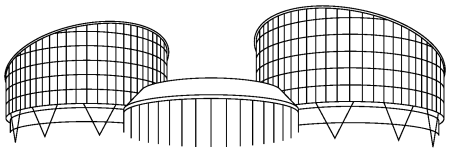

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 10 of the European Convention on Human Rights

Freedom of expression

Updated on 31 August 2024

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law under Article 10 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") (judgments or decisions delivered by the Court and decisions or reports of the European Commission of Human Rights, hereafter "the Commission"). It covers the period from 1957 to 31 December 2020.

Readers will find herein the key principles in this area and the relevant precedents. The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.* However, the Guide does not include the following:

- cases concerning Article 10 in respect of which an admissibility decision was given (incompatibility *ratione materiae*) as a result of their exclusion from protection by the Convention for the ground set out in Article 17 (prohibition of abuse of rights), and cases where the Court had examined the issue of abuse of rights in the light of Article 17 of the Convention and resulted in a decision finding them to be manifestly ill-founded or a judgment finding no violation**;
- those cases which have become irrelevant following a clear and unequivocal change in the case-law (for example, the cases on access to information which were examined prior to the judgment in *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 8 November 2016).

The Court's judgments and decisions serve not only to decide the cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016, and *Nagmetov v. Russia* [GC], no. 35589/08, § 64, 30 March 2017).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

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* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

** These cases are covered in the Guide on Article 17 of the Convention (Prohibition of abuse of rights).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The *HUDOC database* of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the *HUDOC user manual*.

Article 10 of the Convention – Freedom of expression

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

HUDOC keywords

Postive obligations (10)

1. Freedom of expression (10-1) – Freedom of opinion (10-1) – Freedom to receive information (10-1) – Freedom to impart information (10-1) – Freedom to receive ideas (10-1) – Freedom to impart ideas (10-1) – Interference by public authority (10-1) – Regardless of frontiers (10-1) – Licencing of broadcasting (10-1)

2. Duties and responsibilities (10-2) – Interference by public authority (10-2)

Prescribed by law (10-2): Accessibility (10-2) – Foreseeability (10-2) – Safeguards against abuse (10-2)

Necessary in a democratic society (10-2): National security (10-2) – Territorial integrity (10-2) – Public safetly (10-2) – Prevention of disorder (10-2) – prevention of crime (10-2) – Protection of health (10-2) – Protection of morals (10-2) – Protection of the rights of others (10-2) – Protection of the reputation of others (10-2) – Prevention of the disclosure of information received in confidence (10-2) – Maintaining the authority and impartiality of the judiciary (10-2)

I. Introduction

A. Methodology used in this Guide

1. Given the extensive case-law developed by the Convention institutions on the right to freedom of expression, the subject must be approached using a clearly defined methodology.

2. Before examining the substance of the right protected by Article 10 under its various themes, the Guide first gives a general overview of the applicability of Article 10 of the Convention and the admissibility criteria most frequently developed in cases concerning this provision.

3. Certain points which deserve particular emphasis with regard to the various stages of the Court's examination are then explored, before the chapters containing a thematic and detailed analysis of Article 10 of the Convention.

4. The subsequent theme-based chapters are structured around the various legitimate aims which may justify an interference with the exercise of the right to freedom of expression (Article 10 § 2). The analysis of each of the legitimate aims varies, depending on the quantity of relevant case-law and the degree of nuance contained therein.

5. It should be noted that reference is frequently made to more than one legitimate aim in the cases concerning Article 10. In consequence, a case referred to in one thematic chapter may also be relevant for other chapters.

6. Each section examining a legitimate aim presents the general principles relating in particular to the context of the given aim, and the specific application criteria which emerge from the case-law of the Convention institutions. However, the principles and application criteria are not exclusive to the themes as they have been structured in this Guide; areas of overlap and inter-connection are common throughout the body of case-law under consideration here.

7. The Guide also contains chapters on certain subject areas which are not specifically mentioned in the text of the Convention, but which the Court has incorporated into the Convention system of protection of the right to freedom of expression, such as pluralism, the right of access to information, protection of whistle-blowers and freedom of expression on the Internet. The structure of these chapters follows the inherent logic of these subject areas as interpreted in the Court's case-law.

Finally, the Guide reviews the methodologies used by the Court when examining the right to freedom of expression in relation to the other rights guaranteed by the Convention and its Protocols, whether this relationship is one of complementarity or conflict.

B. General considerations on Article 10 in the Court's case-law

8. Indissociable from democracy, freedom of expression is enshrined in a number of national, European[1], international and regional[2] instruments which promote this political system, recognised as the only one capable of guaranteeing the protection of human rights. In its interpretation of Article 10 of the Convention, the Court has held that "freedom of expression constitutes one of the essential foundations of [democratic] society, one of the basic conditions for its progress and for the development of every man" (*Handyside v. the United Kingdom*, 1976, § 49; *Sanchez v. France* [GC], 2023, § 145).

9. The Court has emphasised on several occasions the importance of this Article, which is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (*Handyside v. the United Kingdom*, 1976, § 49; *Observer and Guardian v. the United Kingdom*, 1991, § 59).

10. As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (*Stoll v. Switzerland* ([GC], 2007, § 101, reiterated in *Morice v. France* ([GC], 2015, § 124) and *Pentikäinen v. Finland* ([GC], 2015, § 87).

11. In addition to those general considerations, the Court has explored in its case-law the States' positive obligations in protecting the exercise of this right.

These positive obligations imply, among other things, that the States are required to establish an effective mechanism for the protection of authors and journalists in order to create a favourable environment for participation in public debate of all those concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities

[1] See, for example, Article 11 of the Charter of Fundamental Rights of the European Union (2000), which reads as follows: "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected."

[2] See, for example, Article 13 of the American Convention on Human Rights (1969), Article 19 of the International Covenant on Civil and Political Rights (1966) or Article 9 of the African Charter on Human and Peoples' Rights (1981).

or by a significant part of public opinion, or even if they are irritating or shocking to the latter (*Dink v. Turkey*, 2010, § 137; *Khadija Ismayilova v. Azerbaijan*, 2019, § 158).

In consequence, Article 10 of the Convention enjoys a very wide scope, whether with regard to the substance of the ideas and information expressed, or to the form in which they are conveyed.

II. Specific questions on the assessment of admissibility in cases concerning Article 10 of the Convention

A. Applicability of Article 10 of the Convention

12. Article 10 does not apply solely to certain types of information or ideas or forms of expression (*markt intern Verlag GmbH and Klaus Beermann v. Germany*, 1989, § 26), particularly those of a political nature; it also includes artistic expression such as a painting (*Müller and Others v. Switzerland*, 1988, § 27), the production of a play (*Ulusoy and Others v. Turkey*, 2007) and information of a commercial nature (*markt intern Verlag GmbH and Klaus Beermann v. Germany*, 1989, § 26; *Casado Coca v. Spain*, 1994, §§ 35-36; *Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 61; *Sekmadienis Ltd. v. Lithuania*, 2018).

13. Even if the publication of news pursues the purpose of entertainment, it nonetheless contributes to the variety of information available to the public and undoubtedly benefits from the protection of Article 10 of the Convention (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 89; *Dupate v. Latvia*, 2020, § 51). Article 10 is thus applicable even in such 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; see also *Sigma Radio Television Ltd v. Cyprus*, 2011, §§ 203-210, where Article 10 was applied in a situation involving remarks made by actors playing fictional characters in an entertainment television series which had been broadcast by the applicant company). Such reporting, however, does not attract the robust protection of Article 10 afforded to the press so that, in such cases, freedom of expression requires a narrower interpretation (*Mosley v. the United Kingdom*, 2011, § 114) and States enjoy a wider margin of appreciation (*C8 (Canal 8) v. France*, 2023, §§ 47, 79 and 84; *Ramadan v. France* (dec.), 2024, §§ 36-37; see also *MGN Limited v. the United Kingdom* (dec.), 2022, §§ 58-60).

14. Furthermore, the Court has specified on numerous occasions that freedom of expression extends to the publication of photographs (*Axel Springer AG v. Germany* [GC], 2012; *Verlagsgruppe News GmbH v. Austria (no. 2)*, 2006), and even of photomontages (*Société de conception de presse et d'édition and Ponson v. France*, 2009).

15. Equally, the Court has considered that Article 10 is also applicable to forms of conduct (*Ibrahimov and Mammadov v. Azerbaijan*, 2020, §§ 166-167; *Semir Güzel v. Turkey*, 2016; *Murat Vural v. Turkey*, 2014; *Gough v. the United Kingdom*, 2014, § 150; *Mătăsaru v. the Republic of Moldova*, 2019, § 29; *Shvydka v. Ukraine*, 2014, §§ 37-38; *Karuyev v. Russia*, 2022, §§ 18-20; *Bumbeș v. Romania*, 2022, § 46; *Genov and Sarbinska v. Bulgaria*, 2021, §§ 58-60; *Ete v. Türkiye*, 2022, §§ 15-16; *Bouton v. France*, 2022, §§ 30-31; *Glukhin v. Russia*, 2023, § 51), to rules governing clothing (*Stevens v. the United Kingdom*, Commission decision, 1986) or to the display of vestimentary symbols (*Vajnai v. Hungary*, 2008, § 47), including in prison (*Donaldson v. the United Kingdom*, 2011). The Court also considered that using the "Like" button on social networks to express interest towards or approve the contents published by third persons constituted, as such, a current and popular form of the exercise of freedom of expression online (*Melike v. Turkey*, 2021, § 44).

16. As far as forms of conduct are concerned, the Court distinguishes between, on the one hand, reprehensible acts committed in the preparation of a publication or broadcast or protests taking the form of impeding activities of which applicants disapprove, which can fall within the ambit of Article 10 of the Convention, and, on the other, actions that infringed domestic criminal law in a manner unrelated to the exercise of freedom of expression (*Kotlyar v. Russia*, 2022, §§ 41-42).

17. The Court found that a protest performance in a cathedral consisted in a mixture of verbal and non-verbal expression, and amounted to a form of artistic and political expression which came within the ambit of Article 10 of the Convention (*Mariya Alekhina and Others v. Russia*, 2018, § 206; see also *Bouton v. France*, 2022, § 30-31). In the case of *Tatár and Fáber v. Hungary*, 2012, an illegal and short gathering by two individuals who hung dirty laundry to the railings of the Parliament building was held by the Court to be a form of expression which was protected by Article 10.

18. Having defined a boycott as a means of expressing a protest, the Court has also accepted that a call for a boycott, which aimed at communicating those protest opinions while calling for specific protest actions, was in principle covered by the protection set out in Article 10 of the Convention. The Court emphasised that the call for a boycott combined the expression of a protesting opinion with incitement to differential treatment, so that, depending on the circumstances, it could amount to a call to discriminate against others. Reiterating that incitement to discrimination was a form of incitement to intolerance, which, together with incitement to violence and hatred, was one of the limits which should never be overstepped in exercising freedom of expression, the Court noted nevertheless that incitement to differential treatment was not necessarily the same as incitement to discrimination (*Baldassi and Others v. France*, 2020, §§ 63-64).

19. In the same vein, the Court considered that calls to abstain from voting in an election are an instance of political expression and thus, in principle, fall within the scope of expression that should be afforded the heightened level of protection under Article 10 of the Convention (*Teslenko and Others v. Russia*, 2022, § 133).

20. Moreover, the Court has recognised that Article 10 applies irrespective of the setting. Thus, it has held that freedom of expression does not stop at the gates of army barracks (*Grigoriades v. Greece*, 1997, § 45; *Ayuso Torres v. Spain*, 2022, § 47) or of prisons (*Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, 2012, § 22; *Bamber v. the United Kingdom*, Commission decision, 1997).

21. In this connection, in the case of *Nilsen v. the United Kingdom* (dec.), 2010, concerning measures taken by the prison administration to prevent a serial killer from publishing his autobiography, the Court accepted that Article 10 was applicable and that the refusal to return the manuscript to the applicant so that he could revise it with a view to its publication amounted to an interference with the exercise of his right to freedom of expression, before concluding that the interference in question had been proportionate to the legitimate aim pursued (§ 44 ; see also similar findings in *Zayidov v. Azerbaijan (No. 2)*, 2022, § 65).

22. In the case of *Kalda v. Estonia*, 2016, which concerned restrictions on a prisoner's opportunities to access Internet sites publishing legal information, the Court reiterated that Article 10 cannot be interpreted as imposing a general obligation to permit prisoners to access the Internet or specific Internet sites. It concluded, however, that there may be an interference with Article 10 of the Convention if the States granted prisoners access to Internet but prevented them from consulting certain sites (§ 45).

23. The dismissal of a civil servant or a State official on political grounds has also warranted examination under Article 10 of the Convention (*Vogt v. Germany*, 1995; *Volkmer v. Germany* (dec.), 2001; see also, *a contrario*, *Glasenapp v. Germany*, 1986, § 53). The fact that the applicants had been dismissed from teaching posts, which by their nature involve the imparting of ideas and information on a daily basis, was a decisive factor in those cases. Similarly, in *Godenau v. Germany*, 2022, § 35, the

Court considered that the inclusion and retention of the applicant's name in the list of teachers deemed unsuitable for reappointment to a teaching post at a public school had essentially related to freedom of expression, given that she had been included in that list because of the opinions she had expressed and the political activities in which she had engaged.

24. In contrast, the Court found that the applicants' dismissal from their positions as, respectively, a tax inspector and a prosecutor, following the application to them of special domestic legislation which imposed screening measures on the basis of their former employment with the KGB, did not encroach upon the applicants' right to freedom of expression and that Article 10 of the Convention was not applicable in the case in question (*Sidabras and Džiautas v. Lithuania*, 2004, §§ 71-72).

25. Furthermore, the Court has found that Article 10 of the Convention applies in the context of labour relations, including where these are governed by the rules of private law (*Herbai v. Hungary*, 2019, § 37; *Fuentes Bobo v. Spain*, 2000, § 38; *Dede c. Türkiye*, 2024, § 38).

26. Statements made in private correspondence (*Zakharov v. Russia,* 2006, § 23; *Sofranschi v. Moldova,* 2010, § 29; *Marin Kostov v. Bulgaria,* 2012, § 42; *Matalas v. Greece*, 2021, § 46), in a complaint to a competent authority (*Rogalski v. Poland*, 2023, § 47), or during a meeting held behind closed doors (*Raichinov v. Bulgaria*, 2006, § 45) may also fall within the scope of Article 10, in spite of the fact that the public nature of such statements is limited.

27. Witness statements also fall within the protective scope of Article 10 (*Udovychenko v. Ukraine*, 2023, §§ 5-7 and 28).

28. The Court also found that an applicant who claimed never to have made the remarks attributed to him could rely on the protection of Article 10, given that, in attributing to him statements he had never made and ordering him to pay damages, the domestic courts had indirectly stifled the exercise of the applicant's freedom of expression. Otherwise, assuming that his claims proved to be correct, the damages he had been ordered to pay would be likely to discourage him from making any similar criticisms in future (*Stojanović v. Croatia*, 2013, § 39).

29. With regard to the so-called "negative right" not to express oneself, the Court does not rule out that such a right is protected under Article 10 of the Convention, but has found that this issue should be addressed on a case-by-case basis (*Gillberg v. Sweden* [GC], 2012, § 86). This issue arose in the case of *Wanner v. Germany* (dec.), 2018, which concerned the conviction for giving false testimony of an individual who had been previously convicted; he refused to name his accomplices and continued to plead his innocence. The Court held that, even assuming that Article 10 was applicable, conviction for breach of the civic duty to give truthful testimony had been necessary in a democratic society (§§ 38 and 44).

30. The Court would not exclude the possibility that certain categories of expression may not be covered by the protection of Article 10 of the Convention. In particular, an offensive statement may fall outside the protection of freedom of expression where its sole intent is to insult. (*Rujak v. Croatia* (dec.), 2012, §§ 27-32). However, it is only by a careful examination of the context in which the offending, insulting or aggressive words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 of the Convention and language which amounts to wanton denigration – for example, where the sole intent of the offensive statement is to insult – thereby falling outside the protection of Article 10 (*Gaspari v. Armenia (no. 2)*, 2023, § 27). In particular, the Court found that the expressions, which the domestic authorities had considered to have been gratuitously offensive and insulting towards the national flag, fell within the scope of Article 10 (*Fragoso Dacosta v. Spain*, 2023, § 20).

31. The Court has found that Article 10 does not protect the right to vote, either in an election or a referendum (*Moohan and Gillon v. the United Kingdom* (dec.), 2017, § 48).

32. In cases concerning a refusal to grant citizenship to a foreign national following discretionary assessment of his loyalty to the State, the Court has found Article 10 to be inapplicable (*Boudelal v. France* (dec.), 2017, § 30). In particular, it has emphasised that the assessment of loyalty for the purposes of a naturalisation decision does not refer to loyalty to the government in power, but rather to the State and its Constitution. The Court considers that a democratic State is entitled to require persons who wish to acquire its citizenship to be loyal to the State and, in particular, to the constitutional principles on which it is founded (*Petropavlovskis v. Latvia*, 2015, § 85).

33. The Court has moreover found that Article 10 of the Convention is not applicable in a number of cases, through the withdrawal of the protection of the Convention as provided for by Article 17 (prohibition of abuse of rights). These cases are examined in detail in the Guide on Article 17.

B. Other admissibility issues[3]

34. Three objections as to admissibility may be mentioned with regard to Article 10 of the Convention.

1. Exhaustion of domestic remedies (Article 35 § 1)

35. The Court reiterated in the case of *Fressoz and Roire v. France* [GC], 1999, that the purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right – usually through the courts – the violations alleged against them before those allegations are submitted to the Court. It added that this provision must be applied with some degree of flexibility and without excessive formalism, and that it was sufficient that the applicant had raised before the national authorities, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law, the complaints intended to be made subsequently in Strasbourg (§§ 37-39).

36. In situations where the applicant has not relied at any point in the courts dealing with his or her case on either Article 10 of the Convention or on arguments to the same or like effect based on domestic law, the Court declares the complaint inadmissible for non-exhaustion of domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention (see, among other authorities, *Aydar v. Turkey* (dec.), 2003).

37. In addition, the Court accepts that, in verifying whether this rule has been respected, it is essential to have regard to the circumstances of the individual case and that it has to take realistic account not only of the existence of formal remedies in the legal system of the State concerned but also of the general legal and political context in which they operated, as well as the personal circumstances of the applicant, so that it can then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (*Yılmaz and Kılıç v. Turkey*, 2008, § 38).

38. Reference by the national courts, of their own motion and in substance, to the right to freedom of expression has also been found by the Court to satisfy the requirement of exhaustion of domestic remedies in this area (*Yılmaz and Kılıç v. Turkey*, 2008, § 42).

39. In the case of *Karácsony and Others v. Hungary* [GC], 2016, the respondent State argued that the applicants, members of parliament who had been subjected to disciplinary proceedings and ordered to pay fines on account of their conduct during a parliamentary hearing, had not exhausted the domestic remedies, namely a constitutional complaint. The Court dismissed this objection, noting that the complaint in question did not offer the applicants the possibility to request any form of rectification of the disciplinary decisions, since there were no regulations in Hungarian law to that effect (§§ 81-82); see also the case of *Szanyi v. Hungary*, 2016 (§ 18). In *Mestan v. Bulgaria*, 2023, the Court dismissed the Government's argument that the applicant should have instituted a procedure

[3] See the Practical Guide on Admissibility

under the Constitution to have certain provisions of the relevant electoral legislation, insofar as they required that all electoral campaigns should be led in the Bulgarian language, declared unconstitutional. Even if such recourse had been successful, it would not have enabled the applicant to have the decisions, by which he had been fined for using a non-official language during his electoral campaign, reviewed (§§ 38-40).

2. Victim status[4] (Article 35 § 3 (a))

40. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention. Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (*Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, § 218). A recent example of the Court's finding of loss of victim status in relation to Article 10 can be found in the case of *Wikimedia Foundation, Inc. v. Turkey* (dec.), 2022, §§ 49-51.

