European Convention of Human Rights and the Protection of Private Life, Freedom of Expression and Access to Information in a Digital Age

Jakob Sjøberg

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Abstract:

The thesis examines the case-law of the European Court of Human Rights (the ECtHR) concerning the rights to private life (Article 8) and the rights to freedom of expression and access to information (Article 10) on the Internet.

The ECtHR has been strongly criticized for some of its decisions in the field of private life or freedom of expression on the Internet. The start of the thesis includes examples of this criticism. It has been voiced that the ECtHR lacks understanding of the ways that the Internet works, and that the lack of understanding has led to inconsistent decisions, a lack of clarity and missing protection of the human rights.

With this as the starting point, the thesis examines whether the ECtHR may in fact be said to have created consistency and clarity in its decisions. The thesis therefore presents principles on legal interpretation, and the ECtHR´s case-law on freedom of expression or private life on the Internet. The cases are then analyzed in order to find the answers to the question on whether the ECtHR has established consistency and clarity in its decisions. Finally, the thesis concludes and gives the reader a well-structured presentation of how the ECtHR may be said to assess cases on freedom of expression or private life on the Internet. Among the methods that are applied in the thesis are the IRAC structure on presentation of case-law, and the principles of legal interpretation. The results or findings

are, shortly put, that the ECtHR has reached a considerable degree of certainty and clarity in its case-law on freedom of expression and private life on the Internet, and that it firstly relied on its case-law from traditional media to find similarities or differences between the new Internet subject and traditional media that it was familiar with. After the ECtHR has reached more decisions concerning the Internet, it does now increasingly rely on these decisions in new cases.

Keywords: Internet, freedom of expression, private life, European human rights

Contents

1. Introduction

The European Convention on Human Rights (the ECHR) was signed in 1950 and Article 8 on private life and Article 10 on freedom of expression have not been amended. However, society has changed considerably in the last decades, and particularly in respect of the rights that are covered by Article 8 and Article 10. Today, private life and freedom of expression are affected by the Internet as never before.

The European Court of Human Rights (the ECtHR) has always strived to ensure that the ECHR is a living instrument that offers relevant and contemporary protection of human rights. The ECtHR applies the principles of dynamic interpretation, with the aim to ensure that the ECHR functions as a living instrument.

The ECtHR has however been criticised for its decisions in cases concerning private life and freedom of expression on the Internet. It has been argued that the ECtHR lacks understanding of the Internet and online environment and that the lack of understanding has led to poor and inconsistent decisions. It has been argued that the ECtHR to some extent is making itself irrelevant and is out of touch with the online reality.

The thesis will therefore seek to obtain an increased understanding of how the ECtHR decides cases concerning protection of private life and freedom of expression on the Internet.

The thesis will analyse how the ECtHR has applied various methods of legal interpretation and whether the ECtHR has established any consistency in its decisions on cases concerning Article 8 and Article 10 on the Internet.

2. Methodology

The thesis is based on legal interpretation and analysis of the ECtHR case-law. The cases are presented in the thesis using known methods of presentation of case-law, especially the Issue, Rule, Application, Conclusion structure (also called IRAC).

This chapter on Methodology introduces to dynamic interpretation, literal interpretation, purposive interpretation, contextual interpretation, precedent, and analogy.

It is particularly important to the thesis to understand how the ECtHR establishes the existence of a trend in European societies, that justifies dynamic interpretation. Dynamic or evolutive interpretation exists in the interpretation of various constitutions, treaties, and conventions etc. The ECtHR is known for such interpretation.

"Providing the legal systems with stability and dynamism requires the existence of stable rules and at the same time with a necessary degree of flexibility to ensure that the legal system would be practical and effective if important and real changes occur in social situations" (Mohebi, 2014).

The ECtHR has often referred to an evolving European consensus as the ground for a dynamic interpretation of the ECHR. According to the ECtHR, the consensus model ensures that the ECHR follows the general evolution in European legal instruments. The ECtHR compares modern European legal instruments and considers if they express a common stance in respect of the issue at hand.

"The consensus model promises an objective and verifiable method of dynamic interpretation. This aspiration is rooted in the positivistic character of the model – the evolutionary interpretation is thought to reflect the currently dominant societal axiological views, which are established through purely legal reasoning involving comparative legal analysis" (Lacki, 2021).

The applause or criticism of the ECtHR´s use of the consensus model relates to the fact that the method is not any objective after all. The ECtHR selects which European legal instruments it considers for the analysis of a European consensus, and which it decides to ignore, and how to understand the selected documents. In evolving fields, it oftentimes not all the European societies and instruments that hold the same approach, even if the ECtHR claims that it has found the existence of a "European consensus".

This understanding of dynamic interpretation is a starting point for the analysis of the case-law in the thesis. However, it is equally important to understand classical interpretation such as literal, purposive, and contextual interpretation.

Frederick J. De Sloovere, who was Professor at New York University, explained the general meaning of legal interpretation. "Interpreting a statute therefore means the finding of a single, sensible, consistent meaning for the whole. It is the process of choosing from two or more possible meanings" and "To interpret a statute is to find the proper meaning so that it may be applied to a particular case". He explained that interpretation consists of literal, purposive, and contextual interpretation (De Sloovere, 1936).

Literal interpretation seeks to gain an understanding of a provision, with respect to the ordinary meaning of the words. "Truly, there may be an obvious meaning, and no other may be apparent even after a careful reading of the statute", said Frederick J. De Sloovere (ibid.).

However, it is usually insufficient just to apply a literal interpretation. He continued that "one can hardly ever say that a statute is plain and explicit until it has been subjected to the traditional techniques and processes of interpretation." Therefore, "to stop there is only to solve the problem of interpretation by avoiding it. Merely to find that a given case comes clearly within the obvious meaning of a statute does not necessarily justify the conclusion that the statute is plain and explicit." Thus, "until one can say that it is the only sensible meaning, the statute has not been fully interpreted" (ibid.).

The Professor concluded on literal interpretation that "if the obvious meaning is not in accord with the meanings of other parts of the statute and with the subject-matter and purpose or reason of the statute, it is no longer persuasive." According to him, it is therefore necessary with contextual interpretation which includes "a critical analysis of the meanings of other relevant parts of the statute" (ibid). "At this point in the process the context must be studied so as to be sure there is no other equally justifiable meaning that the text will bear by fair use of language" (ibid.).

Moreover, he emphasised the need of purposive interpretation. Purposive interpretation seeks to understand what the legislators intended with the provision and to apply the provision in the way that it was intended. The Professor said that "every statute must be interpreted in the light of (…) the reason or purpose behind its enactment as found in the text and the evil toward which it was directed" (ibid.).

Courts, including the ECtHR, rely on precedents in interpretation. According to Professor Lawrence Solan, Brooklyn Law School: "Adherence to precedent furthers both uniformity and stability in the law – important rule of law values" (Solan, 2016). Stare decisis is the principle that precedents are not to be overturned lightly. The Professor explains that the principle is justified on several grounds. "Chief among these justifications is the benefit that comes from knowing that the meaning of a statute is settled, and thus that its interpretation can be relied on by those to whom the statute applies." Therefore, "resolving uncertainty in light of decisions in cases that construed a similar statute (…) can add coherence to the corpus juris". According to the Professor "two values undergird the use of precedent in statutory cases: stability and coherence". He points out that "Coherence is at the heart of judicial decision-making" (ibid.).

However, "Because the earlier precedents were not based on the facts of the case at hand, their applicability must be established through analogical reasoning" (Lamond, 2006). Lecturer in Legal Philosophy, Grant Lamond, finds that "Arguments from precedent and analogy are characteristic of legal reasoning". He distinguishes between precedent and analogy, saying: "Precedent involves an earlier decision being followed in a later case because both cases are the same. Analogy involves an earlier decision being followed in a later case because the later case is similar to the earlier one" (ibid.).

Moreover, “An analogical argument in legal reasoning is an argument that a case should be treated in a certain way because that is the way a similar case has been treated”. He explains the logics behind precedents: “If there are good reasons to believe that an earlier case was correctly decided, and if the facts in a later case are the same as those in the earlier case, then there are good reasons for believing that the same decision would be correct in the later case”. Similarly, “That a close analogy exists usually provides a good reason for deciding the case the same way, since it renders the law more replicable than it would otherwise be”. Grand Lamond concludes that “precedent and analogy help to shore up the predictability of decisions” (ibid).

3. Criticism of the ECtHR

As described in the Introduction, the ECtHR has been criticised for lack of consistency in its decisions in cases concerning protection of private life and freedom of expression on the Internet.

The non-governmental organisation, ARTICLE19, is among those that have criticised the ECtHR in the field of Article 8 and Article 10 on the Internet.

ARTICLE19 voiced strong criticism against the Grand Chambers landmark judgment, *Delfi AS vs. Estonia*.

“ARTICLE 19 is concerned that the judgement in *Delfi* is likely to create even greater legal uncertainty in this area”. “ARTICLE19 finds the judgment in *Delfi* to be a serious blow to freedom of expression online, displaying a worrying lack of understanding of the issues surrounding intermediary liability, and the way in which the Internet works”. “ARTICLE19 is concerned that the decision will have a serious chilling effect on freedom of expression” (Article19, 2013).

“It will also greatly undermine the news publishers’ business model at a time when the news industry is already struggling.” Such a decision was, according to ARTICLE19, “likely to discourage news portals from maintaining comments sections onto which users can post freely or anonymously. This would interfere with a valuable forum for expression, discussion, and engagement with issues online, and constitutes a significant limitation on the freedom of online expression”. ARTICLE19 concluded that “the consequences of the Court’s logic are far worse since they are likely to encourage news portals to close down their comments sections. At any rate, the Court displays an unsurprisingly conservative disposition towards the Internet.” “While this may have been well-intentioned, the Court fundamentally failed to understand the role of Internet intermediaries as the gateway to the exercise of free expression” (ibid.).

Moreover, “it conveniently ignores relevant international standards in the area of freedom of expression on the Internet”. “ARTICLE 19 finds not only that the Court’s judgment failed to grasp the EU framework governing intermediary liability but it also ignored relevant international standards developed by the UN Special Rapporteur on Freedom of Expression (…) It is concerning that the Court failed to take these issues into account.” The criticism continued “While it may not have been within Strasbourg’s competence to rule on the legal position under EU law, its role was to tell the domestic courts that they had got it wrong. Instead, the Court has delivered an extremely short-sighted and damaging judgment for freedom of expression online.” ARTICLE19 concluded, “The Court has thus confirmed a decision which not only significantly undermines EU legal framework in this area, but has also managed to provide an even lower threshold of protection for free expression online than the EU notice-and-takedown regime” (Article19, 2015).

In sum, ARTICLE19 found that the “decision sets a deeply concerning precedent for freedom of expression in several respects” (Article19, 2013).

4. Presentation of the case-law

This chapter gives an overview of the ECtHR's case law on protection of Article 8 and Article 10 on the Internet. The cases are presented in chronological order, starting in 2004 and finishing December 2021.

The chapter has been conducted by analysing the case-law on the official database of the European Court of Human Rights, HUDOC – hudoc.echr.coe.int. Every case in the database concerning Article 8 or Article 10, from 2004 to December 2021, has been assessed to find the cases in which the facts relate to private life or freedom of expression on the Internet.

The cases are presented in this chapter in chronological order. Each case is described in a similar way, making it easier for the reader to understand the cases. The method of presentation is described in the chapter on Methodology.

The pivotal point is Internet related facts and issues and the ECtHR's decisions in respect of the Internet. However, the presentation had been fragmented and insufficient if it had only included the facts and issues related to the Internet. It has therefore been necessary to a certain extent to include parts that do not directly relate to the Internet, to offer a full understanding of the cases.

As mentioned under Methodology, the presentation of each case is based on the IRAC structure. This chapter gives a thorough insight in Issue, Rule and Conclusion of each case. The Application is only mentioned briefly, through inclusion of quotes from the decisions. Hence, the included quotes do not cover the ECtHR's entire reasoning and are merely included to offer a picture of the assessment. The ECtHR´s reasoning (the Application) is instead examined thoroughly in the chapter on Analysis of the ECtHR case-law.

Finally, some words on the collection of material for this chapter. Some readers might wonder if it had been less time consuming to use keywords in the search on HUDOC,

instead of reading through all cases concerning Article 8 and Article 10. However, the cases relating to the Internet include a variation of different words, for example "digital", "Internet", "online", "Facebook", "YouTube", "Twitter", "Vkontakte", "user-generated content", or "website". Just to mention a few. If the collection had only relied on keywords, it had failed to detect a great number of cases. The approach, which was therefore chosen for the collection, was to check every case in chronological order. This approach was applied with respect to both Article 8 and Article 10 on the official database HUDOC.

The thesis is, nevertheless, still likely to have missed some relevant cases. The collection has primarily been conducted in English, but several cases do only exist in other language versions. The thesis has sought to include cases on HUDOC in French, but perhaps some of them have failed to be included, and where a case was neither available in French nor in English, then it has not been detected.

Moreover, some cases only indirectly concern the Internet. The cases which have been excluded are especially cases on search and seizure of laptops, phones or other devices. There is a high number of such cases on search and seizure, that partly relate to the Internet, but in which the ECtHR does not mention the Internet. A few of the search and seizure cases are included in this chapter because the ECtHR specifically considered the Internet in those cases.

Some readers might also wonder why the collection of cases started with cases from year 2004. The motivation behind the year 2004 was that some of the most popular social media companies were launched around 2004-2005. Despite the collection starting with cases from year 2004, the earliest cases that were considered relevant and included in the thesis were, however, from year 2009 and onwards.

Just to avoid confusion: Every time the word the "applicant" is used in the presentation of the cases, it means the applicant before the ECtHR, regardless his/her position in the domestic case.

CASE OF K.U. v. FINLAND (2009)

An unidentified person placed an advertisement on an Internet dating site in the name of the applicant, who was 12 years old at the time.

The advertisement was placed without the applicant's knowledge. The advertisement mentioned his age and year of birth, described his physical characteristics, and linked to a webpage he had, which showed his picture and his telephone number.

In the advertisement, it was claimed that he was looking for an intimate relationship with a boy of his age or older.

The applicant became aware of the advertisement on the Internet when he received an email from a man who asked to meet him.

The applicant’s father requested the police to identify the person who had placed the advertisement. The service provider, however, refused to reveal the identity of the holder of the IP address in question, and claimed that it was bound by the confidentiality of telecommunications.

The police then asked the domestic courts to oblige the service provider. However, the domestic courts refused since there was no explicit legal provision authorising it to order the service provider to disclose telecommunications identification data.

The applicant alleged that the State had failed its positive obligation to protect the rights to respect for his private life under Article 8. The applicant submitted that the domestic legislation protected the criminal, and the victim had no means to obtain protection.

The ECtHR noted that the applicant, a minor, was the subject of an advertisement of a sexual nature on an Internet dating site. The identity of the person who had placed the advertisement could not, however, be obtained from the Internet service provider due to

the legislation in place, under which the operator of the Internet server could not be ordered to provide information identifying the offender.

"The Court considers that practical and effective protection of the applicant required that effective steps be taken to identify and prosecute the perpetrator, that is, the person who placed the advertisement. In the instant case, such protection was not afforded. An effective investigation could never be launched because of an overriding requirement of confidentiality. Although freedom of expression and confidentiality of communications are primary considerations and users of telecommunications and Internet services must have a guarantee that their own privacy and freedom of expression will be respected, such guarantee cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others" and it is "the task of the legislator to provide the framework for reconciling the various claims which compete for protection in this context. Such framework was not, however, in place at the material time, with the result that Finland's positive obligation with respect to the applicant could not be discharged" (para. 49).

The ECtHR concluded that Article 8 had been violated.

CASE OF TIMES NEWSPAPERS LTD v. THE UNITED KINGDOM (Nos. 1 AND 2) (2009)

The applicant was the Times Newspapers Ltd, who was the publisher of The Times newspaper. The applicant was registered in England.

The Times published two articles in the printed newspaper headlined "Second Russian Link to Money Laundering" and "Trader Linked to Mafia Boss, Wife Claims". Both articles were also uploaded on the website belonging to the newspaper. The articles spoke about a Russian businessman and the articles mentioned his full name (in the ECHR case he is called G.L.).

The articles said, inter alia, “British and American investigators are examining the role of an alleged second Russian mafia boss over possible involvement in money-laundering through the Bank of New York. Investigators are understood to be looking at links to G.L., whose company, Nordex, has been described by the CIA as an ‘organisation associated with Russian criminal activity’. G.L.’s name surfaced in earlier money-laundering investigations which may have links to the Bank of New York affair, in which millions of dollars of Russian money are alleged to have been laundered.”

G.L. brought proceedings in respect of the two articles from the printed newspaper. After the case had been initiated, the articles remained accessible in the applicant's Internet archive.

G.L. therefore brought a second action for libel in relation to the Internet publication. The applicant argued that the second action should be rejected.

However, the domestic courts found that the applicant should had attached a note to the article in the Internet archive because a libel action had been initiated against the article in the printed newspaper.

The applicant argued that this would have a chilling effect on the willingness of newspapers to provide Internet archives and would thus limit freedom of expression.

The applicant complained to the ECtHR of a disproportionate restriction of its ability to maintain a publicly accessible Internet archive.

The ECtHR found it noteworthy that the domestic courts had not suggested that potentially defamatory articles should be removed from archives. Instead, the ECtHR noted that the domestic courts found it sufficient if content which was known to be potentially defamatory had attached a notice.

“It is also noteworthy that the Court of Appeal did not suggest that potentially defamatory articles should be removed from archives altogether. In the circumstances,

the Court, like the Court of Appeal, does not consider that the requirement to publish an appropriate qualification to an article contained in an Internet archive, where it has been brought to the notice of a newspaper that a libel action has been initiated in respect of that same article published in the written press, constitutes a disproportionate interference with the right to freedom of expression. The Court further notes that the brief notice which was eventually attached to the archive would appear to undermine the applicant's argument that any qualification would be difficult to formulate" (para. 47).

The ECtHR concluded that there had been no violation of Article 10.

CASE OF MOSLEY v. THE UNITED KINGDOM (2011)

The applicant was Max Mosley, a lawyer and the president of the association FIA that included the Formula One and other motorsports.

The newspaper News of the World published an article headed "F1 boss has sick Nazi orgy with 5 hookers". The article opened with the sentence, "Formula 1 motor racing chief Max Mosley is today exposed as a secret sadomasochistic sex pervert".

Several pages inside the newspaper were also devoted to the story, which included still photos taken from video secretly recorded by one of the participants in the sexual activities.

An edited extract of the video as well as still photos were also published on the newspaper's website and reproduced elsewhere on the Internet. The print version of the newspaper invited readers to view the video and provided the web address.

The applicant's solicitors made a complaint to the News of the World regarding the video footage available on the website. The next day, the edited footage was removed from the

website. The edited video footage was viewed over 1.4 million times over 30 and 31 March 2008. The online version of the article was visited over 400,000 times during the same period.

The applicant commenced legal proceedings against News Group Newspapers Limited claiming damages for breach of confidence and invasion of privacy. Although he did not dispute that the sexual activities had taken place, he contested the characterisation of his activities as being Nazi role-play.

The domestic courts found that there was no Nazi element to the applicant's sexual activities and in the absence of any Nazi connotations, there was no public interest or justification in the publication of the articles or the images. The applicant was awarded GBP 60,000 in damages and recovered GBP 420,000 in costs. The Government considered that the applicant was no longer a victim of any violation of the Convention, since he had successfully pursued domestic proceedings and was awarded damages and recovered costs. The Government emphasised that the damages awarded in his case were the highest that had been awarded in the UK for an invasion of privacy.

The applicant insisted that he remained a victim of a violation of the ECHR notwithstanding the damages that he had been awarded in the domestic proceedings. He argued that damages were not an adequate remedy where private facts and intimate photographs were deliberately exposed to the public in print and on the Internet. The only effective remedy in his case would have been an injunction, a remedy which he was denied by the failure of the newspaper to notify him in advance.

The applicant reiterated that he was not seeking further damages from the newspaper but was making a complaint about that there was no legal requirement in the UK to pre-notify the subject of an article which disclosed material related to his private life.

Before the ECtHR, the applicant complained that the UK had violated its positive obligation under Article 8 of the Convention, by failing to impose a legal duty on the News of the World to notify him in advance in order to allow him the opportunity to

seek an interim injunction and thus prevent publication of material which violated his rights to respect for his private life.

The ECtHR said that it had "consistently emphasised the need to look beyond the facts of the present case and to consider the broader impact of a pre-notification requirement. The limited scope under Article 10 for restrictions on the freedom of the press to publish material which contributes to debate on matters of general public interest must be borne in mind. Thus, having regard to the chilling effect to which a pre-notification requirement risks giving rise, to the significant doubts as to the effectiveness of any pre-notification requirement and to the wide margin of appreciation in this area, the Court is of the view that Article 8 does not require a legally binding pre-notification requirement" (para. 132).

The ECtHR concluded that Article 8 had not been violated by the absence of a pre-notification requirement in domestic law.

CASE OF EDITORIAL BOARD OF PRAVOYE DELO AND SHTEKEL v. UKRAINE (2011)

The applicants were the editorial board and the editor-in-chief of the newspaper Pravoye Delo. It was a local newspaper with a circulation of 3,000 copies.

It published material on political and social matters in the Odessa Region, Ukraine. Due to lack of funds, the newspaper often reprinted articles and other material obtained from the Internet.

The newspaper published an anonymous letter, which was downloaded from a publicly accessible Internet newspaper. The letter contained allegations that senior officials of the Odessa Regional Department of the Security Service had been engaging in unlawful and corrupt activities, and that they had connections with members of organised criminal groups.

G. T., who was the President of the Ukraine
National Thai Boxing Federation, brought defamation proceedings against the applicants. G. T. alleged that the information concerned him and that it was untrue and had damaged his reputation.

The applicants argued before the domestic courts that they were not responsible for the accuracy of the information contained in the material, as it had reproduced material published elsewhere without making any modifications.

The domestic courts found that the material claimed that the president of the Ukraine National Thai Boxing Federation was a member of an organised criminal group and a coordinator and sponsor of murders.

The domestic courts held that the content was defamatory and the fact that the newspaper had reproduced the material from a website was not sufficient to relieve the newspaper of the obligation to prove the serious factual allegations.

The domestic courts ordered the newspaper to publish an apology and to pay non-pecuniary damage. The applicants complained to the ECtHR that their rights to freedom of expression had been violated.

The ECtHR found that the material contained a reference to the source of the material and the editorial board had formally distanced itself by comments that were brought together with the material.

“In particular, they argued that they had not acted with malicious intent to defame the claimant by publishing the material in question and that the public had an interest in receiving the information. Furthermore, they argued that by reproducing the material previously published on the Internet, their intention had been to promote debate and discussion on political matters of significant public interest. They also argued that the claimant had not taken any steps to settle the dispute with them despite the fact that in the same publication they had invited any person concerned to comment. Their plea was entirely ignored by the courts, however” (para. 65).

The ECtHR concluded that Article 10 had been violated.

CASE OF AHMET YILDIRIM v. TURKEY (2012)

The applicant owned and ran a website on which he published his academic work and his views on various topics (it is not described more precisely in the case). The website was created using the Google Sites and hosting service sites.google.com.

The domestic authorities ordered the blocking of a sites.google.com website (called the offending website). The order was issued in the context of criminal proceedings against the offending site's owner, who was accused of insulting the memory of Atatürk.

But the implementation of the order meant that the access to the entire domain and all Google Sites was blocked. This did also affect the applicant's website.

The applicant alleged that the blocking of access to his website amounted to an unjustified infringement of his rights to freedom of expression.

However, the domestic authorities argued that this was the only means of blocking the offending website, as its owner did not have a server certificate and lived abroad. The applicant applied to have the blocking order set aside in respect of his website.

The applicant argued to the ECtHR that the blocking of his website violated his rights under Article 10.

The ECtHR held that "there is no indication that the judges considering the application sought to weigh up the various interests at stake, in particular by assessing the need to block all access to Google Sites. In the Court's view, this shortcoming was simply a consequence of the wording of section 8 of Law no. 5651 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 an obligation, however, flows directly from the Convention and from the case-law of the Convention institutions. In reaching their decision, the courts simply found it established that the only means of blocking access to the offending website in accordance with the order made to that effect was to block all access to Google Sites. However, in the Court's view, they should have taken into consideration, among other elements, the fact that such a measure, by rendering large quantities of information inaccessible, substantially restricted the rights of Internet users and had a significant collateral effect" (para. 66-69).

The ECtHR held that Article 10 had been violated.

CASE OF MOUVEMENT RAËLIEN v. SWITZERLAND (2012)

The applicant was an association and according to their website their doctrine was based on contact with extraterrestrials who were said to have created life on earth.

The followers believed that cloning would enable people to become immortal and the association expressed opinions in favour of human cloning.

The applicant requested authorisation from the police to conduct a poster campaign. The poster in question featured the wording "The Message from Extraterrestrials", "Science at last replaces religion", a telephone number and the address of their website.

The police denied authorisation. It had been indicated in a French parliamentary report on sects and a judgment of the president of the Civil Court that the association engaged in activities that were contrary to public order and immoral.

The domestic courts held that the ban was lawful, after examining the purpose of the association and the website that was referred to on the poster.

The association alleged that the banning of its poster had breached its rights to freedom of expression. The association asserted that the poster did not contain anything that was illegal and the basis of the ban stemmed from the fact that the poster referred to the website.

The ECtHR found that the poster had the aim of attracting people's attention to the website and that the ECtHR should therefore also consider the content of the website in question.

"In view of the fact that the applicant association is able to continue to disseminate its ideas through its website, and through other means at its disposal such as the distribution of leaflets in the street or in letter-boxes, the impugned measure cannot be said to be disproportionate" (para. 75).

The ECtHR concluded that Article 10 had not been violated.

CASE OF WĘGRZYNOWSKI AND SMOLCZEWSKI v. POLAND (2013)

The applicants were two Polish nationals who were lawyers. The newspaper Rzeczpospolita published an article about politicians and the article alleged that the applicants had made a fortune by assisting in shady business deals in which the politicians were involved.

The article alleged that the applicants had taken advantage of their positions at the expense of the public purse by obtaining unjustified benefits when they had carried out their roles as liquidators of State owned companies in bankruptcy.

The domestic courts concluded that the journalists had failed to contact the applicants and their allegations were based on gossip and they had not taken the minimum steps necessary to verify the information.

However, the applicants sued the newspaper again because the article remained accessible on the newspaper's website and the article was positioned in the Google search engine. The applicants therefore argued that their rights were breached in the same way as had occurred through the publication of the original article and it rendered the protection granted by the judgments in their favour ineffective.

According to the applicants, the newspaper should remove the article from the website, publish an apology and cover damages suffered.

The issue to be determined by the domestic courts was whether discovery of a new source of publication – in the instant case on the Internet – provided a factual basis for a new claim.

The courts however rejected that the article should be removed from the website. The courts found it crucial that the article had been published on the website in December 2000, and that the applicants had submitted that they had only learned of the online publication a year after the judgment given in April 2003 had become final.

The domestic courts held that the fact that they had failed to make a specific request for measures in respect of the online publication made it impossible to examine facts which had already existed prior to the judgment. The case was therefore rejected because they could not lodge a new claim based on factual circumstances which existed during the previous set of proceedings.

The applicants complained that their rights to respect for their private life and reputation had been breached. They referred to Article 8.

"The Court accepts that it is not the role of judicial authorities to engage in rewriting history by ordering the removal from the public domain of all traces of publications which

have in the past been found, by final judicial decisions, to amount to unjustified attacks on individual reputations. Furthermore, it is relevant for the assessment of the case that the legitimate interest of the public in access to the public Internet archives of the press is protected under Article 10 of the Convention (…) In this respect, it is noteworthy that in the present case the Warsaw Court of Appeal observed that it would be desirable to add a comment to the article on the website informing the public of the outcome of the civil proceedings in which the courts had allowed the applicants' claim for the protection of their personal rights claim (…) The Court is therefore satisfied that the domestic courts were aware of the significance which publications available to the general public on the Internet could have for the effective protection of individual rights. In addition, the courts showed that they appreciated the value of the availability on the newspaper's website of full information about the judicial decisions concerning the article for the effective protection of the applicant's rights and reputation. However, the Court emphasises that in the proceedings in the present case the applicant did not submit a specific request for the information to be rectified by means of the addition of a reference to the earlier judgments in his favour" (paras. 65-67).

The ECtHR concluded that Article 8 had not been violated.

CASE OF ASHBY DONALD AND OTHERS v. FRANCE (2013)

The applicants were fashion photographers and invited by fashion houses to women's winter collection fashion shows. They did not sign any exclusive agreements, and the photos they took at the fashion shows were sent to a company that published them online a few hours after the shows.

The photos were published on a website that offered photos and videos of fashion shows on a free or pay-to-view basis and for sale.

The designers' federation and several fashion houses lodged a complaint of copyright infringement. The applicants were found guilty of copyright infringement. The domestic

courts noted that the photos had been published on a website belonging to a company managed by the applicants with the aim of selling them or providing access to them for remuneration.

The applicants complained to the ECtHR and they maintained that their activities on the website fell within the exercise of freedom of expression and that the public had the right to be informed about fashion news, including photos from fashion shows.

The ECtHR noted that "the Paris Court of Appeal ruled that the applicants had knowingly disseminated the disputed photographs without the authorization of the copyright holders, that they could not free themselves from their responsibility by relying on the fact that the press commitment system was unsuitable or badly respected, and that they had therefore been guilty of the offense of counterfeiting. It sees no reason to consider that the domestic court exceeded its margin of appreciation by making the right to peaceful enjoyment of fashion designers' property prevail over the applicants' right to freedom of expression" (para. 42, the original is in French and this is a Google translation).

The ECtHR concluded that Article 10 had not been violated.

CASE OF NEIJ AND SUNDE KOLMISOPPI v. SWEDEN (2013)

The applicants were a Swedish and a Finnish national and responsible for the operation of the website The Pirate Bay.

The Pirate Bay enabled users to exchange digital material through file sharing. The applicants were charged with complicity to commit crimes in violation of the Swedish copyright act.

According to the prosecutor, the defendants and another person had been responsible for the operation of The Pirate Bay and had contributed to other people's infringement of copyright concerning music, films and computer games.

The prosecutor submitted that the defendants had provided others with the opportunity to upload files to The Pirate Bay and the opportunity to download files and contact each other.

Several companies brought private claims within the criminal proceedings against the defendants and demanded compensation for illegal use of copyright protected music, films and computer games.

The domestic courts convicted the applicants and sentenced them to imprisonment and held them liable for damages.

The applicants complained to the ECtHR that their convictions interfered with their rights to freedom of expression under Article 10.

The ECtHR said: “In the present case, the Court considers that the prison sentence and award of damages cannot be regarded as disproportionate. In reaching this conclusion, the Court has regard to the fact that the domestic courts found that the applicants had not taken any action to remove the torrent files in question, despite having been urged to do so. Instead they had been indifferent to the fact that copyright-protected works had been the subject of file-sharing activities via TPB” (final para.).

The ECtHR concluded that Article 10 had not been violated.

CASE OF TIERBEFREIER E.V. v. GERMANY (2014)

The applicant was an animal activist organisation.

A journalist, who was not connected to the applicant, entered into a contract of employment with the C. company. The company was authorised under the Animal Welfare Act to perform animal experiments and to keep and breed monkeys for that purpose.

During his working hours, the journalist used a hidden camera and produced 40 hours of film footage which documented the treatment of laboratory animals within the company's premises.

The journalist prepared footage of twenty minutes which he offered to a major German broadcasting company. The broadcasting company aired a film of nine minutes under the title "Animal experiments for profit". The film showed scenes from within the company's premises.

A film of about twenty minutes with the title "Poisoning for profit" was produced, which used largely the same material that had been aired on television. The film dealt with the way in which staff treated the animals and said that the animals were treated in a cruel way and that legal provisions on treatment of animals were disregarded.

The applicant made the film available on their website and claimed that the company had committed "murder and torture". The applicant reported on gatherings in front of the homes of the company's staff members – which the applicant association labelled as "home demos". The website stated: "The action groups act in a mostly autonomous way and are financially supported by the association."

The domestic courts ordered the applicant to desist from showing the film footage taken on the company's premises. The applicant complained that this decision violated the applicant's rights to freedom of expression as provided in Article 10.

The ECtHR held: “Having regard to the foregoing considerations and, in particular, to the careful examination of the case by the domestic courts, which fully acknowledged the impact of the right to freedom of expression in a debate on matters of public interest, the Court considers that the domestic courts struck a fair balance between the applicant association’s right to freedom of expression and the C. company’s interests in protecting its reputation” (para. 59).

The ECtHR concluded that Article 10 had not been violated.

CASE OF JALBĂ v. ROMANIA (2014)

The applicant was a civil servant and worked for the mayor’s office as head of the technical department.

An article was published in the local online newspaper Antidotul. The title of the article was “Two Slyboots from the Mayor’s Office Protect the Maxi-taxi Mafia in Galaţi”. A photo of the applicant was shown under the title of the article.

The article said, inter alia, that the local public transport department operated by the town council had made several attempts to improve transport services in the city but its requests had been rejected by “the mayor’s office when the applicant was employed there”, “because this fellow, with his maxi-taxi business, is not interested in making the public transport services efficient, but rather in filling up his bank accounts without anyone holding him accountable”.

