KEY THEME[1]
Article 10
Contributions to public debate: Journalists and other actors

(Last updated: 28/02/2025)

Introduction

While Article 10 guarantees freedom of expression for "everyone", it is the Court's practice to recognise the vital role of "public watchdog" played by the press in a democratic society and the special position of journalists in this context.

The Court has therefore consistently recognised the essential role played by the media in facilitating and fostering the public's right to receive and impart information and ideas *(Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 165). This is because the Court is mindful that journalists should enjoy a broad scope of protection, including a range of freedoms that are of functional relevance to the pursuit of their activities, such as protection of information-gathering processes, protection of confidential sources, protection against searches of professional workplaces and private domiciles and the seizure of materials, and protection of editorial and presentational autonomy (*Man and Others v. Romania* (dec.), 2019, § 131).[2] A heightened level of protection is accorded both to professional (*Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 71) as well as non-professional journalists (*Falzon v. Malta*, 2018, § 57, where a retired politician was a "regular opinion writer" in weekly publications).

The Court does not give a definition of journalism, but it makes reference to a wide range of **contributions to public debate**[3] and highlights the freedoms that are essential to the role of a "public watchdog" and the duties and responsibilities that surround it. While this role was mainly played by journalists and the media in the past, it is now increasingly being played by other media and non-media actors.

The Court thus considers that, apart from the press, the capacity of a "watchdog" extends to NGOs as well as to academic researchers and authors of literature on matters of public concern and warrants a high level of protection under Article 10 of the Convention. It also notes that the function of bloggers and popular users of social media may also be assimilated to that of "public watchdogs" insofar as the protection afforded by Article 10 is concerned, given the important role played by the Internet in enhancing the public's access to news and facilitating the dissemination of information in general

[1] Prepared by the Registry. It does not bind the Court.

[2] For a detailed analysis of the increased protection for journalists and other media actors under Article 10 of the Convention due to their role of "public watchdog" and duties and responsibilities under Article 10 § 2 of the Convention, including the concept of "responsible journalism", see Chapter V of the Guide on Article 10.

[3] For an outline of the concept of "debate of general interest", see Chapter IV of the Guide on Article 10; *inter alia, Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, §§ 101-103; and *Mosley v. the United Kingdom*, 2011, § 114 where a distinction is made between a publication in the interest of the public and a publication that the public might be interested in reading. It must be noted, however, that Article 10 is still applicable in situations where the relevant actors do not seek to impart any message, opinion, or idea, or to take part in a debate on the matter of public interest (*C8 (Canal 8) v. France*, 2023, §§ 45-47) or where ultimately the Court considered that the impugned statements made no contribution to such a debate (*Karaca v. Türkiye*, 2023, §§ 155 and 158).

(*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 168). The Court has furthermore extended this role to an election observer (*Timur Sharipov v. Russia*, 2022, §§ 26 and 35).

On the other hand, lawyers have not been considered to come under this category (*Studio Monitori and Others v. Georgia*, 2020, § 42).

Noteworthy examples

Online journalism, websites, blogs, search engines:[4]

- In its judgment on *Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 168, making reference to the judgment on *Cengiz and Others v. Turkey,* 2015, §§ 52 and 54, the Court reiterates that certain political content ignored by the traditional media is often shared via certain websites, thus fostering the emergence of **citizen journalism**.[5] It points out that blocking the corresponding services deprives users of a significant means of exercising their right to freedom to receive and impart information and ideas.
- The Court underlines that owing to its accessibility and capacity to store and communicate vast amounts of information, **the Internet** greatly enhances the public's access to news and facilitates the dissemination of information in general (*inter alia,* for the **blocking of access to an entire website** on account of the publication of articles regarded as **calls to participate in unauthorised public events**, *OOO Flavus and Others v. Russia,* 2020, § 34; for a **Google service** intended to facilitate the creation and sharing of websites, *Ahmet Yıldırım v. Turkey*, 2012, §§ 48-49; for the **website of a daily newspaper**, *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, 2009, § 27; for a **search engine**, *M.L. and W.W. v. Germany,* 2018, § 91).
- In the judgment on *Delfi AS v. Estonia* [GC], 2015, which concerns editorial responsibility of an **Internet portal,** after recognising, as the national court did, that the publication of news and comments on the portal was "journalistic activity", the Court makes reference to Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, and to its "differentiated and graduated approach [which] requires that each actor whose services are identified as **media or as an intermediary or auxiliary activity** benefit from both the appropriate form (differentiated) and the appropriate level (graduated) of protection and that responsibility also be delimited in conformity with Article 10 of the European Convention on Human Rights …" (§§ 112-113).