41. As a general rule, the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. Where legislation affecting all citizens is in issue but no direct link between the law in question and the obligations or effects it created for the applicants can be established, the Court does not consider that they have standing as victims (*Dimitras and Others v. Greece* (dec.), 2017, § 31). It is, however, open to applicants to contend that a law violates their rights, in the absence of an individual measure of implementation, if they belong to a class of people who risk being directly affected by the legislation or if they are required either to modify their conduct or risk being prosecuted (*Burden v. the United Kingdom* [GC], 2008, §§ 33-34, and the references cited therein; *Open Door and Dublin Well Woman v. Ireland*, 1992, § 44).

42. In the case of *Margulev v. Russia*, 2019, civil defamation proceedings were brought against a newspaper, in particular for statements that had been made by the applicant. The Court noted that, by accepting the applicant's intervention as a third party in the defamation proceedings, the domestic courts had tacitly accepted that his rights could be affected by the outcome of those proceedings. Hence, it concluded that the applicant's rights and obligations were at stake in the contested proceedings and that they had a direct impact on his right to freedom of expression (§§ 36-37).

43. The existence of legislation very broadly suppressing the expression of specific types of opinion, leading the potential authors to adopt a kind of self-censorship, can amount to interference with freedom of expression and the authors in question may thus assert their victim status (*Vajnai v. Hungary*, 2008, § 54; *Altuğ Taner Akçam v. Turkey,* 2011, §§ 68-83).

44. The Court considers, however, that in order to assert victim status there must be a sufficiently direct link between the applicant and the damage which he or she claims to have sustained as a result of the alleged violation. In a case concerning the closure of the Greek public-service broadcaster, the Court examined in practice the activities of a former employee, who claimed that he was the victim of a breach of his right to impart information as a result of the broadcaster's closure. The Court held that, as a financial administrator, the applicant had not been directly involved in the preparation of programmes and thus did not have victim status to allege a violation of Article 10 in this context (*Kalfagiannis and Prospert v. Greece* (dec.), 2020, § 45). The same conclusion was reached with regard to his capacity as a Greek citizen, on which he had also relied in claiming to be a victim of a violation

[4] The plea of inadmissibility based on the absence or loss of victim status frequently overlaps with the question of whether there has been an interference, which is partially based on a similar logic. This latter issue is dealt with below in the Chapter "The Court's examination of Article 10 cases: a step-by-step analysis".

of the right to receive information (§§ 46-48). A federation of trade unions, representing media employees in the public and private sectors, was also unable to claim victim status, as the closure of the broadcasting service in question did not directly affect that federation's rights as safeguarded by Article 10 (§ 50).

45. The answer to the question whether an applicant can claim to be the victim of a general measure will depend on an assessment of the circumstances of each case, in particular the nature and scope of the impugned measure and its potential impact on the applicant (*Akdeniz and Others v. Turkey*, 2021, § 57). In this case, the applicants (one was a journalist who was at the material time a political commentator and TV news presenter on a national television channel and the other two were academics and well-known users of social media platforms) complained about a general but temporary measure, lasting less than two months, preventing the press and other media from communicating information concerning specific aspects of a parliamentary inquiry. The Court noted that the measure in question was of a general and blanket nature (§ 62), but drew a distinction between the first applicant (a journalist) and the two remaining applicants (academics) as regards the consequences of that measure for them. It considered, in particular, that the first applicant had been directly affected by the impugned measure, as long as, albeit only during a short period, she had been unable to publish or disseminate information or to impart her ideas on the relevant question and could therefore claim to be the victim of the alleged interference (§§ 70 and 76). On the other hand, the sole fact that the other two applicants had suffered indirect effects of the contested measure was insufficient to amount to victim status for the purposes of Article 34 (§§ 71 and 75): it was not alleged that these two applicants had been prevented from publishing their comments or academic research concerning the parliamentary inquiry within the limits, imposed for a short period, by the principle of the confidentiality of the inquiry (§ 73).

46. In *Khural and Zeynalov v. Azerbaijan (no. 2)*, 2023, § 31, concerning civil liability of a newspaper and its editor-in-chief for slanderous defamation of a high-ranking official, the Court held that the second applicant, who had not been formally a party to the domestic proceedings brought against the first applicant (which had a distinct legal personality as a registered media entity) could claim to be a victim of the alleged violation. In that connection, the Court observed that the second applicant's participation in those proceedings had not been limited to being a representative of the first applicant because the domestic courts' decisions had explicitly imposed obligations on him to issue an apology and retraction; that later, his failure to issue an apology and the first applicant's failure to pay damages had served as one of the grounds for his criminal conviction; and that he had, in fact, written the impugned expressions. Consequently, the domestic proceedings had also affected him as a journalist.

47. In the case of *Rotaru v. Romania* [GC], 2000, the Court noted that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (§ 35; see also *Amuur v. France*, 1996, § 36).

48. The Court has concluded, for example, that an amnesty measure did not meet this requirement, given that it did not entail acknowledgement that there had been any breach of the applicant's rights nor did it provide the possibility for him to reclaim any alleged loss of earnings caused by the impugned disciplinary sanction (*Albayrak v. Turkey*, 2008, § 33).

49. Nor can a presidential pardon remove the dissuasive effect of a criminal conviction for defamation, since it is a measure subject to the discretionary power of the President of the Republic; furthermore, while such an act of clemency dispenses convicted persons from having to serve their sentence, it does not expunge their conviction (*Cumpănă and Mazăre v. Romania* [GC], 2004, § 116).

50. In a case where the applicants were subject to a disciplinary sanction for submitting petitions seeking to secure Kurdish language education, the fact that they had ultimately been acquitted did not deprive them of victim status, given that the national courts neither acknowledged nor provided redress for the interference with their rights (*Döner and Others v. Turkey*, 2017, § 89; for a case

involving the acquittal of a newspaper owner following seven sets of criminal proceedings, see *Ali Gürbüz v. Turkey*, 2019, §§ 63-68).

51. Nor can a suspension of a judgment be considered as preventing or redressing the consequences that criminal proceedings have had on an individual's freedom of expression (*Dickinson v. Turkey*, 2021, § 25; *Ömür Çağdaş Ersoy v. Turkey*, 2021, § 24).

52. The issue as to whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 82). Thus, according to the Court, the allocation of the broadcasting frequencies which put an end to the situation complained of by the applicant company, a limited liability company operating in the television broadcasting sector, in its application, and the subsequent compensation, did not constitute either an implicit acknowledgment of a breach of the Convention, or redress for the period during which the applicant company had been prevented from broadcasting (*ibid.*, § 88).

53. In the Court's view, where criminal prosecutions based on specific criminal legislation are discontinued for procedural reasons but the risk remains that the party concerned will be found guilty and punished, that party may validly claim to be the victim of a violation of the Convention (see, among other authorities, *Bowman v. the United Kingdom*, 1998, § 29).

54. Thus, criminal prosecutions of journalists instigated on the basis of criminal complaints and leading to a three-year stay of proceedings, even though the criminal proceedings were lifted after that period in the absence of a conviction, constituted interference on account of their chilling effect on journalists (*Yaşar Kaplan v. Turkey*, 2006, § 35; see, to the same effect, *Aslı Güneş v. Turkey* (dec.), 2004). A restriction on the period of suspension has also been an element leading the Court to find a violation of Article 10 in certain cases (*Şener v. Turkey*, 2000, § 46; *Krasulya v. Russia*, 2007, § 44).

55. Equally, the Court held in the case of *Nikula v. Finland*, 2002, that the conviction of a lawyer for mere negligent defamation on account of her criticism of the strategy adopted by the public prosecutor in criminal proceedings, even if that conviction was ultimately overturned by the Supreme Court and the fine imposed on her lifted, was liable to have a chilling effect on defence counsel's duty to defend their clients' interests zealously (§ 54).

3. Absence of significant disadvantage (Article 35 § 3 (b)).

56. The Court has had an opportunity to examine the application of the "no significant disadvantage" admissibility criterion in cases raising the issue of freedom of expression. More generally, it has stressed that in such cases, the application of this admissibility criterion should take due account of the importance of this freedom and be subject to careful scrutiny by the Court (*Gachechiladze v. Georgia*, 2021, § 40; *Šeks v. Croatia*, 2022, § 48).

57. In particular, it has dismissed the preliminary objection under the significant disadvantage criterion in a number of cases, including:

- *Eon v. France*, 2013, where the Court had regard to the national debate in France on whether insulting the head of State should remain a criminal offence and the wider issue of whether that offence was compatible with the Convention (§§ 34-36).
- *Margulev v. Russia*, 2019, where the Court had regard to the fact that the applicant had experienced a chilling effect as a result of the defamation proceedings against the editorial board of a newspaper in which he had expressed his personal opinions and also to the essential role of a free press in ensuring the proper functioning of a democratic society (§ 42; see also *Gafiuc v. Romania*, 2020, § 39; *Panioglu v. Romania*, 2020, § 75; *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 4)*, 2021, §§ 26-30).

- *Tőkés v. Romania*, 2021, where the Court had regard to the fact that the applicant wished to show his belonging to a minority and given the political sensitivity of minority rights in a democratic sociey (§§ 54-55).
- *Handzhiyski v. Bulgaria*, 2021, where the Court noted that, although the fine imposed on the applicant in that case had not been criminal in nature and had been modest in its amount, the practical and in particular the pecuniary effects on the applicant could not be the sole criterion for assessing whether he had suffered a "significant disadvantage". It pointed out that his complaint under Article 10 had concerned a proper exercise of his right to freedom of expression on a matter of public interest, being thus a point of principle for him, and had raised issues of general importance: whether a political protest carried out in the manner chosen by the applicant – by profaning a public monument without damaging it – could amount to a legitimate exercise of the right to freedom of expression (§ 36).
- *Gachechiladze v. Georgia*, 2021, § 40; and *Šeks v. Croatia*, 2022, § 50, where the Court considered that the applicants' complaints had concerned important questions of principle and had gone beyond the scope of their relevant cases.
- *Sieć Obywatelska Watchdog Polska v. Poland*, 2024, § 26, where the Court considered that the decision to deny access to certain information requested by the applicant NGO had undermined the very core of its activity given the fact that the main area of that activity was gathering information, sharing it with the public and contributing to public debate.

58. In contrast, in some other cases, the Court accepted this objection, still emphasising the importance of freedom of expression and the need for careful scrutiny by the Court in the application of this criterion. Such scrutiny should focus on elements such as the contribution made to a debate of general interest and whether the case involves the press or other news media (*Sylka v. Poland* (dec.), 2014, §§ 25-39; *Mura v. Poland* (dec.), 2016, §§ 20-32; *Savelyev v. Russia* (dec.), 2019, §§ 24-35, see also the Committee decision in *Anthony France and Others v. the United Kingdom* (dec.) [committee], 2017).

III. The Court's examination of Article 10 cases: a step-by-step analysis

A. Whether there was an interference with the exercise of the right to freedom of expression, and the forms of interference

59. The Court considers that interference with the right to freedom of expression may entail a wide variety of measures, generally a "formality, condition, restriction or penalty" (*Wille v. Liechtenstein* [GC], 1999, § 43).

60. Moreover, the Court considers that, in establishing whether or not there has been interference with the right to freedom of expression, there is no need to dwell on the characterisation given by the domestic courts. In several cases, the fact that the evidence underlying the applicant's conviction consisted solely of forms of expression has led the Court to find the existence of an interference (*Yılmaz and Kılıç v. Turkey*, 2008, § 58; *Bahçeci and Turan v. Turkey*, 2009, § 26).

61. In a case where the applicant had denied, before the domestic criminal courts, his responsibility for the materials that had led to his conviction, the Court held that this conviction amounted to an interference in the exercise of his right to freedom of expression. In the Court's view, to hold otherwise would be tantamount to requiring him to acknowledge the acts of which he stood accused, contrary to his right not to incriminate himself, which lies at the heart of the notion of a fair trial protected by

Article 6 of the Convention. In addition, not accepting that a criminal conviction constituted an interference, on the ground that the person concerned denied any involvement in the acts at issue, would lock that person in a vicious circle that would deprive him or her of the protection of the Convention (*Müdür Duman v. Turkey*, 2015, § 30; see also for similar findings, *Kilin v. Russia*, 2021, §§ 55-58).

62. Like the question of victim status, the issue of whether there has been an interference with the right to freedom of expression is closely linked to the possibility of a chilling effect on the exercise of this right. Thus, in a case where criminal proceedings were brought to an end fairly quickly through a discharge order or an acquittal judgment, the Court has considered that, in the absence of other related proceedings, those proceedings could not be regarded as having had a dissuasive effect on the applicants' publishing activities and did not therefore amount to an interference with their freedom of expression (*Metis Yayıncılık Limited Şirketi and Sökmen v. Turkey* (dec.), 2017, §§ 35-36). Conversely, in a case where disciplinary proceedings brought against the applicant, then a member of the military and a university professor, in connection with his statements made in a television programme, had been discontinued without any sanction being imposed on him, the Court considered that those proceedings had amounted to an interference with his rights under Article 10: even though the applicant had not been sanctioned, the decisions delivered in those disciplinary proceedings had stated that he had gone beyond the limits of the right to freedom of expression accorded to military personnel. Those decisions had thus implied that the applicant would have been sanctioned were it not for the fact that his offence had become time-barred. In the Court's view, that conclusion could be deemed a *de facto* warning or admonition addressed to the applicant, which could have a chilling effect, preventing him from expressing in the future similar opinions since fresh disciplinary proceedings might be brought (*Ayuso Torres v. Spain*, 2022, §§ 42-43 and 58).

63. It is worth noting that Article 10 rights are secured "regardless of frontiers", that is no distinction shall be drawn between its exercise by nationals and foreigners. This principle implies that States may only restrict information received from abroad within the confines of the justifications set out in Article 10 § 2 of the Convention (*Cox v. Turkey*, 2010, § 31; *Kirkorov v. Lithuania* (dec.), 2024, § 53).

64. The Court carries out a case-by-case examination of situations which may have a restrictive impact on the enjoyment of freedom of expression. In any event, it considers that mere allegations that the contested measures had a "chilling effect", without clarifying in which specific situation such an effect occurred, was not sufficient to constitute interference for the purposes of Article 10 of the Convention (*Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland* (dec.), 2019, § 72).

65. For example, the following situations may be considered under the Court's case-law as forms of interference with the right to freedom of expression:

- a criminal conviction (*Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 59), combined with a fine (*Kasabova v. Bulgaria*, 2011; *Gaspari v. Armenia (no. 2)*, 2023) or imprisonment (*Cumpănă and Mazăre v. Romania* [GC], 2004);
- an order to pay damages (*Tolstoy Miloslavsky v. the United Kingdom*, 1995, § 51), even where these are symbolic (*Paturel v. France*, 2005, § 49);
- a conviction, even where execution is suspended (*Otegi Mondragon v. Spain,* 2011, § 60);
- the mere fact of having been investigated in criminal proceedings, or the real risk of being investigated on the basis of legislation that had been unclearly drafted and was also interpreted unclearly by the national courts (*Altuğ Taner Akçam v. Turkey*, 2011);
- a prohibition on publication (*Cumhuriyet Vakfı and Others v. Turkey*, 2013);
- the confiscation of a publication (*Handyside v. the United Kingdom*, 1976);
- seizure by the prison administration of newspapers and magazines sent to an imprisoned applicant by his relatives, and of a radio in his possession (*Rodionov v. Russia*, 2018);

- a refusal to grant a broadcasting frequency (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012°;
- a judicial decision preventing a person from receiving transmissions from telecommunications satellites (*Khurshid Mustafa and Tarzibachi v. Sweden*, 2008, § 32);
- a ban on an advertisement (*Barthold v. Germany*, 1985);
- an order to disclose journalistic sources (*Goodwin v. the United Kingdom*, 1996), even where the order has not been enforced (*Financial Times Ltd and Others v. the United Kingdom*, 2009, § 56) or where the source has already come forward and the journalist was compelled to give evidence against him (*Becker v. Norway*, 2017);
- the refusal to grant authorisation to film inside a prison when preparing a television programme and to interview one of the detainees (*Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, 2012); the refusal to grant access to a reception centre for asylum seekers to obtain statements about the living conditions therein (*Szurovecz v. Hungary*, 2019);
- the arrest and detention of protestors (*Steel and Others v. the United Kingdom*, 1998, § 92; *Açık and Others v. Turkey*, 2009, § 40);
- written warnings sent by the prosecutor's office to the officials of an NGO which had organised public demonstrations against a law (*Karastelev and Others v. Russia*, 2020, §§ 70-76);
- withdrawal of accreditation to study archives, used by a journalist in preparing press articles (*Gafiuc v. Romania*, 2020, § 55);
- withdrawal of the applicant's parliamentary immunity through the constitutional amendment (*Kerestecioğlu Demir v. Turkey*, 2021, § 67);
- a caution issued by a mass-media regulator in respect of a publisher, a non-governmental organisation, and the founder, a joint-stock company, for dissemination of "extremist material" in relation to an article with quotations from a manifesto of a controversial nationalist group and with symbols resembling Nazi symbols (*RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, 2021, §§ 60-66);
- revocation of broadcasting licence of a TV channel (*NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 150);
- deletion by an appellate court of certain statements made by the applicant's lawyer in written submissions before that court (*Sàrl Gator v. Monaco*, 2023, § 38).

66. When it comes to professional posts – such as court presidents, judges, public prosecutors, judicial employees, civil servants, university professors, journalists at public broadcasters, employees in State or municipally owned companies, lawyers, notaries, medical doctors, nurses, servicemen– removals or suspensions from those posts (and even refusals to appoint) relating, overtly or covertly, to statements by the post-holders, or candidates, have consistently been seen as interferences with their right to freedom of expression, as in the following examples:

- an announcement by a Head of State of his intention not to reappoint the applicant, a Supreme Court president, to any other public office on the grounds that the latter had expressed an opinion on a constitutional issue, which opinion had allegedly contradicted that of the Head of State (*Wille v. Liechtenstein* [GC], 1999, §§ 44 and 49-51);
- termination of the mandate of a Supreme Court president (*Baka v. Hungary* [GC], 2016, §§ 145-52);
- dismissals of judges (*Pitkevich v. Russia* (dec.), 2001; *Kudeshkina v. Russia*, 2009, §§ 79-80; *Manole v. the Republic of Moldova*, 2023, §§ 53-55), or demotions of judges (*Albayrak*

v. Turkey, 2008, § 38; *Eminağaoğlu v. Turkey*, 2021, § 127; *Miroslava Todorova v. Bulgaria*, 2021, §§ 157-64);

- termination of the mandate of a Chief Public Prosecutor (*Kövesi v. Romania*, 2020, §§ 183-90); removal of a Deputy General Prosecutor (*Jhangiryan v. Armenia* (dec.), 2013, § 36), or of the head of a local public prosecutor's office (*Brisc v. Romania*, 2018, § 89);
- dismissals of public prosecutors (*Altın v. Turkey* (dec.), 2000; *Goryaynova v. Ukraine*, 2020, § 54); of an expert in a prosecutor's office (*Peev v. Bulgaria*, 2007, § 60); or of a press officer in a prosecutor's office (*Guja v. Moldova* [GC], 2008, §§ 53 and 55);
- dismissals of civil servants (*Vogt v. Germany*, 1995, § 44; *Petersen v. Germany* (dec.), 2001; *Volkmer v. Germany* (dec.), 2001; *De Diego Nafría v. Spain*, 2002, § 30; *Kern v. Germany* (dec.), 2007; *Langner v. Germany*, 2015, § 39; *Karapetyan and Others v. Armenia*, 2016, § 36; *Catalan v. Romania*, 2018, § 44), or refusal to promote them (*Otto v. Germany* (dec.), 2005);
- dismissal of a university professor (*Rubins v. Latvia*, 2015, §§ 68-70) or suspension of a university professor (*Gollnisch v. France* (dec.), 2011);
- dismissals of journalists at public broadcasters (*Fuentes Bobo v. Spain*, 2000, § 38; *Nenkova-Lalova v. Bulgaria*, 2012, §§ 52-53; *Matúz v. Hungary*, 2014, §§ 25-27);
- dismissals of employees of State and municipal companies (*Balenović v. Croatia* (dec.), 2010; *Bathellier v. France* (dec.), 2010; *Skwirut v. Poland* (dec.), 2014, §§ 39-40; *Marunić v. Croatia*, 2017, § 45);
- disbarment of a lawyer (*Bagirov v. Azerbaijan*, 2020, § 70), or suspension of a notary (*Ana Ioniţă v. Romania*, 2017, § 41);
- dismissal of a doctor at a public hospital (*Gawlik v. Liechtenstein*, 2021, § 48); or of a nurse in a partly State-owned hospital (*Heinisch v. Germany*, 2011, §§ 43-45); and a disciplinary penalty imposed on a doctor for breach of professional ethics, for criticising the medical treatment provided to a patient (*Frankowicz v. Poland*, 2008);
- reprimands or warnings given to judges (*Kayasu v. Turkey*, 2008, §§ 78-81; *Di Giovanni v. Italy*, 2013, § 74; *Guz v. Poland*, 2020, § 73; *Kozan v. Turkey*, 2022, § 52), a lawyer (*Veraart v. the Netherlands*, 2006, § 49), a journalist (*Wojtas-Kaleta v. Poland*, 2009, § 44), and an academic (*Kula v. Turkey*, 2018, §§ 36-40); and
- even a decision no more than hypothetically capable of affecting the career prospects of a judge (*Panioglu v. Romania*, 2020, § 98).