The applicant lodged a tort-law action against the journalist and sought compensation for non-pecuniary damage. He argued that the journalist had accused him of abuse of power without any proof.

The domestic courts rejected it and held that the article concerned an issue of public interest and not only aspects of the applicant's private life. Due to his position, he should accept criticism and the courts found that the article consisted of value judgments, and not statements of fact.

The applicant argued that his rights under Article 8 had been violated because the journalist had acted in bad faith and made slanderous statements against him without any proof. He found that the State had failed its obligation.

The ECtHR found that the case concerned on the one hand protection of the journalist's rights to freedom of expression and on the other hand the applicant's rights under Article 8.

"The Court notes that there is no indication in the material submitted by the parties that the applicant was involved in or committed any of the acts alleged by the journalist (…) The Court therefore takes the view that, by implying that the applicant had been involved in activities and businesses incompatible with his profession as though it were an established fact when it was mere speculation on the part of the author, the article overstepped the limit of acceptable comments" (paras. 40-42).

The ECtHR concluded that Article 8 had been violated.

CASE OF NISKASAARI AND OTAVAMEDIA OY v. FINLAND (2015)

The first applicant was a journalist for a weekly magazine, Seura, and the second applicant was the company that published the magazine.

A Finnish TV channel broadcast two documentaries which concerned mould-infested houses and protection of forests. The documentaries were created by several reporters, including Mr M.B.

The first applicant criticised on two separate internet discussion sites, which were the Ylevi site by the Green League and the Journalism site by Tampere University, the way the two documentaries had been created.

He wrote, inter alia: "[Mr M.B.] is a fanatic warrior of the faith for whom facts are just in the way. He has indisputably been caught at cold, intentional lying. [Mr M.B.] in fact claimed that the house was healthy but that one cheating company doing mould inspections had managed to find some insignificant mould spots because of which a completely unnecessary court case was initiated ... Contrary to [Mr M.B.'s] assurances, N.N.'s former house was rotten ... [Mr M.B.] must have known that. He is thus lying cold-bloodedly and intentionally."

The first applicant published an article in Seura magazine. The article was approved by a lawyer before publication. The article included passages such as: "[Mr M.B.] claimed that over 10% of the Finnish forest area was already protected and that conservationists demanded that an additional 10-15% of the forest area in Southern Finland should be preserved. These figures are fabricated ... Still he accepted S.S.'s clearly groundless testimony in the documentary."

Mr M.B. reported the matter to the police and asked the police to investigate whether the first applicant was guilty of defamation when he called him a liar in his writings, and then presented his claim for damages against the applicants.

The domestic courts convicted the first applicant of defamation due to his comments on the two Internet discussion sites and in the article calling Mr M.B. a liar and by accusing him of disseminating false information and fabricating figures. He was convicted because it had not been proved that Mr M.B. had disseminated wrong or misleading information in the documentaries.

The first and second applicant were convicted under criminal law and ordered to pay fines and damages to Mr M.B., as well as his legal costs.

The applicants complained under Article 10 that their rights to freedom of expression had been violated.

The ECtHR criticised the domestic court, because "it did not, as required by Article 10, proceed to a sufficient evaluation of the actual impact of the first applicant's right to freedom of expression on the outcome of the case. In particular, the Appeal Court did not balance the first applicant's right to freedom of expression (under Article 10 of the Convention), on the basis of the relevant criteria, in any considered way against the complainant's conflicting right to reputation (under Article 8 of the Convention). It does not emerge from the reasoning of the Appeal Court what "pressing social need" in the present case was taken to justify protecting the complainant's right to reputation over the freedom of expression of the applicants, in particular as both the first applicant and the complainant were professional journalists discussing the limits of critical journalism. Nor is it clear whether, according to the Appeal Court, the resultant interference with the applicants' freedom of expression was proportionate to the legitimate aim pursued" (para. 58).

The ECtHR concluded that Article 10 had been violated.

CASE OF DELFI AS v. ESTONIA (2015)

The applicant was a company who was the owner of an Internet news portal that published up to 330 news articles a day.

It was one of the largest news portals on the Internet in the country. At the end of the news articles there were the words "add your comment" and fields for comments. It was optional if the commenter would put his/her name and email address.

The comments were uploaded automatically and were not edited or moderated by the applicant. The articles received about 10,000 comments daily and the majority were posted under pseudonyms.

The Internet news portal operated a system of notice-and-take-down. Any reader could mark a comment as insulting, mocking or inciting hatred. Comments that included certain obscene words were automatically deleted.

The applicant published an article on the portal under the heading "SLK Destroyed Planned Ice Road". SLK was a shipping company that provided ferry transport. L was the company's majority shareholder. The article attracted twenty comments that contained personal threats and offensive language directed at L.

The comments did for instance include: "let's go to [K]uressaare with sticks and put [L.] and [Le.] in a bag", "burn in your own ship, sick Jew!", "[L.] into the oven!", "fcking monkey", "he's acting like a pig", and "I pee into [L.'s] ear and then I also shit onto his head".

L.'s lawyers requested the applicant to remove the offensive comments and claimed compensation for non-pecuniary damage. The request concerned the twenty comments.

The domestic courts held that the applicant should have created some effective system which would have ensured rapid removal of unlawful comments, and that measures taken by the applicant were insufficient.

The applicant alleged that its rights under Article 10 had been violated, by the fact that it had been held liable for the third-party comments posted on its Internet news portal.

The ECtHR held: "Based on the concrete assessment of the above aspects, taking into account the reasoning of the Supreme Court in the present case, in particular the extreme nature of the comments in question, the fact that the comments were posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the

applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction imposed on the applicant company, the Court finds that the domestic courts' imposition of liability on the applicant company was based on relevant and sufficient grounds, having regard to the margin of appreciation afforded to the respondent State. Therefore, the measure did not constitute a disproportionate restriction on the applicant company's right to freedom of expression."

The ECtHR concluded that Article 10 had not been violated.

CASE OF RUBINS v. LATVIA (2015)

The applicant was a professor and the head of the Department of Dermatological and Venereal Diseases at Riga Stradiņa University. The applicant had been elected to the position of head of department and member of the constituent assembly of the university.

Departments at the university were merged. As a result of the merger the position of head of department occupied by the applicant was abolished. The applicant was told that he could agree to the changes in his contract with the university or if he refused his employment relationship with the university would be terminated.

The applicant sent various emails to the Rector of the university concerning the circumstances of the reorganisation and the abolition of his department. He criticised the decisions taken by the deputy dean.

He did also send another email to the Rector of the university and to several other recipients, including the members of the Senate. The email criticised the lack of democracy and accountability in the leadership of the organisation.

He also drew the recipients' attention to the alleged mismanagement of the university's finances. In support of this allegation the applicant relied on the conclusions adopted by the State Audit Office.

The applicant further spoke in unfavourable terms about several representatives of the management of the university, stating, for example, that "pretends to be a God-fearing Catholic ... yet, as far as is known, has several children born out of wedlock", "cannot decide a single question by himself, does not keep his word, is lying", and "has called me and asked me to break the law in the interests of her protégés".

He sent an email to the Rector in which he referred to shortcomings identified by the State Audit Office. He also raised an issue about cases of plagiarism at the university which had been confirmed by the report of a professional association. He indicated the intention to publish the conclusions adopted by the State Audit Office concerning mismanagement of State funds at the university.

The applicant received a notice of termination of employment, in which he was informed that his employment contract would be terminated. The legal basis for the applicant's dismissal was that the applicant had violated the Labour Law and the university's staff regulations, which required employees to carry out their professional duties in accordance with "good morals".

The decision to terminate his employment did especially refer to his last email. The employer found that the email contained threats and blackmail.

The domestic courts agreed with the applicant's employer and noted that the applicant's motives had been to keep his post at the university.

The applicant complained that his dismissal violated Article 10, since he had been punished for expressing a legitimate opinion about problems prevailing in the university and for attempting to resolve his employment situation.

The ECtHR said, inter alia: “The Court reiterates that the University was a State-financed education establishment. It appears that the issues invoked by the applicant were of some public interest and that the truthfulness of the information was not challenged by the parties. Nevertheless it is apparent from the appellate court’s judgment that these aspects – the public interest and truthfulness of the information – were not assessed at all” (para. 85).

The ECtHR concluded that Article 10 had been violated.

CASE OF FÜRST-PFEIFER v. AUSTRIA (2016)

The applicant was a psychiatrist and registered expert on public care and child abuse.

An article was published on the website meinbezirk.at and in the print publication Bezirksblatt. The article stated: “Suffering from up-and-down mood swings, panic attacks, suicidal thoughts and hallucinations, together with paranoid ideas – but working as a court-appointed expert. In the last 12 years she has examined over 3.000 married couples in custody-related disputes. Now it seems, it gets rough for [the applicant] as an expert report about her psychological condition has been disclosed.”

The passage was followed by comments by a member of a political party, who had made a criminal complaint against the applicant. At the end of the article it was mentioned that the applicant was no longer answering her phone and had withdrawn from all her cases.

As a result of the article the applicant was confronted with questions from colleagues and patients, and proceedings were initiated at the Regional Court to clarify whether she was still fit to work as a court appointed expert.

The applicant lodged an action and sought damages and the publication of the judgment claiming that the article had violated her intimate personal sphere and compromised her publicly.

The domestic courts dismissed the applicant's action and stated that she had a public status, the content of the article was true and the article was sufficiently well-balanced and faithful to the different sides of the story.

The applicant complained that the State had failed to protect her rights under Article 8.

The ECtHR said: "civil servants acting in an official capacity may nevertheless be subject to wider limits of acceptable criticism than ordinary citizens (…) The Courts of Appeal have based their decisions on the finding that the applicant, as a frequently appointed expert in court proceedings in the very sensitive field of child psychology and fosterage should be treated similarly to civil servants acting in an official capacity when it comes to examining whether a careful balance has been struck between the competing public and private interests. The Court does not see strong reasons to substitute its view for that of the domestic courts in regard to this finding" (para. 46).

The ECtHR concluded that Article 8 had not been violated.

CASE OF MAGYAR TARTALOMSZOLGÁLTATÓK EGYESÜLETE AND INDEX.HU ZRT v. HUNGARY (2016)

The first applicant, MTE, was the self-regulatory body of Hungarian Internet content providers. The second applicant was a company which owned one of the major Internet news portals in Hungary, called Index.hu.

Both applicants allowed users to comment on the publications on their portals. Comments could be uploaded following registration and were not previously edited or moderated by the applicants.

The applicants advised their readers, in the form of disclaimers, that the comments did not reflect the portals' own opinion and that the authors of comments were responsible for their contents.

Both applicants put in place a system of notice-and-take-down where any reader could notify them of any comment of concern and request its deletion.

The first applicant, MTE, published an opinion under the title "Another unethical commercial conduct on the net" about two real estate management websites owned by the same company.

According to the opinion, the two websites provided thirty-day long advertising service for their users free of charge. Following the expiry of the thirty-day free period, the service became subject to a fee and this without prior notification of the users. The opinion concluded that the conduct of the service provider was unethical and misleading.

The opinion attracted some comments, amongst which there was the following:
"They have talked about these two rubbish real estate websites a thousand times already. Is this not that Benkő-Sándor-sort-of sly, rubbish, mug company again?"

The second applicant, Index.hu, published the full text of the opinion. One of the comments posted on Index.hu read as follows: "People like this should go and shit a hedgehog and spend all their money on their mothers' tombs until they drop dead."

The company that operated the real estate management websites brought a civil action against the applicants. They claimed that the opinion was false and offensive and the subsequent comments had infringed their right to good reputation.

The domestic courts found that the comments were capable of harming the plaintiff's good reputation and that the applicants, by enabling readers to make comments on their websites, had assumed objective liability for any injurious or unlawful comment.

The applicants complained that the decision of the domestic courts, which established objective liability, was a violation of Article 10.

The ECtHR said: "The Court considers that the rigid stance of the Hungarian courts reflects a notion of liability which effectively precludes the balancing between the competing interests", and continued: "However, in the case of Delfi AS, the Court found that if accompanied by effective procedures allowing for rapid response, the notice-and-take-down-system could function in many cases as an appropriate tool for balancing the rights and interests of all those involved. The Court sees no reason to hold that such a system could not have provided a viable avenue to protect the commercial reputation of the plaintiff. It is true that, in cases where third-party user comments take the form of hate speech and direct threats to the physical integrity of individuals, the rights and interests of others and of the society as a whole might entitle Contracting States to impose liability on Internet news portals if they failed to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties (…) However, the present case did not involve such utterances" (paras. 89-91).

The ECtHR concluded that Article 10 had been violated.

CASE OF ANNEN v. GERMANY (2016)

The applicant was a German national and campaigner against abortion.

He handed out leaflets and put leaflets in letterboxes in the immediate vicinity of the day clinic run by Dr M and Dr R.

The leaflet referred to the website www.babycaust.de which was operated by the applicant. The website contained names and addresses of what the website called "abortion doctors". The full names of Dr M and Dr R and their day clinic were mentioned on the list.

Their actions were compared to Holocaust. Dr M and Dr R filed a request for a civil injunction against the applicant.

They submitted that only legal abortions were performed at their clinic. The applicant's leaflet created the erroneous impression that the abortions that they performed were contrary to the law.

The domestic courts granted the requested injunction and ordered the applicant to desist from further distribution of leaflets that contained their names and that unlawful abortions were performed in their medical practice.

The domestic courts further ordered the applicant to desist from mentioning Dr M and Dr R's names and address in the list of "abortion doctors" on the website.

The applicant complained that the decision violated his rights to freedom of expression as provided in Article 10.

The ECtHR examined 1) the leaflets, and 2) the website. The ECtHR held that it related to a controversial debate of public interest and concluded that the domestic courts had failed to strike a fair balance between the applicant's rights to freedom of expression and the doctors' personality rights. Article 10 was breached in respect of the order to desist from further distribution of leaflets.

The ECtHR considered that "by mainly referring to their conclusions concerning the leaflet and by failing to address specific elements related to the applicant's Internet site, the domestic courts cannot be said to have applied standards which were in conformity with the procedural principles embodied in Article 10 of the Convention and to have based themselves on an acceptable assessment of the relevant facts. The foregoing

considerations are sufficient to enable the Court to conclude that the legal protection received by the applicant at the domestic level was not compatible with the procedural requirements of Article 10 of the Convention. There has accordingly been a violation of that provision in respect of the order to desist from mentioning the doctors' names and address on the website."

The ECtHR concluded that Article 10 had been violated.

CASE OF CENGİZ AND OTHERS v. TURKEY (2016)

The applicants were a lecturer, an assistant professor and a professor who taught Law at Turkish universities.

The Ankara Criminal Court ordered the blocking of access to YouTube. The court held that 10 video files on YouTube infringed a Turkish law that prohibited insults to the memory of Atatürk.

The applicants lodged objections against the blocking order and relied on their rights to freedom of expression. They argued that there was a public interest in access to YouTube.

They also submitted that six of the ten pages to which the order related had already been deleted and that the other four were no longer accessible from inside Turkey. This meant, in their submission, that the blocking order had become devoid of all purpose and constituted a disproportionate restriction on the rights of Internet users to receive and impart information and ideas. The Ankara Criminal Court dismissed the applicants' objections.

The applicants argued that their rights under Article 10 had been violated. They explained, inter alia, that they received information on academic topics on YouTube and that they used such material in their professional activities, and that they themselves uploaded

significant amounts of law material on YouTube. The blocking of access had however kept them unable to access YouTube for the last three years.

The ECtHR held that prior restraints were not incompatible with the ECHR as a matter of principle, but had to form part of a legal framework ensuring both tight control over the scope of the ban and effective judicial review to prevent any abuse and "In the light of these considerations and of its examination of the legislation in question as applied in the instant case, the Court concludes that the interference resulting from the application of section 8 of Law no. 5651 did not satisfy the requirement of lawfulness under the Convention and did not afford the applicants the degree of protection to which they were entitled by the rule of law in a democratic society" (paras. 62-65).

The ECtHR concluded that Article 10 had been violated.

CASE OF KONIUSZEWSKI v. POLAND (2016)

The applicant was a journalist working for a weekly motoring magazine.

The Competition and Consumer Rights Office published a report on its website, summarising the results of a countrywide survey concerning the quality of motor fuel sold by petrol stations.

It listed petrol stations, including their names, addresses and owners, where samples of diesel and petrol did not meet the quality requirements imposed by the applicable regulations.

The applicant published a series of articles in the magazine. The articles presented drastic cases of fraud and described the impact that use of adulterated fuel had on vehicles. It also summarized the results of the survey. One of the articles included a table entitled "Stations selling counterfeit fuel".

The table was based on the report of the Competition and Consumer Rights Office and listed towns, names of the companies and information on the quality of the diesel and petrol which they sold.

B.J. was the owner of one of the stations and asked the magazine's editor to publish a retraction of the statement concerning his business. The publisher replied that their article was based on the report of the Competition and Consumer Rights Office.

B.J. brought a case against the applicant. He submitted that the applicant had damaged his reputation and good name, and that the data from the Office did not indicate that he had committed adulteration of the fuel.

The applicant submitted that he had simply republished an official report and made it clear in the domestic proceedings that it had not been his intention that B.J.'s income should suffer. However, the domestic courts imposed a fine on the applicant and he should reimburse B.J.'s legal costs.

The applicant complained that his rights to freedom of expression had been breached, in violation of Article 10.

The ECtHR held: "The Court observes that the impugned text did not contain any statements amounting to a gratuitous personal attack on B.J. (…) It did not concern his private life and his name was not mentioned. It cannot therefore be said that aspects of his life other than his business activity were exposed to public scrutiny. The nature and severity of the penalties imposed are also factors which should be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (…) The Court must apply the most careful scrutiny when the sanctions imposed by a national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern" (paras. 61 and 62).

The ECtHR concluded that Article 10 had been violated.

CASE OF ÄRZTEKAMMER FÜR WIEN AND DORNER v. AUSTRIA (2016)

The first applicant was the organisation called the Vienna Chamber of Medical Doctors. The Chamber represented all medical practitioners in Vienna. It was established to represent the interests of doctors, ensure that professional duties were observed and uphold the reputation of the medical profession. The first applicant had its own website. The second applicant was the Chamber's president.

The second applicant published a letter on the first applicant's website, which was addressed to all members of the Chamber in Vienna and was also sent out to all of them via email. The letter was titled "Locust funds want to take over medical practices".

The second applicant went on to state that he had been forced to write to his colleagues for a serious reason, namely, because it had been reported in the media that the F. company planned to go into the radiology business.

He added that share-bidding companies planned to offer medical services and that doctors risked becoming mere employees of such "locust" companies.

The second applicant ended his letter by stating that he could guarantee one thing: that the Chamber would make use of all legal and political means to stop such a disastrous development from going ahead. They would prevent competition from "international locust funds".

The Vienna Commercial Court found that there was a competitive relationship between the F. company and the applicants. The court prohibited the applicants from repeating the statement that the F. company was ruthless or referring to the company as "locust". The applicants were also prohibited from calling services offered by the F. company a disastrous development.

The second applicant was ordered to publish the Vienna Commercial Court's judgment on the first applicant's website and in its print newsletter.

The Supreme Court confirmed the prohibition.

The applicants complained that the injunction imposed on them, which prohibited them from repeating certain statements concerning the F. company, violated their rights under Article 10.

The ECtHR found: "For a company which offers medical services, the accusation that it acted as a "locust" (…) was a particularly serious one which affected its reputation. Thus, even if the applicant had intended to make that statement in the context of a wider debate on an issue of public concern, he had to have a solid factual basis on which to base that allegation. In the domestic proceedings, the Austrian courts – after carefully examining the arguments put forward by the applicant – concluded that there was no such factual basis, and the applicant has likewise not provided any persuasive argument substantiating his allegations" (para. 69).

The ECtHR concluded that Article 10 had not been violated.

CASE OF GÖRMÜŞ AND OTHERS v. TURKEY (2016)

The first three applicants were the editors of the weekly political news magazine Nokta. The other three applicants worked for Nokta as journalists.

An article was published in Nokta, which was titled "Again as in 2004: Turkish armed forces seek cooperation with 'friendly' NGOs".

The article revealed the system of evaluation of press editors and journalists that the armed forces put in place with the aim of excluding, from invitations and activities, journalists that were supposed to be opponents of the army.

After the article had been published, the military court ordered a search of all the premises of the Nokta and copies of all the files in computers.

The military court also ordered the extraction of all computer content available on the premises of the Nokta.

The applicants complained of an infringement of their rights to freedom of expression. They alleged that the measures violated the secrecy of their sources of information and constituted a form of intimidation exerted on their activities as journalists.

“This intervention risked not only having a negative impact on the applicants' relations with their sources of information, but also a chilling effect on other journalists or whistleblowers, discouraging them from reporting questionable acts by public authorities. Accordingly, the Court considers that the intervention at issue was disproportionate to the aim pursued” (paras. 74 and 75, Google translation of French version).

The ECtHR concluded that the measures taken to search the applicants' place of work and to seize their data amounted to a violation of Article 10.

CASE OF KALDA v. ESTONIA (2016)

The applicant was serving a life sentence in prison. The applicant requested access to various legal databases online, including decisions of the Supreme Court and administrative courts available on the Internet, and the HUDOC database of the judgments of the European Court of Human Rights. According to the applicant, he was

involved in a number of legal disputes with the prison administration and needed access to those Internet sites in order to be able to defend his rights in court.

The prison and the domestic courts refused the applicant's request to be granted access to some of the material online. The national Supreme Court held, inter alia, that material from Riigi Teataja was available in the paper version and considered access to the paper version sufficient and found that the prison's refusal to grant the applicant access to the online version had been lawful.

The prison had a duty to ensure that he had a reasonable possibility of searching for and familiarising himself with the material. The Supreme Court therefore held that the refusal of the prison was unlawful to the extent that it excluded the applicant's access to the information. But the Supreme Court held that this responsibility was satisfied if the applicant was granted access to the paper version of the material.

The Supreme Court was concerned that it increased the security risk if detainees were granted access to the Internet and used the access for other purposes. The Supreme Court therefore concluded that the prohibition of access to the websites was justified by the need to secure public safety.

The applicant complained that the refusal to grant him access to the websites in question violated his rights to receive information and was in breach of Article 10. He emphasised that the information available on the websites was relied on by the domestic courts in proceedings against him and that his access to the information was necessary for him to be able to protect his rights.

The ECtHR said: "While the security and economic considerations cited by the domestic authorities may be considered as relevant, the Court notes that the domestic courts undertook no detailed analysis as to the security risks allegedly emerging from the access to the three additional websites in question, also having regard to the fact that these were websites of State authorities and of an international organisation. The Supreme Court limited its analysis on this point to a rather general statement that

granting access to additional Internet sites could increase the risk of detainees engaging in prohibited communication" (para. 53).

The ECtHR concluded that Article 10 had been violated.

CASE OF GENNER v. AUSTRIA (2016)

The applicant worked for an association which offered legal and social support to asylum seekers and refugees.

The Federal Minister for Interior Affairs died of an aneurysm. The applicant published a statement on the association's website entitled "One less. What's coming now?" which said "The good news for the New Year: L.P., Minister for torture and deportation, is dead" and "L.P. was a desk war criminal just like many others there have been in the atrocious history of this country: completely desensitised, indifferent to the consequences of their laws and regulations, the compliant instrument of a bureaucracy contaminated with racism. No decent human is shedding tears over her death."

The late Minister's husband filed a private prosecution for defamation against the applicant and the association.

The domestic courts convicted the applicant of defamation in respect of the passages and sentenced him to a fine.

The applicant complained that his conviction for defamation had violated his rights to freedom of expression. He relied on Article 10.

The ECtHR held: "The Court observes that the timing of the impugned statement is a relevant circumstance in the present case and therefore has to be taken into consideration when balancing the conflicting rights under Article 8 and 10. The

statement was an expression of satisfaction with the sudden death of L.P., the applicant made the day after she had passed away. To express insult on the day after the death of the insulted person contradicts elementary decency and respect to human beings (…) and is an attack on the core of personality rights" (para. 45).

The ECtHR concluded that Article 10 had not been violated.

CASE OF MUSTAFA SEZGİN TANRIKULU v. TURKEY (2017)

The applicant was a member of the Turkish Parliament and president of the Diyarbakır Bar Association.

The newspaper Hürriyet reported statements by a senior intelligence officer, who claimed that the National Intelligence Agency of Turkey had been intercepting the telephone conversations and email correspondence of people on the basis of approximately ninety court decisions over the previous ten years.

The communications of the applicant had also been intercepted. The applicant filed a criminal complaint against the judge who had delivered the court decision in question, the public prosecutor, and the agents who had sought permission to monitor and examine communications, and the agents who had implemented the decision.

The Ministry of Justice considered that although the impugned interception decision had been in breach of legal norms, the aim was to locate terrorists before they acted and to take the necessary security measures against them. The applicants objections were dismissed.

The applicant maintained that his rights under Article 8 had been violated.

The ECtHR held that "the Court is of the view that the impugned decision did not satisfy the very basic requirements laid down by Law no. 4422. It therefore rejects the Government's argument that Law no. 4422 constituted a legal basis for the Diyarbakır Assize Court's decision (…) On the basis of the foregoing, the Court concludes that the interception order in the instant case was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention" (paras. 60-64).

The ECtHR concluded that Article 8 had been violated.

CASE OF PIHL v. SWEDEN (2017)

The applicant was a Swedish national. The applicant was accused on a blog post of being involved in a Nazi party. The post appeared on a small blog that was run by a non-profit association.

The blog allowed comments to be posted, but it was clearly stated that such comments were not checked before publication and that commentators were responsible for their own statements. Commentators were therefore requested to display good manners and obey the law.

The day after publication of the post, an anonymous person posted a comment stating that "that guy pihl is also a real hash-junkie according to several people I have spoken to".

The applicant posted a comment on the blog in reply to the comment and the blog post about him. He wrote that the information was wrong and should be removed immediately.

The following day the blog post and the comment were removed and a new post was added by the association which stated that the earlier post was wrong and based on inaccurate information and the association apologised for the mistake.

It was however still possible to find the old post and the comment on the Internet via search engines.

The applicant sued the association and claimed symbolic damages of 1 Swedish krona. He submitted that the post and the comment constituted defamation and that the association was responsible because the association had failed to remove it immediately.

The association admitted that the comment constituted defamation, but it stressed that comments posted on the blog were not reviewed before they were published and it was expressly stated that everyone was responsible for their own comments.

The domestic courts rejected the applicant's claim. They found no legal grounds on which to hold the association responsible for failing to remove the comment sooner than it had done. The association could not be accused of defamation, either as the principal or as an accomplice.

The applicant complained under Article 8 because the Swedish legislation prevented him from holding the association responsible for the defamatory comment and it had violated his rights to respect for his private life.

The ECtHR found: "In view of the above, and especially the fact that the comment, although offensive, did not amount to hate speech or incitement to violence and was posted on a small blog run by a non-profit association which took it down the day after the applicant's request and nine days after it had been posted, the Court finds that the domestic courts acted within their margin of appreciation and struck a fair balance between the applicant's rights under Article 8 and the association's opposing right to freedom of expression under Article 10" (para. 37).

The ECtHR concluded that Article 8 had not been violated.

CASE OF TAMIZ v. THE UNITED KINGDOM (2017)

The applicant, Mr Payam Tamiz, was a British national.

Google Inc. provided a service via Blogger.com that allowed any Internet user to create an independent blog free of charge. It included design tools to help users create layouts for their blogs and if users did not have their own web address, they could host their blogs on Blogger.com web addresses.

Blogger.com operated a Content Policy which set out restrictions, for instance that content such as child pornography or hate speech were prohibited.

Google Inc. operated a Report Abuse system, but it stated that material believed to be "defamation/libel/slander" would only be removed if it had been found unlawful by a court. Google Inc. explained that the reason for its policy was that it would usually not be practicable to remove content without first receiving a court's decision, given the huge volume of content uploaded by users and Google Inc. did not consider itself in a position to adjudicate such disputes.

A piece appeared on the "London Muslim" blog which was hosted on Blogger.com. It contained a photograph of the applicant and the following text: "Payam Tamiz a Tory Muslim council candidate with a 5 o'clock shadow has resigned from the party after calling Thanet girls 'sluts'. Tamiz who on his Twitter page describes himself as an 'ambitious British Muslim' is bizarrely studying law so one would have thought this Tory prat with Star Trek Spock ears might have engaged the odd brain cell before making these offensive remarks."

Around 46 comments were posted in response to the publication. They said, inter alia: "I know Mr Tamiz very well and am surprised that it has taken this long for all this to come out, Payam is a known drug dealer in thanet and has been taken to court for theft from his employers tescos in Ramsgate. His whole family are criminals his mother Mrs [L.] has several convictions for theft and shoplifting and got sentenced at maidstone crown court".

The applicant used the “report abuse” function to indicate that he considered some of the comments on the blog to be defamatory. He did also send a letter to Google UK (subsidiary of Google Inc.) and complained about the blog and comments which he thought were false and defamatory.

Google Inc. received the applicant's permission to forward his complaint to the blogger. The blogger then removed the post and all the comments.

Meanwhile, the applicant sought to bring a claim in libel against Google Inc. The domestic courts refused him permission to bring the claim against Google Inc. The courts assessed the evidence and concluded that the applicant’s claim did not meet the “real and substantial tort” threshold required to serve defamation proceedings outside the jurisdiction.

The applicant applied to the ECtHR, as he believed that the State was in breach of its positive obligation under Article 8.

The ECtHR said that “having particular regard to the important role that ISSPs such as Google Inc. perform in facilitating access to information and debate on a wide range of political, social and cultural topics, the Court considers that the respondent State’s margin of appreciation in the present 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 finds that they acted within this wide margin of appreciation and achieved a fair balance between the applicant’s right to respect for his private life under Article 8 of the Convention and the right to freedom of expression guaranteed by Article 10 of the Convention and enjoyed by both Google Inc. and its end users” (para. 90).

The ECtHR rejected the applicant’s Article 8 complaint as manifestly ill-founded pursuant to Article 35(3)(a) of the Convention.

CASE OF BOŽE v. LATVIA (2017)

The applicant was a Latvian national. The Ministry of Health informed the police authorities that the applicant was selling unlicensed pharmaceutical products via the Internet.

The products were advertised as medicine for treatment of HIV, hepatitis C and cancer.

The police contacted the applicant via the email address indicated on the website that was advertising the products and bought a pack of one of the products.

The police then informed the applicant about the test purchase which had been carried out. The police carried out an inspection at the applicant's apartment. He admitted that he had been producing alleged medicines at home and being aware that the sale of medicines required a licence, but claimed that he did not have the means to obtain such a patent.

As a result of the inspection a computer and other items were seized from the applicant's apartment. A report concluded that the applicant's computer contained a massive volume of information, including on the production and distribution of the alleged medicines, as well as email correspondence with potential clients.

The domestic courts found that the applicant had carried out an unlicensed business activity. The courts came to this conclusion by analysing his website and email communication with potential clients. As a result, the applicant received a fine.

The applicant complained under Article 8 of unauthorised search and seizure of his personal belongings.

The ECtHR said: "The Court considers that the alteration of the initial legal basis and the disagreement among the authorities as to which specific provision of the Law on Police had regulated the police actions attest to the lack of clarity as to the actual legal basis on

which the impugned actions were carried out. Second, the domestic authorities failed to scrutinize the initial absence of a legal basis for carrying out seizure (…) Moreover, the Administrative Court did not carry out any meaningful assessment of the legality and scope of the seizure carried out during inspection. The Court finds that the supervision in the circumstances of the case failed to provide adequate and effective safeguards against possible abuse in the application of the impugned measure by the police" (paras. 81-85).

The ECtHR concluded that Article 8 had been violated.

CASE OF ÓLAFSSON v. ICELAND (2017)

The applicant was editor of the web-based media site Pressan.

Two adult sisters published an article and a letter on their website encouraging people to study the background of candidates in the forthcoming Constitutional Assembly elections. The sisters warned against A, a relative of theirs, who was standing for election. In the letter they alleged that A had sexually abused them when they were children.

Pressan published an article about the sisters' allegations. The article was based on an interview with one of the sisters and on the letter posted on their website.
Pressan published further articles about the matter, based on the sisters' statements on their website and in other media interviews.

A lodged defamation proceedings against the applicant and requested that various statements should be declared null and void.

The domestic courts found some of the statements defamatory and that they consisted of insinuations that A had abused children. The applicant was ordered to pay non-pecuniary damage.

The applicant complained under Article 10 that the judgement of the domestic courts had violated his rights to freedom of expression.

The applicant maintained that A was a public figure and the information had already been publicly available on the Internet and had been widely disseminated. The statements in the news articles had either been based on an interview with one of the sisters or on content that was available on the sisters' website.

The ECtHR noted "it is clear that the disputed statements did not originate from the applicant himself nor from the journalist who wrote the articles, but from the sisters" and "the Supreme Court did not give due consideration to the principles and criteria as laid down by the Court's case law for balancing the right to respect for private life and the right to freedom of expression" (para. 59 and 62).

The ECtHR concluded that Article 10 had been violated.

CASE OF DOROTA KANIA v. POLAND (No. 2) (2017)

The applicant was a journalist of the weekly magazine Wprost and contacted A.C., the rector of the University of Gdańsk, in order to inform him that she considered that he had been an informant for the communist secret services in the past. She did not refer to any evidence in her possession.