Digital archives, data journalism:

- As well as its first role as a "watchdog", the press also plays 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. Digital archives constitute an important source for education and historical research, particularly as they are readily accessible to the public and are generally free *(M.L. and W.W. v. Germany,* 2018, §§ 90-91, and the case law referred to therein). However, where the preservation of personal data in publicly available news archives holds no topical, historical, or scientific importance and the person is not well known, publishers may be ordered to anonymize such records in favour of the individual's "right to be forgotten" (*Hurbain v. Belgium* [GC], 2023, § 255). Where the preservation of personal data concerns

[4] See also the Guide on Article 10, Chapter XIII: "Freedom of expression and the Internet".

[5] As to the question of whether so-called citizen journalists such as bloggers can also rely on the derogation for journalistic purposes, the Court of Justice of the European Union (CJEU) held that they could in its judgment of 14 February 2019 in the case of *Sergejs Buivids v. Datu valsts inspekcija*.

parties who are presumably deceased, such as Stalin-era prosecutors, access to such data by the concerned authorities cannot constitute a privacy infringement as "the private life of a deceased person does not continue after death". Ordinarily, Article 8 can be invoked to restrict personal data access if the same can cause discomfort or harm to the descendants of the deceased but if "independent" or "intimate" claims about the concerned persons are not being made then such access should be permissible (*Suprun and Others v. Russia*, 2024, §§ 96-97).

- In a judgment concerning the prohibition, by judicial decision, of large-scale publication of personal tax data which was publicly accessible under domestic law, the Court held that as media undertakings, the applicant companies should have been aware that the mass collection of data and its wholesale dissemination might not be regarded as **data processing "solely" for journalistic purposes** under the relevant provisions of domestic and EU law (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 151).[6] The Court also pointed out that this information had been **obtained by circumventing channels normally used by journalists** (§ 185).
- In its judgment in *Gafiuc v. Romania*, 2020, § 86, the Court held that matters which were undoubtedly of public interest might be of a sensitive character calling for a cautious and critical approach. Thus the Court noted that the applicant, who was a sportswriter, had in his articles disclosed information from the archives of the *Securitate* in raw form. Instead of filtering the information to comply with the applicable provisions on the use of personal data, he had revealed to the general public aspects of the athletes' private lives which did not contribute to a debate on a matter of public interest. The revocation of his accreditation to search the archives had not, therefore, been a disproportionate penalty within the meaning of Article 10.
- In another case, the Court found that a refusal by the German Foreign Intelligence Service to provide a journalist with data on how many of its employees and informal collaborators had belonged to Nazi organisations had not prevented him from performing his role of "public watchdog". The personnel files had been analysed and the resulting information made publicly available in archives, so that the applicant had had access to part of the information he was seeking (*Saure v. Germany* (dec.), § 38, 2021).
- In a case where an injunction was issued ordering the removal of an article on alleged judicial corruption from the newspaper's website pending defamation proceedings against the applicant, a journalist who had authored that article, the Court considered that the injunction order had not violated Article 10. It pointed out, in particular, that the injunction order had been issued approximately a month after the article had been published, during which period it had been freely available to the public; and that the removal had only been granted in respect of the online publication, whereas the printed copies of the newspaper had remained in circulation. The Court considered that the interference with the applicant's freedom of expression had therefore not been of a significant magnitude as such removal

[6] The Court had regard to the preliminary ruling of the CJEU in which the CJEU explains that the purpose of the derogation under Article 9 of the directive for personal data processing activities carried out solely for journalistic purposes is to reconcile the protection of privacy with the right to freedom of expression and that in order to take account of the importance of this right in every democratic society, it is necessary to interpret concepts relating to that freedom, such as journalism, broadly. It considers that activities such as those carried out by Markkinapörssi and Satamedia in relation to data from documents in the "public" domain under national legislation may be classified as "journalistic activities" if their object is the disclosure to the public of information, opinions or ideas, irrespective of the medium used to transmit them. The CJEU also states that journalistic activities are not limited to media undertakings and may be undertaken for profit-making purposes. However, it left the national court to determine whether that was so in the case at hand.

had not undermined the very essence of the public debate (*Anatoliy Yeremenko v. Ukraine*, 2022, §§ 57-58).