67. As regards, more specifically, cases concerning disciplinary proceedings or the removal or appointment of judges, when ascertaining whether the measure complained of amounted to an interference with the exercise of the applicant's freedom of expression, the Court has first determined the scope of the measure by putting it in the context of the facts of the case and of the relevant legislation (*Baka v. Hungary* [GC], 2016, § 140; see also *Wille v. Liechtenstein* [GC], 1999, §§ 42-43; *Kayasu v. Turkey*, 2008, §§ 77-79; *Kudeshkina v. Russia*, 2009, § 79; *Poyraz v. Turkey*, 2010, §§ 55-57; *Harabin v. Slovakia*, 2012, § 149; *Kövesi v. Romania*, 2020, § 190; *Żurek v. Poland*, 2022, §§ 210-213; *Manole v. the Republic of Moldova*, 2023, § 54; see also, with regard to the refusal to award the title of court expert to a candidate on account of his blog and criticisms of State authorities, although he had been successful in the relevant examination, *Cimperšek v. Slovenia*, 2020, § 57).

68. At the same time, the Court drew a distinction between professional posts and political ones. The former enjoy some sort of stability or tenure, and holding them is chiefly premised on having certain professional qualifications. The latter are as a rule inherently unstable, and holding them is often premised not only on possessing certain qualifications but also on having and expressing views which match those of the political party vested with the right to fill such a post. Therefore, the reasoning underlying the existence of an interference regarding professional posts cannot be automatically transposed to political ones (*Zhablyanov v. Bulgaria*, 2023, §§ 89-90). Thus, the Court expressed

doubts as regards the existence of an interference with the right to freedom of expression in a situation concerning a removal from a position as deputy speaker of a parliament (*Zhablyanov v. Bulgaria*, 2023, § 94).

B. The three assessment criteria": the lawfulness of the interference, its legitimacy, and its necessity in a democratic society

69. The Court then analyses whether the interference was "prescribed by law" and whether it "pursued one of the legitimate aims" within the meaning of Article 10 § 2, and lastly whether the interference was "necessary in a democratic society"; in the majority of cases, this is the question which determines the Court's conclusion in a given case.

1. The criterion of the "lawfulness of the interference"

70. Interference with freedom of expression will breach the Convention if it fails to satisfy the criteria set out in the second paragraph of Article 10. It must therefore be determined whether it was "prescribed by law". It is first and foremost up to the national authorities, and notably the courts, to interpret domestic law. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (*Cangi v. Turkey*, 2019, § 42).

71. The Court has held that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his or her conduct and that he or she must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. However, it went on to state that these consequences do not need to be foreseeable with absolute certainty, as experience showed that to be unattainable (*Perinçek v. Switzerland* [GC], 2015, § 131; *Sanchez v. France* [GC], 2023, § 125). Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (*Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 41; *Bouton v. France*, 2022, § 33; *Sanchez v. France* [GC], 2023, § 125). A margin of doubt in relation to borderline facts does not therefore, ,,of itself, make a legal provision unforeseeable in its application. Nor does the mere fact that a provision is capable of more than one construction mean that it fails to meet the requirement of "foreseeability" for the purposes of the Convention. The role of adjudication, vested in the courts, serves precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice (*ibid*., § 126).

72. The Court has also considered that an individual cannot claim that a legal provision lacks foreseeability simply because it is applied for the first time in his or her case (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 150; *Tête v. France*, 2020, § 52; *Manole v. the Republic of Moldova*, 2023, § 58). Thus, the Court found that the application of legal provisions, on the basis of which the applicant, a politician, had been convicted in criminal proceedings as a "producer" for third-party comments posted on the "wall" of his personal Facebook account, had met the "quality of law" requirements (*Sanchez v. France* [GC], 2023, §§ 132-142).

73. Furthermore, the Court has emphasised that the scope of the concepts of foreseeability and accessibility depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action

may entail. This is particularly true with regard to persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation; they can on this account be expected to take special care in assessing the risks that such activity entails (*Chauvy and Others v. France*, 2004, §§ 43-45).

74. In addition, the Court considers that the scope of the notion of foreseeability depends on the context in which the restrictive measures in question are used. Thus, their use in an electoral context takes on special significance, given the importance of the integrity of the voting process in preserving the confidence of the electorate in the democratic institutions (*Magyar Kétfarkú Kutya Párt v. Hungary* [GC], 2020, § 99).

75. The Court has reiterated, with regard to Articles 9, 10 and 11 of the Convention, that the mere fact that a legal provision is capable of more than one construction does not mean that it does not meet the requirement of foreseeability (*Perinçek v. Switzerland* [GC], 2015, § 135; *Vogt v. Germany*, 1995, § 48 *in fine*, with regard to Article 10; *Anatoliy Yeremenko v. Ukraine*, 2022, § 51). In this context, when new offences are created by legislation, there will always be an element of uncertainty about the meaning of this legislation until it is interpreted and applied by the criminal courts (*Jobe v. the United Kingdom* (dec.), 2011; *Dmitriyevskiy v. Russia*, 2017, § 82).

76. In assessing the foreseeability of a law, the Court also undertakes to verify the quality of the law in question, with regard to both clarity and precision. In this connection, the Court has reiterated that the expression "prescribed by law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the accessibility and quality of the law in question. The Court considers that a law which has been published in the national official gazette is accessible.

77. However, the Convention does not contain any specific requirements as to the degree of publicity to be given to a particular legal provision (*NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 163).

78. The Court held that the conviction of an applicant, president of a political congress, for failing to intervene and prevent delegates at the congress from speaking in Kurdish, in spite of warnings from a government superintendant, was not "prescribed by law". It held that the domestic provision regulating political parties had not been clear enough to have enabled the applicant to foresee that he could face criminal proceedings (*Semir Güzel v. Turkey*, 2016, §§ 35 and 39-41).

79. In the case of *Pinto Pinheiro Marques v. Portugal*, 2015, the Court found that there had not been a sufficient legal basis for the interference, noting that a legal provision penalising another type of comment had been applied to the statements made by the applicant (§§ 37-39).

80. In the same way, the Court has found breaches of the requirement that the interference should be lawful after noting a contradiction between two legal texts and in the absence of a clear solution (*Goussev and Marenk v. Finland*, 2006, § 54) or a discrepancy in the case-law (*RTBF v. Belgium*, 2011, § 115).

81. In the case of *Eminağaoğlu v. Turkey*, 2021, the Court found that the statutory terms on which a disciplinary sanction had been ordered against a judicial officer were general, allowing multiple interpretations. However, the Court considered that, with regard to the rules on the conduct of members of the judiciary, a reasonable approach had to be taken in assessing statutory precision, so that the impugned measure was lawful under article 10 § 2 of the Convention (§§ 128-130).

82. In another case, the Court reiterated that criminal-law provisions (in the case in question, related to hate speech) must clearly and precisely define the scope of relevant offences, in order to avoid a situation where the State's discretion to prosecute for such offences becomes too broad and potentially subject to abuse through selective enforcement (*Savva Terentyev v. Russia*, 2018, § 85; see also *Altuğ Taner Akçam v. Turkey*, 2011, §§ 93-94). Likewise, the Court expressed doubt that the provision, which had served as a basis for the applicant's conviction in administrative proceedings for solo demonstration without a prior notification where he had used "quickly (de)assembled objects",

had been sufficiently foreseeable to meet the "quality of law" requirements since it contained no criteria allowing a person to foresee what kind of objects it covered (*Glukhin v. Russia*, 2023, § 54).

83. In several cases, the Court held that placement in pre-trial detention which was not based on a reasonable suspicion that an offence had been committed within the meaning of Article 5 § 1 (c) of the Convention entailed a violation of that provision, and referred to that finding in concluding that the applicant's pre-trial detention amounted to an interference that had no basis in law, a requirement under Article 10 § 2 of the Convention (*Ragıp Zarakolu v. Turkey*, 2020, § 79; *Sabuncu and Others v. Turkey*, 2020, § 230). Conversely, pre-trial detention may be justified where there is reasonable suspicion that a journalist's activities are part of a broader organised effort to target and detain members of a particular religious group. Special safeguards against such detention apply only to journalistic discussions based on accurate factual information, and did not apply where a journalist broadcasts accusations of terrorism without evidentiary basis (*Karaca v. Türkiye*, 2023, §§ 101-02 and 157-58).

84. In the case of *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, 2011, the Court found that, given the lack of adequate safeguards in the domestic law for journalists using information obtained from the Internet, the applicants could not have foreseen to the appropriate degree the consequences which the impugned publication might entail. This enabled the Court to conclude that the requirement of lawfulness contained in the second paragraph of Article 10 of the Convention had not been met (§ 66).

85. In a case in which the domestic law did not contain any provisions prohibiting the taking of photographs of ballot papers and uploading them anonymously on a mobile application so that they could be shared during a referendum, the Court noted the considerable uncertainty about the potential effects of the impugned legal provisions applied by the domestic authorities and held that such provisions were not foreseeable (*Magyar Kétfarkú Kutya Párt v. Hungary* [GC], 2020).

86. In a case concerning unfettered discretion conferred on the prosecutor's office to issue warnings, cautions and orders under "anti-extremism" legislation, the Court concluded that the requirement of foreseeability had not been met. In this connection, the Court noted that the *ex post facto* remedies provided for by the applicable domestic regulatory framework did not provide protection against arbitrariness or the exercise of discretionary power by a non-judicial authority (*Karastelev and Others v. Russia*, 2020, §§ 78-97).

87. The Court has also held that it is not required to limit its assessment solely to the quality of a law which it had previously declared vague and unforeseeable, but that it is appropriate to assess the necessity of such laws where they were incompatible with the notions of equality, pluralism and tolerance inherent in democratic society (*Bayev and Others v. Russia*, 2017, § 83).

88. In the case of *ATV Zrt v. Hungary*, 2020, with regard to a law in force banning presenters from expressing any opinion on the news that was being broadcast, the Court considered that the question was not whether, *in abstracto,* the relevant legislative provision had been sufficiently precise but whether, in publishing the contested statement (describing a political party as being from the "extreme right"), the applicant television company knew or ought to have known – if need be, after taking appropriate legal advice – that that expression would represent an "opinion" in the circumstances of the case. In the Court's view, the question whether the domestic courts' approach could reasonably have been expected was closely related to the issue whether in a democratic society it was necessary to ban the term "far-right" in a news programme, in the circumstances of the present case and in light of the legitimate aim pursued by the restriction (*ATV Zrt v. Hungary*, 2020, §§ 35 and 37).

89. The lifting of the applicant MP's parliamentary immunity, on the basis of a constitutional amendment and following accusations of terrorism made against him for political speeches he had given, resulted, in the Court's view, from a one-off *ad hominem* amendment and amounted to

unforeseeable interference (*Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, §§ 269-270; see also for similar findings *Kerestecioğlu Demir v. Turkey*, 2021, §§ 67 and 70-72, where the Court found that the lifting of parliamentary immunity in itself constituted an interference).

90. The Court has also held that a broad interpretation of a provision of criminal law cannot be justified where it entails equating the exercise of the right to freedom of expression with belonging to, forming or leading an armed terrorist organisation, in the absence of any concrete evidence of such a link (*Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, § 280).

91. *Akdeniz and Others v. Turkey*, 2021, concerned a general but temporary measure, lasting less than two months, preventing the press and the other media from communicating information concerning specific aspects of a parliamentary inquiry and the Court found that the impugned measure lacked a sufficient legal basis (§§ 91-97).

92. In *Zayidov v. Azerbaijan (No. 2)*, 2022, the Court found that the confiscation and destruction of the applicant's manuscript written while in detention had not been "prescribed by law", in particular because the rule relied on to confiscate and destroy the manuscript was susceptible to a wide range of interpretations, with no safeguards against arbitrary decisions (§§ 67-74).

2. The criterion of the "legitimacy of the aim pursued by the interference"

93. The legitimate aims of interference with the right to freedom of expression are set out in the second paragraph of Article 10 of the Convention. This list is exhaustive (*OOO Memo v. Russia*, 2022, § 37; *Mária Somogyi v. Hungary*, 2024, § 29; *Bielau v. Austria*, 2024, § 30). At this stage of its examination, the Court may find that an interference does not serve to advance the legitimate aim relied on (*Bayev and Others v. Russia*, 2017, §§ 64 and 83, where the Court's assessment focused on the necessity of the impugned laws as general measures; *Macatė v. Lithuania* [GC], 2023, §§ 216-217), or choose to retain only one of the legitimate aims relied on by the State, while dismissing others (*Morice v. France* [GC], 2015, § 170; *Perinçek v. Switzerland* [GC], 2015, §§ 146-154; *Stoll v. Switzerland* [GC], 2007, § 54; *Open Door and Dublin Well Woman v. Ireland*, 1992, § 63; *Kilin v. Russia*, 2021, §§ 63-66).

94. The Court may consider that the lack of a legitimate aim for the interference amounted in itself to a violation of the Convention and therefore decide not to examine whether the interference in question had been necessary in a democratic society *(Khuzhin and Others v. Russia,* 2008, § 117, for a complaint under Article 8 of the Convention). It may also decide, having regard to the circumstances of the case, to continue its examination and establish also whether the interference had been necessary in a democratic society (*Kövesi v. Romania*, 2020, § 199; *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, 2021, §§ 76-82).

3. The criterion of "necessity of the interference in a democratic society"

95. The general principles for assessing the necessity of an interference with freedom of expression, reiterated many times by the Court since its judgment in *Handyside v. the United Kingdom*, 1976, were summarised in *Stoll v. Switzerland* [GC], 2007, (§ 101) and restated in *Morice v. France* [GC], 2015 (§ 124) and *Pentikäinen v. Finland* [GC], 2015 (§ 87).

96. The Court has thus developed in its case-law the autonomous concept of whether an interference is "proportionate to the legitimate aim pursued", which is determined having regard to all the circumstances of the case using criteria established in the Court's case-law and with the assistance of various principles and interpretation tools.

These criteria will be examined in detail in the chapters covering the substantive application of Article 10 in the various categories of cases.

97. Some of the principles and interpretation tools which have been defined, used and articulated in the Court's reasoning to assess the necessity of a given interference with freedom of expression are described below.

a. Existence of a "pressing social need"

98. A pressing social need is not synonymous with "indispensable", but neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable" (*Gorzelik and Others v. Poland* [GC], 2004, § 95; *Barthold v. Germany*, 1985, § 55; *The Sunday Times v. the United Kingdom (no. 1)*, 1979, § 59).

99. While the Contracting States have a certain margin of appreciation in assessing whether such a need exists, where freedom of the press is at stake this margin of appreciation is in principle restricted (*Dammann v. Switzerland*, 2006, § 51). Thus, while acknowledging the States' margin of appreciation in assessing whether such a need exists, the Court may reject the arguments put forward in this connection (see, for example, *Eerikäinen and Others v. Finland*, 2009, § 71; *Fáber v. Hungary*, 2012, § 45).

100. The Court does not always rule explicitly in its conclusions on whether there was a pressing social need, but it refers to whether the reasons given by the national authorities are relevant and sufficient, and to the State's margin of appreciation, in ruling, implicitly, on whether such a need existed (for example, *Janowski v. Poland* [GC], 1999, §§ 31 and 35; *Bladet Tromsø and Stensaas v. Norway* [GC], 1999, §§ 58 and 73). In particular, the Court may limit its analysis to the finding that the domestic courts had failed to apply standards which were in conformity with the principles embodied in Article 10 and to base their decision on an acceptable assessment of the relevant facts, without proceeding to examine the proportionality of the imposed sanction (*Khural and Zeynalov v. Azerbaijan (no. 2)*, 2023, §§ 63-64).

101. Lastly, the Court may attach greater weight to factors other than a pressing social need to justify an interference, and focus its examination on these factors, as well as whether the reasons given by the national authorities were relevant and sufficient in striking a fair balance between the competing interests at stake (*Pentikäinen v. Finland* [GC], 2015, § 114). Thus, in the case of *Pentikäinen v. Finland* [GC], 2015, which traces the parameters of the protection afforded by Article 10 to journalists covering demonstrations on public spaces and the journalists' obligations under that provision, the Grand Chamber noted firstly that the impugned conduct did not concern the applicant's journalistic activity as such, but rather his refusal to comply with lawful and reasonable police orders. It further emphasised that journalists could not, in principle, be released from their duty to obey the criminal law on the basis that Article 10 afforded them a cast-iron defence (for a comparison of the weight attached in the Court's reasoning to the "pressing social need" with that in the Chamber judgment, see § 64).

b. Assessment of the nature and severity of the sanctions[5]

102. The Court is particularly attentive to the "censorship" aspect of an interference and must be satisfied that the penalty does not amount to a form of censorship intended to discourage the press from expressing criticism (*Bédat v. Switzerland* [GC], 2016, § 79). Hence, the conviction of a journalist, prior to publication, amounted in the Court's view to a form of censorship that was likely to discourage him from undertaking research, inherent in his job, with a view to preparing an informed press article on a topical subject (*Dammann v. Switzerland*, 2006, § 57). The Court has described as "censorship" an order suspending the publication and distribution of newspapers, which it considered unjustified

[5] A more detailed account of the question of the nature and severity of the sanctions is included in the chapter "The protection of the reputation or rights of others" below.

even for a short period (*Ürper and Others v. Turkey*, 2009, § 44; see also *Gözel and Özer v. Turkey*, 2010, § 63).

103. Similarly, an injunction forbidding a painting from being exhibited and photogaphs of it being published, and which was not limited either in time or in space, was found by the Court to be disproportionate to the aim pursued (*Vereinigung Bildender Künstler v. Austria*, 2007, § 37; with regard to the relevance of the passage of time in assessing proportionality, see *Éditions Plon v. France*, 2004, § 53).

i. The least restrictive measure

104. The Court considers that in order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned (*Glor v. Switzerland*, 2009, § 94).

105. Thus, in its analysis of proportionality, the Court attached importance to the fact that the national judge chose the least restrictive of several possible measures (*Axel Springer SE and RTL Television GmbH v. Germany*, 2017, § 56; *Perinçek v. Switzerland* [GC], 2015, § 273; *Tagiyev and Huseynov v. Azerbaijan*, 2019, § 49) or ensured the minimum impairment of the applicant association's rights (*Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 75).

106. In one case the applicant association, which carried out on-board activities to campaign for the decriminalisation of abortion, was prevented by a ministerial order from entering Portuguese territorial waters with its ship. The Court reiterated that the authorities are required, when they decide to restrict fundamental rights, to choose the means that cause the least possible prejudice to the rights in question, and gave examples of some possible measures (*Women On Waves and Others v. Portugal*, 2009, § 41).

107. In *Amorim Giestas and Jesus Costa Bordalo v. Portugal*, 2014, the Court found that the applicants' convictions, together with the orders to pay criminal fines and damages, were manifestly disproportionate; it emphasised that the Civil Code provided for a specific remedy in respect of the protection of honour and reputation (see also *Mătăsaru v. the Republic of Moldova*, 2019, § 36).