The applicant published an article in Wprost entitled "Agents Wearing Ermine", alleging that during the communist times A.C. had been an informant for the communist secret police.

The article included a photo of A.C. in the course of his official duties and the caption: "A.C., rector of the University of Gdańsk, used to be an informant for the communist

secret services under the name Lek". The article did not quote its sources, referring in general terms to unspecified documents.

The article was also published on the magazine's website. The magazine moreover published an article written by the applicant (but signed R.P.) entitled "The Party of Fear". It was available on the magazine's website. Its main thrust was that high-society former informants opposed amendments to vetting legislation for fear that their past would come to light. It referred to A.C. as a former informant and contained his photo as rector of the University of Gdańsk.

Likewise, the magazine published an article "New Documents about the Chancellor – Informant". It was available on the magazine's website. Its thrust was also that A.C. was a former informant. The article did not quote its sources and merely referred to unspecified documents. A photo of A.C. was again published alongside it.

A.C. brought a private bill of indictment against the applicant and the editor-in-chief of the magazine. It was argued that they had libelled him by publishing the articles and by disseminating untrue information.

The domestic courts held that the applicant had not had sufficient knowledge at her disposal to support the claims she made in the articles, and they imposed fines on the applicant and ordered the publication of the judgment.

The applicant complained of a breach of her rights to freedom of expression under Article 10.

The ECtHR observed that she had no sound basis for the allegations contained in the articles and that the documents even noted A.C.'s unwillingness to become an informant. "To sum up, the applicant's conviction was based essentially on the findings of fact to the effect that she had failed to comply with her journalistic obligations of diligence. In these circumstances, the domestic courts' conclusion that the applicant had published the first article having failed to take steps that can reasonably be expected to provide some factual basis for her allegations is not open to criticism" (paras. 80-82).

The ECtHR concluded that Article 10 had not been violated.

CASE OF JANKOVSKIS v. LITHUANIA (2017)

The applicant was serving a prison sentence. He had graduated from the medical faculty and wished to pursue studies via distance learning to acquire a second university degree in law with a specialisation in human rights.

He wrote to the Ministry of Education and Science requesting information about the possibility of enrolling at university.

The ministry replied that information about the study programmes could be found on the website of the ministry. The website contained information about learning and study possibilities.

The applicant therefore contacted the prison authorities and requested Internet access to the website of the ministry. They replied that the legal instruments that regulated execution of sentences did not permit prisoners to use the Internet.

The applicant started court proceedings, referring to his correspondence with the ministry and challenging the prison authorities' decision not to grant him access to the Internet. The domestic courts however dismissed the applicant's complaint.

The applicant argued that he had been prevented from receiving information about distance learning possibilities and that it was in breach of Article 10.

The ECtHR found: "Turning to the Lithuanian authorities' decisions, the Court cannot but observe that they essentially focussed on the legal ban on prisoners having Internet access as such, instead of examining the applicant's argument that access to a particular website was necessary for his education" (para. 61).

The ECtHR concluded that Article 10 had been violated.

CASE OF HALLDÓRSSON v. ICELAND (2017)

The applicant worked as a journalist for the newsroom of the Icelandic National Broadcasting Service (the RUV). The RUV was an independent public service broadcaster.

A was a prominent businessman in Iceland. On the evening news, the applicant speculated on whether A had participated in tax fraud. The applicant stated that the authorities believed that they had found the money trail and that they were in possession of documents indicating that A and two business partners had planned to send money to Panama and then back into their own pockets again. The story included a picture of A. A corresponding article was published on RUV's website.

A lodged defamation proceedings against the applicant. According to the domestic courts, the applicant had lacked evidence to support the statements that A had participated in criminal behaviour. They ordered the applicant to pay compensation for non-pecuniary damage to A, plus interest and A's legal costs.

The applicant complained that his rights under Article 10 had been violated.

The ECtHR held: "It reiterates that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the provision that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (…) Furthermore, the Court finds that there were no special grounds in the present case to dispense the media from their ordinary obligation to verify factual statements that are defamatory of private individuals" (para. 50). The applicant had not presented evidence supporting the claim that A was involved in criminal behaviour.

The ECtHR concluded that Article 10 had not been violated.

CASE OF ARNARSON v. ICELAND (2017)

The applicant was a journalist and freelance writer for the web-based media site Pressan.

The applicant claimed that a private website, B, was publishing anonymous blogs, constantly lobbying for the the Federation of Icelandic Fishing Vessel Owners (LIU) and discrediting persons who spoke against it.

The LIU was a federation which represented fishing vessel owners in Iceland and safeguarded their common economic, financial, legal, technical and social interests.

The applicant published an article on Pressan under the headline "LIU pays 20 million for offensive material".

A sent a short statement to Pressan submitting that the LIU had not supported website B.

The applicant published an article on Pressan where he responded to A's statement. The article stated that A had to do better than just denying that direct payments had been made to website B and that the LIU, directed by A, was accountable for the offensive material published anonymously on website B.

The applicant published a third article on the matter on Pressan. The article stated that the LIU supposedly supported website B. Furthermore, the article stated that the applicant knew that not all LIU board members were aware of the organisation's support for the offensive material on website B since the payments were well-disguised in the organisation's financial records. Moreover, it stated that the applicant had been told that it was possible that none of the LIU's board members knew about the organisation's

millions being used to support anonymous slander on website B and that A alone had decided to use the funds in this way. A picture of A appeared beside the text of the article.

A lodged defamation proceedings against the applicant and requested the statements declared null and void. The defamation proceedings brought by A against the applicant ended in an order by the domestic courts that declared the statements null and void and required the applicant to pay compensation to A for non-pecuniary damage and A's legal costs.

The applicant claimed that his rights under Article 10 had been violated.

The ECtHR said that "the applicant did not offer any proof for the factual allegations or demonstrate that they were based on a sufficiently accurate and reliable factual basis. The fact that the applicant submitted that his allegations could not be confirmed does not, in the Court's view, detract from the sufficient basis upon which the District Court classified the statement in question as constituting "insinuations of fraud by abuse of position and negligence at work" and thus defamatory. The Court thus concludes that by publishing his allegation without confirmation on its veracity, the applicant could not have been acting in good faith, and thus in accordance with the standards of responsible journalism" (para. 43).

The ECtHR concluded that Article 10 had not been violated.

CASE OF BUBON v. RUSSIA (2017)

The applicant was a lawyer who also wrote articles for various law journals, legal magazines and online legal information databases. His work required extensive scientific research, including in the field of law enforcement in the Khabarovsk Region.

He received an assignment to write an article on prostitution and the fight against it in the Khabarovsk Region and did therefore contact the head of the Khabarovsk Region police department asking for statistical data for his research.

He sought information on the number of people found administratively liable for prostitution, the number of criminal cases instituted and the number of people found liable under the specific articles of the criminal code.

The relevant authorities replied that they did not have information as specific as sought by the applicant. The information he was seeking was therefore not available.

The applicant insisted that the authorities had the necessary information and statistical data that he needed for his research. He also insisted that the crime statistics reports available on the official websites of the Ministry of Interior and Federal State Statistics Service did not correspond to his needs.

In the alternative, the applicant argued that even if the authorities did not have all of the information that he had requested, they should have provided him with the relevant data they had.

The applicant complained that the authorities denied him access to the information necessary for his scientific research. He relied on Article 10.

The ECtHR held that the fact that the information requested was ready and available constituted an important criterion in the assessment of whether a refusal to provide information could be regarded as an interference with the freedom to receive and impart information. The ECtHR recalled that Article 10 did not impose an obligation to collect information when a considerable amount of work was involved.

The ECtHR therefore found that there had been no interference with the applicant's rights to receive information. The ECtHR concluded that Article 10 had not been violated.

CASE OF TERENTYEV v. RUSSIA (2017)

The applicant was a musician and a jazz critic. The applicant published an article on his personal website about a local jazz festival and its president, Mr Y.

The article contained a detailed description of the event and criticism of Mr Y. The jazz festival was described as "a shoddy piece of work" and Mr Y's delivery was called "crappy".

Mr Y sued the applicant in defamation, arguing that the article was insulting and harmful to his reputation.

The domestic courts found the applicant liable in defamation and awarded Mr Y damages and directed the applicant to publish a retraction on his website. According to the domestic courts, Article 10 had not been breached because "the defendant published statements on the Internet which undermined the honour and dignity of the plaintiff as a person, pedagogue and musician and which contained negative information about him".

The applicant complained of a violation of his rights to freedom of expression under Article 10.

The ECtHR found: "The lack of reasoning in the judgments can be seen particularly in how they approached the contents of the article. Apart from a restatement of the applicable legal provisions, general remarks about the impermissibility of distorting Mr Y.'s name and the "negative character" of the information, the judgments were remarkably laconic and contain nothing that would help the Court to grasp the rationale behind the interference. In particular, the courts did not specify which elements of the impugned publication were problematic" and the domestic courts did not make "any genuine attempt to distinguish between statements of fact and value judgments" (para. 22 and 23).

The ECtHR concluded that Article 10 had been violated.

CASE OF BĂRBULESCU v. ROMANIA (2017)

The applicant was employed in a private company as a sales engineer.

He created an instant messaging account using Yahoo Messenger, after the request from his employer. The purpose of the account was to respond to enquiries from customers.

He did already have another personal Yahoo Messenger account.

The applicant was summoned by his employer to give an explanation. He was informed that his Yahoo Messenger communication had been monitored and that there was evidence that he had used the Internet for personal purposes in breach of the rules in the company.

45 pages of the notice consisted of a transcript of the messages that the applicant had exchanged with his brother and his fiancée during the period when he had been monitored. The messages related to personal matters and some were of an intimate nature. The transcript included messages from the work-related as well as the personal Yahoo Messenger accounts.

The applicant informed the employer that in his view it had committed a criminal offence, namely breaching the secrecy of correspondence. The employer terminated the applicant's contract of employment. The applicant challenged his dismissal. The domestic courts decided that his dismissal had been lawful.

The applicant submitted that his dismissal had been based on a breach of his rights to respect for his private life and correspondence. He relied on Article 8.

The ECtHR said "the domestic courts failed to determine, in particular, whether the applicant had received prior notice from his employer of the possibility that his communications on Yahoo Messenger might be monitored; nor did they have regard either to the fact that he had not been informed of the nature or the extent of the

monitoring, or to the degree of intrusion into his private life and correspondence. In addition, they failed to determine, firstly, the specific reasons justifying the introduction of the monitoring measures; secondly, whether the employer could have used measures entailing less intrusion into the applicant's private life and correspondence; and thirdly, whether the communications might have been accessed without his knowledge (…) Having regard to all the above considerations, and notwithstanding the respondent State's margin of appreciation, the Court considers that the domestic authorities did not afford adequate protection of the applicant's right to respect for his private life and correspondence and that they consequently failed to strike a fair balance between the interests at stake" (para. 140 and 141).

The ECtHR concluded that Article 8 had been violated.

CASE OF LIBERT v. FRANCE (2018)

The applicant was hired in the French national railway company as Deputy Head of the Regional Surveillance Unit.

The applicant complained to the management about the conduct of one of his subordinates, who he alleged had used extreme language. The employee then filed a complaint against the applicant.

The applicant was suspended from duty on grounds of that charge. The proceedings were discontinued a few months later and on the day of his reinstatement he realised that his work computer had been seized.

During his suspension the person who had replaced the applicant had found documents which caught his attention on the computer and alerted the superiors.

The applicant was informed that the hard disk on his work computer had been analysed and that several files contained pornographic images and films.

The applicant was dismissed from service. The employer stated in the reasons for the dismissal that: “the analysis of the files stored on the hard disk of the applicant’s work computer, used for his professional duties, contained a very large number of files containing pornographic images and films (zoophilia and scatophilia)”. The reasons also stated that these facts were in breach of the obligation of exemplary conduct inherent in the duties formerly performed by the applicant.

The dismissal was tried before the courts, but the domestic courts concluded that the dismissal had not been disproportionate.

The applicant complained to the ECtHR of a violation of his rights to respect for his private life on the grounds that his employer had opened personal files stored on the hard disk of his work computer. He relied on Article 8.

The ECtHR noted that the domestic courts took into account, inter alia, that “his actions were particularly serious because, as an official responsible for general surveillance, he would have been expected to be of exemplary conduct” and the ECtHR held that “the domestic courts thus properly assessed the applicant’s allegation of a violation of his right to respect for his private life” and that their decisions were “based on relevant and sufficient grounds” (para. 51 and 52).

The ECtHR concluded that Article 8 had not been violated.

CASE OF ANNEN v. GERMANY (No. 2) (2018)

The applicant was a campaigner against abortion and operated an anti-abortion website babycaust.de.

A picture of graves was shown on the starting page and the text underneath read “then: Holocaust”. Upon clicking on the picture, the user was directed to a page titled: “Abortion – the new Holocaust?” on which the Holocaust was compared to abortions.

The website included a list of the names and addresses of doctors who performed abortions in Germany. One of the sentences read:
“Perverted doctors murder unborn children at the request of the mothers”.

One of the doctors listed on the applicant’s website, Dr Q., sought a civil injunction ordering the applicant to remove his name and address from the website or desist from labelling abortions, such as those performed by Dr Q., “aggravated murder”.

The domestic courts granted the injunction. The applicant had emphasised the term “aggravated murder” in the relevant parts of the website and had compared abortions with the Holocaust. In sum, the statements of the website could be understood as accusation against Dr Q. of committing aggravated murder.

The applicant alleged that the order to desist from labelling abortions “aggravated murder” on his website violated his rights to freedom of expression under Article 10.

The ECtHR found that the domestic courts had carefully weighed the applicant’s rights to freedom of expression against the Article 8 rights of the doctor. The content of the website was such a serious violation of Dr Q.’s rights as to justify a restriction on the applicant’s freedom of expression.

The ECtHR noted that the domestic courts did not hinder the applicants rights to criticise abortions but that he was “only ordered to desist from labelling abortions, such as those performed by Dr Q., “aggravated murder” and to desist therefore from implying that Dr Q. was committing that criminal offence” and that “the accusations were not only very serious (…) but might also incite to hatred and aggression” (para. 34 and 35).

The ECtHR concluded that Article 10 had not been violated.

CASE OF ANNEN v. GERMANY (No. 3) (2018)

The applicant was a campaigner against abortion and operated an anti-abortion website. The applicant distributed leaflets in the immediate vicinity of the medical practice of Dr S.

The leaflets contained the text “Did you know that Dr S. [full name and address] performs abortions that are unlawful according to the case-law of the Federal Constitutional Court?”.

Dr S. wanted the applicant to stop talking about him. The applicant refused and published this statement on his website: “If Dr S. [full name], by carrying out abortions, publicly shows that he agrees with abortions, then he should stand by his opinion. Instead Dr S. considers the leaflet campaign to be slander, threatens an interim injunction and has already given his lawyer a mandate to lodge a criminal complaint for defamation/slander. We ask ourselves: Is Dr S. unprincipled and characterless?”

Dr S. applied to the domestic courts for a civil injunction ordering the applicant not to claim on the Internet that the plaintiff performed unlawful abortions and not to disseminate leaflets containing his name and the assertion that unlawful abortions were performed in his medical practice.

The domestic courts granted the requested injunction and ordered the applicant to desist from claiming on the Internet or on leaflets that the plaintiff performed unlawful abortions. They awarded compensation for the pecuniary damage requested by the plaintiff.

The applicant complained of a violation of his rights under Article 10.

The ECtHR held that the injunction was limited in scope and prevented the applicant from stating that Dr S. was performing unlawful abortions. In that regard the ECtHR

noted that the applicant was not prohibited from campaigning against abortions or criticising doctors that conducted abortions.

The ECtHR concluded that Article 10 had not been violated.

CASE OF ANNEN v. GERMANY (No. 4) (2018)

The applicant was a campaigner against abortion and operated an anti-abortion website. The applicant distributed leaflets in the vicinity of the medical practice of Dr St., who performed abortions. The leaflets stated, inter alia, that the abortions performed by Dr St. in his practice were unlawful according to the case-law of the Federal Constitutional Court.

In addition, the leaflets contained the following statement: "According to international criminal law: Aggravated murder is the intentional 'bringing-to-death' of an innocent human being! The murder of human beings in Auschwitz was unlawful, but the morally degraded NS State allowed the murder of innocent people and did not make it subject to criminal liability."

Dr St. lodged an application for a civil injunction against the applicant and the domestic courts granted the requested injunction. They ordered the applicant to desist labelling the abortions performed by the plaintiff unlawful.

The applicant claimed that his rights under Article 10 had been violated.

The ECtHR held that "the applicant was not criminally convicted for slander or ordered to pay damages (…) but only prevented from addressing passers-by in the immediate vicinity of Dr St.'s medical practice and from labelling the abortions performed by the plaintiff unlawful. Consequently, the injunction was limited geographically and in scope. In regard to the latter the Court notes that the applicant was not per se prohibited

from campaigning against abortion, criticising doctors that conducted abortions or distributing leaflets. In sum, the Court concludes that the level of interference with the applicant's freedom of expression was relatively low and "proportionate to the legitimate aims pursued"" (para. 28).

The ECtHR concluded that Article 10 had not been violated.

CASE OF ANNEN v. GERMANY (No. 5) (2018)

The applicant was a campaigner against abortion and operated an anti-abortion website on which he campaigned against abortion (in the judgment called the "German website").

The Federal Review Board for Publications Harmful to Minors included the applicant's website, www.babycaust.de, on the list of publications considered to be harmful to minors.

The applicant subsequently redesigned his online presence. His new website included a link in bold type to the website www.babycaust.at (the Austrian website).

Attached to the link to the Austrian website was the following comment: "If you want to know more about the modern-day, democratic crime of 'abortion', make your enquiries in Austria."

At the material time, the content of the Austrian website was essentially consistent with that of the German website prior to the objection from the Federal Review Board. In addition, the Austrian website contained a link to a version of the applicant's complete German website as it had originally existed prior to the Federal Review Board's objection.

The following statement was shown on the Austrian website between two photos of babies, one of which was obviously covered in blood: “There is no other word for it: Abortion is ‘AGGRAVATED MURDER’!” The photo underneath showed a pile of corpses in a Third Reich concentration camp.

The caption below read:
“Abortion and euthanasia are crimes that no human law can presume to declare lawful”. The Austrian website also contained other content that said: “Whether concentration-camp commanders or murderers of unborn children, both are manifestations of criminals! These ‘low lifes’ have the same genetic makeup”. A sentence read: “Perverted doctors murdered unborn children at the behest of their mothers” and other photos and sentences compared abortions and Holocaust.

The reader was directed to a list of names and addresses of doctors across Germany who performed abortions. Dr F. was mentioned on the list. He was of Jewish faith and his family had suffered from the atrocities. Dr F. applied to the courts for an injunction against the applicant and damages for the violation of his personality rights.

He argued that the websites in question had generated a direct association between the named doctors and the Third Reich, equated abortions with the crimes of the Third Reich and stigmatised him as a murderer.

The domestic courts found that the website at issue contained the statement that abortions, as performed by Dr F., were acts of aggravated murder comparable with the atrocities inflicted on Jews in the Third Reich. Even though the applicant had made his statements in the context of a public debate of fundamental importance, the applicant’s comments on the websites had not been posted as broad criticism but specifically against the doctors mentioned.

The applicant alleged that a civil injunction and an order to pay damages had violated his rights under Article 10.

The ECtHR noted that the domestic courts concluded that the website contained the general statement that abortions, as performed by Dr F., were acts of aggravated murder. Given the applicant's statements such as "There is no other word for it: Abortion is 'aggravated murder'!" and "we will stand firm in our conviction that the wilful 'bringing-to-death' of an innocent human being is aggravated murder" the ECtHR agreed with that conclusion. The ECtHR agreed with the findings of the domestic courts that the applicant had equated the medical activities of Dr F. to atrocities inflicted on Jews under the Nazi regime.

The ECtHR concluded that Article 10 had not been violated.

CASE OF BENEDIK v. SLOVENIA (2018)

The Swiss authorities conducted a monitoring exercise of users of the so-called Razorback network. The Swiss police established that some of the users owned and exchanged child pornography in the form of pictures or videos.

Among the IP addresses recorded by the Swiss police was also an IP address, which was later linked to the applicant.

Based on the data obtained by the Swiss police, the Slovenian police requested the Internet service provider to disclose data regarding the user to whom the IP address had been assigned.

The Internet service provider gave the police the name and address of the applicant's father, who was subscriber to the Internet service of the IP address.

The police established that the applicant had installed a file-sharing program on one of the computers by means of which he had been able to download different files from other users of the program and had also automatically offered and distributed his own

files to them. Among the files downloaded by the applicant, some contained child pornography.

The applicant complained that his rights to privacy had been breached because the Internet service provider had retained his personal data unlawfully and the police had obtained subscriber data associated with his IP address and consequently his identity arbitrarily, without a court order.

The domestic courts concluded that the applicant, who had not hidden in any way the IP address through which he had accessed the Internet, had consciously exposed himself to the public and could not legitimately have expected privacy.

The applicant complained to the ECtHR that his rights under Article 8 had been violated. The ECtHR formulated that the case concerned the disclosure of subscriber information associated with an IP address.

The ECtHR held that "the Court is of the view that the law on which the contested measure, that is the obtaining by the police of subscriber information associated with the dynamic IP address in question (…) was based and the way it was applied by the domestic courts lacked clarity and did not offer sufficient safeguards against arbitrary interference with Article 8 rights. In these circumstances, the Court finds that the interference with the applicant's right to respect for his private life was not "in accordance with the law" as required by Article 8 § 2 of the Convention. Consequently, the Court need not examine whether the contested measure had a legitimate aim and was proportionate" (para. 132 and 133).

The ECtHR concluded that Article 8 had been violated.

CASE OF EGILL EINARSSON v. ICELAND (No. 2) (2018)

Two women reported to the police that the applicant and his girlfriend had raped them. The public prosecutor dismissed the case after a police investigation because the evidence which had been gathered was not sufficient or likely to lead to a conviction.

A magazine accompanying a leading newspaper, published an interview with the applicant and a picture of the applicant was published on the front page. In the interview the applicant discussed the rape accusation against him. On the same day a Facebook page was set up for the purpose of protesting about the interview and encouraging the editor to remove the applicant's picture from its front page.

Later that day, X posted a comment on the Facebook page which stated: "This is also not an attack on a man for saying something wrong, but for raping a teenage girl ... It is permissible to criticise the fact that rapists appear on the cover of publications which are distributed all over town".

The applicant's lawyer sent a letter to X requesting that she should withdraw her statements, admit they were unfounded, apologise in the media and pay the applicant damages, which would be donated to charity.

X's lawyer opposed the applicant's claims and submitted that the statements were not defamatory. Furthermore, the lawyer informed the applicant's lawyer that X had removed the statement from Facebook. The applicant lodged defamation proceedings against X.

The domestic courts found that X's comment on Facebook had been defamatory and declared the statements null and void. However, the courts dismissed the applicant's claim for the imposition on X of a criminal punishment and rejected the claim to have X carry the costs of publishing the judgment in a newspaper. The applicant was not awarded damages and each party should bear its own legal costs.

The applicant complained under Article 8 that the judgment of the domestic courts had violated his rights to respect for his private life.

The ECtHR noted that the domestic courts had confirmed that the statements were defamatory and declared them null and void. The question was therefore if the protection afforded to him was sufficient or if only an award of damages and legal costs could afford the necessary protection of his rights to respect for his private life.

The ECtHR concluded that the State had not failed in its positive obligations towards the applicant but afforded him sufficient protection under Article 8. The ECtHR said it this way "the Court finds that it cannot be held that the protection afforded to the applicant by the Icelandic courts, finding that he had been defamed and declaring the statements null and void, was not effective or sufficient with regard to the State's positive obligations or that the decision not to grant him compensation deprived the applicant of his right to reputation and, thereby, emptied the right under Article 8 of the Convention of its effective content" (para. 39).

Accordingly, there had been no violation of Article 8.

CASE OF M.L. AND W.W. v. GERMANY (2018)

The applicants were half-brothers. They were sentenced to life imprisonment for the murder of an actor called W.S. The applicants were released on probation.

The radio station Deutschlandradio published a report entitled "W.S. murdered 10 years ago". The report stated the full names of the applicants and told: "Following a six-month trial based on circumstantial evidence S.'s partner, W., and the latter's brother, L., were sentenced to life imprisonment. Both continue to this day to protest their innocence, and this year had their application for a retrial rejected by the Federal Constitutional Court."

The transcript of this report remained available on the archive pages of the radio station's website. Moreover, the Internet portal of the weekly magazine Der Spiegel contained a file entitled "W.S. – hammered to death". The file included five articles that had appeared in the print and online editions of the magazine.

Access to the file was subject to payment. The articles in the file gave a detailed account of the murder of W.S., the criminal investigation and the evidence gathered by the prosecuting authorities, the criminal trial and certain details of the applicants' lives, including their full names.

The newspaper Mannheimer Morgen did also have content on their website, including a teaser that all Internet users had access to for free. The teaser indicated the subject matter and gave the full names of the applicants.

The applicants sought that the media outlets should be prohibited from keeping material on their websites which included the names of the applicants.

The domestic courts decided not to demand that the media outlets should remove the applicants' names from the online material.

The applicants complained that their rights under Article 8 had been violated. They complained that they had been confronted again with their crime despite the fact that they had served their sentences and prepared for their reintegration into society.

The ECtHR entered a detailed assessment that included, inter alia, if the online material in question contributed to a debate of public interest, the content, form and consequences of the publications, and the prior conduct of the applicants.

The ECtHR concluded that Article 8 had not been violated.

CASE OF IVASHCHENKO v. RUSSIA (2018)

The applicant was a photographer and journalist and had a press card which stated that he was a “correspondent at Agency.Photographer.ru”. The applicant prepared texts for publication in print and Internet media outlets.

The applicant travelled to Abkhazia to prepare a report with photographs and document what he described as “the life of this unrecognised republic”. The applicant was working on a photo report concerning the life of ordinary people in Abkhazia and the prospects for economic development in the area.

He returned to Russia, arriving on foot at the customs checkpoint. The applicant presented his Russian passport, press card and a customs declaration, stating that he had electronic information devices (a laptop and flash memory cards) in his luggage.

The customs authorities searched his laptop for several hours without any reasonable suspicion of any offence or unlawful conduct and copied his personal and professional data. This was followed by a “specialist assessment” and the retention of his data for two years.

The applicant complained under Article 8 that the customs authorities had unlawfully examined the data contained on his laptop and in storage devices and had copied electronic data relating to both his personal life and professional activities.

The applicant argued that the situation complained of had also resulted in a separate breach of his rights to freedom of expression.

The domestic courts rejected the applicant's arguments and did not carry out any proportionality assessment.

The ECtHR held: “The Court is of the view that the circumstances of the present case highlight certain deficiencies in the domestic regulatory framework. The domestic authorities, including the courts, were not required to give – and did not give – relevant and sufficient reasons for justifying the “interference” in the present case. In particular, it was not considered pertinent by the domestic authorities to ascertain whether the impugned measures were in pursuance of any actual legitimate aim” (para. 92).

The ECtHR concluded that Article 8 had been violated and decided that it was not necessary to examine separately the merits of the complaint under Article 10.

CASE OF GRA STIFTUNG GEGEN RASSISMUS UND ANTISEMITISMUS v. SWITZERLAND (2018)

The applicant was an NGO that promoted tolerance and condemned racially motivated discrimination. The applicant published articles and interviews on current events relating to racism and anti-Semitism on its website.

The youth wing of the Swiss People’s Party held a demonstration concerning a public initiative to support the prohibition of the building of minarets in Switzerland. After the event the party published a report on its website, including the following: “In his speech (…) the president of the local branch of the Young Swiss People’s Party (…) emphasised that it was time to stop the expansion of Islam. With this demonstration, the Young Swiss People’s Party wanted to take an extraordinary measure in an extraordinary time. The Swiss guiding culture (…) based on Christianity, cannot allow itself to be replaced by other cultures”.

In response, the applicant posted an entry on its
website in the section called “Chronology – Verbal racism” and included the wording of the speech.

The president filed a claim for the protection of his personality rights. He applied to have the applicant withdraw the entry in question from its website and to have it replaced with the court's judgment.

The applicant replied that the title of the Internet entry had to be considered as a value judgment, which could only lead to an infringement of personality rights if it entailed an unnecessarily hurtful and insulting attack on the person concerned.

The domestic courts concluded that the speech itself had not been racist. It therefore ordered the removal of the article from the applicant's website and replaced with the court's judgment.

The applicant claimed that their rights to freedom of expression under Article 10 had been violated.

The ECtHR noted that the case concerned a conflict between on the one hand, the president's rights to respect for his private life and freedom of expression, and on the other hand, the applicant's rights to freedom of expression.

The ECtHR held that "the impugned description cannot be understood as a gratuitous personal attack on or insult to B.K. The applicant organisation did not refer to his private or family life, but to the manner in which his political speech had been perceived. As already stated, B.K., as a young politician expressing his view publicly on a very sensitive topic, must have known that his speech might cause a critical reaction among his political opponents. In view of the foregoing, the impugned categorisation of B.K.'s statement as "verbal racism" on the applicant organisation's website could hardly be said to have had harmful consequences for his private or professional life" (para. 75 and 76).

The ECtHR concluded that the applicant's rights under Article 10 had been violated.

CASE OF EGILL EINARSSON v. ICELAND (2018)

The applicant was a well-known writer, blogger and media personality in Iceland. He had been a DJ, singer and radio show host.

A woman reported to the police that the applicant and his girlfriend had raped her and later another woman also reported to the police that the applicant had raped her. The Public Prosecutor dismissed the cases because the evidence was not sufficient or likely to lead to a conviction.

A magazine that was accompanying a leading newspaper in Iceland, published an interview with the applicant. A picture of the applicant was published on the front page and in the interview the applicant discussed the rape accusations.

On the same day a person that the case calls X published an altered version of the applicant's front-page picture with the caption "Fuck you rapist bastard" on his Instagram account. X had altered the picture by drawing a cross on the applicant's forehead and writing "loser" across his face.

Apparently, X had believed that only his friends and acquaintances, who were his followers on Instagram, had access to the pictures he published. However, his pictures were also accessible to other Instagram users.

Another newspaper published an online article about X's post, along with the altered picture and an interview with the applicant.

The applicant's lawyer sent a letter to X requesting him to withdraw his statement and that he should apologise in the media and pay the applicant punitive damages. By email the same day, X's lawyer submitted that X had not distributed the picture online and that it had been posted for a closed group of friends on Instagram and others had distributed it. The email stated that X was sorry and that the picture had been shared without his consent or knowledge.

The applicant lodged defamation proceedings against X and asked for him to be sentenced for altering the picture and for publishing it on Instagram with the caption "Fuck you rapist bastard". The applicant further requested that the statement "Fuck you rapist bastard" should be declared null and void and that X should be ordered to pay him non-pecuniary damages, and that X should cover the costs of publishing the judgment in the media. The domestic courts dismissed the applicant's claims.

The applicant therefore claimed that his rights under Article 8 had been violated.

The ECtHR found that the issue concerned if the domestic courts had struck a fair balance between the applicant's rights under Article 8 and X's rights under Article 10.

According to the ECtHR: "In light of the above, and in particular the objective and factual nature of the term "rapist", when viewed on its face, the Court finds that the contextual assessment made by the Supreme Court did not adequately take account of relevant and sufficient elements so as to justify the conclusion that the statement constituted a value judgment (…) Article 8 of the Convention must be interpreted to mean that persons, even disputed public persons that have instigated a heated debate due to their behaviour and public comments, do not have to tolerate being publicly accused of violent criminal acts without such statements being supported by facts" (para. 52).

The ECtHR concluded that Article 8 had been violated.

CASE OF FUCHSMANN v. GERMANY (2018)

The applicant was a German national. He was an internationally active entrepreneur in the media sector and chief executive officer of a media company. He held the position of Vice-President of the World Jewish Congress and President of the Jewish Confederation of Ukraine and was publicly honoured for his efforts to improve American-Russian relations.

The newspaper The New York Times published an article about an investigation into corruption. A slightly changed version was also published on the newspaper's website.

The article mentioned the applicant by name and said that the applicant had ties to Russian organised crime. It said that this information was found in reports by the FBI and European law-enforcement agencies.

The applicant sought injunctions against certain parts of the article. The domestic courts concluded that The New York Times had complied with the required journalistic duty of care and that the reporting had relied on sources and background, which the journalist could reasonably consider reliable. The interests of the public did outweigh the concerns of protecting the applicant's private life and reputation.

The applicant argued that the domestic courts had failed to protect his rights under Article 8. He submitted that they had failed to consider the effects of an online publication that continued being accessible on the Internet.

The ECtHR said that "the Court of Appeal, in balancing the right to respect for private life with the right to freedom of expression, took into account and applied the criteria set out in the Court's case-law. The Court reiterates that, where a balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its own view for that of the domestic courts. Such strong reasons are lacking in the present case. The Court of Appeal struck a reasonable balance between the competing rights and acted within the margin of appreciation afforded to it" (para. 54).

The ECtHR concluded that Article 8 had not been violated.

CASE OF MARIYA ALEKHINA AND OTHERS v. RUSSIA (2018)

The applicants were members of the Pussy Riot, in the case called a Russian feminist punk band.

