928 of 2003 and, consequently, any mention of criminal convictions in the criminal record was deleted. The 2003 Act aims to bring domestic law into line with the requirements of the Convention.

Judgment final on 08/07/1999

Final Resolution CM/ResDH(2006)79

Legislative amendment concerning the facilitation of the activities of a gang or an armed illegal organisation

TUR / Emir (10054/03)

The European Court found a violation of Article 10 in relation to a conviction, under the application of the former Penal Code, for "facilitating the activities of an armed gang or organisation" because of the publication in a magazine of a series of articles reporting on the intervention of law enforcement agencies in Turkish prisons.

Judgment final on 03/08/2007

Final Resolution CM/ResDH(2009)17

Following the European Court's ruling, the conviction was deleted from the criminal record. Furthermore, in order to prevent similar situations, the 2003 law partially amended the Criminal Code by deleting the reference to "facilitating the activities of a gang or an armed illegal organisation". This reference does not appear in the new Code of Criminal Procedure, which entered into force in 2005.

Amendment clarifying that the expression of "ill will" or "hostility between different hostility between different communities" are not considered "seditious intent". "seditious intent".

TUR / Foka (28940/95)

Judgment final on 26/01/2009

Final Resolution CM/ResDH(2015)153

In response to the European Court's findings on the confiscation of tapes, books, a notebook and cards by the authorities, measures were taken to promote freedom of expression. In 2007, subsequent to the facts of the judgment, an amendment to the Criminal Code was introduced so that the promotion of "feelings of ill will" and "hostility between different communities" or classes of people are no longer considered "seditious intent".

Thus, publishing or disseminating words or materials that promote ill will between communities will no longer be considered an offence under the criminal law. This amendment will ensure that any confiscation of materials or items on similar grounds will no longer have a legal basis for the purposes of Article 10.

9. RECEPTION OF INFORMATION AND FREEDOM OF EXPRESSION OF PRISONERS IN PENAL INSTITUTIONS

Amendment to the Execution of Sentences Act providing that disciplinary sanctions shall not be delivered to prisoners for making requests or complaints

BGR / Shahanov and Palfreeman (35365/12)

Judgment final on 21/10/2016

Final Resolution CM/ResDH(2017)256

Following the sanctions imposed on the prisoners (10-days' isolation and 3-months' deprivation of food parcels respectively) and imposed by the prison authorities in response to complaints against prison officers, the authorities indicated that they had adopted measures after the event. The sanctions imposed were authorised by the law in force at the time of the events as "*defamatory statements or false allegations against prison officers*".

This 2009 law on the execution of sentences and pre-trial detention was amended in 2013. The amendment provides that prisoners should not be disciplined for making requests or complaints. Now, physical violence or threats of violence against fellow inmates or prison officers continue to be disciplinary offences within the prison, but there is no mention of defamatory statements or false allegations against prison officers or other inmates as grounds for imposing a disciplinary sanction. Therefore, disciplinary sanctions can now only be imposed in situations not related to previous complaints.

Amendment of the Imprisonment Act to facilitate access to Internet sites in prisons

EST / Kalda (17429/10)

Judgment final on 06/06/2016

Final Resolution CM/ResDH(2019)109

In 2019, the authorities amended the section of the Imprisonment Act that prohibited access to websites in prison other than specific sites dedicated to legislative and judicial records. The amendment allows prisoners to access the websites in question in this case, including the Chancellor of Justice and the Council of Europe in Tallinn (the *Riigikogu's website*). However, the authorities have informed that the sites need to be adjusted to block access to other links that remain prohibited.

New legislation to improve access to websites in prisons

LIT / Jankovskis (21575/08)

Judgment final on 17/04/2017

Final Resolution CM/ResDH(2019)73

In 2014, access to a number of websites was granted to prisoners in penal institutions through Limited Internet Access (LIA). In order to ensure the uniform application of LIA in all penitentiary institutions, the Prison Service issued the LIA guidelines for inmates and convicts. In these guidelines it was stipulated that each facility should have a description of the procedure for using the Internet, a list of accessible websites and the rights and obligations of LIA users. As a result of the recommendations given, the prisons adopted the rules of use for Internet access.

In 2017, an order approved written procedure for using the LIA, specifying that equal conditions of access be ensured for all. Thus, a detainee or prisoner wishing to have access to the LIA must submit a request to the head of his or her unit. Taking into account the websites most frequently requested by detainees, 21 additional websites have been authorised. The list is not exhaustive, and detainees may continue to request access to other websites.

INDEX OF CASES