108. Equally, in the case of *Fáber v. Hungary*, 2012, the applicant had been placed in police detention and ordered to pay a fine for having refused to put away a flag that he was displaying during a demonstration, as a form of protest at against that event. In weighing up the applicant's rights to freedom of expression and to peaceful assembly with the right of the other demonstrators to be protected from disruption, the Court considered that the State had a positive obligation to protect the rights of both parties and to find the least restrictive means that would, in principle, have enabled both demonstrations to take place (§ 43).

109. In the case of *Handzhiyski v. Bulgaria*, 2021, the applicant had been found guilty of minor hooliganism and consequently fined for having disguised (placed a hat on and a bag beside) a historical public monument. The Court found that public monuments are frequently physically unique and form part of a society's cultural heritage so that measures, including proportionate sanctions, designed to dissuade acts which can destroy them or damage their physical appearance may be regarded as "necessary in a democratic society". In addition, in a democratic society governed by the rule of law, debates about the fate of a public monument had to be resolved through the appropriate legal channels rather than by covert or violent means. However, the sanction imposed on the applicant could not be considered necessary, especially since he did not engage in any form of violence, did not physically damage the monument in any way and his intention was to protest against the government in the context of a prolonged nation-wide protest against it (§§ 53-59).

110. The case of *Bonnet v. France* (dec.), 2022, concerned the criminal conviction of the applicant for the offence of proffering a public insult of racial nature and of questioning the existence of the Holocaust. The Court noted that, although a prison sentence could have been handed down, the

applicant had been sentenced on appeal to a fine of 10,000 euros. While this was a significant amount, it was less than the sum imposed at first instance, a finding contributing to the Court's conclusion that the interference with the applicant's right was proportionate (§ 58).

ii. General measures

111. In a case examining whether a ban on political advertising in the broadcast media was compatible with the Convention, the Court clarified its criteria for determining the proportionality of a general measure. The Court must primarily assess the legislative choices underlying it. The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation. It follows that the more convincing the general justifications for the general measure are, the less importance the Court will attach to its impact in the particular case (*Animal Defenders International v. the United Kingdom* [GC], 2013, §§ 108-109).

112. Following the same principles, the Court concluded in another case that, in adopting the various general measures in question and by implementing them in the applicants' cases the national authorities had overstepped the margin of appreciation afforded by Article 10 of the Convention (*Bayev and Others v. Russia*, 2017, § 83).

113. Lastly, the Court has regard to whether there exists a European consensus when examining the national margin of appreciation in respect of the justification for general measures (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 123; *Bayev and Others v. Russia*, 2017, § 66).

c. Requirement of relevant and sufficient reasons

114. The Court has held in numerous cases that a lack of relevant and sufficient reasoning on the part of the national courts or a failure to consider the applicable standards in assessing the interference in question will entail a violation of Article 10 (see, among many other authorities, *Uj v. Hungary*, 2011, §§ 25-26; *Sapan v. Turkey*, 2010, §§ 35-41; *Gözel and Özer v. Turkey*, 2010, § 58; *Scharsach and News Verlagsgesellschaft v. Austria*, 2003, § 46; *Cheltsova v. Russia*, 2017, § 100; *Mariya Alekhina and Others v. Russia*, 2018, § 264; *Glukhin v. Russia*, 2023, § 56).

115. In the case of *Tőkés v. Romania*, 2021, the Court considered more specifically that the absence of valid and sufficient reasons for restricting the right to freedom of expression could not be compensated by the light nature of the sanction imposed on the applicant (§§ 85 and 98). In *Khural and Zeynalov v. Azerbaijan (no. 2)*, 2023, §§ 63-64, the Court limited its analysis to the finding that the domestic courts had failed to apply standards which were in conformity with the principles embodied in Article 10 and to base their decision on an acceptable assessment of the relevant facts, and considered that it was not necessary to examine the proportionality of the imposed sanction.

C. Conflict between two rights protected by the Convention: the balancing exercise

116. It may happen that the exercise of the right to freedom of expression interferes with other rights safeguarded by the Convention and the Protocols thereto. In such cases, the Court examines whether the national authorities struck a proper balance between protection of the right to freedom of expression and other rights and rights or values guaranteed by the Convention (*Perinçek v. Switzerland* [GC], 2015, § 274).

117. The search for a fair balance may entail a weighing up of two rights of equal status, which has led the Court to adopt a specific methodology, applied in cases which clearly concern a conflict between the right guaranteed by Article 10 of the Convention and another right protected by the Convention, especially the rights of the person targeted by the contested remarks. These cases

typically involve the rights protected by Article 6 § 2 (*Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 65; *Axel Springer SE and RTL Television GmbH v. Germany*, 2017, §§ 40-42; *Eerikäinen and Others v. Finland*, 2009, § 60) and by Article 8 of the Convention (*Axel Springer AG v. Germany* [GC], 2012, §§ 83-84; *Von Hannover v. Germany (no. 2)* [GC], 2012, §§ 104-107).

118. The general principles governing the methodology in these cases has been summarised in various judgments, particularly those of the Grand Chamber (*Perinçek v. Switzerland* [GC], 2015, § 198; *Axel Springer AG v. Germany* [GC], 2012, §§ 83-84; *Von Hannover v. Germany (no. 2)* [GC], 2012, §§ 104-107).

119. The right to respect for private life (Article 8 of the Convention), including the right to protection of reputation as an element of private life, is by far the most frequently conflict raised before the Court. Chapter V below focuses on this area.

120. In addition, illustrations of cases where other articles of the Convention are likely to conflict with Article 10 are given below.

1. Article 6 § 2 of the Convention[6]

121. Freedom of expression, guaranteed by Article 10 of the Convention, includes the freedom to receive and impart information. Article 6 § 2 cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (*Allenet de Ribemont v. France*, 1995, § 38; *Fatullayev v. Azerbaijan*, 2010, § 159; *Garycki v. Poland*, 2007, § 69). The Court has emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (*Daktaras v. Lithuania*, 2000, § 41; *Arrigo and Vella v. Malta* (dec.), 2005; *Khuzhin and Others v. Russia*, 2008, § 94).

122. As to press campaigns against an accused or publications which contain accusatory aspects, the Court has noted that these may prejudice the fairness of a trial by influencing public opinion and, consequently, the jurors called upon to decide on the guilt of an accused (*Khuzhin and Others v. Russia*, 2008, § 93).

2. Article 9 of the Convention

123. In cases concerning the protection of morals and religion, the Court weighs up the [applicant's] right to impart to the public his or her views on religious doctrine on the one hand and the right of believers to respect for their freedom of thought, conscience and religion on the other hand (*Aydın Tatlav v. Turkey*, 2006, § 26).

124. The Court has reiterated the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs, including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and blasphemous (*Rabczewska v. Poland*, 2022, § 47). Thus, the Court has pointed out that expressions that seek to incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection afforded by Article 10 of the Convention (*E.S. v. Austria*, 2018, § 43; contrast the finding of a violation of Article 10 with regard to a criminal conviction for statements held to be an abusive attack on religion, in which the national authorities failed to assess whether was any incitement to hatred (*Tagiyev and Huseynov v. Azerbaijan*, 2019, §§ 48-50).

125. With regard to the freedom of expression of persons employed by religious organisations, a freedom protected by Article 10 of the Convention, the former Commission declared inadmissible an

[6] See the Chapter "Protection of the authority and impartiality of the justice system and freedom of expression: the right to freedom of expression in the context of judicial proceedings and the participation of judges in public debate" below.

application from a medical practitioner who was employed by a German Catholic hospital and dismissed for having signed an open letter, published in the press, which expressed a view on abortion that ran counter to the position taken by the Catholic Church (*Rommelfanger v. Germany*, Commission decision, 1989).

126. In contrast, the Court found a violation of Article 10 with regard to the failure to renew the employment contract of a lecturer in legal philosophy at the Faculty of Law of the Catholic University of the Sacred Heart in Milan. The Congregation for Catholic Education, an institution of the Holy See, had not approved the renewal on the grounds that some of his positions "were in clear opposition to Catholic doctrine", albeit without specifying the tenor of those positions. The Court acknowledged that it had not been for the domestic authorities to examine the substance of the Congregation's decision. However, the weight attached to the University's interest in dispensing teaching based on Catholic doctrine could not, in the Court's view, extend to impairing the very substance of the procedural guarantees afforded to the applicant by Article 10 of the Convention (*Lombardi Vallauri v. Italy*, 2009).

3. Article 11 of the Convention

127. In the *Fáber v. Hungary*, 2012, judgment, the applicant had been placed in police custody and ordered to pay a fine for having refused to put away a flag that he had displayed during a demonstration for the purpose of counter-demonstrating. In weighing up the applicant's right to freedom of expression and his claim to freedom of peaceful assembly against the other demonstrators' right to protection against disruption, the Court considered that the State had a positive obligation to protect the right of assembly of both demonstrating groups by finding the least restrictive means that would, in principle, have enabled both demonstrations to take place (§ 43).

128. In the case of *Manannikov v. Russia*, 2022, the applicant had been convicted of an administrative offence and fine for his failure to follow police orders to take down an allegedly provocative anti-Putin banner which he had displayed peacefully during a public event organised in the run-up to legislative elections. Examining the complaint under Article 10, the Court considered that principles regarding counter demonstration, formulated in cases concerning freedom of assembly, were fully pertinent to the case, given that the applicant had expressed his opinion during a public event (§35).

4. Article 1 of Protocol No. 1

129. In a case concerning the criminal conviction of photographers for copyright infringement through publication on the Internet of photographs of fashion shows, the Court held that the domestic authorities had enjoyed a particularly wide margin of appreciation, having regard to the aim of the interference, namely the rights of others. In the Court's view, given that Article 1 of Protocol No. 1 applied to intellectual property, the interference was also aimed at protecting rights safeguarded by the Convention or its Protocols (*Ashby Donald and Others v. France*, 2013, § 40).

130. The case of *Neij and Sunde Kolmisoppi v. Sweden* (dec.), 2013, concerned the fact that the applicants were convicted, given non-suspended prison sentences and ordered to pay damages for their involvement in running "The Pirate Bay", the largest Internet site for sharing torrent files (music, films, games, etc.), entailing infringement of copyright. The Court explicitly recognised that the fact of sharing this kind of file on the Internet or facilitating sharing – even unlawfully and for profit – was part of the right to "impart and receive information" within the meaning of Article 10 § 1. It balanced two rights which enjoy equal protection under the Convention, namely the right to freedom of expression and intellectual property rights, an area in which the State enjoyed a wide margin of appreciation. Since the Swedish authorities were under an obligation to protect the plaintiffs' property rights in accordance with the Copyright Act and the Convention, the Court found that there were weighty reasons for the restriction of the applicants' freedom of expression. In this connection, the

Court reiterated that the applicants had been convicted only for materials which were copyright-protected.

IV. The protection of the reputation or rights of others

131. The protection of the reputation or rights of others is, by far, the legitimate aim most frequently relied on in the Article-10 cases brought before the Court.

A. Methodology

132. Two distinct methods of reasoning are applied to cases which concern the protection of the reputation or rights of others.

133. The Court uses the "classical" method of analysing proportionality when it considers, in the circumstances of the dispute before it, that Article 8 is not applicable to the protection of the reputation or rights of others.

134. The second method, the so-called "balancing of rights" approach, concerns the category of cases where the Court considers that Article 8 is applicable to the protection of these legitimate aims. These are typically cases which involve the publication of photographs, images or articles relating to the intimate aspects of an individual's life or that of his or her family (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 79; *Von Hannover v. Germany (no. 2)* [GC], 2012, § 103; *MGN Limited v. the United Kingdom*, 2011, § 142).

135. Following a development in the case-law which was consolidated in a Grand Chamber judgment (*Axel Springer AG v. Germany* [GC], 2012, § 83), protection of reputation may come, as an element of private life, within the scope of Article 8 of the Convention, subject to one condition: a "threshold of seriousness" must be exceeded for there to be a breach of the rights guaranteed by Article 8 of the Convention. In order for Article 8 to come into play in defamation cases, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life.

136. The Court has also pointed out that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence (*Axel Springer AG v. Germany* [GC], 2012, §§ 83-84; *Hachette Filipacchi Associés v. France*, 2007, § 43; *MGN Limited v. the United Kingdom*, 2011, § 142; *Sidabras and Džiautas v. Lithuania*, 2004, § 49).

137. The Court sets out, firstly, the general principles governing the methodology for weighing up (or balancing) the two rights and, secondly, a non-exhuastive list of the applicable criteria[7].

138. The general principles applicable to the methodology for "the balancing of rights" were described by the Court in its Grand Chamber judgments in *Von Hannover v. Germany (no. 2)* [GC], 2012 (§§ 104-107) and *Axel Springer AG v. Germany* [GC], 2012 (§§ 85-88), and summarised in the *Perinçek v. Switzerland* judgment [GC] (§ 198):

i. In such cases, the outcome should not vary depending on whether the application was brought under Article 8 by the person who was the subject of the statement or under Article 10 by the person who has made it, because in principle the rights under these Articles deserve equal respect (see also

[7] See paragraph 143 et seq. below.

Delfi AS v. Estonia [GC], 2015, § 110; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 163).

ii. The choice of the means to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the High Contracting Party's margin of appreciation, whether the obligations on it are positive or negative. There are different ways of ensuring respect for private life and the nature of the obligation will depend on the particular aspect of private life that is at issue.

iii. Likewise, under Article 10 of the Convention, the High Contracting Parties have a certain margin of appreciation in assessing whether and to what extent an interference with the right to freedom of expression is necessary.

iv. However, this margin goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court. The Court's task, in exercising its supervisory function, is not to have to take the place of the national courts but to review, in the light of the case as a whole, whether their decisions were compatible with the provisions of the Convention relied on.

v. If the balancing exercise has been carried out 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 view for theirs (*Delfi AS v. Estonia* [GC], 2015, § 139; *MGN Limited v. the United Kingdom,* 2011, § 150).

139. Hence, the Court may choose to perform its own balancing exercise where it notes serious grounds for doing so (*Perinçek v. Switzerland* [GC], 2015, §§ 274-279).

140. If the balance struck by the national authorities was unsatisfactory, in particular because the importance or scope of one of the rights at stake was not duly considered, the margin of appreciation accorded to the States would be a narrow one (*Aksu v. Turkey* [GC], 2012, § 67).

141. Where the national authorities have fallen short in the balancing exercise between two rights which enjoy equal protection under the Convention, the methodology applied by the Court may lead it to find a procedural violation of Article 10 (*Ibragim Ibragimov and Others v. Russia*, 2018, §§ 106-111); alternatively, the Court may choose to carry out its own balancing exercise, where it finds serious grounds for doing so (*Perinçek v. Switzerland* [GC], 2015, §§ 274-279; *Tête v. France*, 2020, §§ 57-70; *Mesić v. Croatia*, 2022, § 93), or, without conducting this exercise itself, to conclude that the interference was not necessary in a democratic society (*Ergündoğan v. Turkey*, 2018, §§ 32-35).

142. Furthermore, the protection of the reputation of a legal entity does not have the same strength as the protection of the reputation or rights of individuals. Whereas the latter may have repercussions on the individual's dignity, the former is devoid of that moral dimension. This difference is even more salient when it is a public authority that invokes its right to a reputation (*Freitas Rangel v. Portugal*, 2022, § 53).

B. Fair balance between freedom of expression and the right to respect for private life in the context of publications (intimate aspects of an individual's life and reputation)

143. The general principles deriving from the Court's case-law with regard to the protection of private life in the context of a press article are set out, *inter alia*, in paragraphs 83 to 87 of the *Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, judgment. The general principles concerning the right to freedom of expression in this context are reiterated in paragraphs 88 to 93 of that judgment.

144. Thus, the Court has stated that although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its task is nevertheless to impart – in a

manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest.

145. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (*Bladet Tromsø and Stensaas v. Norway* [GC], 1999, §§ 59 and 62; *Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 71; *Von Hannover v. Germany (no. 2)* [GC], 2012, § 102).

146. Thus the task of imparting information necessarily includes duties and responsibilities, as well as limits which the press must impose on itself spontaneously (*Mater v. Turkey*, 2013, § 55). It is not for the Court, or for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists in any given case (*Jersild v. Denmark*, 1994, § 31; *Stoll v. Switzerland* [GC], 2007, § 146).

1. Publications (photographs, images and articles) relating to the intimate aspects of an individual's life or that of his or her family

147. Freedom of expression includes the publication of photographs. This is nonetheless an area in which the protection of the rights and reputation of others takes on particular importance, as the photographs may contain very personal or even intimate information about an individual or his or her family (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 103).

148. The Court recognises every person's right to protection of his or her own image, emphasising that a person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development and mainly presupposes the individual's right to control the use of that image, including the right to refuse publication thereof (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 96; see also, in different contexts, *Margari v. Greece*, 2023, § 28; *Glukhin v. Russia*, 2023, § 66).

a. The criteria and their application[8]

149. The Court has laid down the relevant principles which must guide its assessment – and, more importantly, that of the domestic courts – of whether or not an interference in this area was necessary. It has thus identified a number of criteria in the context of balancing the competing rights (*Axel Springer AG v. Germany* [GC], 2012, §§ 90-95).

150. The five relevant criteria are: the contribution to a debate of public interest ; the degree of notoriety of the person affected ; the subject of the news report ; the prior conduct of the person concerned ; the content, form and consequences of the publication ; and, where appropriate, the circumstances in which the photographs were taken (*Von Hannover v. Germany (no. 2)* [GC], 2012, §§ 109-113; *Von Hannover v. Germany (no. 3)*, 2013, § 46; *Axel Springer AG v. Germany* [GC], 2012, §§ 89-95; *Tănăsoaica v. Romania*, 2012, § 41). Where it examines an application lodged under Article 10, the Court will also examine the way in which the information was obtained and its veracity, and the gravity of the penalty imposed on the journalists or publishers (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 93; *Axel Springer AG v. Germany* [GC], 2012, §§ 90-95).

151. The Court considers in each case whether the criteria thus defined may be transposed to the case in question, although certain criteria may have more or less relevance given the particular circumstances of the case (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 166).

[8] In so far as relevant, these criteria are also applicable to cases concerning the protection of reputation.

152. Indeed, other criteria may be taken into account depending on the particular circumstances of a given case. Hence, in its *Axel Springer SE and RTL Television GmbH v. Germany*, 2017, judgment, which concerned a trial for murder and the ban on publication of images in which a defendant could be identified, the Court added a new criterion, namely "the influence on the criminal proceedings" (§ 42). *Mediengruppe Österreich GmbH v. Austria*, 2022, concerned the publication of an image of an individual, who had previously been convicted in connection with his neo-Nazi activities and already been released by the time of the publication. The Court had regard to the lapse of time between the individual's conviction/release and the publication of the article in question. Without losing sight of the severe political nature of the crime committed by that individual and of the danger with regard to attacks on democracy if journalists were hindered from reporting on the crimes of neo-Nazis, these considerations had to be weighed against the importance of the reintegration into society of persons who had been released from prison after serving their sentence, and their legitimate and very significant interest, after a certain period of time, in no longer being confronted with their conviction (§ 70); see also *Mesić v. Croatia*, 2022, § 86, where the Court took into consideration the status of the parties at stake: applicant's status as a politician and as a high-ranking State official on one hand, the author's of the statements at stake, an advocate, on the other).

i. Contribution to a debate of public interest

153. The Court has always attached particular importance to the fact that the publication of information, documents or photographs in the press serves the public interest and contributes to a debate of general interest. Such an interest can be established only in the light of the circumstances of each case (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 109; *Leempoel & S.A. ED. Ciné Revue v. Belgium*, 2006, § 68; *Standard Verlags GmbH v. Austria*, 2006, § 46; *Von Hannover v. Germany*, 2004, § 60).

154. In this connection, the Court has consistently held there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on the debate of questions of public interest (*Castells v. Spain*, 1992, § 43; *Wingrove v. the United Kingdom*, 1996, § 58).