The group carried out a series of impromptu performances of their songs Release the Cobblestones, Kropotkin Vodka, Death to Prison, Freedom to Protest and Putin Wet Himself in various public areas in Moscow.

Their actions were a response to the political process in Russia and the participation of Vladimir Putin in the presidential election that was due in early March 2012. The applicants argued that their songs contained "clear and strongly worded political messages critical of the government and expressing support for feminism, the rights of minorities and the ongoing political protests".

The band members attempted to perform Punk Prayer – Virgin Mary, Drive Putin Away from the altar of Moscow's Christ the Saviour Cathedral. The band had invited journalists and media to the performance.

Cathedral guards quickly forced the band out and the performance only lasted a minute. A video with footage of the band's performances of the song at the Epiphany Cathedral in Yelokhovo and at Christ the Saviour Cathedral was uploaded to YouTube.

The group had a website which offered photos of the band's performances, the full lyrics of their songs and a video of their performance of Punk Prayer – Virgin Mary, Drive Putin Away at the Epiphany Cathedral in Yelokhovo and at Christ the Saviour Cathedral. The content was also republished by other websites.

The Prosecutor applied to the domestic courts for a declaration that the websites of Pussy Riot were extremist. The prosecutor also sought to limit access to the material by installing a filter to block the IP addresses of websites where the recordings had been published.

The domestic courts ruled that the applicants' video material on the Internet was extremist, placed a ban on the Internet access to the material, and sentenced the applicants to one year and eleven months in prison.

The applicants complained that the domestic courts had violated their rights to freedom of expression, as protected by Article 10.

The ECtHR noted that the applicants were denied participation in the proceedings and the domestic courts had not weighted up the arguments that the applicants had wished to put forward. The ECtHR held that this was incompatible with Article 10. “The foregoing considerations are sufficient to enable the Court to conclude that declaring that the applicants’ video materials available on the Internet were extremist and placing a ban on access to them did not meet a “pressing social need” and was disproportionate to the legitimate aim invoked” (para. 268).

The ECtHR concluded that Article 10 had been violated.

CASE OF MAKRADULI v. "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" (2018)

The applicant was vice-president of the SDSM opposition party and a member of parliament.

The applicant held a press conference that was broadcast by the news programme of the most popular TV channel. The applicant's statement included: “In the year and a half he has formally been head of the Security and Counter Intelligence Agency and practically the head of the police, has Mr S.M., abused his powers in order to influence the Macedonian Stock Exchange and have timely information to enable him to obtain a profit? Is there any truth in the rumours,

which have become stronger, that police wiretapping equipment is being misused for trading on the Stock Exchange?"

The applicant's political party had asked the head of the Public Revenue Office whether Mr S.M. had paid taxes on his property, which had been assessed as being worth several million euros. The transcript of the broadcast was published on the TV channel's website. More articles were published over the following days on the website. The articles stated that the applicant's political party had asked the relevant institutions to investigate the origin of Mr S.M.'s assets.

Mr S.M. brought proceedings accusing the applicant for libel, which was punishable under the Criminal Code. He claimed that the applicant's statements had contained defamatory allegations.

The domestic courts decided against the applicant and found the statements defamatory.

The applicant submitted that his conviction for defamation violated his rights under Article 10.

The ECtHR found that "in view of the circumstances of the case, both of the applicant's statements were, in the Court's opinion, fair comment on issues of legitimate public interest (…) Transparency and prevention of abuse of power by public servants are matters of public concern in a democratic society which aim is to strengthen public integrity and maintain public confidence in public institutions" and the ECtHR expressed worry that "the applicant's criminal conviction (…) could be seen to have a chilling effect on the political debate on matters of importance, which is essential for the proper functioning of democracy" (para. 81-83).

The ECtHR concluded that Article 10 had been violated.

CASE OF MAGYAR JETI ZRT v. HUNGARY (2019)

The applicant was a company that operated a popular online news portal, which averaged 250,000 unique users per day and published 75 articles per day on a wide range of topics, including politics, technology, sports and popular culture.

A group of intoxicated football supporters stopped at an elementary school while travelling by bus to a football match. The students at the school were predominantly Roma. The supporters shouted racist remarks and made threats against the students who were outside in the playground. The supporters also waved flags and threw beer bottles.

The applicant published an article on the incident on the online news portal. The title of the article was “Football supporters heading to Romania stopped to threaten Gypsy pupils”. The article contained a hyperlink to a YouTube video where the president of the local Gypsy municipality talked about the incident.

The words “uploaded to YouTube” indicated that they served as an achor text to a hyperlink to the YouTube video. In the YouTube video, the president claimed that the football supporters had connections to the political party Jobbik. The article did not repeat any of the statements from the YouTube video. The article did also not imply that any of the statements in the video were true.

Jobbik brought defamation proceedings against the president, the applicant and other media outlets which provided links to the video. Jobbik argued that the applicant had infringed its rights to reputation by publishing a hyperlink to the YouTube video.

The domestic courts found that the president's statements falsely conveyed the impression that Jobbik had been involved in the incident and that the applicant was objectively liable for disseminating defamatory statements and had infringed Jobbik’s rights to reputation. The domestic courts found that the posting of such a hyperlink automatically qualified as the publication of the defamatory statement and entailed objective liability.

The applicant was ordered to publish excerpts of the judgment on the online news portal and to remove the hyperlink to the YouTube video from the online article.

The applicant made a constitutional complaint, but the Constitutional Court dismissed the complaint and emphasised that a hyperlink to content qualified as dissemination of facts and was unlawful even if the disseminator had not identified itself with the statement.

The applicant complained that the rulings – which established objective liability for the content it had referred to via a hyperlink – violated Article 10.

The ECtHR said: "Indeed, the courts held that the hyperlinking amounted to dissemination of information and imposed objective liability – a course of action that effectively precluded any balancing between the competing rights, that is to say, the right to reputation of the political party and the right to freedom of expression of the applicant company (…) In the Court's view, such objective liability may have foreseeable negative consequences on the flow of information on the Internet, impelling article authors and publishers to refrain altogether from hyperlinking to material over whose changeable content they have no control. This may have, directly or indirectly, a chilling effect on freedom of expression on the Internet" (para. 83).

The ECtHR concluded that Article 10 had been violated.

CASE OF HØINESS v. NORWAY (2019)

The applicant was a well-known lawyer and had been a talk show host and an active participant in public debate.

Mr Hegnar owned the weekly and daily business newspapers Kapital and Finansavisen and the Internet portal Hegnar Online.

All three publications published articles on the applicant's relationship with a wealthy, elderly widow from whom she would inherit. The publications contained suggestions that the applicant had exploited the widow emotionally or financially. After the widow passed away, her relatives instituted proceedings against the applicant, challenging the validity of her will. The inheritance case, which the applicant won, was covered extensively in the media owned by Mr Hegnar.

The Hegnar Online website featured a forum where readers could start debates and submit comments. All content was user generated.

It was possible for users to comment anonymously and there was no requirement to register. More than 200,000 comments were posted every month and the debate forum was among the biggest of its kind in Norway.

A forum thread was started under the heading "Mona Høiness – the case is growing, according to Kapital". In one of the comments, the poster claimed to "know someone who knows someone who shagged her". Another comment said "If I were to s--- her, it would have to be blindfolded. The woman is dirt-ugly – looks like a wh---". A third comment asked "is she still shagging trønderbjørn?". The comments were made by anonymous users.

Hegnar's moderators detected and deleted one of the comments. The editorial staff was notified of the other two comments by email and responded 13 minutes later that the comments had been removed.

The domestic courts held that Hegnar Online had done enough to remove the three comments and should therefore not be held liable.

The applicant claimed that her rights under Article 8 had been violated.
Although Hegnar Online had established a system with a "warning button" and some members of staff had been tasked with monitoring content on the forum this had, according to the applicant, clearly been insufficient.

The ECtHR found: “In the instant case, “comment 1” and “comment 2” had not been picked up by the moderators, but (…) thirteen minutes after having notified them, the applicant’s counsel received an email stating that the comments had been deleted (…) “Comment 3” had been deleted on the moderator’s own initiative (…) In view of the above, the Court finds that the domestic courts acted within their margin of appreciation when seeking to establish a balance between the applicant’s rights under Article 8 and the news portal and host of the debate forums’ opposing right to freedom of expression under Article 10” (para. 72-75).

The ECtHR concluded that Article 8 had not been violated.

CASE OF MEHMET REŞİT ARSLAN AND ORHAN BİNGÖL v. TURKEY (2019)

The applicants were prisoners. They were convicted of belonging to an illegal armed organisation and were serving a life prison sentence.

They submitted requests that should enable them to prepare for university admission examination or to continue their university studies.

They were refused the rights of using a computer and Internet aimed at training and education, which were vital for the continuation of their education.

They relied on Article 10 and the rights of prisoners to Internet access as determined in the case law of the ECtHR.

The Government provided details on the reasons for the rejection of the applicants’ requests. The Government noted that the applicants should be denied access to the Internet to avoid that they could carry out terrorist activities.

According to the ECtHR "during the decision-making process which culminated in the impugned decisions, the judges failed in their obligation to conduct any balancing exercise of the applicants' interests and the requirements of the maintenance of public order" (para. 72).

The ECtHR concluded that Article 2 of Protocol No. 1 had been violated. The ECtHR took the case-law relating to Article 10 into account.

CASE OF KABLIS v. RUSSIA (2019)

The applicant was a Russian national and notified the town administration of his intention to hold a "picket" behind the Lenin monument, which fifty people were expected to attend.

The aim of the event was to discuss the arrest of the Komi Republic government and to let people express their thoughts about the arrest. The Federal Security Service had arrested and started investigations against the Governor of the Komi Republic and several high-ranking officials in the Komi Republic government. On the same day the applicant published a copy of his notification on his Internet blog.

Any opinions – from approval to criticism of the arrest – were welcome. He hoped that the "picket" would be approved. The applicant also published another entry on his Internet blog, informing his readers that the town administration had refused to approve the venue behind the Lenin monument and a copy of its decision. He said that a "people's assembly" would be held instead at the same location and time.

He explained that a "people's assembly" was an assembly of people who gathered to discuss without there being any organisers. Unlike a "picket", it was not possible to use placards during a "people's assembly". The applicant also published a post on VKontakte, calling for participation in the public discussion.

The applicant's VKontakte account was blocked
by the VKontakte administrator following an order from the Russian authorities. The deputy Prosecutor General found that the VKontakte post contained information about a "picket" and the town administration had refused to allow the "picket" because it was prohibited to hold public events at that location. The post therefore amounted to campaigning for participation in an unlawful public event. The
applicant's VKontakte account therefore had to be blocked.

The applicant then published an entry on his blog. He asked what would happen if many people came to the "people's assembly" later that day. He claimed that a high participation rate would show that there were many people who were not afraid to express their opinion. On the same day the administrator of the Internet site that hosted the applicant's blog informed him by email that access to the three blog entries had been restricted on the order of the Prosecutor General's office because they had been found to contain calls to participate in public events held in breach of the established procedure.

About fifty people gathered near the Lenin monument. The "people's assembly" went peacefully and without any disturbance.

The applicant challenged the decisions to block his VKontakte account and three entries on his Internet blog. The domestic courts dismissed his claim and held that access to the information was restricted because the applicant sought to breach the rules on participation in public events.

The applicant argued that his rights under Article 10 had been violated.

The ECtHR found: "It follows that the breach of the procedure for the conduct of public events in the present case was minor and did not create any real risk of public disorder or crime. Nor did it have a potential to lead to harmful consequences for public safety or the rights of others. In such circumstances the Court is not convinced that there was "a pressing social need" to apply prior restraint measures and to block access to the impugned Internet posts calling for participation in that event and thereby expressing an opinion on an important matter of public interest" (para. 105).

The ECtHR concluded that Article 10 had been violated.

CASE OF NAVALNYY v. RUSSIA (No. 2) (2019)

The applicant, Mr Navalnyy, was a political activist, opposition leader and a popular Internet blogger. He was placed under house arrest and was restricted from using the Internet.

The applicant tried to challenge the extension of his house arrest, but the domestic courts refused to examine the applicant's complaint.

The applicant complained that his ability to impart and receive information had been restricted and that his rights under Article 10 had been violated.

The ECtHR held: “The Court has found (…) that the formal reason for the applicant’s house arrest was a risk of his absconding. The domestic courts and the Government referred also to the likelihood of his influencing witnesses and obstructing the course of justice, which could correspond to the same aim. However, as the Court has already established, those risks were entirely unsubstantiated and it does not appear that they played any role in the decision on the preventive measure (…) Moreover, there was no link between the restrictions on the applicant’s freedom of expression and the indicated risks” (para. 79 and 80).

The ECtHR concluded that Article 10 had been violated.

CASE OF ELVIRA DMITRIYEVA v. RUSSIA (2019)

The applicant was a Russian national, Elvira Dmitriyeva. She was campaigning for the politicial activist, Aleksey Navalnyy.

Mr Navalnyy published a documentary on YouTube entitled "Don't Call Him Dimon" denouncing Prime Minister Medvedev for alleged corruption. Mr Navalnyy called on his supporters to protest.

Mr Navalnyy's followers notified the local authorities of their intention to hold public assemblies against corruption. In response to the call by Mr Navalnyy, the applicant notified the town administration of her intention to hold a meeting, which 150 people were expected to attend.

The aim of the event was to protest against corruption and to demand Medvedev's resignation.

The town administration refused to approve the meeting. The ground for the refusal was that the locations that the applicant had chosen would be occupied by other public events.

The applicant published a message on VKontakte, criticising the town administration for its decision not to allow the meeting. The applicant also posted on VKontakte calling for participation in a meeting. 400 people decided to participate in the unauthorised meeting.

The domestic courts imposed a fine on the applicant because she had published a message on VKontakte and campaigned for participation in an unauthorised event.

The applicant complained that her conviction for calling on the public to participate in the unauthorised event had breached her rights to freedom of expression. She relied on Article 10.

According to the ECtHR: “It follows that the fact that the applicant breached a statutory prohibition by “campaigning” for participation in a public event that had not been duly approved is not sufficient in itself to justify an interference with her freedom of expression. The Court must examine whether it was necessary in a democratic society to sentence her to a fine, having regard to the facts and circumstances of the case. The Court notes in this connection that the message published by the applicant criticised the authorities for not allowing a public event demanding the resignation of the Prime Minister, Mr Medvedev, suspected of large-scale corruption. The issues raised in that Internet post were a matter of public concern and the applicant’s comments therein contributed to an on-going political debate. The Court reiterates in this connection that under its case-law, expression on matters of public interest is entitled to strong protection” (para. 84 and 85).

The ECtHR concluded that Article 10 had been violated.

CASE OF SAVVA TERENTYEV v. RUSSIA (2019)

The applicant lived in the Komi Republic of Russia and had a blog hosted by livejournal.com, a popular blog platform.

The police searched the office of a newspaper and seized the hard disks.

Later that day, an NGO called the Memorial Human Rights Commission, issued a press release which linked the search to the campaign for election of members to the regional legislature.

The press release mentioned that the newspaper had published a large amount of material in the context of the election campaign and that it stood in opposition to the authorities of the Komi Republic.

On the same day, the President of the NGO published the press release on his blog at livejournal.com.

Mr T. left a comment under the press release. It read as follows: “The police, once again, confirm their reputation as ‘the regime’s faithful dogs’. Unfortunately, police officers still have the mentality of a repressive hard stick in the hands of those who have the power. It feels like they are an instrument of punishment of the recalcitrant rather than being a service to society”.

Mr B.S. who was a journalist, blogger and the applicant’s acquaintance, made a brief post on his blog at livejournal.com about the search. The post contained a hyperlink to the press release published on the President's blog.

The applicant was a subscriber to Mr B.S.’s blog. He read the post and then accessed the President's blog using the hyperlink.

The applicant read the press release and the comments, including the one left by Mr T. He then returned to Mr B.S.’s blog and posted a comment which was entitled “I hate the cops, for fuck’s sake” and the comment included: “I disagree with the idea that ‘police officers still have the mentality of a repressive hard stick in the hands of those who have the power’. Firstly, they are not police officers but cops; secondly, their mentality is incurable. A pig always remains a pig. Who becomes a cop? Only lowbrows and hoodlums – the dumbest and least educated representatives of the animal world. It would be great if in the centre of every Russian city, on the main square ... there was an oven, like at Auschwitz, in which ceremonially every day, and better yet, twice a day (say, at noon and midnight) infidel cops would be burnt. The people would be burning them. This would be the first step to cleansing society of this cop-hoodlum filth.”

The applicant received a one year suspended sentence due to his comments that the domestic courts found were aimed at inciting hatred against police officers.

The applicant argued that his criminal conviction for his comments on the Internet violated his rights under Article 10.

The ECtHR said that "although the wording of the impugned statements was, indeed, offensive, insulting and virulent (…) they cannot be seen as stirring up base emotions or embedded prejudices in an attempt to incite hatred or violence against the Russian police officers (…) it was rather the applicant's emotional reaction to what he saw as an instance of an abusive conduct of the police personnel. The Court furthermore discerns no other elements, either in the domestic courts' decisions or in the Government's submission, which would enable it to conclude that the applicant's comment had the potential to provoke any violence with regard to the Russian police officers, and thus posed a clear and imminent danger which required the applicant's criminal prosecution and conviction" (para. 84).

The ECtHR concluded that Article 10 had been violated.

CASE OF ANNEN v. GERMANY (No. 6) (2019)

The applicant was a campaigner against abortion and operated an anti-abortion website.

The applicant issued a press release for his initiative "Never Again!". The press release was published on the Internet. It stated: "Prof. Dr B uses embryos – people – for research purposes at the University of Bonn that were murdered in Israel and then sold to Germany for significant sums of money. During Nazi times, German scientists performed research experiments on Jews and then murdered them. Nowadays, the unborn children of people who follow the religion of Moses – the Jews – are murdered and sold to the 'Christian' country of Germany for research purposes, all with the blessing of both Israel and Germany!".

Criminal proceedings were brought against the applicant and the domestic courts convicted the applicant of insult and sentenced him to a penalty of thirty daily fines.

The applicant argued that his rights under Article 10 had been violated.

The ECtHR said that “the Court observes that the sanction was criminal in nature, which is (…) one of the most serious forms of interference with the right to freedom of expression (…) In that regard, it notes that the applicant was sentenced to a penalty of 30 daily fines of EUR 15 each and thereby to a sentence at the lower end of the possible criminal sanctions for insult. Having regard to the seriousness of the violations of Prof. Dr B.’s personality rights and the nature of the personalized attacks, when seen in the historical context (…) the Court finds that the penalty appears moderate and did not fall outside of the domestic courts’ margin of appreciation” (para. 32).

The ECtHR concluded that Article 10 had not been violated.

CASE OF OOO REGNUM v. RUSSIA (2020)

The applicant was an electronic news media.

The applicant published an article on their website. The article concerned mercury poisoning following consumption of a juice drink. The article said that a woman had contacted the emergency services of a local hospital after she had found mercury globules in the carton of an apple juice drink bought in a local shop and that officers had visited the scene of the incident. It also said that a panel of experts had analysed the seized cartons.

The applicant also published more news items about the mercury poisoning and the juice drink. For example, which said that a criminal case regarding mercury poisoning had been opened and that state agencies had continued searching for and seizing cartons of the drink.

Drinks marketed under the brand in question were produced by at least two legal entities.

One of the legal entities brought a defamation claim against the applicant before a commercial court. They sought a retraction of the news items, their removal from the website, and compensation for non-pecuniary damage.

The commercial courts found against the applicant and ordered the applicant to pay the claimant damages. Moreover, the domestic courts declared the statements in the news items untruthful and tarnishing of the claimant's business reputation. The applicant was ordered to publish a retraction, remove the news items from the website, and pay the claimant damages.

The applicant complained of a violation of the rights under Article 10.

The ECtHR analysed a number of criteria, including the matter of public interest, the content, form and consequences of the publications, the sources of information and the penalty that had been imposed. The ECtHR held: "Accordingly, the Court considers that the information reported in the three news items which the Circuit Court found defamatory amounts to statements of fact, the existence of which at the time of reporting had been demonstrated. Mindful of the fact that, as the issues in the present case concerned factual statements, it is of great importance that the duties and responsibilities of the media were respected (…) and in view of the manner in which the information related in the three news items was obtained, the Court is satisfied that, when publishing on the website, the applicant company acted in discharge of their duty as purveyors of accurate and reliable information and in full compliance with the tenets of responsible journalism" (para. 76).

The ECtHR concluded that Article 10 had been violated.

CASE OF CIMPERŠEK v. SLOVENIA (2020)

The applicant had a master's degree in construction and applied for the title of "court expert on the assessment of the effects of natural and other disasters". The Minister of Justice invited the applicant to take a test and he was examined by a commission composed of experts in the field.

The Minister of Justice issued a certificate confirming that the applicant had successfully passed the examination.

The applicant was therefore invited to take the oath. However, the oath ceremony was postponed. The applicant sent an email to the Ministry in which he voiced his frustration because the oath ceremony was postponed.

The applicant also sent an email to other candidates who were waiting to take the oath and suggested that all candidates should complain. The Ministry learned about the email that the applicant had sent to other candidates and the Ministry learned about an online blog that the applicant wrote. The applicant wrote an online blog called "Politics, the kitchen and chicks".

The Ministry informed the applicant that based on the content of his blog, the complaint and his emails, the Minister had doubts as to whether the applicant had the required personal qualities. His application for the title of court expert was dismissed.

The Minister noted, inter alia, "[the applicant] not only writes critical social commentary columns, but also writes offensively about State bodies, visible representatives of political and social life, and certain other persons".

The applicant lodged a claim with the domestic courts, disputing the Minister's decision. The domestic courts did, however, conclude that the applicant's rights had not been violated.

The applicant complained that the dismissal, on account of the views he had expressed in his emails or online blog, had violated Article 10.

The ECtHR found that "the Minister based his decision on the dismissal of the applicant's application for the title of court expert on the applicant's emails and blog, both of which the Minister considered to be offensive (…) In this regard, the Court observes that the Minister did not rely on any particular blog post or email passage, nor did he in any other way specify the language used by the applicant in the blog and emails which he considered to be offensive. The absence of such reasoning in the Minister's decision is particularly noteworthy, given that only days prior to that decision the Minister had considered that there was no obstacle to the applicant's appointment as a court expert" (para. 66).

The ECtHR concluded that Article 10 had been violated.

CASE OF VLADIMIR KHARITONOV v. RUSSIA (2020)

The applicant was the executive director of the Association of Electronic Publishers, a non-commercial partnership, and co-founder of the NGO called Association of Internet Users.

He was the owner and administrator of a website which featured a compilation of news, articles and reviews about electronic publishing.

The website was hosted by DreamHost, a provider of a shared web-hosting service based in the United States. The service hosted multiple websites which had the same IP address but different domain names.

The applicant's website had a unique domain name – www.digital-books.ru – but shared IP address with many other websites hosted on the same server.

The applicant learned from users of the website that access to his website was blocked by reference to "a decision by the competent Russian authority". He checked the register of websites black-listed by the Russian telecoms regulator and discovered that the IP address of his website had been put on the blocking list pursuant to a decision of the Federal Drug Control Service.

The decision was intended to block access to another website – a collection of cannabis themed folk stories – which was also hosted by DreamHost and had the same IP address as the applicant's website.

He was unable to share the latest developments and news about electronic publishing, while visitors to his website were prevented from accessing the entire website.

The applicant complained to the domestic courts that the decision to block the entire IP address had the effect of blocking access to his website which did not contain any illegal information. His complaint was rejected by the courts, holding that the telecoms regulator had acted within its competence.

The applicant claimed that his rights under Article 10 had been violated.

The ECtHR found: "Lastly, as regards the proceedings which the applicant instituted to challenge the incidental effects of the blocking order, there is no indication that the judges considering his complaint sought to weigh up the various interests at stake, in particular by assessing the need to block access to all websites sharing the same IP address" (para. 45).

The ECtHR concluded that Article 10 had been violated, and it also pointed out that millions of websites were blocked in Russia for the sole reason that they shared IP address with a website that featured illegal content.

CASE OF BULGAKOV v. RUSSIA (2020)

The applicant was the owner and administrator of the website Worldview of the Russian Civilization (www.razumei.ru).

He discovered that the local Internet service provider had blocked access to his website. The prosecutor had brought a public-interest claim against the Internet service provider and claimed that the applicant had been able to make an e-book available that was categorised as extremist content. The e-book was accessible in PDF format on the applicant's website.

When the applicant realised this, the applicant deleted the offending e-book and brought proceedings against the Internet service provider, seeking to have the access to his website restored.

The domestic courts reached various decisions. One granted the claim, noting that the extremist material had been removed. But that decision was overturned on appeal. The supreme court refused the applicant leave to appeal.

The applicant complained that the domestic courts upheld a measure that blocked access to his entire website, even after the prohibited content had been removed. He relied on Article 10.

The ECtHR found that "the wholesale blocking of access to an entire website is an extreme measure which has been compared to banning a newspaper or television station (…) Such a measure deliberately disregards the distinction between the legal and illegal information the website may contain, and renders inaccessible large amounts of content which has not been designated as illegal. Blocking access to a website's IP address has the practical effect of extending the scope of the blocking order far beyond the illegal content which had originally been targeted (…) Such an extension did not have a legal basis in the circumstances of the present case" (para. 34).

The ECtHR concluded that Article 10 had been violated.

CASE OF PENDOV v. BULGARIA (2020)

The applicant operated a website dedicated to Japanese anime culture.

A publishing house complained to the police that a book which it had published had been made available on the Internet in breach of copyright.

The investigation showed that the site which had uploaded the book was partially hosted on a server owned by the applicant. The officers seized and removed the applicant's server.

The server hosted a number of websites, including his own website that was dedicated to Japanese anime culture.

The applicant submitted several requests for the return of his server. He pointed out that the information that was necessary for the criminal investigation could be copied and that the server could be returned to him.

His website had existed for more than four years, but it stopped functioning because of the seizure. The website was only restored to full functionality after the server was returned to the applicant. The website did however become "infrequently visited" after it had been unavailable.

The applicant complained of a violation of his rights under Article 10.

The ECtHR said: "The Court points out once again that the retention of the applicant's server in criminal proceedings proved to be unnecessary for the purposes of the investigation and that for some period of time the prosecution authorities made no effort

to remedy the effects of their actions on the applicant's freedom of expression, despite having been informed of those effects on many occasions. The above means that the interference with the applicant's right to freedom of expression as defined above was not a measure proportionate to the legitimate aims served" (para. 66 and 67).

The ECtHR concluded that Article 10 had been violated.

CASE OF MAGYAR KÉTFARKÚ KUTYA PÁRT v. HUNGARY (2020)

The applicant was the political party MKKP. Its political stance was, for instance, expressed through satire and on its website.

It was announced that Hungary would hold a referendum on whether to accept the European Union's proposed mandatory quotas for relocating migrants. The following question was put to a referendum: "Do you want the European Union to be entitled to order the mandatory settlement of non-Hungarian citizens in Hungary without Parliament's consent?"

The applicant urged its supporters to participate in the referendum but to cast invalid votes. The applicant's reason for advocating invalid votes was that the referendum constituted an abuse of a democratic legal institution and that, while boycotting was a passive rejection of the referendum, an invalid vote sent a clear message denouncing its lack of legitimacy in an active manner.

The call on voters to cast invalid votes was posted on the applicant's website. The applicant made a mobile application called "Cast an invalid ballot" which enabled users to upload and share with other users, anonymously, photos of their ballots or a photo of the activity they were engaged in instead of voting.

The applicant was fined because the calling on voters to upload and publish photos of ballot papers and encouraging them to cast invalid votes constituted unlawful campaigning.

The applicant complained of a violation of Article 10. The applicant stressed that its conduct had contributed to the democratic process, since social media had become an important tool of public discourse.

The ECtHR found that "in so far as the Government relied on the NEC Guidelines as clarification to the effect that the taking of ballot photographs was in breach of the principle in question, the Court notes that those Guidelines expressed the NEC's view on the interpretation of the basic principles of electoral procedure. They were issued for the electoral bodies and were not legally binding but served exclusively as guidance (…) having regard to the particular importance of the foreseeability of the law when it comes to restricting the freedom of expression of a political party in the context of an election or a referendum (…) the Court takes the view that the considerable uncertainty about the potential effects of the impugned legal provisions applied by the domestic authorities exceeded what is acceptable under Article 10 § 2 of the Convention" (para. 114-116).

The ECtHR concluded that Article 10 had been violated.

CASE OF BEIZARAS AND LEVICKAS v. LITHUANIA (2020)

The applicants were a homosexual couple. The first applicant posted a photo on his Facebook showing a kiss between him and the second applicant.

The picture was accessible not only to his Facebook friends, but also to the general public. The picture received more than 2,400 likes and more than 800 comments.

The majority of the comments aimed at inciting hatred and violence against LGBT people and some of the comments threatened the applicants personally. The comments included: “I’m going to throw up – they should be castrated or burnt; cure yourselves, jackasses – just saying” and “If you were born perverts and have this disorder, then go and hide in basements and do whatever you like there, faggots. But you will not ruin our beautiful society, which was brought up by my mum and dad, where men kiss women and do not prick their skewers together. I genuinely hope that while you are walking down the street, one of you will get your head smashed in and your brain shaken up”.

The applicants asked the LGL Association, which was an NGO for LGBT rights, to notify the Prosecutor General’s Office of the hateful comments. The LGL Association notified the prosecutor of 31 comments.

The prosecutor dismissed the LGL Association's claim and the domestic courts later dismissed the LGL Association's appeal. The courts shared the prosecutor’s view that the authors of the comments “had chosen improper words” to express their disapproval of homosexual people. Even so, the “mere use of obscenities” was not enough to incur criminal liability.

The domestic courts also pointed out that the Facebook page was visible and accessible not only to his friends, but also to individuals who were completely unknown to him. He had posted the photo publicly and had not restricted it to his friends or “like-minded people”, even though the Facebook social network allowed such a possibility.

According to the domestic courts, a person who posted a picture of two men kissing should had foreseen that such “eccentric behaviour really did not contribute to the cohesion of those within society who had different views or to the promotion of tolerance”.

The domestic courts held that an owner of a profile on which such an image was posted had to take into account that his freedom of expression was inseparable from the obligation to respect the views and traditions of others.

The applicants alleged that they had been discriminated against on the grounds of sexual orientation, in breach of Article 14, taken in conjunction with Article 8.

The ECtHR said that "the hateful comments, including undisguised calls for violence by private individuals directed against the applicants and the homosexual community in general, were prompted by a bigoted attitude towards that community and, secondly, that the very same discriminatory state of mind was at the core of the failure on the part of the relevant public authorities to discharge their positive obligation to investigate in an effective manner whether the comments regarding the applicants' sexual orientation constituted incitement to hatred and violence; by downplaying the seriousness of the comments, the authorities at the very least tolerated them" (para. 129).

The ECtHR concluded that Article 14, taken in conjunction with Article 8, had been violated.

CASE OF BREYER v. GERMANY (2020)

The applicants were two German nationals. They were involved in a civil-liberties union which campaigned against the general retention of telecommunications data, and they organised protests and published articles that criticised State surveillance. The first applicant was a member of the Parliament of Schleswig-Holstein.

A law called the Telecommunications Act required telecommunications providers to store personal data of all their customers of prepaid mobile telephone SIM cards and make them available to authorities upon request. Until these amendments, telecommunications providers had been entitled solely to collect and store data that was necessary for the contractual relationship.

Both applicants used prepaid mobile phone SIM cards and had to register certain personal details with their respective providers when activating those SIM cards.

The applicants complained that personal data had been stored by their respective telecommunications providers and interfered with their rights to privacy. The domestic courts held that the provision was in accordance with the constitution.

The applicants relied on their rights in Article 8. They found that the interference was serious because it constituted mass pre-emptive storage of personal data, and the vast majority of affected people did not present any danger or risk to public safety or national security.

According to the ECtHR: “Lastly, the Court acknowledges that – as there is no consensus among the member States concerning collection and storage of limited subscriber information – member States have a certain margin of appreciation in choosing the means for achieving the legitimate aims of protecting national security and fighting crime, which Germany did not overstep in the present case” (para. 108).

The ECtHR concluded that Article 8 had not been violated.

CASE OF ENGELS v. RUSSIA (2020)

The applicant was a politician and activist. The applicant was owner and administrator of a website dedicated to information on freedom of expression, online privacy, and copyright.

One page of the website provided a list and a short description of tools and software for bypassing restrictions on private communications and content filters on the Internet, such as virtual private networks (VPN).

The prosecutor submitted that the tools that were mentioned on the applicant's website enabled users to access extremist material on other, unrelated websites.

The domestic courts declared the content of the page illegal and ordered the telecoms regulator to block access to the applicant's website. The basis for the decision was that filter-bypassing technologies could enable users to access extremist content on other websites.

The website was not actually blocked, because the applicant removed the page. But the applicant complained that the decision, which forced him to remove information from his website, to avoid that his website would be blocked, violated Article 10.

The ECtHR found that the domestic courts had applied a vague and overly broad legal provision that did not offer website owners any indication in respect of the categories of content that were likely to be banned. The ECtHR was not satisfied with “the Information Act which did not satisfy the foreseeability requirement under the Convention and did not afford the applicant the degree of protection from abuse to which he was entitled by the rule of law in a democratic society” (para. 34).

The ECtHR concluded that Article 10 had been violated.