Campaign groups, civil society, NGOs:

- In the judgment on *Steel and Morris v. the United Kingdom,* 2005, the Court held that "in a democratic society, even **small** and informal **campaign groups**, […] must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment" (§ 89).
- In the case of *Medžlis Islamske zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 86, the Court makes reference to, *inter alia*, the Fundamental Principles on the Status of Non-governmental Organisations in Europe, which underline the **important contribution made by NGOs** "to the development, realisation and continued survival of democratic societies" and the need for NGOs to be "encouraged to participate in… mechanisms for dialogue, consultation and exchange" by such societies.
- In a case where NGOs had disseminated election-related information and had been penalised under a statutory prohibition against the publication of any such information during a pre-election media blackout period, the Court held that the fact that the administrative offence report (regarded as a formal charging document under Russian law) had left the nature of the charge against the association wholly unspecified, coupled with the rather superficial approach of the domestic courts to assessing the charge, had had an unjustified "chilling effect" on the applicant's exercise of its "social watchdog" function (*Assotsiatsiya NGO Golos and Others v. Russia*, 2021, § 86). The Court has reaffirmed the applicability of this principle to cases involving human rights defenders, taking the view that "the principles regarding the detention of journalists and media professionals may apply *mutatis mutandis* to the initial and continued pre-trial detention of human rights defenders" where they have performed a "watchdog" role (*Taner Kılıç v. Turkey (no. 2)*, 2022, § 147). The Court furthermore extended these principles to an election observer, whose function was to obtain first-hand and direct knowledge of the electoral process and impart the results of his observations; the fact that he was forcibly removed from a polling station whilst observing and filming the election process was considered to be a disproportionate interference with his freedom of expression given the heightened level of protection he enjoyed and the lack of "relevant and sufficient" reasons to justify his removal (*Timur Sharipov v. Russia*, 2022, §§ 26 and 35-39).
- A member of the judiciary speaking in his or her capacity as head of an association or NGO which "draws attention to matters of public interest" may also be afforded the protection of Article 10 of the Convention, although members of the judiciary must generally refrain from making political statements of such a nature as to compromise their independence and undermine their image of impartiality (*Eminağaoğlu v. Turkey*, 2021, §§ 134 and 148).
- In the context of access to information held by the State, in its judgment on *Társaság a Szabadságjogokért v. Hungary,* 2009, the Court stresses that the realisation of the **function of creating forums for public debate** is not limited to the media or professional journalists and that such a forum can be prepared by a non-governmental organisation (§ 27; see also *Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 159).
- In the context of the publication of a resolution by an environmental NGO, the Court underlines that as an NGO specialising in the field, the applicant had acted as a "watchdog" under the Environmental Protection Act. Since such involvement of an NGO is vital to a democratic society, the Court considers that it is similar to the role of the press as defined in its settled case law. Therefore, to succeed in its task, an NGO must be able to disclose facts

that may interest the public, evaluate them and thereby contribute to the transparency of the activities of public authorities (*Vides Aizsardzības Klubs v. Latvia,* 2004, § 42; *Association Burestop 55 and Others v. France*, 2021, § 88; for an animal rights NGO, see also *Animal Defenders International v. the United Kingdom* [GC], 2013, § 103).

- In the context of a criminal defamation charge against an economist, the Court examined whether the allegedly defamatory statements made by the economist on a news broadcast program contributed to a "debate of public interest". The statements were made about a halted construction project for a paediatric wing of a public hospital. The Court concluded that that discussions associated with a public hospital and healthcare conditions of children are of "general interest" and the public has "an interest in being informed" about it *(Almeida Arroja v. Portugal*, 2024, § 73).