155. In the Court's view, public interest ordinarily relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 171). The weight of the public interest in the relevant information will vary depending on the situations encountered. Information concerning unlawful acts or practices is undeniably of particularly strong public interest. Information concerning acts, practices or conduct which, while not unlawful in themselves, are nonetheless reprehensible or controversial may also be particularly important. That being so, although information capable of being considered of public interest concerns, in principle, public authorities or public bodies, it cannot be ruled out that it may also, in certain cases, concern the conduct of private parties, such as companies, which also inevitably and knowingly lay themselves open to close scrutiny of their acts (*Eigirdas and VĮ "Demokratijos plėtros fondas" v. Lithuania*, 2023, § 88).

156. The Court has recognised such an interest, for example, when the publication concerns information on the medical condition of a candidate for the highest office of State (*Éditions Plon v. France*, 2004, § 44), sporting issues (*Nikowitz and Verlagsgruppe News GmbH v. Austria*, 2007, § 25; *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*, 2007, § 28); or performing artists (*Sapan v. Turkey*, 2010, § 34), criminal proceedings in general (*Dupuis and Others v. France*, 2007, § 42; *July and SARL Libération v. France*, 2008, § 66; *Mediengruppe Österreich GmbH v. Austria*, 2022, § 48), crimes committed (*White v. Sweden*, 2006, § 29; *Egeland and Hanseid v. Norway*, 2009, § 58; *Leempoel & S.A. ED. Ciné Revue v. Belgium*, 2006, § 72; *Eerikäinen and Others*

v. Finland, 2009, § 59) or a "sex scandal" within a political party, involving certain members of the Government (*Kącki v. Poland*, 2017, § 55).

157. Under the Court's case-law matters of public interest also include the administration of justice (*Morice v. France* [GC], 2015, § 128), the functioning of the system of child care proceedings (*N.Š. v. Croatia*, 2020, § 103), or else protection of the environment and public health (*Mamère v. France*, 2006, § 20; *OOO Regnum v. Russia,* 2020, §§ 68-69), and matters concerning historical events (*Dink v. Turkey*, 2010, § 135). The Court also considers it essential in a democratic society that a debate on the causes of acts of particular gravity amounting to crimes against humanity should be able to take place freely (*Giniewski v. France*, 2006, § 51).

158. In a case where the Court examined the dismissal of trade-union members for publishing articles which offended their colleagues, it did not share the Government's view that the content of the articles in question did not concern any matter of general interest. In the Court's view, they had been published in the context of a labour dispute inside the company, to which the applicants had presented certain demands. The debate had therefore not been a purely private one; it had at least been a matter of general interest for the workers of the company (*Palomo Sánchez and Others v. Spain* [GC], 2011, § 72; see also *Fragoso Dacosta v. Spain*, 2023, § 32).

159. In the case of *Khurshid Mustafa and Tarzibachi v. Sweden*, 2008, in which the applicants, of Iraqi origin, wished to receive television programmes in Arabic and Farsi from their native country or region, the Court reiterated that the freedom to receive information extends not only to reports of events of public concern, but covers in principle also cultural expressions as well as pure entertainment. It stressed the importance, especially for an immigrant family with three children, to maintain contact with the culture and language of their country of origin (§ 44).

160. While the public has a right to be informed, articles or television programmes aimed solely at satisfying the curiosity of a particular audience regarding the details of a person's private life cannot be deemed to contribute to any debate of general interest to society (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 59; *Hachette Filipacchi Associés v. France*, 2007, § 42; *Rubio Dosamantes v. Spain*, 2017, § 34; *MGN Limited v. the United Kingdom*, 2011, § 143; *C8 (Canal 8) v. France*, 2023, § 84), even supposing that the person concerned is well known (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 95). The Court has reiterated in this connection that the public interest cannot be reduced to the public's thirst for information about the private life of others, or to the reader's wish for sensationalism or even voyeurism (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 101). In *MGN Limited v. the United Kingdom* (dec.), 2022, §§ 59 and 62, where the applicant company, the publisher of three national newspapers, had been found liable to pay very high success fees in proceedings for unlawful breach of privacy of 23 persons, the Court underlined the gravity of the applicant's intrusion into those persons' private life and considered that, since the applicant's activities had been removed from the concept of responsible journalism and had not even arguably concerned its participation in debates over matters of legitimate public concern, the applicant's Article 10 interests could not weigh heavily in the balance in deciding on the proportionality of the interference.

161. In *Mediengruppe Österreich GmbH v. Austria*, 2022, a daily newspaper had published a photograph with a "convicted neo-Nazi" caption as regards an individual who was indirectly connected to the campaign of a political candidate in the run-up to a presidential election, the impugned publication having taken place more than twenty years after the conviction. The Court accepted the domestic courts' conclusion that there had been no objective justification for the reference to that individual's conviction and that, in the absence of a direct link between that person and the relevant political candidate, the said publication had not contributed to the debate on the election (§ 57).

162. In *Ramadan v. France* (dec.), 2024, the applicant, accused of sexual assault in ongoing criminal proceedings, disseminated in his book and two other media information concerning the identity of the alleged victim of that assault without the latter's consent. The Court accepted the domestic courts'

finding that by his relevant actions the applicant had not intended to take part in the debate of general interest but rather sought to defend himself in public against the relevant accusations which however had not been required to ensure the fairness of the proceedings against him (§§ 37-38 and 41).

ii. The degree to which the person concerned is well known

163. The Court has reiterated that the extent to which an individual has a public profile or is well-known influences the protection that may be afforded to his or her private life. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 110; *Verlagsgruppe News GmbH v. Austria (no. 2)*, 2006, § 34; *Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece*, 2018, § 53).

164. The public has the right to be informed, which is an essential right in a democratic society that, in certain special circumstances, may even extend to aspects of the private life of public figures, particularly where politicians are concerned (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 64; *Karhuvaara and Iltalehti v. Finland*, 2004, § 45). Although the publication of news about the private life of public figures is generally for the purposes of entertainment rather than education, it contributes to the variety of information available to the public and undoubtedly benefits from the protection of Article 10 of the Convention. However, such protection may cede to the requirements of Article 8 where the information at stake is of a private and intimate nature and there is no public interest in its dissemination (*Mosley v. the United Kingdom*, 2011, § 131; *Von Hannover v. Germany (no. 2)* [GC], 2012, § 110).

165. In the case of *Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, the Court reiterated that the right of public figures to keep their private life secret is, in principle, wider where they do not hold any official functions and is more restricted where they do hold such a function. The fact of exercising a public function or of aspiring to political office necessarily exposes an individual to the attention of his or her fellow citizens, including in areas that come within one's private life. Accordingly, certain private actions by public figures cannot be regarded as such, given their potential impact in view of the role played by those persons on the political or social scene and the public's resultant interest in being informed of them (§§ 119-120).

166. Thus, the Court emphasised the importance of the role and function of an individual targeted by the impugned statements, which accused him of having offered one of his assistants paid employment in return for sexual favours, at a time when, in addition to being a public figure, he was a member of the European Parliament acting in the course of exercising his official functions (*Kącki v. Poland*, 2017, §§ 54-55).

167. The application of this reasoning extends, beyond political figures, to any person who could be regarded as a public figure, namely persons who, through their acts or even their position, have entered the public arena (*Kapsis and Danikas v. Greece*, 2017, § 35; see, for the status of members of the Consultative Council, who were akin to those of experts appointed by the public authorities to examine specific issues, *Kaboğlu and Oran v. Turkey*, 2018, § 74; see also *Drousiotis v. Cyprus*, 2022, § 51, in which the Court considered that due to a combination of factors, a high-ranking attorney in the Law Office of the Republic of Cyprus could be compared to a public figure).

168. In consequence, the Court held that a businessman was a public figure (*Verlagsgruppe News GmbH v. Austria (no. 2)*, 2006, § 36).

169. In contrast, in a case concerning a journalist's conviction for the publication of information covered by the secrecy of criminal investigations, specifically letters sent by the accused to the investigating judge and information of a medical nature, the Court held that the national authorities were not merely subject to a negative obligation not to knowingly disclose information protected by Article 8, but that they should also have taken steps to ensure effective protection of an accused

person's right to respect for his correspondence (*Bédat v. Switzerland* [GC], 2016, § 76; see also *Craxi v. Italy (no. 2)*, 2003, § 73). In the Court's view, this type of information calls for a high degree of protection under Article 8; that finding is especially important as the accused was not known to the public. The mere fact that he was the subject of a criminal investigation, for a very serious offence, did not justify treating him in the same manner as a public figure, who voluntarily exposes himself to publicity (see also, in a comparable context, *Fressoz and Roire v. France* [GC], 1999, § 50; *Egeland and Hanseid v. Norway*, 2009, § 62; *Śliwczyński and Szternel v. Poland* (dec.), 2022, § 57; on the obligation to protect the victim's identity, see *Kurier Zeitungsverlag und Druckerei GmbH v. Austria*, 2012).

170. *Mediengruppe Österreich GmbH v. Austria*, 2022, concerned the publication of a photograph with a "convicted neo-Nazi" caption as regards an individual indirectly connected to the campaign of a political candidate in the run-up to a presidential election. The Court observed that, at a certain point in time, the relevant individual had indeed been a "well-known member of the neo-Nazi scene in Austria": however, when the photograph/caption were published, more than twenty years had passed since his conviction and some seventeen years had elapsed since his release and there was no indication that the individual had sought the limelight after his release. The Court also noted that it had not been argued before the national courts that he had still been a person of public interest and notoriety at the time of the publication. In the Court's view, it could not be automatically concluded that that individual's notoriety had remained the same over the years (§ 59).

iii. Prior conduct of the person concerned

171. In the case of *Von Hannover v. Germany (no. 2)* [GC], 2012, the Court stated that the conduct of the person concerned prior to publication of the report, or the fact that the photo in issue and the related information have already appeared in an earlier publication, are also factors to be taken into consideration (§ 111).

172. Thus, in the case of *Hachette Filipacchi Associés (ICI PARIS) v. France*, 2009, the Court found that the disclosures of a singer, once made public, weakened the degree of protection for his private life to which he was entitled, as it was by then widely known news. In so far as the applicant journalist had reproduced, without distorting it, part of the information – freely divulged and made public by the singer, particularly in his autobiography – about his assets and how he spent his money, the Court considered that he no longer had a "legitimate expectation" that his private life would be effectively protected (§§ 52-53; see also *Minelli v. Switzerland* (dec.), 2005).

173. In contrast, the Court has specified that the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication. An individual's alleged or real previous tolerance or accommodation with regard to publications touching on his or her private life does not necessarily deprive the person concerned of the right to privacy (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 130). Likewise, disclosure by the alleged victim of sexual assault of her identity on her social media accounts would not justify further public dissemination of this information without her consent by the alleged perpetrator (*Ramadan v. France* (dec.), 2024, §§ 38-43).

174. In a context that engaged, in addition to Article 8, Article 6 § 2 of the Convention, the Court held that a confession of guilt did not deprive the accused of his right not to be portrayed as guilty, through the publication of photographs to which he had not consented, until the verdict was pronounced (*Axel Springer SE and RTL Television GmbH v. Germany*, 2017, § 51).

175. The Court also takes account of a company's prior conduct in assessing the degree of tolerance to criticism expected from it. In the case of *Kuliś and Różycki v. Poland*, 2009, where the applicants had published a satirical cartoon describing the crisps produced by the plaintiff food-manufacturing company as "muck", the Court considered that the wording employed by the applicants had admittedly been exaggerated, but that they were reacting to slogans used in the plaintiff's advertising campaign, which also displayed a lack of sensitivity and understanding for the age and vulnerability of

the intended consumers of their product, namely children. The Court thus considered that the style of the applicants' expression was motivated by the type of slogans to which they were reacting and, taking into account its context, did not overstep the boundaries permissible to a free press (§ 39).

iv. Method of obtaining the information and its veracity

176. In determining whether or not a publication interferes with an applicant's right to respect for his or her private life, the Court takes account of the manner in which the information or photograph was obtained. In particular, it stresses the importance of obtaining the consent of the persons concerned, and the more or less strong sense of intrusion caused by a photograph (*Von Hannover v. Germany*, 2004, § 59; *Gurgenidze v. Georgia*, 2006, §§ 55-60; *Hachette Filipacchi Associés v. France*, 2007, § 48).

177. In this connection, the Court has had occasion to note that photographs appearing in the "sensationalist" press or in "romance" magazines, which generally aim to satisfy the public's curiosity regarding the details of a person's strictly private life, are often obtained in a climate of continual harassment which may induce in the person concerned a very strong sense of intrusion into their private life or even of persecution (*Von Hannover v. Germany*, 2004, § 59; *Société Prisma Presse v. France (no. 1)* (dec.), 2003 ; *Société Prisma Presse v. France (no. 2)* (dec.), 2003; *Hachette Filipacchi Associés (ICI PARIS) v. France*, 2009, § 40).

178. As to the dissemination of videos recorded using a hidden camera, the Court has examined, *inter alia*, whether the images in question were filmed in a public or in a private space. It held that in a public space, a public figure, as such, could have expected his conduct to have been closely monitored and even recorded on camera, while in a private space the same person could legitimately have an expectation of privacy (*Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece*, 2018, §§ 64-65; see also *Von Hannover v. Germany*, 2004, § 52).

179. In a case in which a broadcasting company was penalised mainly for having broadcast information which someone else had obtained illegally, the Court found that this fact, taken alone, was not sufficient to deprive the applicant company of the protection of Article 10 of the Convention. As regards the telephone conversation between members of the government, broadcast by the applicant company, the Court emphasised several points with regard to the method of obtaining the information and its veracity: it noted that at no stage had it been alleged that the applicant company or its employees or agents were in any way responsible for the recording or that its journalists transgressed the criminal law when obtaining or broadcasting it. It also noted that there had never been any investigation at the domestic level into the circumstances in which the recording was made. Lastly, it noted that it had not been established before the domestic courts that the recording contained any untrue or distorted information or that the information and ideas expressed in connection with it by the applicant company's journalist had occasioned as such any particular harm to the plaintiff's personal integrity and reputation (*Radio Twist a.s. v. Slovakia*, 2006, §§ 59-62).

180. Furthermore, obtaining the consent of the persons concerned makes it possible to evaluate the veracity and fairness of the means of obtaining the information in question and of making it public (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 134; see, *a contrario*, *Reklos and Davourlis v. Greece*, 2009, § 41, and *Gurgenidze v. Georgia*, 2006, § 56). In the case of *Peck v. the United Kingdom*, 2003, referring to the relevant case-law of the former Commission, the Court held that the recording and disclosure of an attempted suicide in a public place constituted a serious interference with the applicant's right to respect for his private life (§§ 61-62).

181. Lastly, in a case where the Court examined the fair balance to be struck between the rights protected by Article 10 and those protected under Article 8, with regard to an article accompanied by intimate photographs taken from secretly recorded video footage about the alleged "Nazi" sexual activities of a public figure, it held that Article 8 of the Convention does not entail a legally binding pre-notification requirement prior to the publication of information about a person's private life (*Mosley v. the United Kingdom*, 2011, § 132).

v. Content, form and consequences of the impugned article

182. The Court has always considered that Article 10 of the Convention protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (*De Haes and Gijsels v. Belgium*, 1997, § 48; *Jersild v. Denmark*, 1994, § 31; *Oberschlick v. Austria (no. 1)*, 1991, § 57).

183. With regard to the content and form of the impugned articles, the principle has always been that there exists, inherent in the profession of journalist, freedom to deal with subjects as they see fit. The Court has reiterated, for example, that it is not for it, nor for the national courts, to substitute their own views for those of the press in this area (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 139; *Jersild v. Denmark*, 1994, § 31). In addition, the Court has established that Article 10 of the Convention leaves it for journalists to decide what details ought to be published to ensure an article's credibility (*Fressoz and Roire v. France* [GC], 1999, § 54).

184. In any event, the Court considers that wherever information bringing into play the private life of another person is in issue, journalists are required to take into account, in so far as possible, the impact of the information and pictures to be published prior to their dissemination (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 140).

185. The case of *Haldimann and Others v. Switzerland*, 2015, concerned journalists' conviction for filming and broadcasting, for public-interest purposes, an interview with an insurance broker. Although the recording itself entailed only limited interference with the broker's interests, given that only a restricted group of individuals had access to the recording, the fact of broadcasting it as part of a report which was particularly disparaging towards the broker was liable to entail a more significant interference with the broker's right to privacy, since it was seen by a large number of viewers. However, the applicants had pixelated the broker's face so that only his hair and skin colour could still be made out; they also distorted his voice. The Court considered that these and other precautions, intended to prevent identification of the broker, were decisive factors in the case. In consequence, it concluded that the interference with the private life of the broker was not so serious as to override the public interest in information about alleged malpractice in the field of insurance brokerage (§ 66; contrast *Peck v. the United Kingdom*, 2003, where the Court found a violation of Article 8 of the Convention arising from the transmission to the media of video footage from a closed-circuit television, filming a person attempting to commit suicide in a public place).

186. The Court can understand in a general manner that the alteration or abusive use of a photo in respect of which a person had given authorisation for a specific purpose could be considered as a relevant reason for restricting the right to freedom of expression (*Hachette Filipacchi Associés (ICI PARIS) v. France*, 2009, § 46). The way in which the photo or report is published and the manner in which the person concerned is represented therein may also be factors to be taken into consideration (*Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft mbH v. Austria (no. 3)*, 2005, § 47; *Jokitaipale and Others v. Finland*, 2010, § 68).

187. Another factor is the purpose for which a photograph was used and how it could be used subsequently (*Reklos and Davourlis v. Greece*, 2009, § 42; *Hachette Filipacchi Associés (ICI PARIS) v. France*, 2009, § 52). In the *Reklos and Davourlis v. Greece* case, the Court held that the fact of a baby's image being retained in the hands of the photographer in an identifiable form, with the possibility of subsequent use, ran counter to the wishes of the person concerned and/or his parents, and entailed a violation of Article 8 of the Convention (§ 42).

188. Lastly, the Court considers that the extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation (*Karhuvaara and Iltalehti v. Finland*, 2004, § 47; *Gurgenidze v. Georgia*, 2006, § 55; *Klein v. Slovakia*, 2006, § 48). This factor was, in particular, relevant in the case of *Allée v. France*, 2024, § 48, which concerned an email sent to six people, of whom only

one was not involved in the case of harassment alleged therein; or in *Dede c. Türkiye*, 2024, § 50, concerning an internal e-mail sent by an employee to human resources staff criticising the management methods of a top-level manager.

189. With regard to the potential impact of the medium concerned, the Court has consistently reiterated that the audiovisual media often have a much more immediate and powerful effect than the print media (*Purcell and Others v. Ireland*, Commission decision, 1991; *Jersild v. Denmark*, 1994, § 31).

190. The Court has recognised, in particular, that the impact of broadcast media is reinforced by the fact that they continue to be familiar sources of entertainment in the intimacy of the home (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 119, with further references).

191. The Court has also noted that Internet sites are an information and communication tool particularly distinct from the printed media, especially as regards the capacity to store and transmit information, and that 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, particularly on account of the important role of search engines (*Hurbain v. Belgium* [GC], 2023, § 236; *M.L. and W.W. v. Germany*, 2018, § 91, with further references).

192. With particular regard to the dissemination on the Internet of statements that are considered defamatory, the Court has noted that 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 (*Delfi AS v. Estonia* [GC], 2015, § 133).

193. Furthermore, in the *Nilsen and Johnsen v. Norway* [GC], 1999, judgment, the Court stated, in substance, that where the impugned statements were made orally and then reported by the press, it could be presumed in this context that this eliminated the applicants' possibilities of reformulating, perfecting or retracting them before publication (§ 48). The fact that impugned statements were made during a press conference or a live radio or television programme also reduced the possibility for the presumed defamer to reformulate, refine or retract them before they were made public (*Otegi Mondragon v. Spain*, 2011, § 54; *Fuentes Bobo v. Spain*, 2000, § 46; *Reznik v. Russia*, 2013, § 44).