CASE OF OOO FLAVUS AND OTHERS v. RUSSIA (2020)

The applicants were owners of online media outlets who published articles that were critical of the Russian Government.

A Russian law, called the Information Act, was amended to empower the Prosecutor General to identify websites which contained calls for mass disorder, extremist activities, or participation in unauthorised mass gatherings.

A court order was not required, since the Prosecutor General could submit a blocking request directly to the telecoms regulator, which in turn would notify the website’s

webhosting service provider. The provider would then immediately block access to the website and notify its owner.

The Prosecutor General sent a request and access to the applicants' websites was blocked on the grounds that the websites contained material that "calls for extremist activities".

The applicants applied for a judicial review of the blocking measure. They submitted that the blocking of access to their websites, without notice of which material that was considered offending, prevented them from restoring access to their websites.

The domestic courts decided that the blocking of the websites was in accordance with the law.

The applicants complained that their rights under Article 10 had been violated.

The ECtHR established that "the interference resulting from the application of the procedure under section 15.3 of the Information Act had excessive and arbitrary effects and that the Russian legislation did not afford the applicants the degree of protection from abuse to which they were entitled by the rule of law in a democratic society" (para. 44).

The ECtHR concluded that Article 10 had been violated.

CASE OF HERBAI v. HUNGARY (2020)

The applicant worked as a human resources management expert at Bank O. His tasks included the analysis and calculation of salaries and staffing management.

The Bank O. initiated a reform of its remuneration policy, in which the applicant was also involved. According to the code of ethics of the bank, the applicant was under an obligation not to publish any information relating to the activities of his employer.

The applicant started a website for human resources knowledge. The website included a presentation of the applicant with his photo, describing him as an expert in human resources management and indicated that he worked in the human resources department of a bank, but did not mention the employer by name.

The applicant's employment was terminated for breach of his employer's confidentiality standards.

The domestic courts dismissed his action, finding that the website and the content of the articles constituted a breach of the duty of mutual trust.

The domestic courts found that the applicant had revealed information of a professional nature acquired by virtue of his employment at Bank O., in breach of his employer's code of ethics. They found that his rights to freedom of expression had not been violated.

The applicant complained of a violation of his rights under Article 10.

According to the ECtHR, "the enjoyment of the right to freedom of expression should be secured even in the relations between employer and employee (…) In the present case, the Court cannot discern any meaningful balancing of the interests at issue by the domestic courts (…) In the light of the above considerations, the Court finds that in the present case the domestic authorities have failed to demonstrate convincingly that the rejection of the applicant's challenge against his dismissal was based on a fair balance between the applicant's right to freedom of expression, on the one hand, and his employer's right to protect its legitimate business interests, on the other hand" (para. 50 and 51).

The ECtHR concluded that Article 10 had been violated.

CASE OF STANDARD VERLAGSGESELLSCHAFT MBH v. AUSTRIA (No. 3) (2021)

The applicant owned and published a daily newspaper, Der Standard, in a print and online version. The website included discussion fora that related to the articles.

At the end of each article, registered users were invited to post comments. In the registration process, each user was required to submit his/her full name and email address, but the registered users' information was not shown publicly.

The community guidelines described that the website provided a platform for lively dialogue, but reminded users that they were responsible for their own comments and that the company would disclose user data if required to do so by law.

The applicant published an article on the website. The article concerned K.S. who was a leader of a right-wing political party. A user called "Tango Korrupti2013" posted the comment "Corrupt politician-assholes forget, [but] we don't ELECTION DAY IS PAYDAY!!!!!" and another user called "rrrn" posted the comment "[It was] to be expected that FPOe/K, ...-opponents would get carried away. [That would] not have happened if those parties had been banned for their ongoing Nazi revival."

K.S. asked to learn the identity of "Tango Korrupti2013" and "rrrn". The applicant denied the request and K.S. brought a civil action against the applicant. K.S. found that the two comments constituted defamation and insulting behaviour within the meaning of the Criminal Code, and that the user data was necessary to be able to lodge claims against the users. The applicant maintained that it was not obliged to disclose the user data because the comments at issue were not defamatory, but rather constituted permissible value judgments.

However, the domestic courts ordered the applicant to reveal the identity of the users.

The applicant argued that the decision of the domestic courts violated Article 10.

According to the ECtHR, “it was obvious that the comments at issue were part of a political debate. However, the appeal courts and the Supreme Courts did not base their assessment on any balancing between the interests of the authors of the particular comments and of the applicant company to protect those authors, respectively, on the one side, and the interests of the plaintiffs concerned on the other side (…) The Court finds that in the absence of any balancing of those interests the decisions of the appeal courts and of the Supreme Court were not supported by relevant and sufficient reasons to justify the interference” (para. 94-96).

The ECtHR concluded that Article 10 had been violated.

CASE OF BIANCARDI v. ITALY (2021)

The applicant was the editor-in-chief of an online newspaper.

He published an article concerning a fight which had taken place in a restaurant and mentioned the name of the restaurant and the owners who were also the people who had fought.

The owners sent a formal notice to the applicant and sought that the article would be removed from the Internet. But the applicant did not follow their request.

The owners lodged a claim with the domestic courts against Google Italy and the applicant. The courts noted that the article had been published on 29 March 2008 and had remained easily accessible on the Internet until 23 May 2011, although the applicant had been asked to remove it.

The domestic courts found that the public interest in the information had already been satisfied. The domestic courts concluded that there had been a breach of the owners' rights to reputation and respect for their private life.

The applicant was not held liable for having kept the article on the website, but he should have de-indexed it – so that the article would not continue to appear among the search results on Google when someone typed the name of the restaurant or the owners on Google.

The applicant brought the case before the ECtHR and argued that he could not be given the responsibility for de-indexing the article, since such a possibility was in his view only open to the Internet search engine providers (Google etc.).

The case before the ECtHR concerned de-indexing and the applicant's decision to keep the article easily accessible on the Internet. The ECtHR found that de-indexing could be carried out by websites themselves. The ECtHR held that "the finding by the domestic courts that the applicant had breached V.X.'s right to respect for his reputation by virtue of the continued presence on the Internet of the impugned article and by his failure to de-index it constituted a justifiable restriction of his freedom of expression (…) all the more so as no requirement was imposed on the applicant to permanently remove the article from the Internet" (para. 70).

The ECtHR concluded that there had been no violation of Article 10.

CASE OF VOLODINA v. RUSSIA (No. 2) (2021)

The applicant had a relationship with a person called S. After their separation, S. threatened the applicant and assaulted her on several occasions.

The applicant became aware that her account on the Russian social media VKontakte had been hacked. Her invented name had been replaced with her real name, and her personal details, a photo of her passport and her intimate photos had been uploaded to the account.

Classmates of her son and his teacher had been added as friends. The applicant attempted to log into her account only to discover that the password had been changed.

The applicant complained to the police about the breach of her rights to privacy. The police took a statement from the applicant's brother. He said that he had talked to S. on the phone and that S. had admitted that he had hacked into the applicant's email account and sent obscene messages to her contacts.

New fake profiles appeared in the applicant's name on VKontakte and Instagram. The profiles used her intimate photos and personal details, and she received death threats from S. via social media and Internet messengers.

She asked the police to open a criminal case. The police found it established that S. had created fake profiles on VKontakte in the applicant's name and had published her intimate photos without her consent.

S. filed a motion to discontinue the proceedings because of expiration. The motion was granted, as the offence was considered of lesser gravity and the limitation period of 2 years had expired. The decision to discontinue the proceedings was not communicated to the applicant or her lawyer.

The applicant brought the case before the ECtHR arguing that the State had failed to protect her rights under Article 8.

The ECtHR found that "the Russian authorities bear responsibility for their failure to ensure that the perpetrator of acts of cyberviolence be brought to justice. The impunity which ensued was enough to shed doubt on the ability of the State machinery to produce a sufficiently deterrent effect to protect women from cyberviolence (…) even though the existing framework equipped the authorities with legal tools to prosecute the acts of cyberviolence of which the applicant was a victim, the manner in which they actually handled the matter – notably a reluctance to open a criminal case and a slow pace of the investigation resulting in the perpetrator's impunity – disclosed a failure to discharge their positive obligations under Article 8 of the Convention" (para. 67 and 68).

The ECtHR concluded that Article 8 had been violated.

CASE OF PANIOGLU v. ROMANIA (2021)

The applicant was a judge attached to the Bucharest Court of Appeal. The applicant wrote an article about the President of the Court of Cassation under the heading "Nothing about how a Comrade Prosecutor has become the president of all judges".

The applicant's name was in the byline, which also stated that she was a judge attached to the Bucharest Court of Appeal. The article was printed both in a domestic newspaper and on an Internet news site.

The Judicial Investigation Unit found that the article suggested that the President of the Court of Cassation had behaved inappropriately during communism, and that the article had not provided any evidence for the allegations. A code-of-conduct penalty was imposed on the applicant.

The applicant appealed the decision and argued that the code-of-conduct penalty could have negative effects on her career advancement and had been permanently included in her professional file.

The domestic courts dismissed the appeal as ill-founded. They confirmed that the applicant had not presented any evidence to support her allegations against the President of the Court of Cassation.

The applicant argued that her rights under Article 10 had been violated.

The ECtHR found that "none of the information relied on by the applicant in her submissions (…) appears to support the suggestion that L.D.S. had committed any acts of the nature imputed by the applicant either at the time when she had been working as

prosecutor or after she had become a judge" and "In the light of the foregoing and the particular importance it attaches to the position held by the applicant, the Court considers that the domestic authorities struck a fair balance between the need to protect the authority of the judiciary and the reputation or rights of others, on the one hand, and the need to protect the applicant's right to freedom of expression on the other" (para. 118 and 124).

The ECtHR concluded that Article 10 had not been violated.

CASE OF ŞIK v. TURKEY (No. 2) (2021)

The applicant worked as a journalist and reporter on a domestic daily newspaper, Cumhuriyet.

It was one of the oldest newspapers in Turkey and was known for its critical stance towards the government and for attachment to the principle of secularism.

The applicant was arrested at his home and taken into police custody by the police. He was suspected of disseminating propaganda in favour of organisations considered by the government to be terrorist organisations, including the PKK, through articles and interviews published in the newspaper and items posted on social media.

The public prosecutor questioned him mainly about eleven tweets which he had posted on Twitter and five articles which he had written and published on the Cumhuriyet website and in the newspaper's print edition.

The applicant denied committing any offence. He maintained that his articles and his posts on social media had not contained any propaganda in favour of a terrorist organisation or any call to violence.

The applicant complained of a violation of Article 10 because of his lengthy detention and because his journalistic activities had been considered as evidence that he supported terrorist organisations.

The ECtHR noted that "those articles and posts did not contain any incitement to commit terrorist offences, did not condone the use of violence and did not encourage insurrection against the legitimate authorities. While some of the published material may have reported points of view voiced by members of prohibited organisations, it remained within the bounds of freedom of expression, which requires that the public has the right to be informed of the different ways of viewing a situation of conflict or tension, including the point of view of illegal organisations" (para. 132).

The ECtHR held that Article 10 had been violated.

CASE OF GORYAYNOVA v. UKRAINE (2021)

The applicant worked at the regional prosecutor's office as a senior prosecutor.

The applicant published open letters on a website where she criticized the prosecution authorities and police officers of fraud, corruption, and abuse of power. She was dismissed from her post due to her publications on the Internet.

She submitted that she had decided to publish open letters to the Prosecutor General on the Internet because it had been impossible to raise her point otherwise. No effective mechanism to uncover and suppress corruption activities had existed and her complaints had been left without response.

The domestic courts held that her claims were false and insulting statements. The domestic courts held that the employer was in their good right to dismiss the applicant.

The applicant alleged that her rights under Article 10 had been violated.

The ECtHR noted that "the domestic courts provided no analysis whatsoever of the content and reliability of the allegations made in the applicant's letter (…) the domestic courts failed to analyse the applicant's submissions regarding her repeated attempts to raise her concerns with her hierarchy and verify whether there were any possible alternative means for the applicant to report the wrongdoing she had allegedly witnessed and how this was linked to her motives (…) Lastly, the Court notes that the sanction of dismissal was the heaviest one available (…) However, at no stage of the proceedings did the domestic authorities provide any analysis of the possibility to apply less intrusive sanctions, essentially assuming that the applicant's actions constituting "misconduct discrediting a prosecutor" justified automatic dismissal" (para. 60, 62 and 64).

The ECtHR held that Article 10 had been violated.

CASE OF AKDENİZ AND OTHERS v. TURKEY (2021)

The applicants were Mr Akdeniz, Mr Altıparmak and Ms Güven. Mr Akdeniz and Mr Altıparmak were a professor of law and an assistant professor of law. They did also hold the positions of director of the Center for Human Rights at the university and director of the NGO Cyber-Rights.Org. They published articles and books where the subject was freedom of expression. They were popular users of social media platforms, such as Twitter and Facebook, with thousands of subscribers or followers.

Ms Güven was a well-known journalist in Turkey and a popular user of Twitter with 1.88 million subscribers on her Twitter account and she worked for a private TV channel as a political commentator and newscaster.

An order was issued which prohibited the dissemination and publication of information concerning the parliamentary inquiry into possible corruption committed by four former ministers.

The injunction in question had a general scope and concerned printed and visual material, but also any type of information published on the Internet.

The applicants complained that the injunction violated their rights to freedom of expression as journalists and academics trying to play the role of "public watchdog".

The ECtHR held that the mere fact that Mr Akdeniz and Mr Altıparmak – in their capacity as academics and popular users of social media platforms – suffered indirect effects from the measure in question could not be sufficient to qualify them as "victims" within the meaning of the ECHR. Mr Akdeniz and Mr Altıparmak had not demonstrated how the prohibition affected them directly.

Ms Güven could, on the other hand, as a journalist and political commentator and television news presenter legitimately claim that the measure had infringed her rights to freedom of expression.

The ECtHR held that "the impugned interference lacked a "legal basis" within the meaning of Article 10 and did not enable the applicant to enjoy the sufficient degree of protection required by the rule of law in a democratic society. This conclusion makes it superfluous to consider the other requirements of this provision. Accordingly, there has been a violation of Article 10 of the Convention in respect of the applicant Ms Güven" (para. 97 – Google translation of French version).

The ECtHR concluded that Article 10 had been violated in respect of the applicant Ms Güven.

CASE OF İBRAHİM TOKMAK v. TURKEY (2021)

The applicant was a football referee. He shared a post on his Facebook account. The post was created by a third party and it concerned H.K. who was a columnist and publisher of a newspaper and who died two days earlier during a trip to Saudi Arabia.

The press reported that H.K. had died of a heart attack which had been caused by taking a drug used for erectile dysfunction. The post had a photo of H.K. and the text: “For years you called Atatürk a drunk, you said he died of alcohol and he was just an alcoholic, then you die of Viagra in the holy land of Mecca ... This is called a lesson”.

The post was accompanied by the following comment, written by the admin of the page: "Let hell be your abode, uncle H.K.! Thanks, Viagra!”.

The applicant added this comment: “He was a real son of a bitch (…) Thanks to those who invented Viagra!”

The Turkish Football Federation (TFF) sanctioned the applicant for his activity on Facebook. The sanction resulted in the cancellation of his referee license.

The applicant alleged that the sanction imposed on him for commenting on and sharing the post on his Facebook account violated his rights to freedom of expression.

The ECtHR said that “the reasoning thus adopted by the domestic authorities in their decisions does not enable it to establish that they have carried out an adequate balance in the present case, in accordance with the relevant criteria arising from its case-law, between, on the one hand, the applicant's right to freedom of expression, and, on the other hand, the interests at stake, such as the maintenance of order and peace in the football community. It observes that in these decisions the authorities merely set out general considerations concerning the offense provided for in Article 38 (a) of the instructions of the central committee of arbitrators, without providing a detailed assessment of the facts of the case” (para. 35 – Google translation of French version).

The ECtHR concluded that Article 10 had been violated.

CASE OF SEDAT DOĞAN v. TURKEY (2021)

The applicant was manager of Galatasaray football club. He participated in a sports program on TV and spoke about the referral to the Disciplinary Committee for Professional Football of two players from his club following a gesture they had made during a football match. They had revealed a T-shirt with a message in tribute to Nelson Mandela, who died the day before.

The applicant expressed: “Humanity has been fighting against racism and discrimination for years. Nelson Mandela is the man who led this fight successfully. Now he is dead. I want to talk about my players. D.D. and M.E. express both their sadness and their opposition to racism. I draw your attention, D.D. and M.E. are not citizens of the country of Nelson Mandela. So, I am asking you now, if a member of the family of the president of our federation had died and my players had written on their t-shirts “Rest in peace”, would the friends of the federation have referred them before the disciplinary commission?”

The Turkish Football Federation (TFF) imposed sanctions and found that the applicant's remarks constituted unsportsmanlike remarks. The disciplinary sanction meant deprivation of the rights attached to his duties for sixty days and a disciplinary fine.

The applicant posted messages on his Twitter account, accompanied by the hashtag “goodbye TFF”.

The messages included: “You will have what you are looking for! We will settle our accounts in Turkish justice”, “Even if you want to, you cannot silence me with intimidation or sanctions. We are the grandchildren of Tevfik Fikret. What did the great thinker say? Until honest people are as brave as dishonest people, there will be no

improvement", "I am warning you right now, get your lawyers. Besides specialists in criminal law, you will need specialists in restitution law."

The Disciplinary Committee held that the tweets constituted unsportsmanlike remarks likely to devalue the image of football, to incite violence and disorder in sport and provoke protests from supporters. The Disciplinary Committee imposed a disciplinary sanction of deprivation of the rights attached to his duties for forty-five days accompanied by a disciplinary fine.

The applicant alleged that the penalties imposed on him for the comments he had made on TV and the tweets he had posted violated his rights to freedom of expression. He relied on Article 10.

The ECtHR held that "these decisions do not contain a sufficient answer to the question whether the interference with the applicant's exercise of the right to freedom of expression was justified in the present case, having regard in particular to the context of the remarks which the applicant had held during the television program in question, namely the dismissal before the Disciplinary Committee of two players from his club for having paid tribute to Nelson Mandela, and the tweets he had broadcast in reaction to the disciplinary sanctions that he had received. Nor do these decisions make it possible to establish the capacity to cause harm of the remarks and tweets in question (…) The Court therefore considers that the national authorities in the present case failed to carry out an appropriate analysis in the light of all the criteria set out and applied by it in cases relating to freedom of expression" (para. 42).

The ECtHR concluded that Article 10 had been violated.

CASE OF NAKİ ET AMED SPORTİF FAALİYETLER KULÜBÜ DERNEĞİ v. TURKEY (2021)

The applicant was a a professional football player. He posted the following message on his Facebook after a win in the Turkish championships: “Very important victory for us today. Dirty game from the opposite team, but we got out of it impeccably! Happy and proud to be able to be a beacon of hope for our people in such a difficult time. Amed Sportif did not bow down and never will. We entered the field with our faith in freedom and we won. We have sown the seeds of Freedom and Hope! Thank you to all our politicians, artists, intellectuals, and to our people. They have not abandoned us. We dedicate and offer this victory to those who lost their lives or who were injured during the persecutions that hit our land for more than fifty days! Long live freedom!”

The Turkish Football Federation (TFF) found that the applicant's remarks violated the prohibition on ideological propaganda, in the football disciplinary instruction and constituted unsportsmanlike remarks. The applicant received a disciplinary fine and was suspended for twelve matches.

The applicant alleged that the sanctions, which the TFF had imposed on him for having published the message on his Facebook, violated his right to freedom of expression. He relied on Article 10.

The ECtHR held that “the reasoning thus adopted by the national authorities in their decisions does not enable it to establish that they carried out an adequate balance in the present case (…) between the applicant's right to freedom of expression, on the one hand, and the interests at stake, such as the maintenance of order and peace in the football community, on the other. It observes that in those decisions the authorities were content to quote, in general terms, certain passages from Articles 38 and 42 of the instruction, which defined the offenses of unsportsmanlike remarks and ideological propaganda with which the applicant was charged, without providing a detailed assessment of the facts of the case (…) The Court therefore considers that the national authorities cannot be said to have carried out an appropriate analysis in the present case” ” (para. 36 and 37 – Google translation of French version).

The ECtHR concluded that Article 10 had been violated.

GHEORGHE-FLORIN POPESCU v. ROMANIA (2021)

The applicant was a journalist. He published a series of articles on his personal Internet blog where he criticised L.B. who was editor-in-chief of a newspaper and director of a media group.

The applicant criticised L.B's training of young socialists and questioned L.B.'s ability to fulfill his duties as director of a media group since the newspaper he ran had failed to cover the murder of a woman by her companion, followed by the suicide of the latter.

L.B. brought a civil action to hold the applicant liable for the statements, which he claimed were defamatory. According to L.B., the applicant had uttered insults which exceeded the limits of freedom of expression. L.B. found that the applicant had used words that were vulgar to criticize the fact that young militants of the Social Democratic Party had followed a training course which L.B. provided. The applicant had accused L.B. of being “morally responsible” for a tragic event and for not covering this event in the media.

The domestic courts ordered the applicant to pay compensation for non-pecuniary damage, because the five articles on the blog contained defamatory remarks and therefore infringed L.B.’s rights to protection of his reputation.

The domestic courts held that using a personal blog to express all kinds of personal opinions went beyond the level of exaggeration that was useful for democratic debate.

The applicant claimed that his rights under Article 10 had been violated.

The ECtHR held: “As regards the content of the impugned articles, the Court notes that the domestic courts did not seek to ascertain what their object was either, and that they confined themselves to concluding that the applicant had planned from L.B. negative image likely to cause him psychological suffering, anxiety and pain (…) This type of reasoning testifies to a tacit acceptance, by the domestic courts, of the fact that respect for the right to private life prevailed in this case over respect for the right to freedom of expression” (para. 37 – Google translation of French version).

The ECtHR concluded that Article 10 had been violated.

CASE OF OOO INFORMATSIONNOYE AGENTSTVO TAMBOV-INFORM v. RUSSIA (2021)

The applicant was a Russian company with an information agency that operated through a website.

The applicant published an article on the website. It was titled “Assessment of the Internet polling results: there is no obvious majority vote for the United Russia party, while the protest vote is surging”.

The article presented the results of an opinion poll with 2,000 people and statistical data that related to the party preferences expressed by the poll voters.

Russian legislation on “campaigning material” limited a media outlet’s participation in “pre-election campaigning” and the applicant was fined for the article and two other articles that were considered contrary to the rules.

The domestic courts held that the applicant had violated the law and certain requirements related to opinion polls, for example, to specify when the poll had been

carried out, the wording of the polling question, and the region where the poll had been carried out.

The applicant argued that the conviction violated Article 10 and that the domestic legislation prevented media outlets from any meaningful activity during an election period.

The ECtHR found that it had “not been substantiated that prosecution for the violation of those requirements when publishing material on the Internet was “necessary in a democratic society”. In view of the foregoing considerations and in the absence of more detailed submissions on the rationale of the regulatory framework for opinion polls during an election period and on the justification of the applicant’s conviction, the Court cannot conclude in the present case that the related “formalities, conditions, restrictions or penalties” within the meaning of Article 10 § 2 of the Convention were in compliance with it” (para. 109 and 110).

The ECtHR concluded that Article 10 had been violated.

CASE OF KILIN v. RUSSIA (2021)

The applicant was a Russian national. He created a user account on VKontakte, an online social network in Russia.

He uploaded a video entitled “Russia 88 (Granny)” and a song called “Glory to Russia!” that was performed by the band Kolovrat. The content was not produced by the applicant, but he had made it available to others through his account.

The applicant's account came to the attention of the Russian authorities. The authorities created a VKontakte account and sent a friend request to the applicant's account. After the request had been accepted, the authorities gained access to the video and the song.

The Federal Security Service initiated criminal proceedings against the applicant and commissioned a linguistic and psychological assessment of the material. The report concluded that the applicant had posted material that incited ethnic hatred and discrimination.

The domestic courts convicted the applicant and sentenced him to a suspended term of eighteen months' imprisonment.

The applicant complained that his criminal conviction was in violation of Article 10.

The ECtHR said: "The Court accepts the national courts' finding that the video could be reasonably perceived as stirring up ethnic discord by calling for violence against people of Azerbaijani origin and as calling for violating their rights by violent actions. As regards the audio, it has not been contested, and the Court accepts, that it could be reasonably perceived as stirring up ethnic discord by calling for violence against people of non-Russian ethnicities and as calling for violating their rights by violent actions (…) When finding the applicant guilty of the criminal offence of intentional calls to ethnic discord by violent actions and violation of the rights of others by violent actions, the domestic courts convincingly established the applicant's criminal intent" (para. 87-90).

The ECtHR concluded that Article 10 had not been violated.

CASE OF SEDLETSKA v. UKRAINE (2021)

The applicant was a journalist at the Kyiv office of Radio Free Europe/Radio Liberty. She was the editor-in-chief of a TV programme called "Schemes: Corruption in Detail". Many of the issues that were presented in the TV programme concerned prosecutors and politicians.

The National Anticorruption Bureau of Ukraine (NABU) instituted criminal proceedings against a prosecutor, K. and tapped the telephone of Ms N., who was K.'s partner. NABU suspected him of unjust enrichment.

The Ukrainian online media Obozrevatel published an article on its website stating that the head of NABU had held a closed meeting with some media representatives in which he disclosed confidential information about ongoing criminal investigations, including the one against K.

The article told that the media representatives had listened to a recording of a telephone conversation with Ms N., in which she was discussing details of her private life. The article was accompanied by an audio file presented as the recording.

A Member of Parliament, called M., complained to the Prosecutor General that Obozrevatel's article was unlawful and that the head of NABU had breached the rules of confidentiality in ongoing criminal proceedings and Ms N.'s rights to respect for her private life. Later, Ms N. also complained and asked that criminal proceedings would be instituted against the head of NABU.

Criminal proceedings were instituted against him for violation of privacy and disclosure of confidential information concerning ongoing criminal investigations. A voice recognition analysis revealed that the applicant was likely to have been one of the media representatives who attended the meeting with the head of NABU.

The applicant refused to answer questions related to the alleged meeting. She claimed that she could not be interviewed as a witness if it would lead to the identification of her journalistic sources.

An article on the Court Reporter media website stated that the prosecutor's office had started checking telephone calls made by journalists who had supposedly attended the meeting. The website included photos of journalists, including the applicant, and contained a link to an anonymised version of the order.

The applicant complained that the court orders allowing the prosecutor's office to access her mobile telephone communications data had constituted an unjustified interference with her rights to the protection of journalistic sources. She relied on Article 10.

The ECtHR held that "by way of justifying the pressing social need for the interference with the applicant's rights, the Court of Appeal referred only to the purpose of "achieving efficiency" in a criminal investigation and establishing "more exactly the time and place" of the purported confidential meeting (…) without providing any indication why these considerations outweighed the public interest in non-disclosure of the applicant's protected geolocation data" (para. 71).

The ECtHR concluded that Article 10 had been violated.

CASE OF RAMAZAN DEMİR v. TURKEY (2021)

The applicant was placed in pre-trial detention as part of a criminal investigation. He was suspected of being a member of a terrorist organization and exercising propaganda in favor of the organization. He was a lawyer and the representative of applicants in several cases pending before the ECtHR.

The prison authorities refused his request for access to certain websites containing legal information. Among the websites were the website of the ECtHR and the Constitutional Court. The authorities referred to security reasons.

The applicant found that he needed to obtain access to the legal information to better follow the cases of his clients and to prepare his own defense.

He explained that he lodged appeals for his clients before the Constitutional Court and before the ECtHR and that it was important for him to access the latest judgments published on the websites.

The domestic courts confirmed the decision that had been made by the prison authorities.

The applicant alleged that the refusal constituted a violation of his rights protected by Article 10.

The ECtHR said: “Even if the security considerations invoked by the national authorities were to be considered relevant, the Court notes that the national courts did not carry out a detailed analysis of the security risks which would have resulted from the applicant's access to the three aforementioned websites , especially since these were websites of state authorities and an international organization and the applicant only accessed these websites under the control of the authorities and under the conditions that the latter determined” (para. 46).

The ECtHR concluded that Article 10 had been violated.

CASE OF GACHECHILADZE v. GEORGIA (2021)

The applicant was registered as an entrepreneur and started producing condoms under the brand name Aiisa. The condoms were sold online and via vending machines.

The brand was “aiming at shattering stereotypes, to aid a proper understanding of sex and sexuality”. The condoms had various packagings that included depictions of popular fictional characters, historical and political figures, different quotes from literature etc.

The applicant created four designs which became the subject of the proceedings against her. The chairman of a political movement complained that Aiisa had used designs which were insulting to the religious feelings of Georgians.

The applicant was served a report by the Municipal Inspectorate. The report stated that she had placed unethical advertising on her product and the brand's Facebook page, in breach of advertising rules. The applicant was ordered to cease using the designs on the products and on social media and to issue a product recall in respect of distributed products.

The applicant argued before the domestic courts that the decision constituted unjustified censorship. The domestic courts rejected her argument. They found that the decision had pursued the legitimate aim of protecting the rights of others not to have their religious beliefs insulted and protecting public morals.

The applicant complained that her rights under Article 10 had been violated.

The ECtHR said: "Finally, the Court takes issue with the apparent implication in the domestic courts' decisions that the views on ethics of the members of the Georgian Orthodox Church took precedence in the balancing (…) The Court reiterates that in a pluralist democratic society those who choose to exercise the freedom to manifest their religion must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith (…) In the light of the foregoing, the Court concludes that at least in so far as three of the four disputed designs are concerned (…) the reasons adduced by the domestic courts were not relevant and sufficient to justify an interference under Article 10 § 2 of the Convention" (para. 62 and 63).

The ECtHR concluded that Article 10 had been violated.

CASE OF MELİKE v. TURKEY (2021)

The applicant was a cleaner who was employed by the Ministry of National Education.

She clicked the “Like” button on Facebook content that included: “Journalists are detained, the Kurdish people are massacred, those who want to march for justice are arrested. But that is not enough for fascism! The assassins are attacking in the streets as if they were unleashed... Today they killed the president of a bar association, the president of the bar association of Diyarbakır, T.E. Even if you kill, even if you detain, we will not give up, we will not be silent, we will not back down. The streets and squares are ours. The martyrs are immortal”, “During the era of the People's Party, the children would have drunk beer... During the time of the Justice and Development Party, teachers and imams raped their students...”, and “Dirty guy, was it a mule who gave birth to you, brainless bigot” with a photo of a leader of a religious group and the text on the photo “If only you had no mother and you had not been born, asshole”.

The applicant was dismissed for pressing the “Like” button on the Facebook content. Her employment contract was immediately terminated and without entitlement to compensation.

The applicant sought the annulment of the decision to terminate her employment contract, but the domestic courts dismissed her appeal. They held that her action to press the “Like” button was likely to disturb the peace and tranquility of the workplace. According to the domestic courts, the content contained attacks on the honor and reputation of school teachers, glorified and encouraged the acts of the PKK, and carried out the propaganda of the PKK.

The applicant alleged that her dismissal for pressing the “Like” button violated her rights to freedom of expression under Article 10.

The ECtHR held: “In this regard, the Court observes in the first place that the applicant is not the person who created and published the disputed content on the social network concerned and that her act was limited to clicking on the “Like” button located below

these contents. The act of adding a "Like" to content cannot be considered to carry the same weight as sharing content on social networks, insofar as a "Like" expresses only a sympathy with regard to a published content, and not an active desire for its distribution (…) It further observes that, given the nature of her position, the applicant could only have a limited reputation and representativeness in her workplace and that her activities on Facebook could not have had a significant impact on students, parents teachers and other employees" (para. 51 – Google translation of French version).

The ECtHR concluded that Article 10 had been violated.

CASE OF HÁJOVSKÝ v. SLOVAKIA (2021)

The applicant wished to become a biological father through surrogacy, a practice that was not regulated by Slovak law. He and his partner published an advertisement in a newspaper seeking a woman who was willing to give birth to a child, while offering a financial reward in return.

The advertisement did not reveal the applicant's identity and promised to keep any negotiations confidential. A TV reporter, pretending to be a potential surrogate mother, used a hidden camera to secretly record her meetings with the applicant in which arrangements for the surrogate pregnancy were discussed.

Her report about the applicant's intention to "buy" a child was broadcast on TV, including video recordings of the applicant. A newspaper published an article entitled "Trade in unborn children", describing the applicant's story as depicted by the television report and displaying, without the applicant's consent, his pictures taken from that report.

The article stated that the applicant would probably not be punished because there was no legislation which would enable the actions to be prosecuted. The article was also published in the online version of the newspaper.

The applicant brought actions against the newspaper publisher, but it was dismissed by the domestic courts on the grounds that the article aimed to inform readers about questions of public interest and the applicant had himself attracted public and media attention by publishing his advertisement and the article only contained information which had already been broadcast on TV.

The applicant argued under Article 8 that the publisher could legitimately publish an article about surrogacy but that there had been no need to illustrate that topic using his own story, which disclosed his identity and private aspects of his life, and that the publication of his pictures had not contributed to a discussion about surrogacy; its only goal had been to create a scandal about him, cause a sensation and increase the number of readers.

The ECtHR observed that the applicant had not himself sought any public exposure beyond placing an anonymous advertisement in a newspaper. He could not have expected that he was running a risk of being recorded and having his identity revealed in the media.