Academic researchers, authors of literature on matters of public concern:[7]

- The Court points out the importance attached in its case law and, more generally, in the work of the Parliamentary Assembly of the Council of Europe to academic freedom, which should guarantee freedom of expression and of action, freedom to disseminate information and freedom to "conduct research and distribute knowledge and truth without restriction" (*Lombardi Vallauri v. Italy,* 2009, § 43; *Sorguç v. Turkey*, 2009, § 35, see also PACE Recommendation 1762 (2006) on academic freedom and university autonomy).
- Academic freedom is not restricted to academic or scientific research, but also extends to academics' freedom to express freely their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence. This may include an examination of the functioning of public institutions in a given political system and criticism thereof (*Mustafa Erdoğan and Others v. Turkey,* 2014, § 40; see also *Aksu v. Turkey* [GC], 2012, § 71). Nevertheless the Court has underscored that in order to claim victim status applicants must, in their capacity as academics or popular social media users, establish a concrete interest sufficient to engage their right to freedom of expression by showing how the measure in question affects them directly; for example, they may allege that they have actually been "prevented from publishing their comments or academic research" (*Akdeniz and Others v. Turkey*, 2021, §§ 73-75).
- This freedom comprises academics' freedom to express freely their opinions about the institution or system in which they work and to distribute knowledge and truth without restriction (*Sorguç v. Turkey*, 2009, § 35; *Kula v. Turkey,* 2018, § 38; see also *Riolo v. Italy,* 2008, § 63, where the Court finds that the situation of an academic whose article is republished in a daily newspaper should enjoy the same protection as a journalist under Article 10 of the Convention).
- In the judgment on *Hertel v. Switzerland*, 1998, § 50, the Court underlines in particular that in a sphere in which it is unlikely that any certainty exists, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas.
- In the judgment on *Bielau v. Austria*, 2024, § 44, in the context of a blog post published by a practicing doctor, the Court notes that while practicing doctors enjoy the freedom of expression guaranteed under Article 10, such exercise should be balanced with their professional obligations. A restriction on their freedom of expression may be justified in cases of "categorical and untrue public information on medical questions" and if they are "scientifically untenable".

[7] For authors of literature on matters of public concern, see the Guide on Article 10 in general and, among many other case-law references, *Chauvy and Others v. France*, 2004, §§ 67-68.

- In *Suprun and Others v. Russia*, 2024, § 90, the Court concluded that the denial of archival records concerning Soviet era oppression constituted an interference with the applicants' right to receive information. Further, access to such information was considered useful to enhance "public historical awareness".

Further references

Relevant European and international law:

- Council of Europe Convention on Access to Official Documents (CETS No. 205)
- Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age (2022)
- Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries (2018)
- Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and security of journalists and other media actors (2016)
- Recommendation CM/Rec(2012)3 of the Committee of Ministers to member States on the protection of human rights with regard to search engines (2012)
- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media (2011)
- Recommendation CM/Rec(2007)16 of the Committee of Ministers to member States on measures to promote the public service value of the Internet (2007)
- Recommendation No R (2000) 13 of the Committee of Ministers to member States on a European policy on access to archives (2000)
- Recommendation 1762 (2006) of the Parliamentary Assembly of the Council of Europe (PACE) on academic freedom and university autonomy (2006)

Other relevant sources:

- Journalism and media privilege (IRIS Special, European Audiovisual Observatory, Strasbourg, 2017)
- Factsheet on whistleblowers and their freedom to impart information (updated June 2018)
- Implementation Guide to Recommendation CM/Rec(2016)4 on the Protection of journalism and safety of journalists and other media actors (Council of Europe DGI(2020)11, September 2020)