2. Elements and principles of the Court's reasoning specific to defamation cases (protection of reputation)

a. Elements of definition and framing: some considerations

194. Since the Convention provides no definition of defamation, the Court approaches this concept in its case-law by reference to national legislation.

i. The existence of an objective link between the impugned statement and the person claiming protection under Article 10 § 2 of the Convention

195. In establishing the constituent elements of defamation, the Court requires that there be an objective link between the impugned statement and the person suing in defamation. Mere personal conjecture or subjective perception of a publication as defamatory does not suffice to establish that the person was directly affected by the publication. There must be something in the circumstances of a particular case to make the ordinary reader feel that the statement reflected directly on the individual claimant or that he or she was targeted by the criticism (*Reznik v. Russia*, 2013, § 45; *Kunitsyna v. Russia*, 2016, §§ 42-43; *Margulev v. Russia*, 2019, § 53; *Udovychenko v. Ukraine*, 2023, §§ 41 and 43).

196. In certain cases, a small group of persons, such as the board of directors of a company or organisation, can also bring a defamation action where the target is the group, but where its members, even if not mentioned by name, can be identified by the persons who know them or, more generally, by a "reasonable person". This was the situation in the case of *Ruokanen and Others v. Finland*, 2010, which concerned allegations of rape during a party for a local basketball team (§ 45; see also *Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 67).

197. With regard to the protection of an individual's reputation on the basis of his or her identification with a group, in its *Aksu v. Turkey* [GC], 2012, judgment the Court held, in particular, that any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of its members. It is in this sense that it can be seen as affecting their "private life" within the meaning of Article 8 § 1 of the Convention. On this basis, it found that this provision was applicable to proceedings in which a person of Roma origin, who had felt offended by passages in a book and dictionary entries about Roma in Turkey, had sought redress (§§ 58-61 and 81).

198. The Court considers that protection of reputation should, in principle, be limited to that of living persons and not be relied upon with regard to the reputation of deceased persons, except in certain limited and clearly defined circumstances. In situations where the applicant before the Court is the deceased's family, the Court has acknowledged that attacks on the reputation of the deceased may intensify the grief of their family members, especially in the period immediately after the death (*Éditions Plon v. France*, 2004). Equally, in certain circumstances, attacks on the dead person's reputation may be of a nature and intensity such as to encroach on the right to respect of the private life of the dead person's families, or even entail a violation of that right (*Hachette Filipacchi Associés v. France*, 2007; see also *Dzhugashvili v. Russia* (dec.), 2014, and *Genner v. Austria*, 2016).

199. In several judgments and decisions, the Court has also acknowledged that the reputation of an ancestor may in some circumstances affect a person's "private life" and identity, and thus come within the scope of Article 8 § 1 of the Convention (see, for example, *Putistin v. Ukraine*, 2013, §§ 33 and 36-41; for a work of fiction, see *Jelševar and Others v. Slovenia* (dec.), 2014, § 37); for a press article on a historical public figure, see *Dzhugashvili v. Russia* (dec.), 2014, §§ 26-35).

ii. The level of seriousness of the attack on reputation

200. The central element of defamation is the attack on reputation. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (*Bédat v. Switzerland* [GC], 2016, § 72; *Axel Springer AG v. Germany* [GC], 2012, § 83; *A. v. Norway*, 2009, § 64).

201. More specifically, the Court has held that reputation has been deemed to be an independent right mostly when the factual allegations were of such a seriously offensive nature that their publication had an inevitable direct effect on the plaintiff's life (*Toranzo Gomez v. Spain*, 2018, § 51; *Karakó v. Hungary*, 2009, § 23; *Polanco Torres and Movilla Polanco v. Spain*, 2010, § 40; *Yarushkevych v. Ukraine* (dec.), 2016, § 24).

202. In the case of *Karakó v. Hungary*, 2009, the level of seriousness of the interference required for Article 8 of the Convention to be applicable in terms of the protection of reputation is described as such a serious interference in private life that personal integrity as such is compromised (§ 23).

203. In a number of disputes concerning defamation, the Court has thus found, explicitly or implicitly, that the level of seriousness had been reached and that Article 8 was applicable:

- In a decision concerning a defamation claim brought by the applicant in respect of an offensive comment against him, posted anonymously on an Internet portal, the Court considered that Article 8 was applicable (*Pihl v. Sweden*, 2017, §§ 23-25; see also *Fuchsmann v. Germany*, 2017, § 30).

- In a case where the applicant, a well-known man who had himself mentioned his homosexuality publicly, complained under Article 8 of the Convention about the domestic authorities' refusal to bring criminal proceedings in respect of a joke which had described him as a woman during a television comedy show, the Court held, firstly, that Article 8 was applicable, before finding that there had been no violation of that provision. In the Court's view, as sexual orientation is a profound part of a person's identity and since gender and sexual orientation are two distinctive and intimate characteristics, any confusion between the two will therefore constitute an attack on one's reputation capable of attaining a sufficient level of seriousness for Article 8 to be applicable (*Sousa Goucha v. Portugal*, 2016, § 27).

- The Court has held that accusing a person of being disrespectful towards a group of another ethnicity and religion was not only capable of tarnishing her reputation, but also of causing her prejudice in both her professional and social environment, so that the accusations attained the requisite level of seriousness as could harm her rights under Article 8 of the Convention (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 79).

- Attacks on an individual's professional reputation are considered by the Court to fall within the protection of Article 8 of the Convention. For example: a doctor in the case of *Kanellopoulou v. Greece*, 2007; the director of a State-subsidised company in *Tănăsoaica v. Romania*, 2012; judges in the case of *Belpietro v. Italy*, 2013; compare with *Shahanov and Palfreeman v. Bulgaria*, 2016 (§§ 63-64), in the context of reporting on alleged irregularities and a complaint against State officials; and *Bergens Tidende and Others v. Norway*, 2000 (§ 60), where the Court did not find that a doctor's undoubted interest in protecting his professional reputation was sufficient to outweigh the important public interest in the freedom of the press to impart information on matters of legitimate public concern.

- In the case of *Mikolajová v. Slovakia*, 2011, the applicant complained about the disclosure of a police decision stating that she had committed an offence, even though no criminal proceedings were ever brought. Given the gravity of the conclusion contained in the police decision, namely that the applicant was guilty of a violent criminal offence, coupled with its disclosure to an insurance company, the Court examined in turn the applicability of Articles 6 § 2 and 8 of the Convention. It considered that there had been an interference with the applicant's rights protected by Article 8, noting that the applicant had not been substantially affected under Article 6 § 2. This finding did not prevent the Court from taking account of the rights protected by Article 6 § 2 in its weighing-up exercise (§ 44; see also *Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 65; *A. v. Norway*, 2009, § 47).

- In the case of *Toranzo Gomez v. Spain*, 2018, which concerned an applicant's conviction for slander for qualifying the methods used by the police as "torture", in discord with that concept's legal definition, the Court found Article 8 applicable and verified whether the standards used by the domestic courts had ensured a fair balance between the competing rights and interests at stake (§§ 56 and 59-60).

- In a case in which a university professor had been ordered to pay civil damages for defamation after stating that a candidate in parliamentary elections was involved in a commercial dispute, the Court considered that the requisite level of seriousness for application of Article 8 of the Convention had been reached, in particular because the information concerned matters of a private nature (*Prunea v. Romania*, 2019, § 36).

- In a defamation case arising from statements contained in private documents between individuals that were not meant by their author to be publicly disseminated but which were made known to a restricted number of persons, the Court considered that such statements were not only capable of tarnishing the targeted person's reputation, but also of causing her harm in both her professional and social environment. Such accusations were considered therefore to have attained a level of seriousness sufficient to harm one's rights under Article 8 and examined whether the domestic authorities had struck a fair balance between, on the one hand, the applicant's freedom of expression, as protected by Article 10, and, on the other, the recipient's right to respect for her reputation under Article 8 (*Matalas v. Greece*, 2021, § 45).

204. In certain cases concerning defamation, the Court has explicitly stated that Article 8 did not apply and has proceeded to examine whether the interference with freedom of expression was proportionate (*Falzon v. Malta,* 2018, § 56; *Fedchenko v. Russia (no. 3)*, 2018, §§ 48-49).

205. In these cases, and in others where the applicability of Article 8 is implicitly dismissed, the Court bases its analysis on the second paragraph of Article 10 and uses the methodology of proportionality analysis, following essentially the same criteria (see the following section).

b. Principles and elements in assessing whether the interference was proportionate to the legitimate aim of the protection of reputation

206. More detailed principles and elements for assessing proportionality, developed by the Court in its case-law on protection of reputation, are set out below.

207. Determining the extent to which the statements in question may contribute to a debate of public interest is the first criterion in analysing the proportionality of an interference with freedom of expression, irrespective of the legitimate aim pursued and whatever the method of reasoning applied by the Court. Generally speaking, a statement's contribution to a debate of public interest will reduce the State's margin of appreciation.

208. In this connection, the Court has consistently established that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate of questions of public interest (*Stoll v. Switzerland* [GC], 2007, § 106; *Castells v. Spain*, 1992, § 43; *Wingrove v. the United Kingdom*, 1996, § 58).

i. Content-related elements

α. Forms/means of expression

209. Article 10 also includes artistic freedom, which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. In consequence, those who create, perform, distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society (*Müller and Others v. Switzerland*, 1988, §§ 27 et seq.; *Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 47).

210. The Court has observed on several occasions that satire is a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care (*Welsh and Silva Canha v. Portugal*, 2013, § 29; *Eon v. France*, 2013, § 60; *Alves da Silva v. Portugal*, 2009, § 27; *Vereinigung Bildender Künstler v. Austria*, 2007, § 33; *Tuşalp v. Turkey*, 2012, § 48; *Ziembiński v. Poland (no. 2)*, 2016, § 45; *Handzhiyski v. Bulgaria*, 2021, § 51). In this regard, several variations of satirical expression can be noted in the Court's case-law: a painting (*Vereinigung Bildender Künstler v. Austria*, 2007, § 33), a sign with a political message (*Eon v. France*, 2013, § 53), a fictitious interview (*Nikowitz and Verlagsgruppe News GmbH v. Austria*, 2007, § 18), an advertisement (*Bohlen v. Germany*, 2015, § 50), a caricature (*Leroy v. France*, 2008, § 44; *Patrício Monteiro Telo de Abreu v. Portugal*, 2022, § 40), a press article in a local newspaper (*Ziembiński v. Poland (no. 2)*, 2016, § 45), publicly mocking of a monument by disguising it (*Handzhiyski v. Bulgaria*, 2021, § 51).

β. Distinction between statements of fact and value judgments

211. Since its leading judgments in *Lingens v. Austria*, 1986, and *Oberschlick v. Austria (no. 1)*, 1991, the Court has emphasised that a careful distinction is to be made between factual statements on the one hand, and value judgments on the other. While the existence of facts can be demonstrated, the

truth of value judgments is not susceptible of proof (*McVicar v. the United Kingdom*, 2002, § 83; *Lingens v. Austria*, 1986, § 46).

212. With respect to statements of facts, the Court has held, in particular, that the "presumption of falsity" of such statements – that is an obligation on the author to demonstrate their truth – does not necessarily contravene the Convention provided that the defendant is allowed a realistic opportunity to prove that the statement was true (*Kasabova v. Bulgaria*, 2011, §§ 58-62; *Staniszewski v. Poland*, 2021, § 45; Azadliq *and Zayidov v. Azerbaijan*, 2022, § 35; *Udovychenko v. Ukraine*, 2023, § 44). At the same time, the Court has also indicated in such cases that an applicant who was clearly involved in a public debate on an important issue should not be required to fulfil a more demanding standard than that of due diligence, as in such circumstances an obligation to prove factual statements may deprive the applicant of the protection afforded by Article 10 (*Makraduli v. the former Yugoslav Republic of Macedonia*, 2018, § 75; *Staniszewski v. Poland*, 2021, § 45; *Wojczuk v. Poland*, 2021, § 74; Azadliq *and Zayidov v. Azerbaijan*, 2022, § 35; *Udovychenko v. Ukraine*, 2023, § 44).

213. The Court has also held that special grounds are required before a newspaper can be dispensed from its ordinary obligation to verify factual statements that are defamatory of private individuals. The question whether such grounds existed depends in particular on the nature and degree of the defamation in question and the extent to which the newspaper could reasonably regard its sources as reliable with respect to the allegations (*McVicar v. the United Kingdom*, 2002, § 84; *Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 66).

214. On the other hand, a requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (*Morice v. France* [GC], 2015, § 126; *Dalban v. Romania* [GC], 1999, § 49; *Lingens v. Austria*, 1986, § 46; *Oberschlick v. Austria (no. 1)*, 1991, § 63). Nevertheless, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive (*Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 76; *De Haes and Gijsels v. Belgium*, 1997, § 42; *Oberschlick v. Austria (no. 2)*, 1997, § 33; *Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 55).

215. The Court has emphasised that, where the national legislation or courts make no distinction between value judgments and statements of fact, which amounts to requiring proof of the truth of a value judgment, this is an indiscriminate approach to the assessment of speech and, in the Court's opinion, is *per se* incompatible with freedom of opinion, a fundamental element of Article 10 of the Convention (*Gorelishvili v. Georgia*, 2007, § 38; *Grinberg v. Russia*, 2005, §§ 29-30; *Fedchenko v. Russia*, 2010, § 37). The Court has accordingly noted the failure to make a distinction between facts and value judgments in several cases (*OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia*, 2017, § 44; *Reichman v. France*, 2016, § 72; *Paturel v. France*, 2005, § 35; *Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 55; *De Carolis and France Télévisions v. France*, 2016, § 54).

216. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts (*Peruzzi v. Italy*, 2015, § 48). In the context of its review, the Court occasionally calls into question the classification made by the national authorities in this connection, considering that the impugned statements amounted to a value judgment whose truth could not be demonstrated (see, for example, *Feldek v. Slovakia*, 2001, §§ 35 and 86; *Eigirdas and VĮ "Demokratijos plėtros fondas" v. Lithuania*, 2023, §§ 98-99) or, alternately, that they were to be considered as factual (*Egill Einarsson v. Iceland*, 2017, § 52).

217. In order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks (*Brasilier v. France*, 2006, § 37; *Balaskas v. Greece*, 2020, § 58), bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (*Paturel v. France*, 2005, § 37; see also *Lopes Gomes da Silva v. Portugal*, 2000, concerning comments made by

a journalist on the political thought and ideology of a candidate in municipal elections; *Hrico v. Slovakia*, 2004, criticism of a Supreme Court judge; *Radio Broadcasting Company B92 AD v. Serbia*, 2023, concerning allegations of corruption in vaccine procurement; and *Eigirdas and VĮ "Demokratijos plėtros fondas" v. Lithuania*, 2023, § 100, concerning involvement of a well-known businessman and politician in hidden political advertising during elections).

218. In the case of *Scharsach and News Verlagsgesellschaft v. Austria*, 2003, which concerned the use of the term "closet Nazi" to describe a politician, the national courts had considered the term to be a statement of fact and had never examined the question whether it could be considered as a value judgment (§ 40). In the Court's view, the standards applied when assessing someone's political activities in terms of morality are different from those required for establishing an offence under criminal law (§ 43; see also *Unabhängige Initiative Informationsvielfalt v. Austria*, 2002, § 46; *Brosa v. Germany*, 2014, § 48).

219. In the case of *Thorgeir Thorgeirson v. Iceland*, 1992, the Court found that certain factual elements contained in the impugned articles, on the subject of brutality, consisted essentially of references to "stories" or "rumours", emanating from persons other than the applicant. It noted that the articles related to a matter of serious public concern and that it had not been established that the story was altogether untrue and merely invented. In the Court's view, the journalist ought not therefore to have been required to adduce proof of the factual basis of his claims, in that he was essentially reporting what was being said by others about police brutality. In so far as the applicant was required to establish the truth of his statements, he was, in the Court's opinion, faced with an unreasonable, if not impossible task (§ 65; see also *Dyuldin and Kislov v. Russia*, 2007, § 35).

220. The necessity of a link between a value judgment and its supporting facts may vary from case to case according to the specific circumstances (*Feldek v. Slovakia*, 2001, § 86).

221. In a case where this factual basis was absent and the applicants failed to provide evidence of the plaintiff's allegedly criminal conduct, the Court held that there had been no violation of Article 10 (*Barata Monteiro da Costa Nogueira and Patrício Pereira v. Portugal*, 2011, § 38; compare with *De Lesquen du Plessis-Casso v. France*, 2012, § 45).

222. The issue of the requirement of a (sufficient) factual basis must be assessed against the other relevant parameters for the proportionality of the interference with freedom of expression. For example, the distinction between statements of fact and value judgments is of less significance where the impugned statements are made in the course of a lively political debate at local level and where elected officials and journalists should enjoy a wide freedom to criticise the actions of a local authority, even where the statements made may lack a clear basis in fact (*Lombardo and Others v. Malta*, 2007, § 60; *Dyuldin and Kislov v. Russia*, 2007, § 49).

223. In *Lopes Gomes da Silva v. Portugal*, 2000, which concerned an editorial published in a newspaper, the Court considered that the comments made, in relatively incisive terms, with regard to the political thought and ideology of a candidate in municipal elections did have some factual basis and held that the situation clearly involved a political debate on matters of general interest, an area in which restrictions on the freedom of expression should be interpreted narrowly (§ 33).

224. Equally, in *Hrico v. Slovakia*, 2004, the Court held that the impugned articles, which were critical of a Supreme Court judge, expressed value judgments and had a sufficient factual basis. Were there no factual basis, such an opinion could appear excessive, but, it noted, that was not so in the case in question (see also *Fleury v. France*, 2010; *Cârlan v. Romania*, 2010; *Laranjeira Marques da Silva v. Portugal*, 2010).

225. Generally speaking, there is no need to make this distinction when dealing with extracts from a novel. In the Court's view, it nevertheless becomes fully pertinent when the impugned work is not one of pure fiction but introduces real characters or facts (*Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 55).

226. The Court also distinguishes between statements of fact and value judgments in cases involving satire. With regard to a satirical article concerning an Austrian skier who allegedly expressed satisfaction at an injury sustained by one of his rivals, the Court concluded that the comment in question amounted to a value judgment, expressed in the form of a joke, and remains within the limits of acceptable satirical comment in a democratic society (*Nikowitz and Verlagsgruppe News GmbH v. Austria*, 2007).

χ. Procedural issues: standard and burden of proof[9], equality of arms

227. The distinction between facts and value judgments, examined thoroughly above, is of great importance in terms of the burden of proof in defamation cases. Equally, the principles of "responsible journalism" are closely related to this problem in assessing the circumstances of each case.

228. The "duties and responsibilities" inherent in the exercise of freedom of expression mean that special grounds are required before a newspaper can be dispensed from its ordinary obligation to verify factual statements that are defamatory (see, for example, *Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 66).

229. In the case of *Bozhkov v. Bulgaria*, 2011, the Court reiterated that if the national courts apply an overly rigorous approach to the assessment of journalists' professional conduct, the latter could be unduly deterred from discharging their function of keeping the public informed. The courts must therefore take into account the likely impact of their rulings not only on the individual cases before them but also on the media in general (§ 51).

230. Thus, the Court found, in the context of civil defamation proceedings, that the requirement to prove that the allegations made in a newspaper article were "substantially true on the balance of probabilities" constituted a justified restriction on freedom of expression under Article 10 § 2 of the Convention (*McVicar v. the United Kingdom*, 2002, §§ 84 and 87).

231. In *Kasabova v. Bulgaria*, 2011, the Court considered that allegations in the press cannot be put on an equal footing with those made in criminal proceedings. Nor can the courts hearing a libel case expect libel defendants to act like public prosecutors, or make their fate dependent on whether the prosecuting authorities choose to pursue criminal charges against, and manage to secure the conviction of, the person against whom they have made allegations (§ 62; see also *Bozhkov v. Bulgaria*, 2011, § 51; *Rumyana Ivanova v. Bulgaria*, 2008, § 39).