The ECtHR said that "the applicant could not have expected to be recorded or reported on in a public manner (…) and did not voluntarily cooperate with the media (…) In the Court's view, it was indeed clear from the television report that the reporter had contacted the applicant, pretending to be interested in his advertisement, and that she had made the recordings with a hidden camera without the applicant being aware of it or having consented to it. This should have alerted the journalist and the newspaper publisher to the need to use that material with caution and not to disseminate it without masking or blurring the applicant's face" (para. 49).

The ECtHR concluded that the State had failed to fulfil its positive obligations under Article 8.

CASE OF M.P. v. PORTUGAL (2021)

The applicant was a Spanish national. She was married with a Portuguese national and they got two children. Their marriage deteriorated and the applicant decided to settle in Spain with the children.

The husband filed a petition with the family court of Lisbon. He demanded the return of the children and the temporary fixing of their residence in Portugal, as well as the prohibition of any travel abroad without the authorization of both parents.

He alleged that the applicant had always put her personal needs ahead of the family. He presented that he had discovered electronic messages exchanged between the applicant and male correspondents on a casual dating site. He saw it as proof that his wife had extramarital affairs while they were still married.

He argued that such behavior was not an example to set for the children. He printed the messages she had exchanged with male correspondents and placed them in the file of the procedure.

The applicant requested that her electronic messages should be removed from the file. She indicated that her husband had accessed her email without her consent. She lodged a complaint against the husband for violation of the secrecy of correspondence.

The domestic courts rejected her request. They found that it could not be said that there had been a violation of correspondence and emphasized that access to the messages had taken place while they were married and that the spouses shared their private life and, consequently, their correspondence. In these circumstances, it could not be considered that he had intended to violate her private life. The messages belonged to the couple's common private life, and no longer solely the applicant's privacy.

The applicant complained under Article 8 that the domestic courts did not sanction that her husband accessed the messages and placed them in the files.

The ECtHR held that these were personal messages which an individual could expect should not be disclosed without her consent and that the disclosure could lead to a very strong feeling of intrusion into the private life and correspondence. However, the ECtHR agreed with the domestic courts that "the effects of the disclosure of the disputed messages on the applicant's private life were limited. Indeed, these messages were only disclosed in the context of the civil proceedings. However, public access to the files of this type of proceedings is restricted (…) Moreover, the messages were not examined in practice, the Lisbon Family Court having ultimately not ruled on the merits of the claims made by the husband" (para. 49 – Google translation of French version).

The ECtHR concluded that Article 8 had not been violated.

CASE OF HURBAIN v. BELGIUM (2021)

The applicant was a Belgian national, Mr Patrick Hurbain. He was the publisher of the Belgian newspaper Le Soir.

In 1994, the printed version of the newspaper Le Soir included an article that reported on a car accident caused by G that had led to the death of two people and injured three others. The article mentioned G's full name. G was convicted in connection with the incident in 2000. He served his sentence and was formally rehabilitated in 2006.

The article was also included in the newspaper's archives on its website. The article was freely accessible on the website.

G wrote to the company Rossel et Compagnie, which owned Le Soir, and asked them to remove the article from the newspaper's electronic archives or at least make it anonymous. In support of his request G referred to the fact that he was a doctor and that the article appeared on the list of search results when his name was typed into search engines.

The company decided not to accept the request and kept the article in the online archive. G therefore instituted proceedings against the applicant, seeking to have the electronic version of the article anonymised.

If the company should provide evidence of the impossibility of making the information anonymous, then G sought an order requiring the newspaper to add a "no-index" tag to the online version of the article to prevent it from appearing on the list of results when his name was typed into the search engine.

The domestic courts held that it would not render the information devoid of interest to remove G's name, since it would have no impact on the actual substance of the information, which concerned a traffic accident caused by the harmful effects of alcohol.

The domestic courts emphasised that sixteen years had elapsed between the initial publication of the article and the first request for anonymisation. The courts therefore concluded that G satisfied the criteria for claiming a right to be forgotten.

The domestic courts ordered the applicant to anonymise the article on the website by replacing G's full name with the letter X.

The applicant alleged that the order to anonymise the article on the website constituted a violation of Article 10.

The ECtHR held: "the Court attaches considerable weight to the fact that the nature of the measure imposed in the present case preserved the integrity of the archived article, since it was only a matter of anonymising the online version of the article and the applicant was allowed to keep the original digital and paper archives" (para. 129).

The ECtHR concluded that there had been no violation of Article 10.

CASE OF BIG BROTHER WATCH AND OTHERS v. THE UNITED KINGDOM (2021)

The applicants were various organisations and persons, such as Open Rights Group, Bureau of Investigative Journalism, Amnesty International Limited, and the Legal Resources Centre.

The applicants all believed that due to the nature of their activities, their electronic communications were likely to have been intercepted by the United Kingdom intelligence services.

The applicants accepted that the bulk interception regime had a basis in domestic law. However, they argued that it lacked the quality of law because it was so complex as to be inaccessible to the public and to the Government, reliance was placed on arrangements which were substantially "below the waterline" rather than on clear and binding legal guidelines, and it lacked sufficient guarantees against abuse.

They contended that the purposes for which interception could be permitted (such as "the interests of national security" and "the economic well-being" of the UK) were too vague to provide a clear limit.

They submitted that there were no effective or binding safeguards against the disproportionate retention of intercepted data.

The ECtHR found: "While the IC Commissioner provided independent and effective oversight of the regime, and the IPT offered a robust judicial remedy to anyone who suspected that his or her communications had been intercepted by the intelligence services, these important safeguards were not sufficient to counterbalance the shortcomings highlighted (…) In view of the aforementioned shortcomings, the Court finds that section 8(4) did not meet the "quality of law" requirement and was therefore incapable of keeping the "interference" to what was "necessary in a democratic society"" (para. 426).

The ECtHR (the Grand Chamber) concluded that Articles 8 and 10 had been violated.

CASE OF CENTRUM FÖR RÄTTVISA v. SWEDEN (2021)

The applicant, Centrum för rättvisa, was an NGO that represented clients in proceedings concerning human rights and was involved in education and research projects and participated in the public debate concerning human rights.

The applicant communicated with individuals, organisations, and companies in Sweden and abroad by email. A large part of that communication was, according to the applicant, particularly sensitive from a privacy perspective.

The applicant believed that there was a risk that its communications either was or would be intercepted and examined by way of signals intelligence. The applicant submitted that there was no effective remedy at the national level for anyone suspecting that they had been subject to bulk interception by the Swedish authorities.

The applicant therefore argued that it should have its case examined by the ECtHR and that the legislation and practice in Sweden on bulk interception was in violation of its rights to respect for private life and correspondence protected by Article 8. The applicant did not bring any domestic proceedings, because it held that there was no effective remedy for its complaints.

It did especially focus on the Signals Intelligence Act that permitted the interception of any communications that crossed the Swedish borders. The applicant argued that virtually all users of communications services engaged in cross-border communications, either deliberately by contacting a foreign recipient or inadvertently through communicating via a server located abroad.

The ECtHR formulated that the issue was whether the legislation instituted a system of secret surveillance that potentially affected everyone communicating over the telephone or using the Internet. The ECtHR held that: “communications or communications data of any person or entity in Sweden may happen to be transmitted via intercepted communications bearers and may thus be subject to at least the initial stages of automatic processing by the FRA under the contested legislation.”

The ECtHR held that “the above-mentioned shortcoming may allow information seriously compromising privacy rights or the right to respect for correspondence to be transmitted abroad mechanically, even if its intelligence value is very low. Such transmission may therefore generate clearly disproportionate risks for Article 8 Convention rights. Furthermore, no legally binding obligation is imposed on the FRA to analyse and determine whether the foreign recipient of intelligence offers an acceptable minimum level of safeguards” (para. 371) and “The Court reiterates that there is considerable potential for bulk interception to be abused in a manner adversely affecting the rights of individuals to respect for private life (…) the Court considers that the Swedish bulk interception regime, when viewed as a whole, did not contain sufficient “end-to-end” safeguards to provide adequate and effective guarantees against arbitrariness and the risk of abuse” (para. 373).

The ECtHR concluded that Article 8 had been violated.

CASE OF SOCIÉTÉ EDITRICE DE MEDIAPART AND OTHERS v. FRANCE (2021)

The applicants were an online news site called Mediapart, its publishing editor and a journalist.

Ms Bettencourt was the main shareholder of the L'Oréal group. A dispute arose between Ms Bettencourt and her daughter, due to large financial gifts to third parties. Ms

Bettencourt's butler secretly recorded conversations which she held at her home, for example with her wealth manager.

The applicants published audio extracts and transcripts from the recordings on the website. The domestic courts ordered the applicants to remove the publications from the website.

The applicants argued that the order violated their rights under Article 10.

The ECtHR held: “The sensitivity of the information infringing on privacy and the continuous nature of the damage caused by access to the written and audio transcripts on the newspaper's site called for a measure likely to put an end to the disturbance observed (…) The Court accepts, like the national courts, that a measure other than that ordered would have been insufficient to effectively protect the private life of the persons concerned” (para. 90 – Google translation of French version).

The ECtHR concluded that the domestic courts could legitimately conclude that Ms Bettencourt's rights of privacy should weigh stronger than the applicants' rights under Article 10. The ECtHR concluded that there had been no violation of Article 10.

CASE OF L.B. v. HUNGARY (2021)

The applicant was a Hungarian national. The National Tax and Customs Authority published the applicant’s personal data, including his name and home address, on the list of tax defaulters on its website.

This measure was provided for by an Act on Tax Administration, which required the Tax Authority to publish a list of taxpayers in respect of whom a final decision had assessed that they had tax arrears in excess of HUF 10 million for the previous quarter.

The published information included their names, addresses, tax identification numbers and the amount of tax arrears.

An online media outlet produced an interactive map called “the national map of tax defaulters”. The applicant’s home address, along with the addresses of other tax defaulters, was indicated with a red dot, and if a person clicked on the dot the applicant’s name and home address appeared.

Subsequently, the applicant appeared on a list of “major tax evaders” that was also made available on the Tax Authority’s website pursuant to an Act on Tax Administration, which provided for the publication of a list of people who had owed a tax debt to the Tax Authority exceeding HUF 10 million for a period longer than 180 days.

The applicant complained that the publication of his personal data on the Tax Authority’s website for his failure to comply with his tax obligations had infringed his rights to private life as provided for in Article 8.

The ECtHR noted that the case did not concern the republication of the applicant’s personal data by the online media outlet in the form of the “tax defaulters map”, but merely the publication of such data on the website of the Tax Authority.

The ECtHR said: “Given the specific context in which the information at issue was published, the fact that the publication was designed to secure the availability and accessibility of information in the public interest, and the limited effect of the publication on the applicant’s daily life, the Court considers that the publication fell within the respondent State’s margin of appreciation” (para. 71).

The ECtHR concluded that there had been no violation of Article 8.

CASE OF VEDAT ŞORLİ v. TURKEY (2021)

The applicant was a Facebook user who shared content on his Facebook account. He shared a caricature on which Barack Obama was kissing the President of the Turkish Republic, illustrated in a woman's outfit.

A conversation bubble placed above the image of the President of the Turkish Republic, said in Kurdish “Are you going to register the title deed of Syria in my name, my dear husband?”

He did also share photos of the President of the Turkish Republic and the former Prime Minister of Turkey, with the following comment: “May your power feed on blood sinks to the bottom of the earth / May your seats which you solidify by dint of taking lives sink into the bottom of the earth / May your luxurious lives which you live with the dreams which you steal sink into the bottom of the earth / May your presidency, your power, your ambitions sink to the bottom of the earth”.

The applicant was placed in police custody suspected of having insulted the President of the Turkish Republic. The domestic courts held that the content he had shared on his Facebook account was likely to injure the honor, dignity and reputation of the President.

The applicant lodged a complaint with the Constitutional Court. He argued that his pre-trial detention for two months, his sentence to eleven months imprisonment (suspended sentence) and his placement under surveillance for five years, because of the content he published on Facebook, violated his rights to freedom of expression. The Constitutional Court declared the applicant's complaint inadmissible.

The applicant tried the case before the ECtHR, referring to his rights under Article 10.

The ECtHR found: “In the light of the foregoing, the Court considers that nothing in the circumstances of the present case was such as to justify the applicant's placement in police custody and the decision to remand him in custody, nor the imposition of a

criminal sanction, even if, as in the present case, it was a prison sentence accompanied by a stay of judgment. By its very nature, such a sanction inevitably produces a dissuasive effect on the desire of the person concerned to express himself on matters of public interest" (para. 45 – Google translation of French version).

The ECtHR concluded that Article 10 had been violated.

CASE OF YEFIMOV AND YOUTH HUMAN RIGHTS GROUP v. RUSSIA (2021)

The applicants were an association, called Youth Human Rights Group, and Mr Yefimov who was the founder and director of the association. The association provided legal assistance to victims of human rights violations, supported youth projects and published an online newspaper, Zero Hour, covering its work and social life.

The applicants posted a short note on the newspaper's website, "Karelia is fed up with priests", which read as follows: "Anti-church attitudes are on the rise in the Karelian capital. Nothing surprising about that. Thinking members of society have realised that the church is also a party in power. The Russian Orthodox Church, just like the United Russia party, is fooling people with fairytales about our good life while raking in money. Total corruption, oligarchy, and the absolute power of security services are the reasons for a revival of the Russian Orthodox Church (ROC). Churches in Karelia are being built with public funds while there is no money for basic needs; ROC gets day nurseries for use at a time when childcare facilities are desperately lacking. Bearded men in fancy robes – modern-day ideology instructors – have filled the television screens. They give their opinion on everything, from canalisation to modernisation. All of this makes normal people puke; unable to do anything about the clerical stranglehold, they express their attitude to the ROC's provincial officials by tagging walls in places where the Orthodox scum hangs out."

The Investigations Committee of the Republic of Karelia opened a criminal investigation into the publication which allegedly undermined the dignity of religious believers, an offence under the Criminal Code.

The authorities reacted with a series of measures against the applicant (Mr Yefimov) which involved the institution of criminal proceedings, a search of his home, the removal of his personal computer and an order for his confinement in a psychiatric institution. The applicant did not show symptoms of any mental disorder and fled Russia in the meantime. His name was placed on the list of terrorists and extremists, which banned him from any activity as a director or member of any association. The authorities froze his bank accounts in Russia. The association was banned for "indicators of extremist activities".

The applicants complained that Article 10 had been violated.

The ECtHR said: "In view of the above, the Court finds that the publication has not been shown to be capable of inciting violence, hatred or intolerance or causing public disturbances, and that the grounds for levelling criminal charges against the applicant were inconsistent with the Article 10 standards" (para. 48).

The ECtHR concluded that Article 10 had been violated.

CASE OF PAL v. THE UNITED KINGDOM (2021)

The applicant had been a psychiatrist. She ceased to practice medicine and became a journalist. Her focus as a journalist was whistleblowing issues.

The applicant became involved in a dispute with the journalist called AB. The dispute led to a series of email allegations and counter-allegations between the two.

The applicant wrote and published an article on her website. The article detailed some of AB's alleged professional contacts. It also contained links to a judgment of the Bar Council concerning AB and a newspaper article concerning his representation at an Employment Tribunal and the applicant claimed that he had been heavily criticised. The article ended with an invitation to readers to send the applicant any information they had on AB.

The applicant posted a series of Tweets which suggested that the police had issued a harassment warning against "Private Eye's journalist" and "Peter's friend". In fact, the police had only informed AB that he should not complain to the applicant directly but to her organisation.

AB provided a detailed statement to the police in which he emphasised the acute anxiety that had been caused by the applicant's behaviour which she had pursued over a number of years. He described the information she had published about him as "largely false", and "twisted, spiteful and bizarre". He further claimed that the applicant's behaviour had affected his career and his employment prospects.

The police arrested the applicant on suspicion of harassment due to the article and the Tweets. She was handcuffed and driven to London where she was interviewed under caution and detained for approximately seven hours before being granted bail.

She was subsequently charged with harassment. The criminal proceedings were ultimately discontinued, but this only happened more than eight months after her arrest.

The applicant complained that her prosecution, the way her arrest had been carried out and the conditions of bail imposed on her breached her rights under Article 10. The domestic courts found that her rights under Article 10 had not been violated.

According to the ECtHR: "In light of the foregoing, it has not been established that the arresting officer, the officer responsible for deciding to charge the applicant, or the domestic courts balanced her right to freedom of expression and either AB's right to

respect for his private life and reputation or the need to prevent disorder or crime in accordance with the relevant criteria" (para. 62).

The ECtHR concluded that Article 10 had been violated.

CASE OF ASSOTSIATSIYA NGO GOLOS AND OTHERS v. RUSSIA (2021)

The applicant was an association created by several NGOs. Its purpose was to provide short-term and long-term monitoring of electoral campaigns. The applicant had its own website (called the NGO website).

The applicant launched a project which consisted in the creation of a website called Map of Violations. The project had its own website (called the project website). It enabled users to generate content and especially reports of alleged violations during the election period.

The project was run in partnership with an Internet news outlet. According to the applicant, the project website was to function using the crowd-sourcing method; website users were able to generate the site's content, while the project managers were in charge of technical support and preliminary monitoring of the content. The NGO website had hyperlinks to the project website, for instance through a banner.

Members of the State Duma and the Chief Officer of the Central Elections Committee complained to the Prosecutor General, alleging that the NGO's website contained negative information about the United Russia political party.

The domestic courts found that content on the project website violated Russian legislation on content that was allowed to be published in the period of an election. The applicant appealed, arguing that none of the publications could be reasonably classified as

sociological research reports or results of opinion polls, which could not lawfully be disseminated within the five days preceding the election day. The applicant also argued that the content had been submitted by users of the website and the applicant had merely had the role of providing a platform.

The domestic courts concluded that the applicant had disseminated material relating to the preparation and running of an election and dismissed the argument that the evidence concerned publications posted directly by users. The courts found that the information was posted less than five days before the election day and contained statistical data about campaigning and analysis of such data.

The applicant complained that the decision of the domestic courts and the enforcement of the statutory ban on election-related publications in the days preceding election day violated their rights under Article 10.

The ECtHR said: "There is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in the fields of political speech and other matters of public interest, including during electoral periods (…) At the same time, the Court reiterates that States must be accorded some discretion in regulating certain forms of electoral campaigning with a view to safeguarding the democratic order within their own political systems (…) It can be assumed that the imposition of a short "silence and reflection period" on active campaigning before an election falls, in principle, within the scope of the State's discretion. However, the Court considers that the respondent State overstepped it in the present case by sanctioning the dissemination during the silence period of all content that could be considered as "relating to" a forthcoming election" (para. 89).

The ECtHR concluded that Article 10 had been violated.

5. Analysis of the ECtHR case-law

The above chapter offered an overview of the ECtHR case-law concerning protection of Article 8 and Article 10 on the Internet. Each case was presented in chronological order. The detailed analysis and comparison of the approach of the ECtHR will be examined in the present chapter.

Every case that is mentioned in the above chapter, is carefully analysed in the present chapter. The analysis in this chapter, demonstrates the ECtHR assessment and determination of cases concerning Article 8 or Article 10 on the Internet.

For more information on the methodology that has been applied in this chapter and legal interpretation, please read the Methodology in the beginning of the thesis.

No. 1) The ECtHR acknowledges how essential the Internet has become to modern society and communication

The ECtHR describes our times as “an increasingly digital age” in which “lives are increasingly lived online” (*Centrum for Rättvisa v. Sweden*).

The ECtHR refers to European instruments that demonstrate the importance of the Internet in modern society and communication, and particularly concerning freedom of expression and access to information.

The Court´s references to European instruments support that access to the Internet, and for instance to social media and online archives, has become important to the exercise of freedom of expression (e.g. *Kalda v. Estonia*).

The ECtHR repeats that the Internet has become one of the principal means by which individuals exercise their rights to freedom of expression and information, and explains

that this is, inter alia, due to its accessibility and access to vast amounts of information (e.g. *Engels v. Russia*).

In the *Delfi* case from 2015, that concerned user-generated comments, the Grand Chamber described that "this is the first case in which the Court has been called upon to examine a complaint of this type in an evolving field of technological innovation" (*Delfi AS v. Estonia* - para. 111).

The ECtHR refers to instruments that emphasise that the Internet has become important in people's lives and in the enjoyment of human rights. "The Court cannot overlook the fact that in a number of Council of Europe and other international instruments the public-service value of the Internet and its importance for the enjoyment of a range of human rights has been recognised. Internet access has increasingly been understood as a right, and calls have been made to develop effective policies to attain universal access to the Internet and to overcome the "digital divide"" (*Kalda v. Estonia* - para. 52).

The Court concludes in the paragraph that "these developments reflect the important role the Internet plays in people's everyday lives. Indeed, an increasing amount of services and information is only available on the Internet" (ibid.). A similar paragraph is found in *Jankovskis v. Lithuania* - para. 62.

In several cases, the ECtHR states that "owing to its accessibility and capacity to store and communicate vast amounts of information, the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information" (*Kilin v. Russia* - para. 54; *Vladimir Kharitonov v. Russia* - para. 33; *OOO Flavus and Others v. Russia* - para. 28; *Engels v. Russia* - para. 24; *Bulgakov v. Russia* - para. 28; *Cengiz and Others v. Turkey* - para. 49; *Ahmet Yildirim v. Turkey* - para. 54; *Melike v. Turkey* - para. 49).

The ECtHR elaborates in the next sentence of the mentioned cases: "The Internet provides essential tools for participation in activities and discussions concerning political issues and issues of general interest, it enhances the public's access to news and facilitates the dissemination of information in general" (ibid.).

The ECtHR calls the modern times “a world in which the individual is confronted with vast quantities of information circulated via traditional and electronic media and involving an ever-growing number of players” (*OOO Regnum v. Russia* - para. 60 & 61; *Magyar Jeti ZRT v. Hungary* - para. 64).

The ECtHR elaborates that “In the current, increasingly digital, age the vast majority of communications take digital form and are transported across global telecommunications networks” (*Centrum for Rättvisa v. Sweden* - para. 236). Similarly, the ECtHR says that “online publications (…) nowadays tend to be accessible by a greater number of people and viewed as a major source of information and ideas” (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 88).

The ECtHR compares with the past, and states that increasing amounts of information are only available online. The ECtHR has for instance said this in a case concerning an applicant who was an inmate and who sought education-related information on the Internet and who challenged the authorities' decision not to grant him Internet access. The ECtHR says that “such access was indispensable for the purposes of obtaining education-related information” and “The Court has also recently observed that an increasing amount of services and information is available only via the Internet” (*Jankovskis v. Lithuania* - para. 49).

In the case *Centrum for Rättvisa*, the ECtHR emphasises which development that occurred over the decade: “However, while the bulk interception regimes considered in those cases were on their face similar to that in issue in the present case, both cases are now more than ten years old, and in the intervening years technological developments have significantly changed the way in which people communicate. Lives are increasingly lived online, generating both a significantly larger volume of electronic communications, and communications of a significantly different nature and quality, to those likely to have been generated a decade ago” (*Centrum for Rättvisa v. Sweden* - para. 255).

No. 2) The ECtHR describes the positive contribution that the Internet has made to freedom of expression and access to information

As described above, the ECtHR finds that the Internet has become essential to modern society and communication. The ECtHR elaborates that the Internet has become one of the principal means by which individuals exercise their rights to freedom of expression and access to information (e.g. *Cengiz and Others v. Turkey*).

Important benefits can be derived from the Internet (e.g. *Annen v. Germany*). The Internet enhances the access to vast amounts of information (e.g. *Cengiz and Others v. Turkey*). Information on the Internet is easily available and accessible (e.g. *L.B. v. Hungary*). The Internet also enhances the availability, diversity and reach of traditional media (e.g. *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia*). Moreover, the Internet is crucial for the ability of journalists to act as a "public watchdog" and for them to gain access to information (e.g. *Shtekel v. Ukraine*). User-generated content and social media are an unprecedented platform for the exercise of freedom of expression (e.g. *Delfi AS v. Estonia*). The ECtHR has for example held that YouTube and Facebook contribute to freedom of expression on the Internet (e.g. *Ahmet Yildirim v. Turkey*). In several cases, the ECtHR has stressed the importance of digital archives and that such archives enhance the access to information (e.g. *M.L. and W.W. v. Germany*). The ECtHR has also considered hyperlinks and Internet service providers and that they facilitate access to information (*Magyar Jeti ZRT v. Hungary*; *Tamiz v. the United Kingdom*).

The ECtHR finds that the Internet offers important benefits to the exercise of freedom of expression. "Indeed, the Court stressed on many occasions the essential role which the press plays in a democratic society (…) a concept which in modern society undoubtedly encompasses the electronic media including the Internet" and "the Court acknowledges that important benefits can be derived from the Internet in the exercise of freedom of expression" (*Annen v. Germany* - para. 67; *Magyar Tartalomszolgaltatok v. Hungary* - para. 86-88).

The ECtHR repeats 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" (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 84 & 85; *OOO Regnum v. Russia* - para. 60 & 61; *Savva Terentyev v. Russia* - para. 79; *Kablis v. Russia* - para. 81; *Beizaras and Levickas v. Lithuania* - para. 127; *Jankovskis v. Lithuania* - para. 53 & 54; *Kalda v. Estonia* - para. 44; *Delfi AS v. Estonia* - para. 133 & 157; *Magyar Tartalomszolgaltatok v. Hungary* - para. 56; *Magyar Jeti ZRT v. Hungary* - para. 66; *Magyar Helsinki Bizottság v. Hungary* - para. 168; *Pendov v. Bulgaria* - para. 52; *Egill Einarsson v. Iceland* - para. 46; *Arnarson v. Iceland* - para. 37; *Ahmet Yildirim v. Turkey* - para. 48 & 49; *Cengiz and Others v. Turkey* - para. 52; *Annen v. Germany* - para. 66; *Times Newspapers LTD v. United Kingdom* - para. 27; *Gheorghe-Florin Popescu v. Romania* - para. 26).

Similarly, the ECtHR reiterates that "owing to its accessibility and capacity to store and communicate vast amounts of information, the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information" (*Kilin v. Russia* - para. 54; *Vladimir Kharitonov v. Russia* - para. 33; *OOO Flavus and Others v. Russia* - para. 28; *Engels v. Russia* - para. 24; *Bulgakov v. Russia* - para. 28; *Cengiz and Others v. Turkey* - para. 49; *Ahmet Yildirim v. Turkey* - para. 54; *Melike v. Turkey* - para. 49).

In those paragraphs, the ECtHR elaborates in the next sentence: "The Internet provides essential tools for participation in activities and discussions concerning political issues and issues of general interest, it enhances the public's access to news and facilitates the dissemination of information in general" (ibid.).

In a couple of those paragraphs, the ECtHR explains in more detail how the Internet plays an important role for the rights under Article 10. "The Internet enables new forms of expression and activities that may fall within the ambit of Article 10 § 1 of the Convention (…) In view of its accessibility and its capacity to communicate information and ideas "regardless of frontiers", the Internet also enhances the availability, diversity and reach of traditional media through their online outlets, as well

as their "public watchdog" role, which is increasingly pertinent at election time", says the ECtHR (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 84 & 85).

The ECtHR emphasises the importance of access to information in election times. The ECtHR therefore finds that the Internet contributes during election times, since online publications "nowadays tend to be accessible by a greater number of people and viewed as a major source of information and ideas" (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 88).

A couple of the above paragraphs emphasise that "user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression" (*Delfi AS v. Estonia* - para. 110; *Cengiz and Others v. Turkey* - para. 52; *Kablis v. Russia* - para. 81; *Savva Terentyev v. Russia* - para. 79).

In *Ahmet Yildirim* and *Cengiz* the ECtHR considers specifically how Google and YouTube contribute to freedom of expression on the Internet. The ECtHR says: "The Court notes that Google Sites is a Google service designed to facilitate the creation and sharing of websites within a group and thus constitutes a means of exercising freedom of expression" (*Ahmet Yildirim v. Turkey* - para. 48 & 49) and "the Court observes that YouTube is a video-hosting website on which users can upload, view and share videos and is undoubtedly an important means of exercising the freedom to receive and impart information and ideas. In particular, as the applicants rightly noted,
political content ignored by the traditional media is often shared via YouTube, thus fostering the emergence of citizen journalism. From that perspective, the Court accepts that YouTube is a unique platform on account of its characteristics, its accessibility and above all its potential impact, and that no alternatives were available to the applicants" (*Cengiz and Others v. Turkey* - para. 52).

The ECtHR has also found that Facebook contributes to the ability to exercise the rights to freedom of expression: "It notes in this regard that the disputed content was published on Facebook, which is an online social network. It recalls having already held, with regard to online publications, that the possibility for individuals to express

themselves on the Internet constitutes an unprecedented tool for the exercise of freedom of expression" (*Melike v. Turkey* - para. 49, Google translation of French version).

The primary function of the press is, in the ECtHR's eyes, to act as a "public watchdog". The ECtHR stresses that access to the Internet is crucial for the ability to function as a "public watchdog". The court does, for instance, say that "having regard to the role the Internet plays in the context of professional media activities (…) the Court considers 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"" (*Editorial Board of Pravoye Delo and Shtekel v. Ukraine* - para. 64).

Several cases have focused on digital archives. For example, in *Times Newspapers* and in *Wegrzynowski* the ECtHR says: "While the primary function of the press in a democracy is to act as a "public watchdog", it has a valuable secondary role in maintaining and making available to the public archives containing news which has previously been reported (…) The maintenance of Internet archives is a critical aspect of this role" (*Wegrzynowski and Smolczewski v. Poland* - para. 59; *Times Newspapers LTD v. United Kingdom* - para. 29).

Similarly, the ECtHR describes: "In addition to this primary function, the press has a secondary but nonetheless valuable role in maintaining archives containing news which has previously been reported and making them available to the public. In that connection the Court stresses the substantial contribution made by Internet archives to preserving and making available news and information". The ECtHR elaborates that "Such archives constitute an important source for education and historical research, particularly as they are readily accessible to the public and are generally free" and they contribute by "placing current events in context" (*M.L. and W.W. v. Germany* - para. 90 & 91; *Fuchsmann v. Germany* - para. 35-39; *Hurbain v. Belgium* - para. 100 & 105; *Times Newspapers LTD v. United Kingdom* - para. 45; *Wegrzynowski and Smolczewski v. Poland* - para. 59).

In *Fuchsmann*, the ECtHR therefore agrees with the domestic courts when it stresses the contribution of Internet archives: "The Court of Appeal further held that public interest also existed in the publication of the article in the online archive of the newspaper. It reasoned that the public had not only an interest in news about current events, but also in the possibility of researching important past events. The Court agrees with this conclusion, too. It notes the substantial contribution made by Internet archives to preserving and making available news and information. Such archives constitute an important source for education and historical research, particularly as they are readily accessible to the public and are generally free" (*Fuchsmann v. Germany* - para. 35-39).

Likewise in the case *M.L. and W.W.*, the ECtHR agrees with the domestic courts that stressed the importance of digital archives. "The Federal Court of Justice also pointed out that the media's task was to contribute to shaping democratic opinion by making old news items that were stored in their archives available to the public. The Court fully agrees with this conclusion. It has consistently stressed the essential role played by the press in a democratic society (…) including through its websites and the establishment of digital archives, which contribute significantly to enhancing the public's access to information and its dissemination" (*M.L. and W.W. v. Germany* - para. 101 & 102). The ECtHR also says that information on the Internet becomes "easily available and accessible to those concerned, irrespective of their place of residence" (*L.B. v. Hungary* - para. 61-64).

The ECtHR has also considered hyperlinks as well as Internet service providers, and how they contribute to the access to information and functioning of the Internet. In respect of hyperlinks, the ECtHR says that "bearing in mind the role of the Internet in enhancing the public's access to news and information, the Court points out that the very purpose of hyperlinks is, by directing to other pages and web resources, to allow Internet users to navigate to and from material in a network characterised by the availability of an immense amount of information. Hyperlinks contribute to the smooth operation of the Internet by making information accessible through linking it to each other" (*Magyar Jeti ZRT v. Hungary* - para. 73). In respect of Internet service providers, the ECtHR emphasises "the important role that ISSPs such as Google Inc. perform in facilitating access to information

and debate on a wide range of political, social and cultural topics" (*Tamiz v. the United Kingdom* - para. 90).

No. 3) The ECtHR stresses that the Internet has, however, increased the risk of violations to private life and hate speech

As described above, the ECtHR finds that the Internet contributes to freedom of expression and access to information. Meanwhile, the ECtHR is also concerned that the Internet increases the risk of violations to private life and hate speech. As described above, the ECtHR finds that the Internet contributes because of its capacity to disseminate information, store and transmit information, the persistence of the information, and Internet archives and search engine enhance the access to information.

However, these are the same reasons why the Internet according to the ECtHR increases the risk of violations to private life and hate speech. Unlawful speech can be disseminated like never before and remain persistently available online (e.g. *Delfi AS v. Estonia*). This distinguishes speech on the Internet from the traditional media (e.g. *Benedik v. Slovenia*). The ECtHR does consider digital archives and search engines a great contribution to access to information, but is at the same time concerned with the serious effect they may have on private life (*Biancardi v. Italy*; *Hurbain v. Belgium*).