KEY CASE-LAW REFERENCES

- *Hertel v. Switzerland*, 25 August 1998, Reports of Judgments and Decisions 1998-VI (violation of Article 10);
- *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, 27 May 2004 (violation of Article 10);
- *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, 17 December 2004 (no violation of Article 10);
- *Steel and Morris v. the United Kingdom*, no. 68416/01, ECHR 2005-II (violation of Article 10);
- *Riolo v. Italy*, no. 42211/07, 17 July 2008 (violation of Article 10);
- *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, ECHR 2009 (no violation of Article 10);
- *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, 14 April 2009 (violation of Article 10);
- *Sorguç v. Turkey*, no. 17089/03, 23 June 2009 (violation of Article 10);
- *Lombardi Vallauri v. Italy*, no. 39128/05, 20 October 2009 (violation of Article 10);
- *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, ECHR 2012 (no violation of Article 8);
- *Ahmet Yıldırım v. Turkey*, no. 3111/10, ECHR 2012 (violation of Article 10);
- *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, ECHR 2013 (no violation of Article 10);
- *Mustafa Erdoğan and Others v. Turkey*, nos. 346/04 and 39779/04, 27 May 2014 (violation of Article 10);
- *Delfi AS v. Estonia* [GC], no. 64569/09, ECHR 2015 (no violation of Article 10);
- *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, ECHR 2015 (violation of Article 10);
- *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 8 November 2016 (violation of Article 10);
- *Medžlis Islamske zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, 27 June 2017 (no violation of Article 10);
- *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, 27 June 2017 (no violation of Article 10);
- *Falzon v. Malta*, no. 45791/13, 20 March 2018 (violation of Article 10);
- *Kula v. Turkey*, no. 20233/06, 19 June 2018 (violation of Article 10);
- *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28 June 2018 (no violation of Article 8);
- *Man and Others v. Romania* (dec.), no. 39273/07, 19 November 2019 (inadmissible - manifestly ill-founded);
- *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, 30 January 2020 (no violation of Article 10);
- *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, 23 June 2020 (violation of Article 10; violation of Article 13 taken in conjunction with Article 10);
- *Gafiuc v. Romania*, no. 59174/13, 13 October 2020 (no violation of Article 10);
- *Eminağaoğlu v. Turkey*, no. 76521/12, 9 March 2021 (violation of Articles 8 and 10);
- *Akdeniz and Others v. Turkey*, nos. 41139/15 and 41146/15, 4 May 2021 (violation of Article 10);

- *Association Burestop 55 and Others v. France*, nos. 56176/18 and 5 others, 1 July 2021 (no violation of Article 10);
- *Hájovský v. Slovakia*, no. 7796/16, 1 July 2021 (violation of Article 8);
- *M.L. v. Slovakia*, no. 34159/17, 14 October 2021 (violation of Article 8);
- *Saure v. Germany* (dec.), no. 6106/16, 19 October 2021 (inadmissible – non-exhaustion of domestic remedies);
- *Assotsiatsiya NGO Golos and Others v. Russia*, no. 41055/12, 16 November 2021 (violation of Article 10);
- *I.V.Ț. v. Romania*, no. 35582/15, 1 March 2022 (violation of Article 8);
- *Taner Kılıç v. Turkey (no. 2)*, no. 208/18, 31 May 2022 (violation of Articles 5 § 1, 5 § 3, 5 § 5, and Article 10; no need to examine Article 18; Article 5 § 4 inadmissible - manifestly ill-founded);
- *Timur Sharipov v. Russia*, no. 15758/13, 13 September 2022 (violation of Article 10);
- *Anatoliy Yeremenko v. Ukraine*, no. 22287/08, 15 September 2022 (no violation of Article 10 in the injunction proceedings, violation of Article 10 in defamation proceedings);
- *C8 (Canal 8) v. France*, nos. 58951/18 and 1308/19, 9 February 2023 (no violation of Article 10);
- *Karaca v. Türkiye*, no. 25285/15, 20 June 2023 (no violation of Article 10);
- *Hurbain v. Belgium* [GC], no. 57292/16, 4 July 2023 (no violation of Article 10);
- *Almeida Arroja v. Portugal*, no. 47238/19, 19 March 2024 (violation of Article 10);
- *Suprun v. Russia*, nos. 58029/12 and 4 others, 18 June 2024 (violation of Article 10);
- *Bielau v. Austria*, no. 20007/22, 27 August 2024 (no violation of Article 10).