232. The Court also held in *Kasabova v. Bulgaria*, 2011, that "the presumption of falsity" can be seen as unduly inhibiting the publication of material whose truth may be difficult to establish in a court of law, for instance because of the lack of admissible evidence or the expense involved in doing so. The Court emphasised that the reversal of the burden of proof operated by that presumption makes it particularly important for the courts to examine the evidence adduced by the defendant very carefully, so as not to render it impossible for him or her to reverse it and make out the defence of truth (*Kasabova v. Bulgaria*, 2011, §§ 59-62). It considered that journalists may be relieved of the obligation to prove the truth of the facts alleged in their publications and avoid conviction by simply showing that they have acted fairly and responsibly (§ 61; see also *Wall Street Journal Europe Sprl and Others v. the United Kingdom* (dec.), 2009; *Radio France and Others v. France*, 2004, § 24; *Standard Verlags GmbH and Krawagna-Pfeifer v. Austria*, 2006, §§ 16, 30 and 57).

233. Similarly, when balancing police officers' right to respect for their private life and the freedom of expression of individuals who had been arrested by them, the Court considered that restricting the right of individuals to criticise the actions of public powers by imposing an obligation to accurately

[9] For the general principles concerning presumptions of fact or of law, in the context of the presumption of innocence under Article 6 § 2 of the Convention, see *Salabiaku v. France*, 1988, § 28.

respect the legal definition of torture, as set out in the domestic law, would be imposing a heavy burden on them (*Toranzo Gomez v. Spain*, 2018, § 65).

234. In the case of *Rumyana Ivanova v. Bulgaria*, 2008, the Court considered that the applicant had not sufficiently verified her factual allegations against a politician prior to their publication and that, against best journalistic practice, she had failed to consult trustworthy sources. The Court emphasised that the applicant had adopted the incriminating allegations as her own and was therefore liable for their truthfulness. It thus differentiated this situation from that in which journalists merely reported what others had said and simply omitted to distance themselves (*Rumyana Ivanova v. Bulgaria*, 2008, § 62; *Radio France and Others v. France*, 2004, § 38; *Thoma v. Luxembourg*, 2001, §§ 63-64; *Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 77).

235. With regard to the possibility for the defence to prove its allegations in defamation cases, the Court attached importance – in a case concerning an injunction prohibiting a municipal councillor from repeating statements about sects – to the fact that the evidence proposed by the applicant had been deemed irrelevant and the court had made no comment as to whether it was effectively available (*Jerusalem v. Austria*, 2001, § 45; see also *Boldea v. Romania*, 2007, §§ 60-61; *Flux v. Moldova (no. 4)*, 2008, §§ 37-38; *Busuioc v. Moldova*, 2004, § 88; *Savitchi v. Moldova*, 2005, § 59; *Folea v. Romania*, 2008, §§ 41-43).

236. Furthermore, the Court attaches importance to situations where the burden of proof would oblige a journalist to disclose the source of information. Thus, an interference with the principle of protection of journalistic sources would be compatible with Article 10 of the Convention only if there exists a requirement in the public interest overriding this principle (*Sanoma Uitgevers B.V. v. the Netherlands* [GC], 2010, § 90; *Kasabova v. Bulgaria*, 2011, § 65; *Cumpănă and Mazăre v. Romania* [GC], 2004, § 106).

237. In the case of *Steel and Morris v. the United Kingdom*, 2005, the Court examined the burden of proof placed on the applicants in a dispute between them and the large multinational company McDonalds. The applicants had been involved in a campaign launched by the NGO London Greenpeace against McDonalds, during which a fact sheet, which they were accused of publishing, had been distributed. The Court noted, firstly, that the fact that the plaintiff in the case was a large multinational company should not in principle deprive it of the right to defend itself against defamatory allegations or mean that the applicants should not have been required to prove the truth of the statements made (§ 94). Secondly, it considered that it is essential, in order to safeguard the countervailing interests in freedom of expression and open debate, that a measure of procedural fairness and equality of arms be provided for. Lastly, it noted that the lack of legal aid had rendered the defamation proceedings unfair, in breach of Article 6 § 1. The lack of procedural fairness and equality had therefore given rise to a breach of Article 10 in this case (§ 95).

238. As regards other contexts, in *Udovychenko v. Ukraine*, 2023, where the applicant, a private individual, had been found liable in defamation proceedings as regards her statement she had made, in reply to a question from a journalist, concerning the circumstances of a mediatised traffic accident she had eye-witnessed, the Court found that in the absence of any allegation of bad faith on the applicant's part, to require her to prove the truthfulness of her impugned statement – a requirement that would have been very difficult, if not impossible, to fulfil – had not been consistent with the principles laid down in the Court's case-law (§ 51). The Court took the view that allowing witnesses of events that may have involved criminal offences to convey publicly, in good faith, what they had directly observed and duly reported to the authorities, unless they were bound by the secrecy of investigations, was an aspect of the protection of freedom of expression (§ 50).

239. In *Allée v. France*, 2024, the Court underlined a need to provide appropriate protections for self-reporting victims of psychological or sexual harassment. In that case, the Court found that the national courts had placed an excessive burden on the applicant by requiring her to provide proof of the alleged

workplace sexual harassment, which had no outside witnesses, rather than adapting the criteria of "good faith" and "sufficient factual basis" to the specific circumstances (§ 52).

δ. Defences

240. By reason of the "duties and responsibilities" inherent in the exercise of freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and that they provide "reliable and precise" information in accordance with the ethics of journalism (*Bergens Tidende and Others v. Norway*, 2000, § 53; *Goodwin v. the United Kingdom*, 1996, § 39; *Fressoz and Roire v. France* [GC], 1999, § 54).

241. The following grounds of defence therefore apply in defamation proceedings, especially with regard to journalists.

• *The defence of truth (exceptio veritatis)*

242. The existence of procedural safeguards for the benefit of a defendant in defamation proceedings is among the factors to be taken into account in assessing the proportionality of an interference under Article 10. In particular, it is important for the defendant to be afforded a realistic chance to prove that there was a sufficient factual basis for his or her allegations (*Morice v. France* [GC], 2015, § 155, with further references).

243. In the Court's view, the inability to plead the defence of truth is a measure that goes beyond what is required to protect a person's reputation and rights (*Colombani and Others v. France*, 2002, § 66).

244. The defence of truth relates only to facts and not to comments and value judgments, in that only factual statements are susceptible of proof (see, for example, *Castells v. Spain*, 1992, § 48).

245. However, and this applies in particular to journalists, it is not always possible to confirm the facts completely when an event has just taken place, and for that reason a certain margin of manoeuvre is required in such instances. The Court has acknowledged that news is a "perishable commodity" and that to delay its publication, even for a short period, might well deprive it of all its value and interest (*Observer and Guardian v. the United Kingdom*, 1991, § 60).

• *Good faith*

246. The existence or otherwise of good faith can be established by referring to the facts and circumstances of a case and/or codes of professional ethics. In the case of journalists, the Court has emphasised the importance of monitoring compliance with journalistic ethics, particularly given the influence wielded by the media in contemporary society and in a world in which the individual is confronted with vast quantities of information (*Stoll v. Switzerland* [GC], 2007, § 104).

247. In a case involving defamation of a plastic surgeon, the Court held that the accounts given by dissatisfied patients, while expressed in graphic and strong terms, were essentially correct and had been accurately recorded by the newspaper. Reading the articles as a whole, the Court could not find that the statements were excessive or misleading (*Bergens Tidende and Others v. Norway*, 2000, § 56; see also, for the domestic courts' failure to examine the criteria appropriately, *Reichman v. France*, 2016, § 71).

ii. Context-related elements

α. Role and status of the person making the impugned statement

248. Enhanced protection under Article 10 of the Convention is granted to certain persons on account of their role and status in a democratic society. The role of "public watchdogs" and the specific status of judges and lawyers are covered in detail in separate sections below.

249. Moreover, freedom of expression is especially important for elected representatives, who represent their electorate, draw attention to their preoccupations and defend their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament call for the closest scrutiny on the part of the Court (*Karácsony and Others v. Hungary* [GC], 2016, § 137; *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, §§ 242-245; *Castells v. Spain*, 1992, § 42; *Piermont v. France*, 1995, § 76; *Jerusalem v. Austria*, 2001, § 36; *Otegi Mondragon v. Spain*, 2011, § 50; *Lacroix v. France*, 2017, § 40; *Szanyi v. Hungary*, 2016, § 30; see also *Freitas Rangel v. Portugal*, 2022, § 59, for the extension of such a protection to an invited expert presenting his views before a parliamentary commission).

250. At the same time, in the *Erbakan v. Turkey* judgment, the Court stressed that the fight against all forms of intolerance was an integral part of human-rights protection and that it was crucially important that in their speeches politicians should avoid making comments likely to foster such intolerance (§ 64).

β. Target of the impugned statement

251. The status of the individual targeted by defamatory statements is one of the parameters taken into account by the Court in examining defamation cases. The Court considers that the "limits of acceptable criticism" are much wider as regards individuals with a public status than as regards private individuals (*Palomo Sánchez and Others v. Spain* [GC], 2011, § 71).

• *Political and public figures*

252. It is in the *Lingens v. Austria*, 1986, case that the Court set out for the first time the principle that politicians inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and the public at large; they must consequently display a greater degree of tolerance (§ 42; see also *Nadtoka v. Russia*, 2016, § 42).

253. This requirement of tolerance is all the more pertinent from politicians when they themselves make public statements that are susceptible of criticism (*Mladina d.d. Ljubljana v. Slovenia*, 2014, § 40; *Pakdemirli v. Turkey*, 2005, § 45). Thus the Court ruled, for instance, in *Oberschlick v. Austria (no. 2)*, 1997, that comments made in reporting on a speech that was clearly intended to be provocative and consequently to arouse strong reactions (§ 31) could not constitute a gratuitous personal attack (§ 33), in spite of their polemical nature (*Dickinson v. Turkey*, 2021, § 55).

254. Generally speaking, this principle of tolerance applies to all members of the political class, whether a Prime Minister (*Tuşalp v. Turkey*, 2012, § 45; *Axel Springer AG v. Germany (no. 2)*, 2014, § 67; *Dickinson v. Turkey*, 2021, § 55), a minister (*Turhan v. Turkey*, 2005, § 25), a mayor (*Brasilier v. France*, 2006, § 41), a political adviser (*Morar v. Romania*, 2015), a member of parliament (*Mladina d.d. Ljubljana v. Slovenia*, 2014; *Monica Macovei v. Romania*, 2020), or the head of a political party (*Oberschlick v. Austria (no. 2)*, 1997).

255. Indeed, the Court has stated that providing increased protection for heads of State and Government by means of a special law will not, as a rule, be in keeping with the spirit of the Convention (*Otegi Mondragon v. Spain*, 2011, § 55; *Pakdemirli v. Turkey*, 2005, § 52; *Artun and Güvener v. Turkey*, 2007, § 31; *Ömür Çağdaş Ersoy c. Turquie*, 2021, § 58; for foreign heads of State, see *Colombani and Others v. France*, 2002, § 67). In the case of *Otegi Mondragon v. Spain*, 2011, the Court held that the

fact that the King occupies a neutral position in political debate and acts as an arbitrator and a symbol of State unity should not shield him from all criticism in the exercise of his official duties (§ 56; see also *Stern Taulats and Roura Capellera v. Spain*, 2018, § 35).

256. Furthermore, the Court considers that, while it is legitimate for the persons representing the institutions of State to be protected by the competent authorities in their capacity as guarantors of institutional public order, the dominant position which these institutions occupy requires the authorities to exercise restraint in the use of criminal proceedings (*Dickinson v. Turkey*, 2021, § 56).

257. The Court applies the same logic to others who, in various ways, engage in public life. In the case of *Kuliś v. Poland*, 2008, it stated that the limits of admissible criticism are wider if a public figure is involved, as he inevitably and knowingly exposes himself to public scrutiny and must therefore display a particularly high degree of tolerance (§ 47; for a lecturer who, beyond the public nature of his profession, had chosen to give publicity to some of his ideas or beliefs, and could therefore have expected a close examination of his statements, see *Brunet-Lecomte and Lyon Mag' v. France*, 2010, § 46; see also *Mahi v. Belgium* (dec.), 2020; for the director of a mosque who was criticised for the conduct of his tasks, on account of the institutional dimension and the importance of his duties, *Chalabi v. France,* 2008, § 42; for a businessman (*Verlagsgruppe News GmbH v. Austria (no. 2)*, 2006, § 36); and, in contrast, *Kaboğlu and Oran v. Turkey*, 2018, § 74, for members of a Consultative Council, whose duties were akin to those of experts appointed by the public authorities to examine specific issues).

258. Protection of reputation extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues (*Lingens v. Austria*, 1986, § 42; *Nadtoka v. Russia*, 2016, § 42).

• *Government, public authorities and other institutions*

259. Taking the view that in a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion, the Court has established that the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician (*Castells v. Spain*, 1992, § 46; *Tammer v. Estonia*, 2001, § 62; *Margulev v. Russia*, 2019, § 53). In the case of *Vides Aizsardzības Klubs v. Latvia*, 2004, the Court extended the application of this reasoning to public authorities, finding that, in a democratic society, the latter laid themselves open to public scrutiny (§ 46; see also *Dyuldin and Kislov v. Russia*, 2007, § 83; *Radio Twist a.s. v. Slovakia*, 2006, § 53).

260. The Court considers that State bodies and civil servants acting in an official capacity have to accept that they are subject to wider limits of acceptable criticism than private individuals (*Romanenko and Others v. Russia*, 2009, § 47; *Toranzo Gomez v. Spain*, 2018, § 65; see also *Frisk and Jensen v. Denmark*, 2017, § 56, concerning criticism of a public hospital, and *Lombardo and Others v. Malta*, 2007, § 54, a local council).

261. The same principles apply to institutions responsible for providing a public service. The Court has found that the protection of a university's authority is a mere institutional interest, a consideration not necessarily of the same strength as the protection of the reputation or rights of others for the purposes of Article 10 § 2 (*Kharlamov v. Russia*, 2015, § 29). In consequence, the limits of permissible criticism are wider for universities, even if this criticism has a negative impact on their reputation. In the Court's view, this is part of academic freedom, which comprises the academics' freedom to express freely their opinion about the institution or system in which they work and freedom to distribute knowledge and truth without restriction (*Sorguç v. Turkey*, 2009, § 35; *Kula v. Turkey*, 2018, § 38). On the other hand, the Court unconditionally accepted that protecting the reputation of a public hospital was a legitimate aim within the meaning of Article 10 § 2 (*Gawlik v. Liechtenstein*, 2021, § 51).

262. As regards executive bodies, the Court considers that, by virtue of its role in a democratic society, the interests of a body of the executive vested with State powers in maintaining a good reputation essentially differs from both the right to reputation of natural persons and the reputational interests of legal entities, private or public, that compete in the marketplace (*OOO Memo v. Russia*, 2022, §§ 46-48). In that case, the Court found that civil defamation proceedings brought, in its own name, by the highest body of the executive of a constituent entity of the Russian Federation against an Internet media outlet could not, as a general rule, be regarded to be in pursuance of the legitimate aim of the protection of the reputation of others, under article 10 § 2 of the Convention. This does not exclude, however, that individual members of a public body, who could be "easily identifiable" in view of the limited number of its members and the nature of the allegations made against them, may be entitled to bring defamation proceedings in their own individual name. Likewise, *Mária Somogyi v. Hungary*, 2024, §§ 30-44 concerned a compensation order against the applicant for infringing a municipality's personality rights for having shared a third party's Facebook post about the management of property owned by the municipality and the use of public funds. The Court found that the measure complained of did not pursue any of the legitimate aims enumerated in Article 10 § 2 of the Convention.

• *Civil servants*

263. Although the Court considers that civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty (*Busuioc v. Moldova*, 2004, § 64; *Lešník v. Slovakia*, 2003, § 53), it also imposes on them a high degree of tolerance, albeit not identical to that of politicians. It has held that civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than ordinary citizens (*Mamère v. France,* 2006, § 27, *Radio Broadcasting Company B92 AD v. Serbia*, 2023, § 78). Admittedly those limits may in some circumstances be wider with regard to civil servants exercising their powers than in relation to private individuals. However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to criticism of their actions (*Janowski v. Poland* [GC], 1999, § 33; *Mariapori v. Finland*, 2010, § 56; *Nikula v. Finland*, 2002, § 48; *Balaskas v. Greece*, 2020, § 48, and especially §§ 50-51 as regards teachers; *Milosavljević v. Serbia*, 2021, § 60).

264. In the case of *Bild GmbH & Co. KG v. Germany*, 2023, a news outlet shared unblurred CCTV footage of a police officer using force during an arrest but did not allege any misconduct on the part of the officer. Tthe Court observed that, in the absence of such misconduct allegations, civil servants retain a legitimate interest in protecting their private life against false portrayals of abuse of office. Therefore, courts should balance the relevant public interest against the specific adverse consequences that publication of an officer's image may have on his or her private or family life (§ 35). Such balancing must take place regardless of whether the coverage is positive or negative, since in any case the public has an interest in news coverage of police use of force (§ 42).

265. Moreover, the principle of increased tolerance does not extend to all persons who are employed by the State or by State-owned companies (*Busuioc v. Moldova*, 2004, § 64). In the case of *Nilsen and Johnsen v. Norway* [GC], 1999, for example, the Court refused to compare a government-appointed expert to a politician; this would have had the effect of requiring him to display a greater degree of tolerance. In the Court's view, it was rather what the applicant did beyond this function, by his participation in public debate, which was relevant (§ 52). This consideration was also relevant in the case of *De Carolis and France Télévisions v. France*, 2016, in which the Court held that the level of the post occupied by the State employee was the criterion for assessing the degree of tolerance expected from him or her (§ 52).

• *Judges, expert witnesses*

266. In the case of *Morice v. France* [GC], 2015, the Court acknowledged that, bearing in mind that judges form part of a fundamental institution of the State, they may as such be subject to personal criticism within the permissible limits, and not only in a theoretical and general manner. When acting in their official capacity they may thus be subject to wider limits of acceptable criticism than ordinary citizens (§ 131; see also *July and SARL Libération v. France*, 2008, § 74; *Aurelian Oprea v. Romania*, 2016, § 74; *Do Carmo de Portugal e Castro Câmara v. Portugal*, 2016, § 40; *Radobuljac v. Croatia*, 2016, § 59; *Panioglu v. Romania*, 2020, § 113; *Lutgen v. Luxembourg*, 2024, § 68).

267. The limits of permissible criticism seem to be reached when it comes to destructive attacks that are essentially unfounded (*Prager and Oberschlick v. Austria*, 1995, § 34) especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying (*Anatoliy Yeremenko v. Ukraine*, 2022, § 59; *Stancu and Others v. Romania*, 2022, § 135); it may therefore be necessary for the State to protect judges from accusations that are unfounded (*Lešník v. Slovakia*, 2003, § 54; for criticism of the prosecutor by the accused, see *Čeferin v. Slovenia*, 2018, § 56). Equally, given that they act in their official capacity and having regard to the potential impact of their opinions on the outcome of the criminal proceedings, expert witnesses should also tolerate criticism of the performance of their duties (*ibid.*, § 58).

268. The tacit assumption by the domestic courts that interests relating to the protection of the honour and dignity of others (in particular of those vested with public powers) prevailed over freedom of expression in all circumstances led the Court to conclude that there had been a failure to perform the requisite balancing exercise (*Tolmachev v. Russia*, 2020, § 51).

• *Defendants*

269. In the case of *Miljević v. Croatia*, 2020, concerning defamation proceedings on account of statements made by a defendant in another set of criminal proceedings, after noting that the applicant's comments attained the requisite level of seriousness to harm rights that were protected under Article 8 of the Convention, especially since they amounted to accusing a third party of conduct tantamount to criminal behaviour (§ 60-62), the Court drew attention to the heightened level of protection that the statements given by the defendant deserved as part of his defence during a criminal trial. It reiterated that defendants in criminal proceedings should be able to speak freely about issues connected to their trial without being inhibited by the threat of proceedings for defamation, as long as they do not intentionally give rise to a false suspicion of punishable behaviour against another person (§ 82). In assessing the interference with the applicant's freedom of expression, the Court took account, among other factors, of the context in which the statements were made, and in particular whether they concerned arguments made in connection with the applicant's defence (§ 68).