The ECtHR has on several occasions stressed: "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 certainly higher than that posed by the press" (*OOO Regnum v. Russia* - para. 60 & 61; *Kilin v. Russia* - para. 78 & 79; *Savva Terentyev v. Russia* - para. 79; *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 84 & 85; *Annen v. Germany* - para. 66; *M.L. and W.W. v. Germany* - para. 90 & 91; *Egill Einarsson v. Iceland* - para. 46; *Arnarson v. Iceland* - para. 37; *Magyar Jeti ZRT v. Hungary* - para. 66; *L.B. v. Hungary* - para. 61-64; *Wegrzynowski and Smolczewski v. Poland* - para. 58; *Editorial Board of Pravoye Delo*

and Shtekel v. Ukraine - para. 63; *Delfi AS v. Estonia* - para. 133; *Hurbain v. Belgium* - para. 115). The ECtHR has therefore emphasised that this stance on the risks posed by the Internet is "the Court's well-established case-law" (*L.B. v. Hungary* - para. 61-64).

The ECtHR included in some of these paragraphs that the risks are increased because "Internet sites are an information and communication tool particularly distinct from the printed media, especially as regards the capacity to store and transmit information" (*Hurbain v. Belgium* - para. 115; *M.L. and W.W. v. Germany* - para. 90 & 91; *Affaire Societe Editrice de Mediapart et Autres v. France* - para. 88), whereas the ECtHR has also described that the Internet increases the risk of violations to private life and hate speech, because "Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated like never before, worldwide, in a matter of seconds, and sometimes remain persistently available online" (*Kilin v. Russia* - para. 78 & 79; *Savva Terentyev v. Russia* - para. 79; *Annen v. Germany* - para. 67; *Delfi AS v. Estonia* - para. 110; *Melike v. Turkey* - para. 50).

The ECtHR has also described that "the Court does not lose sight of the ease, scope and speed of the dissemination of information on the Internet, and the persistence of the information once disclosed, which may considerably aggravate the effects of unlawful speech on the Internet compared to traditional media" (*Benedik v. Slovenia* - para. 105; *Delfi AS v. Estonia* - para. 147; *Standard Verlagsgesellschaft MBH v. Austria, No. 3* - para. 75).

The statements which are mentioned above are repeated in a number of cases. However, there are also examples that the ECtHR describes specifically in a case that the Internet increases the risk of harm to private life or hate speech.

The ECtHR spoke in one case of the harm that defamatory or hateful comments may cause when they are published on popular websites: "The potential of the comments on the Internet as well as the danger they may cause, especially when they are published on popular Internet websites". The case concerned hate speech on Facebook against homosexuals (*Beizaras and Levickas v. Lithuania* - para. 127).

In the case of *Volodina* the ECtHR spoke specifically of cyberharassment. The Court says: “The acts of cyberviolence, cyberharassment and malicious impersonation have been categorised as forms of violence against women and children capable of undermining their physical and psychological integrity” (*Volodina v. Russia, No. 2* - para. 48).

In the case, the applicant's social media account was hacked by her ex-partner, and he uploaded her intimate photos to the account. The ECtHR emphasised the effects that cyberharassment has on the individual. “The non-consensual publication of her intimate photographs, the creation of fake social-media profiles which purported to impersonate her, and her tracking with the use of a GPS device interfered with her enjoyment of her private life, causing her to feel anxiety, distress and insecurity” (*Volodina v. Russia, No. 2* - para. 49). “The publication of the applicant’s intimate photographs, calculated to attract the attention of her son, his classmates and their teacher (…) sought to humiliate and degrade her” (*Volodina v. Russia, No. 2* - para. 50).

In respect of articles that continue being available in Internet archives and search engines, the ECtHR says that “anyone – well-known or not – can be the subject of an Internet search, and his or her rights can be impaired by continued Internet access to his or her personal data” (*Biancardi v. Italy* - para. 62).

Similarly, in *Hurbain*, the ECtHR spoke of Internet archives and search engines: “The same is true as regards paper and digital archives, as the scope of the latter is much greater and the repercussions on the private life of the individuals who are named are correspondingly more serious, an effect that is further amplified by search engines” (*Hurbain v. Belgium* - para. 116).

The ECtHR has also mentioned that the Internet may cause other risks, beside violations to private life and hate speech. It has for instance paid attention to “threats that States currently face from networks of international actors, using the Internet both for communication and as a tool, and the existence of sophisticated technology which would enable these actors to avoid detection” (*Centrum for Rättvisa v. Sweden* - para. 254). Similarly, it describes: “While technological capabilities have greatly increased

the volume of communications traversing the global Internet, the threats being faced by Contracting States and their citizens have also proliferated. These include, but are not limited to, global terrorism, drug trafficking, human trafficking and the sexual exploitation of children. Many of these threats come from international networks of hostile actors with access to increasingly sophisticated technology enabling them to communicate undetected. Access to such technology also permits hostile State and non-State actors to disrupt digital infrastructure and even the proper functioning of democratic processes through the use of cyberattacks, a serious threat to national security which by definition exists only in the digital domain and as such can only be detected and investigated there" (*Centrum for Rättvisa v. Sweden* - para. 237).

No. 4) The ECtHR emphasises the importance of ensuring balance between the competing rights to private life and freedom of expression

In the two sections right above it is shown, firstly, that the ECtHR believes freedom of expression and access to information benefit from the Internet and, secondly, that the ECtHR finds the Internet increases the risk of violations to private life and hate speech. The ECtHR does therefore emphasise the need to weigh the competing rights and ensure a balance between Article 8 and Article 10.

This section describes the approach that the ECtHR applies in the balancing of the competing rights.

The ECtHR starts with an assessment of the applicability of the two articles. They are only applicable if the interference is sufficiently serious. The ECtHR refers to this as the threshold test.

Even if the threshold has been met, the ECtHR considers some intrusions more serious than others. The level of intrusion matters when the ECtHR considers the balancing between Article 8 and Article 10.

The ECtHR assesses whether the domestic courts have balanced the competing rights. If the ECtHR finds that the domestic courts have balanced the competing rights, then the ECtHR will conclude that they have acted within their margin of appreciation. It means that the ECtHR will not reach a conclusion that is different of that from the domestic courts.

The scope of the margin of appreciation will usually correspond with the level of intrusion. However, in several cases the ECtHR concludes that the domestic courts did not offer Article 8 or Article 10 sufficient protection. Oftentimes, the ECtHR is not convinced that the domestic courts have actually balanced the competing rights and has followed the criteria set out in Article 8(2) or 10(2) concerning necessity.

Finally, the section analyses how the ECtHR applies the above-mentioned principles in cases on blocking of access to websites, objective liability on media companies in respect of user-generated content, and digital archives.

“Bearing in mind the need to protect the values underlying the Convention, and considering that the rights under Articles 10 and 8 of the Convention deserve equal respect, a balance must be struck that retains the essence of both rights” (*Delfi AS v. Estonia* - para. 110; *Annen v. Germany* - para. 67). ”While recognising the importance of the rights of a person who has been the subject of content available on the Internet, these rights must also be balanced against the public’s right to be informed” (*L.B. v. Hungary* - para. 61-64; *M.L. and W.W. v. Germany* - para. 103 & 104).

The question is therefore if the domestic courts have weighed Article 8 and Article 10 in the specific case. Or as the ECtHR explains it: “The question is thus whether, in the present case, the State has struck a fair balance between the applicant’s right to respect for her private life under Article 8 and the online news agency and forum host’s right to

freedom of expression guaranteed by Article 10 of the Convention" (*Høiness v. Norway* - para. 68).

The following is an example, showing that the ECtHR assesses if Article 8 is applicable to the case and decides that Article 8 is indeed applicable. The ECtHR says: "In addition, it observes that the material in the case file indicates that the employer also accessed the applicant's personal Yahoo Messenger account (…) It is open to question whether – and if so, to what extent – the employer's restrictive regulations left the applicant with a reasonable expectation of privacy. Be that as it may, an employer's instructions cannot reduce private social life in the workplace to zero. Respect for private life and for the privacy of correspondence continues to exist, even if these may be restricted in so far as necessary. In the light of all the above considerations, the Court concludes that the applicant's communications in the workplace were covered by the concepts of "private life" and "correspondence". Accordingly, in the circumstances of the present case, Article 8 of the Convention is applicable" (*Barbulescu v. Romania* - para. 78-81). The following is another example: "The Court notes that the present case concerns electronic messages that the applicant had exchanged with male correspondents on a casual dating site. These are personal messages which an individual can legitimately expect not to be disclosed without his or her consent, and the disclosure of which may lead to a very strong feeling of intrusion into the "private life" and "correspondence" referred to in Article 8 of the Convention. Since the seriousness of the interference with the personal enjoyment of the right to respect for private life denounced in the present case is not in doubt, the Court concludes that such messages do indeed fall within the scope of this provision" (*M.P. v. Portugal* - para. 34).

Here is an example in which the ECtHR determines that Article 10 is applicable. "The Court reiterates that measures blocking access to websites are bound to have an influence on the accessibility of the Internet and, accordingly, engage the responsibility of the respondent State under Article 10 (…) The measure which prevented visitors to the applicants' websites from accessing their content amounted to "interference by a public authority" with the right to receive and impart information, since Article 10 guarantees not only the right to impart information but also the right of the public to receive it" (*OOO Flavus and Others v. Russia* - para. 29).

Similarly, in *Bulgakov*, the ECtHR says: "The Court reiterates that measures blocking access to websites are bound to have an influence on the accessibility of the Internet and, accordingly, engage the responsibility of the respondent State under Article 10" and "The measure which prevented visitors to the applicant's website from accessing its content amounted to "interference by a public authority" with the right to receive and impart information, since Article 10 guarantees not only the right to impart information but also the right of the public to receive it" (*Bulgakov v. Russia* - para. 29).

In *Ashby Donald*, the ECtHR determined that fashion photos shared on a website were covered by Article 10: "The Court reiterates that Article 10 of the Convention is intended to apply to communication by means of the Internet (…) regardless of the type of message to be conveyed (…) and even when the objective pursued is of a lucrative nature (…) It also recalls that freedom of expression includes the publication of photographs (…) It infers from this that the publication of the disputed photographs on a website dedicated to fashion and offering the public images of fashion shows for free or paid consultation and for sale falls within the exercise of the right to freedom of expression, and that the conviction of the applicants for these facts amounted to an interference" (*Ashby Donald and Others v. France* - para. 34 – Google translation of French version).

Moreover, Article 8 is only activated if the interference with the rights to private life is deemed sufficiently serious. The following is an example in which the ECtHR assesses if Article 8 is applicable: "The Court finds it clear that comments on the first applicant's Facebook page (…) affected the applicants' psychological well-being and dignity, thus falling within the sphere of their private life (…) finding that the attacks on the applicants had attained the level of seriousness required for Article 8 to come into play, the Court holds that the facts of the case fall within the scope of Article 8 of the Convention" (*Beizaras and Levickas v. Lithuania* - para. 117).

Sometimes, the ECtHR refers to this question, of whether an interference is sufficiently serious for Article 8 or Article 10 to be applicable, as the threshold test. The following is an example of how the "threshold test" is applied, and specifically to cases concerning the Internet. The ECtHR states that "in considering the gravity of the

interference with the applicant's Article 8 rights, the Court recalls that an attack on personal honour and reputation must attain a certain level of seriousness and must have been carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life (…) This threshold test is important: (…) the reality is that millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. However, the majority of comments are likely to be too trivial in character, and/or the extent of their publication is likely to be too limited, for them to cause any significant damage to another person's reputation" (*Tamiz v. the United Kingdom* - para. 80).

In the same case, the ECtHR elaborates on the threshold test. "In deciding whether that threshold has been met in the present case, the Court is inclined to agree with the national courts that while the majority of comments about which the applicant complains were undoubtedly offensive, for the large part they were little more than "vulgar abuse" of a kind – albeit belonging to a low register of style – which is common in communication on many Internet portals (…) and which the applicant, as a budding politician, would be expected to tolerate (…) Furthermore, many of those comments (…) which made more specific – and potentially injurious – allegations would, in the context in which they were written, likely be understood by readers as conjecture which should not be taken seriously" (*Tamiz v. the United Kingdom* - para. 81).

Even when the threshold has been met, the ECtHR considers some intrusions into private life more serious than others. The level of intrusion has a bearing when the ECtHR considers the balancing between Article 8 and Article 10.

Paragraphs 66 to 72 of the *L.B.* case are an example in which the ECtHR argues that the content only had a limited impact on private life: "It is also clear that the reach and thus potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or highly visited web pages (…) amongst other things, an individual seeking the information had to take the initial step of going to the Tax Authority's website (…) The Court also finds it relevant that the Tax Authority's website did not provide the public with a means of shaming the applicant, for example, a way of posting comments underneath the lists in question.

Finally, the Court cannot but note that although the applicant referred to the general public-shaming effect of appearing on the list (…) his submissions contained no evidence or reference to personal circumstances indicating that the publication of his personal data on the tax defaulters' and tax evaders' list had led to any concrete repercussions on his private life. In the Court's view, in the circumstances of the present case, making the information in question public could not be considered a serious intrusion into the applicant's personal sphere. It does not appear that making his personal data public placed a substantially greater burden on his private life than was necessary to further the State's legitimate interest" (*L.B. v. Hungary* - para. 66-72).

Once the ECtHR has found that the threshold has been met, and Article 8 is therefore applicable, the ECtHR will assess whether the domestic courts have balanced the competing rights.

If their balancing may be accepted, then they have acted within their margin of appreciation. The effect of this is explained in the following: "The domestic courts reviewed the relevant aspects of the case (…) there are no reasons for the Court to substitute a different view for that of the domestic courts. In view of the above, the Court finds that the domestic courts acted within their margin of appreciation when seeking to establish a balance between the applicant's rights under Article 8 and the news portal and host of the debate forums' opposing right to freedom of expression under Article 10" (*Høiness v. Norway* - para. 74 & 75).

It means that the ECtHR will not reach a different conclusion than the domestic courts if the domestic courts acted within their margin of appreciation. It is for example explained in this paragraph: "Furthermore, having discerned no "strong reasons" which would justify substituting its own view for those of the national courts (…) it finds that they acted within this wide margin of appreciation and achieved a fair balance between the applicant's right to respect for his private life under Article 8 of the Convention and the right to freedom of expression guaranteed by Article 10 of the Convention and enjoyed by both Google Inc. and its end users" (*Tamiz v. the United Kingdom* - para. 90).

The scope of the margin of appreciation will usually correspond with the level of intrusion. The domestic courts have more room to decide if the effect on the private life was limited. The above case of *L.B.* is an example, showing that the domestic courts were offered a wide margin of appreciation. Due to "the limited effect of the publication on the applicant's daily life, the Court considers that the publication fell within the respondent State's margin of appreciation. It follows that there has been no violation of Article 8 of the Convention" (*L.B. v. Hungary* - para. 66-72).

The margin of appreciation is also mentioned in the *Delfi* case. The ECtHR is satisfied that the domestic courts have acted within their margin of appreciation. "Based on the concrete assessment of the above aspects, taking into account the reasoning of the Supreme Court in the present case, in particular the extreme nature of the comments in question, the fact that the comments were posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction imposed on the applicant company, the Court finds that the domestic courts' imposition of liability on the applicant company was based on relevant and sufficient grounds, having regard to the margin of appreciation afforded to the respondent State". The ECtHR concludes: "Therefore, the measure did not constitute a disproportionate restriction on the applicant company's right to freedom of expression. Accordingly, there has been no violation of Article 10 of the Convention" (*Delfi AS v. Estonia* - para. 162).

However, there are several cases in which the ECtHR concludes that the domestic courts did not offer Article 10 the necessary protection, after emphasising that the domestic courts did not balance the rights and did not consider the importance of Article 10.

See for example *OOO Regnum*: "The Court observes that the subject matter of the three impugned news items at hand was the instance of mercury poisoning following the consumption of a shop-bought branded soft drink. In its view, this clearly pertains to an important aspect of human health and raises a serious issue in terms of consumer

protection. Accordingly, the impugned news items conveyed information of considerable public interest (…) However, nowhere in the judgment (…) did the Circuit Court consider whether the information disseminated by an electronic media outlet had been topical to the public. It therefore failed to see the defamation dispute in the context of the general interest in receiving reports on the discovery of a potential health hazard" (*OOO Regnum v. Russia* - para. 68 & 69).

Similarly, in *OOO Flavus*, the ECtHR finds that the domestic courts restricted the rights to freedom of expression, without having scrutinized how the content was violating. "The Court has found above that the decision on the illegal nature of the websites' content had been made in the present case on spurious grounds or outright arbitrarily" (*OOO Flavus and Others v. Russia* - para. 37 & 38). The ECtHR holds that the interference "had excessive and arbitrary effects" and the "Russian legislation did not afford the applicants the degree of protection from abuse to which they were entitled by the rule of law in a democratic society. In so far as the blocking measures targeted the entire online media beyond the content originally identified as unlawful, the interference had no justification under paragraph 2 of Article 10. It did not pursue any legitimate aim and was not necessary in a democratic society" (*OOO Flavus and Others v. Russia* - para. 44).

Bulgakov also concerns the blocking of access to a website. Again, the ECtHR emphasises that freedom of expression cannot be restricted more than is necessary and any restriction must be in accordance with Article 10(2): "The Court reiterates that the wholesale blocking of access to an entire website is an extreme measure which has been compared to banning a newspaper or television station (…) Such a measure deliberately disregards the distinction between the legal and illegal information the website may contain, and renders inaccessible large amounts of content which has not been designated as illegal. Blocking access to a website's IP address has the practical effect of extending the scope of the blocking order far beyond the illegal content which had originally been targeted" (*Bulgakov v. Russia* - para. 34). The ECtHR therefore concludes: "The Court has found above that there was no legal basis for blocking access to the applicant's entire website when it contained one page of extremist material" (*Bulgakov v. Russia* - para. 38).

The ECtHR has also had occasion to emphasise that a State cannot exclude any kind of technology, solely on the grounds that the technology might be used for criminal purposes. “Even though the use of any information technology can be subverted to carry out activities which are incompatible with the principles of a democratic society, filter-bypassing technologies primarily serve a multitude of legitimate purposes, such as enabling secure links to remote servers, channelling data through faster servers to reduce page-loading time on slow connections, and providing a quick and free online translation. None of these legitimate uses were considered by the Russian court before issuing the blocking order” (*Engels v. Russia* - para. 29).

Moreover, *Kablis* is an example of a case in which the domestic courts did not analyse if the restriction on freedom of expression was necessary. “It follows that the breach of the procedure for the conduct of public events in the present case was minor and did not create any real risk of public disorder or crime. Nor did it have a potential to lead to harmful consequences for public safety or the rights of others. In such circumstances the Court is not convinced that there was “a pressing social need” to apply prior restraint measures and to block access to the impugned Internet posts calling for participation in that event and thereby expressing an opinion on an important matter of public interest” (*Kablis v. Russia* - para. 105).

Some of the cases mentioned above exemplify that the ECtHR is sceptical of complete blocking of access to a website, if only some of the content is violating. The ECtHR is also critical of objective liability, meaning that the domestic courts exclude any assessment of the necessity of the interference. *Magyar Jeti* is an example of objective liability, and the ECtHR says that “the relevant Hungarian law, as interpreted by the competent domestic courts, excluded any meaningful assessment of the applicant company’s freedom of expression rights under Article 10 of the Convention, in a situation where restrictions would have required the utmost scrutiny, given the debate on a matter of general interest. Indeed, the courts held that the hyperlinking amounted to dissemination of information and imposed objective liability – a course of action that effectively precluded any balancing between the competing rights, that is to say, the right to reputation of the political party and the right to freedom of expression of the applicant company” (*Magyar Jeti ZRT v. Hungary* - para. 83 & 84).

The ECtHR continues: “In the Court’s view, such objective liability may have foreseeable negative consequences on the flow of information on the Internet, impelling article authors and publishers to refrain altogether from hyperlinking to material over whose changeable content they have no control. This may have, directly or indirectly, a chilling effect on freedom of expression on the Internet. Based on the above, the Court finds that the domestic courts’ imposition of objective liability on the applicant company was not based on relevant and sufficient grounds. Therefore, the measure constituted a disproportionate restriction on its right to freedom of expression” (*Magyar Jeti ZRT v. Hungary* - para. 83 & 84).

In *Magyar Tartalomszolgaltatok*, the ECtHR requests that domestic courts not only consider if the interference is necessary in the specific case but also if the interference might hamper freedom of expression on the Internet more generally. “However, the Court cannot but observe that the Hungarian courts paid no heed to what was at stake for the applicants as protagonists of the free electronic media. They did not embark on any assessment of how the application of civil-law liability to a news portal operator will affect freedom of expression on the Internet. Indeed, when allocating liability in the case, those courts did not perform any balancing at all between this interest and that of the plaintiff. This fact alone calls into question the adequacy of the protection of the applicants’ freedom of expression rights on the domestic level” (*Magyar Tartalomszolgaltatok v. Hungary* - para. 86-88).

In cases where the ECtHR finds that the interference with the rights to freedom of expression was unnecessary, the ECtHR will conclude that Article 10 has been violated. See for example: “The Court concludes that the interference with the applicant’s right to receive information, in the specific circumstances of the present case, cannot be regarded as having been necessary in a democratic society. There has accordingly been a violation of Article 10 of the Convention” (*Jankovskis v. Lithuania* - para. 64).

The ECtHR has defined the balancing between Article 8 and Article 10 in a series of cases concerning online archives. The issue in such cases is, on the one hand, the private life of a person who is mentioned in an article that appears in a media company's online archive and, on the other hand, the freedom of expression and access to information. This

paragraph serves as an introduction to the kind of issue: “In a case such as the present one, the rights of a person who has been the subject of content available on the Internet must therefore be balanced against the public’s right to be informed about past events and contemporary history, in particular through the use of digital press archives” (*Hurbain v. Belgium* - para. 101).

In cases concerning online archives, the ECtHR has emphasised that online archives are covered by Article 10 and that the decision of the domestic courts should not limit the media company's and the public's Article 10 rights more than necessary. The *M.L. and W.W.* case is an example: “Moreover, according to the Court’s case-law, the legitimate interest of the public in access to the public Internet archives of the press is protected under Article 10 of the Convention (…) and particularly strong reasons must be provided for any measure limiting access to information which the public has the right to receive” (*M.L. and W.W. v. Germany* - para. 101 & 102).

The ECtHR is concerned with the “risk of a chilling effect” in cases concerning digital archives. In the case *M.L. and W.W.*, the domestic courts “pointed to the risk of a chilling effect on the freedom of expression of the press (…) and in particular the risk that the media, owing to a lack of sufficient personnel and time to examine such requests, might no longer include in their reports identifying elements that could subsequently become unlawful”. The ECtHR said that it could not rule out the existence of the risk, if media companies should “examine the lawfulness of a report at a later stage, following a request from the person concerned”, because “weighing up all the interests at stake, would entail a risk that the press might refrain from keeping reports in its online archives or that it would omit individualised elements in reports likely to be the subject of such a request.” The ECtHR therefore held that “the most careful scrutiny under Article 10 is required where measures or sanctions imposed on the press are capable of discouraging the participation of the press in debates on matters of legitimate public concern” (*M.L. and W.W. v. Germany* - para. 103).

Similarly, in *Hurbain*, the ECtHR mentions what it calls the “risk of a chilling effect” and considers how the decision could hamper the Article 10 rights. “In that connection the Court is keenly aware of the risk of a chilling effect on freedom of the press posed

by a requirement for a publisher to anonymise an article whose lawfulness has not been questioned. The obligation to examine at a later stage the lawfulness of keeping a report online following a request from the person concerned, which implies weighing up all the interests at stake, entails a risk that the press might refrain from keeping reports in its online archives or omit individualised elements in reports likely to be the subject of such a request" (*Hurbain v. Belgium* - para. 102).

No. 4.1) The ECtHR considers hate speech a particular category in respect of the balancing between the rights of Article 8 and Article 10

Section 4 concerns the balancing between the competing rights to private life and freedom of expression. The start of section 4 explained how the ECtHR assesses the issue, in general. As mentioned, the starting point in any case is balancing between the competing rights.

However, the assessment differs in crucial ways in respect of hate speech. Because if the ECtHR finds that the speech in the case amounts to hate speech, then it enjoys no protection under Article 10. There is in other words no balancing to be considered between Article 8 and Article 10. The ECtHR will therefore carefully decide whether the speech amounts to hate speech. In some cases, the domestic courts held that the speech was hate speech, and therefore not protected, but the ECtHR concludes that the domestic courts were wrong (e.g. *Magyar Tartalomszolgaltatok v. Hungary*). In other cases, the ECtHR concludes that the State protected speech, despite the fact that it was hate speech (e.g. *Beizaras and Levickas v. Lithuania*). *Delfi AS* is an example of a case in which the ECtHR agrees with the domestic courts that the speech amounted to hate speech and the interference was justified.

The ECtHR explains that "freedom of expression online carries with it duties and responsibilities" and may be subject to such "restrictions or penalties that are necessary

in a democratic society" (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 84 & 85).

In some cases, the ECtHR considers the question of hate speech, but concludes that it was not hate speech. After this conclusion, the ECtHR will analyse if the domestic courts have balanced the rights under Article 8 and Article 10 correctly.

Magyar Tartalomszolgaltatok is an example, in which the ECtHR held that the domestic courts were wrong when they restricted the rights under Article 10, because the expressions did not contain hate speech. The ECtHR did in other words find that the domestic courts had not conducted the balancing of competing rights. "It is true that, in cases where third-party user comments take the form of hate speech and direct threats to the physical integrity of individuals, the rights and interests of others and of the society as a whole might entitle Contracting States to impose liability on Internet news portals if they failed to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties (…) However, the present case did not involve such utterances. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 10 of the Convention" (*Magyar Tartalomszolgaltatok v. Hungary* - para. 91).

In *Beizaras and Levickas*, the ECtHR concludes that the comments made on Facebook against a homosexual couple were hate speech. The case is mentioned in more detail in other parts of the thesis. See *Beizaras and Levickas v. Lithuania* - para. 125. The ECtHR stresses that "comments that amount to hate speech and incitement to violence" are unlawful and are not protected under Article 10. The paragraph also mentions "attacks on specific groups of the population" and "racist speech".

However, there are also examples of cases in which the domestic courts found that it amounted to hate speech and the ECtHR agrees. In *Delfi AS*, a media company allowed for user-generated comments on the Internet. The ECtHR did not only accept the need to restrict the hateful comments, but also the domestic courts' imposition of liability on the media company. Firstly, the ECtHR considered if the notice-and-take-down system that the media company had introduced was sufficient to avoid liability. "If

accompanied by effective procedures allowing for rapid response, this system can in the Court's view function in many cases as an appropriate tool for balancing the rights and interests of all those involved. However, in cases such as the present one, where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals (…) the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties" (*Delfi AS v. Estonia* - para. 159). The *Delfi* case is dealt with in more detail, right below, concerning user-generated content.

No. 4.2) The ECtHR considers user generated content a particular category in respect of the balancing between the rights of Article 8 and Article 10

The ECtHR has examined the balancing between Article 8 and Article 10 in several cases concerning social media and user generated content. According to the ECtHR, social media is an unprecedented opportunity to exercise the rights to freedom of expression (e.g. *Cengiz and Others v. Turkey*). YouTube and Facebook are examples of websites with user generated content, which enhance the ability to exercise the rights to freedom of expression and access to information (e.g. *Melike v. Turkey*). It does for instance make it possible for minorities to voice their opinions (e.g. *Beizaras and Levickas v. Lithuania*). The ECtHR has considered the meaning of a "like" on Facebook or "sharing" of content (*Melike v. Turkey*; *Kilin v. Russia*). The ECtHR has also distinguished between, for instance, "offensive" or "vulgar" language and hate speech (e.g. *Tamiz v. the United Kingdom*). Moreover, the ECtHR has assessed if it affects the protection under Article 10 that the comments on social media are expressed anonymously (e.g. *Benedik v. Slovenia*). The ECtHR has determined that user generated speech may be protected by Article 10, even if it consists of "vulgar" or "offensive" words or is expressed anonymously. The action of "sharing" or "likes" on Facebook are also examples of protected speech. The ECtHR emphasises that hate speech does, on the

other hand, enjoy no protection under Article 10. The State must combat hate speech, also on social media (*Beizaras and Levickas v. Lithuania*). Websites that enable user generated content may be liable in some situations (e.g. *Delfi AS v. Estonia*). However, the ECtHR is careful that websites should not become discouraged from enabling user generated content (e.g. *Magyar Tartalomszolgaltatok v. Hungary*). Liability is more likely to be in conformity with Article 10 in cases that resemble the *Delfi* case (e.g. *Tamiz v. the United Kingdom*).

The ECtHR finds that user generated content is an unprecedented opportunity to exercise the rights to freedom of expression. "User-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression" (*Cengiz and Others v. Turkey* - para. 52; *Delfi AS v. Estonia* - para. 110; *Kablis v. Russia* - para. 81; *Savva Terentyev v. Russia* - para. 79). The ECtHR continues, by saying "That is undisputed and has been recognised by the Court on previous occasions".

In this connection, the ECtHR says that YouTube and Facebook and other websites which enable user generated content, make a positive contribution to freedom of expression and access to information. "In this connection, the Court observes that YouTube is a video-hosting website on which users can upload, view and share videos and is undoubtedly an important means of exercising the freedom to receive and impart information and ideas" (*Cengiz and Others v. Turkey* - para. 52). "It notes in this regard that the disputed content was published on Facebook, which is an online social network. It recalls having already held, with regard to online publications, that the possibility for individuals to express themselves on the Internet constitutes an unprecedented tool for the exercise of freedom of expression" (*Melike v. Turkey* - para. 49, Google translation of French version).

The ECtHR has also explained how it finds that YouTube contributes to freedom of expression and access to information. "YouTube (…) is also a very popular platform for political speeches and political and social activities" and "In particular, as the applicants rightly noted, political content ignored by the traditional media is often shared via YouTube, thus fostering the emergence of citizen journalism. From that perspective, the Court accepts that YouTube is a unique platform on account of its characteristics, its accessibility and above all its potential impact,

and that no alternatives were available to the applicants" (*Cengiz and Others v. Turkey* - para. 51 & 52).

It is therefore natural that the ECtHR finds that websites which enable users to share content are covered by Article 10. "In a similar vein, the running by the applicants of a website which made it possible for users to share digital material such as movies, music and computer games was considered as putting in place the means for others to impart and receive information within the meaning of Article 10 of the Convention. The applicants' conviction for putting in place a means of disseminating information was therefore held to constitute interference with the right to freedom of expression" (*Magyar Kétfarkú Kutya Párt v. Hungary* - para. 87).

The ECtHR has dealt with cases where users have utilized social media to discuss subjects related to equality and human rights. In *Beizaras and Levickas*, a homosexual couple used Facebook as an opportunity to contribute to the debate concerning sexual minorities. "The Court observes that although in their application to the Court the applicants stated that the idea behind their posting of the photograph in question had been to announce the beginning of their relationship, in their subsequent observations they admitted that the photograph had been meant to incite discussion about gay people's rights in Lithuania (…) The Court also points to LGBT-friendly Vilnius's follow-up posts on its own Facebook page in which it was stated that the applicants' photograph had been posted to serve the aim of helping other LGBT people in Lithuania" (*Beizaras and Levickas v. Lithuania* - para. 119). The ECtHR emphasises how "it is a fair and public debate about sexual minorities' social status that benefits social cohesion by ensuring that representatives of all views are heard, including the individuals concerned" (ibid.). The ECtHR therefore finds that social media such as Facebook contributes to the exercise of the rights to freedom of expression because it enables minorities to express themselves.

The ECtHR has considered the style of communication in user generated content. The below paragraphs are examples in which the ECtHR sought to clarify what a person might express with his/her action when "sharing" or "liking" content. "In this regard, the Court observes in the first place that the applicant is not the person who created and

published the disputed content on the social network concerned and that his act was limited to clicking on the "Like" button. located below these contents. It notes that the act of adding a "Like" mention to content cannot be considered to carry the same weight as sharing content on social networks, insofar as a "Like" mention expresses only a sympathy with regard to a published content, and not an active desire for its distribution" (*Melike v. Turkey* - para. 51, Google translation of French version). "The Court also considers that the sharing of third-party content online through social media platforms is a frequent way of communication and social interaction and that it does not always pursue any specific communicative aim or aims, especially where a person does not accompany it with any comment or otherwise signify his or her attitude toward the content. The Court does not exclude that such act of sharing certain content still can contribute to an informed citizenry" (*Kilin v. Russia* - para. 78 & 79).

In respect of the style of communication, the ECtHR has also distinguished between, for instance, "offensive" or "vulgar" language and hate speech. In this regard, the ECtHR has described the style of communication that is often found in user generated content. In one case, the ECtHR noted that "the expressions used in the comments were offensive, one of them being outright vulgar" (*Magyar Tartalomszolgaltatok v. Hungary* - para. 76 & 77). The ECtHR did, however, find that "the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the content of the expression (…) Without losing sight of the effects of defamation on the Internet, especially given the ease, scope and speed of the dissemination of information (…) the Court also considers that regard must be had to the specificities of the style of communication on certain Internet portals. For the Court, the expressions used in the comments, albeit belonging to a low register of style, are common in communication on many Internet portals – a consideration that reduces the impact that can be attributed to those expressions" (*Magyar Tartalomszolgaltatok v. Hungary* - para. 76 & 77).

Similarly, in *Tamiz* the ECtHR held that offensive expressions in user generated content may be covered by Article 10. This is in line with its stance in traditional media. It is however interesting how the ECtHR describes the style of communication in user

generated content and justifies that no action should be taken against offensive comments. The ECtHR relies on its case-law from traditional media and then explains in detail how this applies especially to user generated content. The ECtHR says, "in considering the gravity of the interference with the applicant's Article 8 rights, the Court recalls that an attack on personal honour and reputation must attain a certain level of seriousness and must have been carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life (…) This threshold test is important: (…) the reality is that millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. However, the majority of comments are likely to be too trivial in character, and/or the extent of their publication is likely to be too limited, for them to cause any significant damage to another person's reputation" (*Tamiz v. the United Kingdom* - para. 80).

The ECtHR continues on the "threshold test" and offensive speech in user generated content: "In deciding whether that threshold has been met in the present case, the Court is inclined to agree with the national courts that while the majority of comments about which the applicant complains were undoubtedly offensive, for the large part they were little more than "vulgar abuse" of a kind – albeit belonging to a low register of style – which is common in communication on many Internet portals (…) and which the applicant, as a budding politician, would be expected to tolerate (…) Furthermore, many of those comments (…) which made more specific – and potentially injurious – allegations would, in the context in which they were written, likely be understood by readers as conjecture which should not be taken seriously" (*Tamiz v. the United Kingdom* - para. 81).

As a style of communication on social media, the ECtHR has also considered how it affects the rights under Article 10, if a user decides to express him/herself anonymously. The ECtHR has concluded that comments are covered by Article 10, even if they are anonymous. The ECtHR says that "the Court is mindful of the interest of Internet users in not disclosing their identity. Anonymity has long been a means of avoiding reprisals or unwanted attention. As such, it is capable of promoting the free flow of ideas and information in an important manner, including, notably, on the Internet" (*Delfi AS v.*

Estonia - para. 147; *Benedik v. Slovenia* - para. 105; *Standard Verlagsgesellschaft MBH v. Austria, No. 3* - para. 76).

One of the crucial distinctions is between hate speech and protected speech. The ECtHR emphasises that hate speech is not protected under Article 10.

In *Beizaras and Levickas* the domestic courts said that comments such as "it's not only the Jews that Hitler should have burned" or "faggots should be thrown into the gas chamber" or have "a free honeymoon trip to the crematorium" were mere obscenities and were simply words that were not chosen properly. The ECtHR held that there was no room in Article 10 for hate speech. The ECtHR emphasised that the statements were attacks on specific groups of the population. The ECtHR said that the State should combat hate speech (*Beizaras and Levickas v. Lithuania* - para. 125).

The ECtHR has also considered whether websites have reacted sufficiently against user generated hate speech. The ECtHR has emphasised the need to act against hate speech and that websites, which enable user generated content, may face liability if hate speech is not removed. The ECtHR says that "in cases such as the present one, where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, as understood in the Court's case-law (…) the Court considers (…) that the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties" (*Delfi AS v. Estonia* - para. 159). In the same case, the ECtHR states: "Having regard to the fact that there are ample opportunities for anyone to make his or her voice heard on the Internet, the Court considers that a large news portal's obligation to take effective measures to limit the dissemination of hate speech and speech inciting violence – the issue in the present case – can by no means be equated to "private censorship"" (*Delfi AS v. Estonia* - para. 157).

The ECtHR also lists facts in that case which justify liability on the website. The ECtHR finds that "taking into account (…) in particular the extreme nature of the comments in

question, the fact that the comments were posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction imposed on the applicant company, the Court finds that the domestic courts' imposition of liability on the applicant company was based on relevant and sufficient grounds" and the ECtHR concludes: "Therefore, the measure did not constitute a disproportionate restriction on the applicant company's right to freedom of expression. Accordingly, there has been no violation of Article 10 of the Convention" (*Delfi AS v. Estonia* - para. 162).

In other cases, the ECtHR has compared to *Delfi*, to consider if it was justified that the State held a media company liable for user generated content. The ECtHR has for example distinguished and said that Article 10 was violated when liability was imposed in *Magyar Tartalomszolgaltatok*. "It is true that, in cases where third-party user comments take the form of hate speech and direct threats to the physical integrity of individuals, the rights and interests of others and of the society as a whole might entitle Contracting States to impose liability on Internet news portals if they failed to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties (…) However, the present case did not involve such utterances. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 10 of the Convention" (*Magyar Tartalomszolgaltatok v. Hungary* - para. 91).

The ECtHR has emphasised that websites which enable user generated content may assume responsibility in some situations. "Although Internet news portals are not publishers of third-party comments in the traditional sense, they can assume responsibility under certain circumstances for user-generated content" (*Magyar Jeti ZRT v. Hungary* - para. 66). The ECtHR has analysed when a website may assume such responsibility. The ECtHR finds that websites which allow for user generated content generally make a positive contribution to freedom of expression. As a starting point, the ECtHR considers it sufficient if the website has established a system to monitor user generated content.

However, there may be more facts to evaluate. For example, whether the website is commercially run or whether it encourages comments of a particular nature.

In *Magyar Tartalomszolgaltatok*, the ECtHR describes the system that the applicants had created to monitor user generated content. The ECtHR states, inter alia: "The Court observes that the applicants took certain general measures to prevent defamatory comments on their portals or to remove them (…) The second applicant set up a team of moderators performing partial follow-up moderation of comments posted on its portal. In addition, both applicants had a notice-and-take-down system in place, whereby anybody could indicate unlawful comments to the service provider so that they be removed" (*Magyar Tartalomszolgaltatok v. Hungary* - para. 81 & 82). The ECtHR was satisfied with this system and was, accordingly, critical of the stance of the domestic courts. "The domestic courts held that, by allowing unfiltered comments, the applicants should have expected that some of those might be in breach of the law. For the Court, this amounts to requiring excessive and impracticable forethought capable of undermining freedom of the right to impart information on the Internet" (*Magyar Tartalomszolgaltatok v. Hungary* - para. 81 & 82).

The ECtHR stressed in the case that it was careful not to impose excessive liability on websites for user generated content, because this could reduce the extent to which websites would offer the chance for users to express themselves. "Such liability may have foreseeable negative consequences on the comment environment of an Internet portal, for example by impelling it to close the commenting space altogether. For the Court, these consequences may have, directly or indirectly, a chilling effect on the freedom of expression on the Internet. This effect could be particularly detrimental for a non-commercial website such as the first applicant" (*Magyar Tartalomszolgaltatok v. Hungary* - para. 86-88).

Høiness is an example, in which the ECtHR considers the balancing between the competing rights under Article 8 and Article 10. The ECtHR held that Article 8 had not been violated. In coming to this conclusion, the ECtHR analysed how the website monitored user generated content. "With respect to the measures adopted by Hegnar Online, it appears that there was an established system of moderators who monitored

content, although it is stated in the High Court's judgment that they may not have discovered a great number of unlawful comments to remove of their own motion. Moreover, readers could click on "warning" buttons in order to notify their reaction to comments (…) Lastly, it appears from the present case that a response was also given to warnings by other means, such as email" (*Høiness v. Norway* - para. 71 & 72). The wording shows that the ECtHR is willing to accept that a system is sufficient to avoid liability even if it "may not have discovered a great number of unlawful comments to remove of their own motion". This amplifies the ECtHR's intention not to discourage websites from allowing user generated content.

The ECtHR has stated that liability is more likely to be in conformity with Article 10 in cases that resemble the *Delfi* case than, for example, concerning small blogs run as a hobby. "In *Delfi* the Grand Chamber was concerned with a large, professionally managed Internet news portal run on a commercial basis which published news articles of its own and invited its readers to comment on them; it expressly stated that it did not concern other Internet fora, such as a social media platform where the platform provider does not offer any content and where the content provider may be a private person running a website or blog as a hobby" (*Tamiz v. the United Kingdom* - para. 85).

To complete this chapter on user generated content, it may be relevant to add that the ECtHR has considered if users of YouTube can claim "victim status" when access to YouTube is blocked in their country. The ECtHR found that applicants satisfied to be granted "victim status" because they were active users of YouTube, and specifically used it to access and share academic content. The ECtHR said about the applicants that "through their YouTube accounts they used the platform not only to access videos relating to their professional sphere, but also in an active manner, for the purpose of uploading and sharing files of that nature" (*Cengiz and Others v. Turkey* - para. 50) and "the applicants had no access to YouTube for a lengthy period. As active YouTube users, they can therefore legitimately claim that the measure in question affected their right to receive and impart information and ideas (…) such a measure was bound to have an influence on the accessibility of the Internet and, accordingly, engaged the responsibility of the respondent State under Article 10 (…) The measure in

question therefore amounted to "interference by public authority" with the exercise of the rights guaranteed by Article 10" (*Cengiz v. Turkey* - para. 57).

By contrast, "in *Akdeniz* (…) it held that the mere fact that Mr Akdeniz – like the other users of two music-streaming websites in Turkey – was indirectly affected by a blocking order could not suffice for him to be acknowledged as a "victim" within the meaning of Article 34 of the Convention" and "the Court had regard, inter alia, to the fact that the applicant could easily have had access to a whole range of musical works by a variety of means" (*Cengiz and Others v. Turkey* - para. 49 & 51).

No. 5) The ECtHR relies on its case-law from traditional media. The ECtHR compares traditional media and the Internet, finding differences or similarities. The result of this comparison suggests if the conclusion should be the same

The section above, concerned the balancing between the rights under Article 8 and Article 10. When the ECtHR undertakes this balancing exercise, it often relies on case-law from traditional media. It is therefore important for the ECtHR to compare the Internet phenomenon with a subject from traditional media. If the similarities are convincing, the ECtHR may reach the same conclusion. In some situations, the ECtHR finds that the Internet differs from traditional media in ways which mean that they should be regulated in different ways (e.g. *Magyar Jeti ZRT v. Hungary*).

The ECTHR is concerned that the Internet may pose significant risks of harm to private life or hate speech, which are greater than the risks posed by traditional media (e.g. *Kilin v. Russia*). However, in other situations the ECtHR finds that the Internet makes a positive contribution, and the protection that originally was offered to traditional media should therefore be extended to digital media (e.g. *M.L. and W.W. v. Germany*).

The ECtHR will of course offer the Internet strong protection, if the ECtHR compares the Internet and traditional media, and finds that the rights to freedom of expression and access to information benefit even more from the Internet than it does from traditional media (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia*). In some of the cases in which the ECtHR has had to consider a new subject, that is particular to the Internet, it has compared the Internet subject to a subject in traditional media, and found that they have similarities or differences, so that they should be determined in the same or different ways. See for instance the case concerning hyperlinks (*Magyar Jeti ZRT v. Hungary*). The ECtHR has had to determine cases concerning social media and user generated content. The ECtHR has looked at points where they are similar, as well as points where they are different, from traditional media (e.g. *Delfi AS v. Estonia*). The ECtHR has applied literal, purposive, and contextual interpretation in numerous paragraphs mentioned in the sections above. The ECtHR does also apply these kinds of interpretation in the paragraphs in this section. However, the current section is particular because of the extent to which the ECtHR rules by precedent and analogy.

A crucial first question to be decided in any case is whether the person has "victim status", so the case qualifies to come before the ECtHR. In the thesis, the question has been saved for this section, because of the following paragraphs that compare users of the Internet and traditional media. However, it would actually be a preliminary issue to be decided, and which would determine whether the ECtHR would accept the case.

The ECtHR has had cases, in which it should determine if users of YouTube have victim status. The ECtHR has determined this with reference to its case-law on victim status in cases concerning traditional media. In this paragraph, it first compares a user of a music-streaming website and a reader of a newspaper: "In *Tanrıkulu and Others* (…) it found that readers of a newspaper whose distribution had been prohibited did not have victim status. Similarly, in *Akdeniz* (…) it held that the mere fact that Mr Akdeniz – like the other users of two music-streaming websites in Turkey – was indirectly affected by a blocking order could not suffice for him to be acknowledged as a "victim" within the meaning of Article 34 of the Convention" (*Cengiz and Others v. Turkey* - para. 49). However, it says that "the answer to the question whether an applicant can claim to be the victim of a measure blocking access to a website will

therefore depend on an assessment of the circumstances of each case, in particular the way in which the person concerned uses the website and the potential impact of the measure on him" (*Cengiz and Others v. Turkey* - para. 49). This distinction makes the ECtHR determine that applicants may have victim status if they upload content to YouTube. The ECtHR has therefore been able to use the comparison with its case-law on traditional media, both in situations where it concluded that there was victim status and where there was none.

In some situations, the ECtHR finds that the Internet differs from traditional media in ways which mean that they must be regulated in different ways. The ECtHR has stated that "the policies governing reproduction of material from the printed media and the Internet may differ" (*Magyar Jeti ZRT v. Hungary* - para. 68; *Wegrzynowski and Smolczewski v. Poland* - para. 58; *Editorial Board of Pravoye Delo and Shtekel v. Ukraine* - para. 63; *Hurbain v. Belgium* - para. 116).

In three of the cases, these words are mentioned right after: "The latter undeniably have to be adjusted according to technology's specific features in order to secure the protection and promotion of the rights and freedoms concerned" (*Magyar Jeti ZRT v. Hungary* - para. 68; *Wegrzynowski and Smolczewski v. Poland* - para. 58; *Editorial Board of Pravoye Delo and Shtekel v. Ukraine* - para. 63).

Similarly, the ECtHR has stressed that "because of the particular nature of the Internet, the "duties and responsibilities" of Internet news portals for the purposes of Article 10 may differ to some degree from those of a traditional publisher, as regards third-party content" (*Magyar Jeti ZRT v. Hungary* - para. 66; *Magyar Tartalomszolgaltatok v. Hungary* - para. 62; *Delfi AS v. Estonia* - para. 113).

One of the ways in which the ECtHR considers the Internet different from traditional media is "the capacity to store and transmit information". The ECtHR has repeated that "the Internet is an information and communication tool particularly distinct from the printed media, especially as regards the capacity to store and transmit information" (*Hurbain v. Belgium* - para. 115; *M.L. and W.W. v. Germany* - para. 90 & 91; *Wegrzynowski and Smolczewski v. Poland* - para. 58; *Editorial Board of Pravoye*

Delo and Shtekel v. Ukraine - para. 63; *Affaire Societe Editrice de Mediapart et Autres v. France* - para. 88). Moreover, the ECtHR finds it unlikely to regulate and control the Internet to the same extent as traditional media. "The electronic network, serving billions of users worldwide, is not and potentially will never be subject to the same regulations and control" (*Wegrzynowski and Smolczewski v. Poland* - para. 58; Editorial *Board of Pravoye Delo and Shtekel v. Ukraine* - para. 63).

The ECtHR is concerned that the Internet may pose significant risks of harm to private life, which are greater than the risks posed by traditional media. According to the ECtHR "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 certainly higher than that posed by the press".

It is a statement which the ECtHR has repeated on numerous occasions (*OOO Regnum v. Russia* - para. 60 & 61; *Kilin v. Russia* - para. 78 & 79; *Savva Terentyev v. Russia* - para. 79; *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 84 & 85; *Magyar Jeti ZRT v. Hungary* - para. 66; *L.B. v. Hungary* - para. 61-64; *Egill Einarsson v. Iceland* - para. 46; *Arnarson v. Iceland* - para. 37; *Hurbain v. Belgium* - para. 115; *Editorial Board of Pravoye Delo and Shtekel v. Ukraine* - para. 63; *Delfi AS v. Estonia* - para. 133; *M.L. and W.W. v. Germany* - para. 90 & 91; *Wegrzynowski and Smolczewski v. Poland* - para. 58).

According to the ECtHR, "communications in online media and their content are far more likely than the written press to interfere with the exercise and enjoyment of fundamental rights and freedoms, in particular the right to respect for private life" (*Affaire Societe Editrice de Mediapart et Autres v. France* - para. 88, Google translation of French version).

The risk of harm to private life is increased "particularly on account of the important role of search engines" (*M.L. and W.W. v. Germany* - para. 90 & 91).

Similarly, the ECtHR finds that "as regards paper and digital archives (…) the scope of the latter is much greater and the repercussions on the private life of the individuals who

are named are correspondingly more serious, an effect that is further amplified by search engines" (*Hurbain v. Belgium* - para. 116).

Besides violations of private life, the ECtHR is also concerned that the Internet increases the risk of hate speech and calls to violence. It has, for instance, described the concern in the way that "unlawful speech, including hate speech and calls to violence, can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain persistently available online" (*Kilin v. Russia* - para. 78 & 79). "The Court does not lose sight of the ease, scope and speed of the dissemination of information on the Internet, and the persistence of such information once disclosed, which may considerably aggravate the effects of unlawful speech compared to traditional media" (*Standard Verlagsgesellschaft MBH v. Austria, No. 3* - para. 75; *Delfi AS v. Estonia* - para. 147).

It follows from the ECtHR's case-law that the effect of the audio-visual media is more "immediate and powerful" than the print media. This case-law originally related to television, but the ECtHR has extended its stance to include the Internet. The ECtHR finds that "it is commonly acknowledged that the audio-visual media often have a much more immediate and powerful effect than the print media" (*Delfi AS v. Estonia* - para. 134; *Aplha Doryforiki Tileorasi Anonymi Etairia v. Greece* - para. 48).

However, in other situations the ECtHR compares the Internet and traditional media and finds that the case-law on traditional media should also apply to the Internet. Below are some examples where the ECtHR finds that the Internet makes a positive contribution to freedom of expression and access to information, and the protection that originally was offered to traditional media should therefore also apply to digital media.

The ECtHR emphasises the role of the press in a democratic society, saying "the Court stressed on many occasions the essential role which the press plays in a democratic society" (*Magyar Tartalomszolgaltatok v. Hungary* - para. 86-88; *OOO Regnum v. Russia* - para. 60 & 61; *M.L. and W.W. v. Germany* - para. 101 & 102). It then says that the protection of the press under Article 10 expands to the Internet, saying that this is "a concept which in modern society undoubtedly encompasses the electronic media

including the Internet" and "Following the advent of new information technology, it expanded the guarantees of press freedom to the new electronic media" (ibid.).

The ECtHR leans on its case-law from traditional media and concludes that media companies play a valuable role in contributing with Internet archives. "While the primary function of the press in a democracy is to act as a "public watchdog", it has a valuable secondary role in maintaining and making available to the public archives containing news which has previously been reported (…) The maintenance of Internet archives is a critical aspect of this role" (*Wegrzynowski and Smolczewski v. Poland* - para. 59; *M.L. and W.W. v. Germany* - para. 90 & 91; *Hurbain v. Belgium* - para. 100).

The ECtHR finds it problematic if "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"" (*Editorial Board of Pravoye Delo and Shtekel v. Ukraine* - para. 64; *Magyar Jeti ZRT v. Hungary* - para. 68). "Not only do the media have the task of imparting such information and ideas, the public also has a right to receive them (…) Were it otherwise, the press – and hence the electronic media – would be unable to play their vital role as "public watchdog"" (*OOO Regnum v. Russia* - para. 60 & 61).

The ECtHR emphasises in these paragraphs "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". Moreover, the ECtHR has even compared bloggers and popular social media users to "public watchdogs" and have granted them great protection under Article 10. The ECtHR has repeated that "the function of bloggers and popular users of the social media may be also assimilated to that of "public watchdogs" in so far as the protection afforded by Article 10 is concerned" (*Magyar Helsinki Bizottság v. Hungary* - para. 168; *Gheorghe-Florin Popescu v. Romania* - para. 26).

Anonymous comments on the Internet, is a complex issue that the ECtHR has determined in favour of anonymity. The ECtHR has reached this stance leaning on its case-law concerning anonymous expressions before the time of the Internet. The ECtHR

says that “the Court is mindful of the interest of Internet users in not disclosing their identity. Anonymity has long been a means of avoiding reprisals or unwanted attention. As such, it is capable of promoting the free flow of ideas and information in an important manner, including, notably, on the Internet” (*Delfi AS v. Estonia* - para. 147).

In some situations, the ECtHR compares the Internet and traditional media, and finds that the Internet enhances the exercise of the rights under Article 10, in ways that even go beyond the reach of traditional media. The ECtHR then finds that Article 10 should offer strong protection to the Internet in those situations. “The Internet enables new forms of expression and activities that may fall within the ambit of Article 10 § 1 of the Convention (…) In view of its accessibility and its capacity to communicate information and ideas “regardless of frontiers”, the Internet also enhances the availability, diversity and reach of traditional media through their online outlets” (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 84 & 85). According to the ECtHR, YouTube is an example of the positive contribution, because it enables content that is typically ignored by traditional media. “In this connection, the Court observes that YouTube is a video-hosting website on which users can upload, view and share videos and is undoubtedly an important means of exercising the freedom to receive and impart information and ideas. In particular, as the applicants rightly noted, political content ignored by the traditional media is often shared via YouTube, thus fostering the emergence of citizen journalism. From that perspective, the Court accepts that YouTube is a unique platform on account of its characteristics, its accessibility and above all its potential impact, and that no alternatives were available to the applicants” (*Cengiz and Others v. Turkey* - para. 52).

The ECtHR has described that this is “especially the case during and in relation to election periods which are particularly conducive to contributions to political debates” (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 84 & 85). The ECtHR therefore finds that the Internet contributes to the core of democracy in ways that go beyond the reach of traditional media. On elections, the ECtHR has also described how the “regulatory framework” in one case “excessively and without compelling justification reduced the scope for political expression in the press by restricting the range of participants and perspectives” and that the “rationale applies

even more forcefully in the context of online publications, which nowadays tend to be accessible by a greater number of people and viewed as a major source of information and ideas" (*OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* - para. 88).

In some of the cases in which the ECtHR has had to consider a new subject, that is particular for the Internet, it has compared the Internet subject to a subject in traditional media, and found that they have similarities or differences, so that they should be determined in the same or different ways. For instance, when the ECtHR had to decide on the meaning and protection of hyperlinks from an Article 10 perspective, it compared with traditional media. The comparison with traditional media helped the ECtHR determine hyperlinks as a form of expression. It is a great example of how a comparison with traditional media offers the ECtHR a way to rule on a phenomenon that exists on the Internet. The ECtHR held that hyperlinks are "essentially different from traditional acts of publication" and the conclusion in the case was that the State should not have imposed objective or strict liability on the media company, because the one who includes a hyperlink does not have the same control over the content that is directed to as would be the case if the company itself had published, for example, a text.

"Hyperlinks, as a technique of reporting, are essentially different from traditional acts of publication in that, as a general rule, they merely direct users to content available elsewhere on the Internet. They do not present the linked statements to the audience or communicate its content, but only serve to call readers' attention to the existence of material on another website. A further distinguishing feature of hyperlinks, compared to acts of dissemination of information, is that the person referring to information through a hyperlink does not exercise control over the content of the website to which a hyperlink enables access, and which might be changed after the creation of the link – a natural exception being if the hyperlink points to content controlled by the same person" (*Magyar Jeti ZRT v. Hungary* - para. 74-76). It is a great example of how a comparison with traditional media leads to the conclusion in the case.

Cases concerning blocking of websites is another example of how the ECtHR has compared the Internet and traditional media. However, in this instance the ECtHR finds that the similarities are sufficiently strong to apply the case-law from traditional media.

It reiterated that “the wholesale blocking of access to an entire website is an extreme measure which has been compared to banning a newspaper or television station” (*Vladimir Kharitonov v. Russia* - para. 38; *OOO Flavus and Others v. Russia* - para. 37 & 38; *Bulgakov v. Russia* - para. 34).

In two of these paragraphs, the ECtHR therefore finds that “Such a measure deliberately disregards the distinction between the legal and illegal information the website may contain, and renders inaccessible large amounts of content which has not been identified as illegal. Blocking access to the entire website has the practical effect of extending the scope of the blocking order far beyond the illegal content which had been originally targeted”, and in the last it says that “the Court considers that a legal provision giving an executive agency so broad a discretion carries a risk of content being blocked arbitrarily and excessively” (ibid.).

The ECtHR did for instance deal with a case in which the State restricted access to information concerning information technology, because the State found that such technology could be used for extremist or other harmful purposes. The ECtHR proved its point with reference to traditional media. “The Court notes that all information technologies, from the printing press to the Internet, have been developed to store, retrieve and process information (…) Just as a printing press can be used to print anything from a school textbook to an extremist pamphlet, the Internet preserves and makes available a wealth of information, some portions of which may be proscribed for a variety of reasons (…) Suppressing information about the technologies for accessing information online on the grounds they may incidentally facilitate access to extremist material is no different from seeking to restrict access to printers and photocopiers because they can be used for reproducing such material. The blocking of information about such technologies interferes with access to all content which might be accessed using those technologies” (*Engels v. Russia* - para. 30). The restriction was therefore unlawful.

Social media and user generated content is a phenomenon that may differ greatly from traditional media. The ECtHR has therefore had to determine how to rule in such cases.

The ECtHR has both looked at points where they are similar and where they differ from traditional media.

About the similarities, "publishing of news and comments on an Internet portal is also a journalistic activity" (*Delfi AS v. Estonia* - para. 112 & 113). "In respect of the printed media, the Court has found that publishers, who do not necessarily associate themselves with the opinions expressed in the works they publish, participate in the exercise of freedom of expression by providing authors with a medium (…) In the context of new media, the Court has previously held that a Google service designed to facilitate the creation and sharing of websites within a group constituted a means of exercising freedom of expression (…) Similarly, a video-hosting website represented an important means of exercising the freedom to receive and impart information and ideas" (*Magyar Kétfarkú Kutya Párt v. Hungary* - para. 87).

Those similarities have for example led the ECtHR to conclude: "The blocking of these services was found to have deprived users of a significant means of exercising their right to freedom to receive and impart information and ideas" (*Magyar Kétfarkú Kutya Párt v. Hungary* - para. 87). The ECtHR has, however, also stressed important differences between traditional media and digital media companies which enable user generated comments. "While the publisher of a printed media publication is, through editing, the initiator of the publication of a comment, on the Internet portal the initiator of publication is the author of the comment, who makes it accessible to the general public through the portal. Therefore, the portal operator is not the person to whom information is disclosed" (*Delfi AS v. Estonia* - para. 112 & 113).

In the same case, *Delfi*, the ECtHR also noted "the starting-point of the Supreme Court's reflections, that is, the recognition of differences between a portal operator and a traditional publisher, is in line with the international instruments in this field, which manifest a certain development in favour of distinguishing between the legal principles regulating the activities of the traditional print and audio-visual media, on the one hand and Internet-based media operations, on the other" (*Delfi AS v. Estonia* - para. 113).

In some cases, this distinction led the ECtHR to determine that "because of the nature of Internet media, it cannot reasonably be required of a portal operator to edit comments before publishing them in the same manner as applies for a printed media publication" (*Delfi AS v. Estonia* - para. 112 & 113). However, in other cases the ECtHR held: "Although Internet news portals are not publishers of third-party comments in the traditional sense, they can assume responsibility under certain circumstances for user-generated content" (*Magyar Jeti ZRT v. Hungary* - para. 66; *Magyar Tartalomszolgaltatok v. Hungary* - para. 62).

The ECtHR also considered whether deletion of hateful comments could be considered "private censorship", and the ECtHR concluded that "a large news portal's obligation to take effective measures to limit the dissemination of hate speech and speech inciting violence – the issue in the present case – can by no means be equated to "private censorship"" (*Delfi AS v. Estonia* - para. 157).

No. 6) If the State has failed to protect the rights under Article 8, the ECtHR will emphasise that the State has positive obligations

The above sections concerned the balancing between Article 8 and Article 10, particularly hate speech and social media or user generated content, and the interpretation that the ECtHR may conduct to reach its conclusion.

In some cases, the ECtHR concludes that the State has failed its positive obligation to protect the rights to private life. This section is the last, and mentions instances where the ECtHR emphasised that the speech against the applicants amounted to hate speech, and the State failed its positive obligation to protect the applicants (e.g. *Volodina v. Russia; Beizaras and Levickas v. Lithuania*).

Moreover, it suits well as the last section because it highlights some of the important conclusions of the above sections. Namely, that cases concerning Article 8 or Article 10 on the Internet often relate to social media or user generated content; the starting point that the competing rights should be weighed; and that speech is not protected if it amounts to hate speech, and there is therefore no balancing exercise in cases concerning hate speech.

The ECtHR says that it "acknowledges that important benefits can be derived from the Internet in the exercise of freedom of expression". However, it "is also mindful that liability for defamatory or other types of unlawful speech must, in principle, be retained and constitute an effective remedy for violations of personality rights" (*Annen v. Germany* - para. 67).

The ECtHR takes cyberviolence very seriously. In the ECtHR's words: "Online violence, or cyberviolence, is closely linked with offline, or "real-life", violence and falls to be considered as another facet of the complex phenomenon of domestic violence" (*Volodina v. Russia, No. 2* - para. 49). In the same paragraph, the ECtHR emphasises that "States have a positive obligation to establish and apply effectively a system punishing all forms of domestic violence and to provide sufficient safeguards for the victims". The "positive obligation applies to all forms of domestic violence, whether occurring offline or online" (ibid.).

In the *Volodina* case the ECtHR even stressed that "the acts of cyberviolence in the instant case were sufficiently serious to require a criminal-law response on the part of the domestic authorities" (*Volodina v. Russia, No. 2* - para. 50). The ECtHR described that the "publication of the applicant's intimate photographs, calculated to attract the attention of her son, his classmates and their teacher (…), sought to humiliate and degrade her" and "the tracking of her movements by means of a GPS device and the sending of death threats on social media caused her to feel anxiety, distress and insecurity" (ibid.).

The ECtHR found that "the response of the Russian authorities to the known risk of recurrent violence on the part of the applicant's former partner was manifestly

inadequate and that, through their inaction and failure to take measures of deterrence, they allowed S. to continue threatening, harassing and assaulting the applicant without hindrance and with impunity" (*Volodina v. Russia, No. 2* - para. 61).

The State must protect the victim from recurrent online violence and bring the perpetrator of acts of cyberviolence to justice. The ECtHR concluded in the case that "the manner in which they actually handled the matter – notably a reluctance to open a criminal case and a slow pace of the investigation resulting in the perpetrator's impunity – disclosed a failure to discharge their positive obligations under Article 8 of the Convention" (*Volodina v. Russia, No. 2* - para. 67 & 68).

Similarly, in *Beizaras and Levickas*, the State did not respect its positive obligations. The Prosecutor and domestic courts found that it did not reach the threshold of the Criminal Code when authors on Facebook posted hateful comments against a homosexual couple, including "it's not only the Jews that Hitler should have burned" and that "faggots should be thrown into the gas chamber" or have "a free honeymoon trip to the crematorium" or should have "their heads smashed" or be "shot" or "castrated". According to the domestic courts the comments were mere "obscenities" and were simply words "not chosen properly". The ECtHR held that the comments amounted to hate speech and that the State had failed its positive obligation under Article 8 (*Beizaras and Levickas v. Lithuania* - para. 125-127).

6. Conclusion

The ECtHR has been strongly criticised for its case-law concerning Article 8 and Article 10 on the Internet. The criticism sounds that the ECtHR has displayed a worrying lack of understanding of freedom of expression on the Internet and the way in which the Internet works, has created greater legal uncertainty, has acted short-sighted and set deeply concerning precedent for freedom of expression in several respects.

The objective of the thesis was to obtain a better understanding of how the ECtHR analyses cases on protection of private life or freedom of expression on the Internet. It is a field of significant importance in modern life.

The thesis analysed if the ECtHR applied methods of legal interpretation to create a clear line of reasoning in cases concerning Article 8 or Article 10 on the Internet.

The thesis presented important principles of legal interpretation, including dynamic interpretation, literal, purposive, and contextual interpretation, precedent, and analogy.

Firstly, the thesis presented around 100 cases from the ECtHR case-law concerning Article 8 and Article 10 on the Internet. The cases were analysed using the IRAC structure.

Secondly, the thesis applied the principles of legal interpretation to analyse and compare the case-law and draw conclusions. The analysis demonstrated that the ECtHR can be said to have adopted the following line of reasoning in cases concerning Article 8 or Article 10 on the Internet:

1) According to the ECtHR, the Internet has become essential to modern society and communication. 2) The ECtHR describes positive contributions that the Internet has made to freedom of expression and access to information. 3) The ECtHR stresses that the Internet has, however, also increased the risk of violations to private life and hate speech. 4) The ECtHR emphasises the importance of ensuring a balance between the

competing rights to private life and freedom of expression. 4.1) The ECtHR considers hate speech a particular category in respect of the balancing between the rights of Article 8 and Article 10. 4.2) Moreover, the ECtHR considers user generated content a particular category in respect of the balancing. 5) The ECtHR leans on its case-law from traditional media. The ECtHR compares traditional media and the Internet, finding differences or similarities. The result of this comparison suggests if the conclusion should be the same. 6) Finally, if the State has failed to protect the rights under Article 8, the ECtHR will emphasise that the State has positive obligations.

The analysis therefore showed that the ECtHR has developed a line of reasoning, which makes its decisions more predictable, which acknowledges the importance of the Internet, and which seeks to protect Article 8 as well as Article 10 online.

Despite the strong criticism that has been voiced against the ECtHR – claiming that the ECtHR has brought legal uncertainty and shows a worrying lack of understanding of the way in which the Internet works – the conclusion of the thesis is therefore that the ECtHR has created a logical line of reasoning that enables greater consistency and legal certainty in cases concerning protection of private life or freedom of expression on the Internet.

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