• *Legal entities (companies, associations)*

270. The Court accepted that a commercial company could have a reputation (*Halet v. Luxembourg* [GC], 2023, § 108). In particular, in a case concerning a press article which criticised a wine produced by a State-owned company, the Court accepted that the production company undisputedly had a right to defend itself against defamatory allegations, and that there is a public interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good. However, the Court indicated that there was a difference between the reputation of an individual concerning his or her social status, which might have repercussions on his or her dignity, and the commercial reputational interests of a company, which is devoid of that moral dimension (*Uj v. Hungary*, 2011, § 22; *OOO Regnum v. Russia*, 2020, § 66; see also *Almeida Arroja v. Portugal*, 2024, §§ 59, 75 and 89, where the Court proceeded on the assumption that a law firm had a reputation).

271. The Court applies, *mutatis mutandis*, the principles identified in the *Lingens v. Austria*, 1986, judgment to legal entities such as large companies. In the *Steel and Morris v. the United Kingdom*, 2005, judgment, it indicated that large public companies inevitably and knowingly lay themselves open to close scrutiny of their acts and, as in the case of the businessmen and women who manage them, the limits of acceptable criticism are wider in the case of such companies (§ 94; see also *Fayed v. the United Kingdom*, 1994, § 75).

272. In assessing proportionality, the Court has additionally been attentive to the size and nature of companies that are targeted by allegedly defamatory comments (*Timpul Info-Magazin and Anghel v. Moldova*, 2007, § 34). The Court has also stated that when a private company decides to participate in transactions in which considerable public funds are involved, it voluntarily exposes itself to increased scrutiny by public opinion (*ibid.*, § 34).

273. Indeed, the Court has emphasised that, as well as the public interest in open debate about business practices, there is a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good (*Steel and Morris v. the United Kingdom*, 2005, § 94).

274. With regard to statements made by a minority shareholder in a large company, the Court considered that a high degree of protection was extended to statements aimed at ensuring that the directors of powerful commercial companies shouldered their responsibilities, with a view to inducing them to take account of their firm's long-term interests (*Petro Carbo Chem S.E. v. Romania*, 2020, § 43). It held that the applicant company's intention had been to launch a debate on the issue of the management of the firm in which it had held shares, rather than to jeopardise the firm's commercial success and viability for its shareholders and employees, and more broadly for the well-being of the economy. Its comments appeared to have been motivated by a desire to exercise active control over the firm in order to improve its management and encourage the creation of long-term value (§ 52).

275. The assessment of the limits of permissible criticism of associations and other non-governmental organisations depends on the extent of their involvement in public debate. As the Court has stated, associations lay themselves open to scrutiny when they enter the arena of public debate (*Jerusalem v. Austria*, 2001, § 38). In consequence, once they are active in the public domain, they must show a higher degree of tolerance with regard to criticism made by opponents about their aims and the means employed in that debate (*Paturel v. France*, 2005, § 46).

276. In the case of *Eigirdas and VĮ "Demokratijos plėtros fondas" v. Lithuania*, 2023, the Court also recognised a legitimate aim in protecting the reputation of a magazine, without referring to the individual reputations of its members (§ 108).

iii. The nature of measures and penalties in response to defamation

277. The nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (*Cumpănă and Mazăre v. Romania* [GC], 2004, § 111). A detailed analysis is provided below of this criterion as it is relevant to defamation cases.

278. Sentencing is in principle a matter for the national courts (*Cumpănă and Mazăre v. Romania* [GC], 2004, § 115), but the Court will review its proportionality.

α. Criminal penalties

279. In view of the margin of appreciation left to Contracting States by Article 10 of the Convention, a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued (*Radio France and Others v. France*, 2004, § 40; *Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 59).

280. While the Court accepts, in principle, a criminal response to acts of defamation, it has however held that the dominant position of the State institutions requires the authorities to show restraint in resorting to criminal proceedings (*Morice v. France* [GC], 2015, § 176; *De Carolis and France Télévisions v. France*, 2016, § 44; *Otegi Mondragon v. Spain*, 2011, § 58; *Incal v. Turkey*, 1998, § 54; *Öztürk v. Turkey* [GC], 1999, § 66). It recommends, if necessary, that they resort to other types of measures, such as civil and disciplinary remedies (*Raichinov v. Bulgaria*, 2006, § 50; *Ceylan v. Turkey* [GC], 1999, § 34).

281. The Court pays considerable attention to the severity of a criminal penalty in defamation cases, particularly where a matter of public interest is involved. In this connection, it has reiterated that the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence (*Cumpănă and Mazăre v. Romania* [GC], 2004, § 115; *Ruokanen and Others v. Finland*, 2010, § 50; *Balaskas v. Greece*, 2020, § 61; see also *Fatullayev v. Azerbaijan*, 2010, §§ 129 and 177, where the Court described the prison sentence of two years and six months imposed on the applicant as "grossly disproportionate" and instructed that he was to be released immediately).

282. In the case of *Bédat v. Switzerland* [GC], 2016, the Court reiterated that it sought to ensure that the penalty does not amount to a form of censorship intended to discourage the press from expressing criticism. It went on to state that such a sanction is likely to deter journalists from contributing to public discussion of issues affecting the life of the community (§ 79; see also *Toranzo Gomez v. Spain*, 2018, § 64; *Lewandowska-Malec v. Poland*, 2012, § 70; *Barthold v. Germany*, 1985, § 58; *Lingens v. Austria*, 1986, § 44; *Monnat v. Switzerland*, 2006, § 70).

283. In cases involving the press, the Court has held that the criminal-law nature of the penalty is more important than the minor nature of the penalty imposed (*Stoll v. Switzerland* [GC], 2007, § 154; *Haldimann and Others v. Switzerland*, 2015, § 67).

284. This reasoning is also found in *De Carolis and France Télévisions v. France*, 2016, where the Court reiterated that, even when the sanction is the lightest possible, such as a guilty verdict with a discharge in respect of the criminal sentence and an award of only a "token euro" in damages, it nevertheless constitutes a criminal sanction (§ 63; see also *Jersild v. Denmark*, 1994, § 35; *Brasilier v. France*, 2006, § 43; *Morice v. France* [GC], 2015, § 176; *Lutgen v. Luxembourg*, 2024, § 72).

285. In contrast, in the case of *Pedersen and Baadsgaard v. Denmark* [GC], 2004, the Court held that there was a "pressing social need" to take action in relation to the seriously accusatory allegations made by journalists, who had not attempted to prove them. It did not find the criminal fines excessive or to be of such a kind as to have a "chilling effect" on the exercise of media freedom (§§ 92-94). Moreover the national Supreme Court had clearly acknowledged the weight to be attached to journalistic freedom in a democratic society (§ 71).

286. Furthermore, the principle requiring restraint in the use of criminal proceedings in defamation cases is not limited to journalistic freedom, but applies to every individual. By way of example, in *Kanellopoulou v. Greece*, 2007, the Court found that a custodial sentence imposed on the applicant in response to an attack on a surgeon's reputation was disproportionate. In that case, the means available under civil law would have sufficed to protect the doctor's reputation (§ 38; see also *Mătăsaru v. the Republic of Moldova*, 2019, § 35; see *Nikula v. Finland*, 2002, § 55, with regard to the criminal conviction of a defence lawyer).

287. In this connection, the Court has frequently referred to Resolution 1577 (2007) of the Parliamentary Assembly of the Council of Europe, which exhorts States whose laws still provide for prison sentences for defamation – although prison sentences are not actually imposed – to abolish them without delay (*Otegi Mondragon v. Spain*, 2011; *Artun and Güvener v. Turkey*, 2007; *Mariapori*

v. Finland, 2010, § 69; *Niskasaari and Others v. Finland*, 2010, § 77; *Saaristo and Others v. Finland*, 2010, § 69; *Ruokanen and Others v. Finland*, 2010, § 50).

β. Civil and restorative measures and sanctions

• *Damages and fines*

288. The Court accepts that national laws concerning the calculation of damages for injury to reputation must make allowance for an open-ended variety of factual situations. A considerable degree of flexibility may be called for to enable juries to assess damages tailored to the facts of the particular case (*Tolstoy Miloslavsky v. the United Kingdom*, 1995, § 41; *OOO Regnum v. Russia*, 2020, § 78).

289. In finding that a disproportionately large award had been made in the case of *Tolstoy Miloslavsky v. the United Kingdom*, 1995, the Court stressed that this had been made possible by the lack of adequate and effective safeguards at the relevant time against disproportionately large awards (§ 51; see, to similar effect, *Independent Newspapers (Ireland) Limited v. Ireland*, 2017, § 105).

290. When assessing the proportionality of damages awards the Court may take into account the consequences of the amount of damages for the applicant's economic situation (for an absence of harmful effects of a pecuniary sanction, see *Delfi AS v. Estonia* [GC], 2015, § 161; *C8 (Canal 8) v. France*, 2023, §§ 101-102; for the disproportionate nature of a pecuniary award in the light of the applicant's economic situation, see *Kasabova v. Bulgaria*, 2011, § 43, and *Tolmachev v. Russia*, 2020, §§ 53-55). The Court may also refer to reference values, such as the minimum salary in force in the respondent State in question (*Tolmachev v. Russia*, 2020, § 54).

291. Assessment of the proportionality of damages awards may also depend on the nature of the other penalties and legal costs imposed on the person found liable for acts of defamation by the domestic courts (*Ileana Constantinescu v. Romania*, 2012, § 49).

292. Moreover, such assessment may include a consideration of the applicant's notoriety. For example, in *Mesić v. Croatia*, 2022, § 112, a former President had been ordered to pay approximately EUR 6,660 in non-pecuniary damages for the statements he had made that an advocate needed psychiatric treatment for implicating him in a criminal complain. The Court found that, while the sum ordered for non-pecuniary damages could appear substantial, it had been an appropriate sanction to neutralise the "chilling" dissuasive effect of the statements of the applicant, a high-ranking official, on the advocate who, moreover, had not been in a position to reply.

293. Lastly, the "chilling effect" of an order to pay damages is also a parameter in assessing the proportionality of this means of redress for defamatory comments. With regard to the freedom of expression of journalists, the Court seeks to ensure that damages awards against press companies are not so high that they threaten the latter's economic foundations (*Błaja News Sp. z o. o. v. Poland*, 2013, § 71). Thus, in the case of *Timpul Info-Magazin and Anghel v. Moldova*, 2007, the Court noted that the award made against the applicant company had led to its closure (§ 39).

294. At the same time, with regard to an award where the damages amounted to "one franc in symbolic compensation", the Court took the occasion to emphasise the chilling effect of the sanction, even a relatively light one, on the right to freedom of expression (*Brasilier v. France*, 2006, § 43; *Paturel v. France*, 2005, § 49; *Desjardin v. France*, 2007, § 51).

295. Where fines are concerned, the fact that the proceedings are civil rather than criminal in nature and the relatively moderate nature of this type of sanction would not suffice to negate the risk of a chilling effect on the exercise of the right to freedom of expression (*Anatoliy Yeremenko v. Ukraine*, 2022, § 107) even where it was not shown whether the applicant struggled or not to pay the fine (*Monica Macovei v. Romania*, 2020, § 96; *Stancu and Others v. Romania*, 2022, § 148).

• *Right of reply, retraction or rectification, court order to issue and publish an apology*

296. The Court has held that the legal obligation to publish a rectification may be considered a normal element of the legal framework governing the exercise of freedom of expression by the media. The aim of the right to reply is to afford everyone the possibility of protecting him or herself against certain statements or opinions disseminated by the mass media that are likely to be injurious to his or her private life, honour or dignity: in other words, the primary objective of the right of reply is to allow individuals to challenge false information published about them in the press (*Axel Springer SE v. Germany*, 2023, §§ 33-34; *Eigirdas and VĮ "Demokratijos plėtros fondas" v. Lithuania*, 2023, § 116). At the same time, given the high level of protection enjoyed by the press there would need to be exceptional circumstances in which a newspaper may legitimately be required to publish, for example, a retraction, an apology or a judgment in a defamation case. In this respect, the potential chilling effect of the penalties imposed on the press in the performance of its task as a purveyor of information and public watchdog in the future must also be taken into consideration (*Axel Springer SE v. Germany*, 2023, § 33).

297. In the case of *Eigirdas and VĮ "Demokratijos plėtros fondas" v. Lithuania*, 2023, the Court considered the implications of a pre-notification requirement which established a right to reply even before the publication of certain information, thereby obliging journalists to solicit the response of the person(s) criticised in an article prior to that article's publication (§ 119). The Court found that such pre-notification requirements were not required by Article 8 given doubts as to their effectiveness, a wide margin of appreciation, and concerns over the potential chilling effects on journalism (§ 120). It therefore held that there had been a violation of Article 10 when domestic courts disciplined a media outlet for publishing demeaning comments about another media outlet's coverage of public figures without first asking the second media outlet if they would like to exercise their right of reply (§ 124).

298. In the case of *Melnychuk v. Ukraine* (dec.), 2005, which concerned the refusal by a newspaper to publish the applicant's response to criticism of one of his books, the Court noted that the State had a positive obligation to protect the applicant's right to freedom of expression in two ways: by ensuring that he had a reasonable opportunity to exercise his right of reply by submitting a response to the newspaper for publication; and by ensuring that he had an opportunity before the domestic courts to contest the newspaper's refusal. The Court considered that the right of reply, as an important element of freedom of expression, flows from the need not only to be able to contest untruthful information, but also to ensure a plurality of opinions, especially in matters of general interest such as literary and political debate (§ 2).

299. In consequence, the right of response is equally subject to the restrictions and limitations of Article 10 § 2 of the Convention.

300. Equally, the Court has stated that the requirement to publish a retraction, apology or even a judicial decision in a defamation case is an exception to the editorial discretion enjoyed by newspapers and other media in deciding whether to publish articles and comments submitted by private individuals (*Eker v. Turkey*, 2017, § 45; *Melnychuk v. Ukraine* (dec.), 2005, ; *Axel Springer SE v. Germany*, 2023, § 33).

301. In the Commission decision *Ediciones Tiempo v. Spain*, 1989, the applicant company's complaint concerned a court order to publish a response to an article that had previously appeared in a weekly newspaper owned by it. The applicant company complained, in particular, that it had been required to publish statements that it knew to be false. The former Commission dismissed the complaint, pointing out that a newspaper could not refuse to publish a right of reply on the sole ground that the information contained in was allegedly false. In the Commission's view, Article 10 of the Convention could not be interpreted as guaranteeing the right of communication companies to publish only information which they consider reflecting the truth, still less as conferring on such companies powers to decide what is true before discharging their obligation to publish the replies which private

individuals are entitled to make. The purpose of the regulations governing the right of reply is to safeguard the interest of the public in receiving information from a variety of sources and thereby to guarantee the fullest possible access to information. The Commission also noted that the publishing company had not been obliged to amend the content of the article and that it had had the opportunity to insert its own versions of the facts once more when it published the reply of the person who had been criticised (*Ediciones Tiempo v. Spain*, 1989, § 2).

302. Having regard to the fact that a reply, to be effective, must be distributed immediately, the Commission considered that the veracity of the facts asserted in the reply could not be checked in any great detail at the time of publication.

• *Measures ordering retraction, rectification or apology*

303. In the *Karsai v. Hungary*, 2009, judgment, concerning a retraction order imposed on a historian, the Court held that, in ordering him to retract his statements publicly, the courts had imposed a measure that affected his professional credibility as a historian and was therefore capable of producing a chilling effect (§ 36).

304. In the case of *Smolorz v. Poland*, 2012, in assessing the proportionality of an order that a journalist was to publish a public apology following defamatory statements, the Court reiterated that although the penalty imposed on Mr Smolorz was a minor one, the important point was that he had been required to apologise publicly for his comments (§ 42).

• *Other publications*

305. Analysing a court decision ordering the applicant to publish a notice of a ruling in a national newspaper at his own expense, the Court emphasised the deterrent effect of the sanction, in view of the importance of the debate in which the applicant had legitimately sought to take part (*Giniewski v. France*, 2006, § 55).

306. In another case, where the applicant association had been obliged to remove the offending articles from its Internet site, to publish the main findings of the cantonal court's judgment and to pay the costs and expenses of the domestic proceedings, the Court held that this was largely a token compensation and could not be considered excessive or disproportionate (*Cicad v. Switzerland*, 2016, § 62).

• *Interlocutory and permanent injunctions*

307. The Court has stated that, generally speaking, Article 10 does not prohibit prior restraints on publication as such. In the Court's view, however, the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the Court's part. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (*Observer and Guardian v. the United Kingdom*, 1991, § 60; see also *Cumpănă and Mazăre v. Romania* [GC], 2004, § 118). Such restraints must therefore form part of a legal framework ensuring both tight control over the scope of the ban and effective judicial review to prevent any abuses (*Ahmet Yıldırım v. Turkey*, 2012, § 64, with further references).

308. In the case of *Cumhuriyet Vakfı and Others v. Turkey*, 2013, reaffirming the same principles, the Court emphasised that it must also carry out a close examination of the procedural safeguards embedded in the system to prevent arbitrary encroachments on freedom of expression, and it examined the scope and duration of the interim injunction, the reasoning for it, and the ability to contest the measure before it was adopted (§§ 61-74).

309. The Court has held that a 180-day ban on broadcasting imposed on a radio station on account of comments made by one of its guests was disproportionate to the aims pursued (*Nur Radyo Ve Televizyon Yayıncılığı A.Ş. v. Turkey*, 2007, § 31).

310. In another case, the Court considered that a civil injunction preventing the broadcasting of certain films, which was subject to review in case of a change in the relevant circumstances, reflected the fair balance struck by the German courts between the applicant association's right to freedom of expression and the interests of the company concerned in protecting its reputation (*Tierbefreier e.V. v. Germany*, 2014, § 58).

311. In a case concerning a general and absolute prohibition on publication as a means for protecting the reputation of others and also for maintaining the authority of the judiciary, the Court held that the domestic courts' justification was insufficient, pointing out that the ban applied only to criminal proceedings instituted on a complaint accompanied by a civil-party application, and not to those instituted on an application by the public prosecutor's office or on a complaint that was not accompanied by a civil-party application. In the Court's view, such a difference in the treatment of the right to inform did not seem to be based on any objective grounds, yet wholly impeded the right of the press to inform the public about matters which, although relating to criminal proceedings in which a civil-party application had been made, could be in the public interest, as was the case here (*Du Roy and Malaurie v. France*, 2000, §§ 35-36).

312. In a case where the applicant, a journalist, was sued in defamation proceedings by judges following the publication of his article on alleged judicial corruption, and where an injunction was issued ordering the removal of the impugned article from the newspaper's website pending those proceedings, the Court considered that the injunction order had not violated Article 10 of the Convention. 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 had not undermined the very essence of the public debate (*Anatoliy Yeremenko v. Ukraine*, 2022, §§ 57-58).

V. The role of "public watchdog": increased protection, duties and responsibilities

A. The role of watchdog

313. The Court has always asserted the essential role played by the press as a "watchdog" in a democratic society, and it has connected the task of the press in imparting information and ideas on all matters of public interest to the public's right to receive them (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 126; *Bédat v. Switzerland* [GC], 2016, § 51; *Axel Springer AG v. Germany* [GC], 2012, § 79; *The Sunday Times v. the United Kingdom (no. 2)*, 1991, § 50; *Bladet Tromsø and Stensaas v. Norway* [GC], 1999, §§ 59 and 62; *Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 71; *News Verlags GmbH & Co.KG v. Austria*, 2000, § 56; *Dupuis and Others v. France*, 2007, § 35; *Campos Dâmaso v. Portugal*, 2008, § 31). This role has been recognised with regard to professional (for instance, *Pedersen and Baadsgaard v. Denmark*, [GC] 2004, § 71) as well as non-professional journalists (*Falzon v. Malta*, 2018, §§ 6 and 57 *in fine*, where this role was attributed to a retired politician who was a regular opinion writer in weekly publications; see also *Gelevski v. North Macedonia*, 2020, §§ 6 and 22).

314. Where freedom of the "press" is at stake, the authorities have only a limited margin of appreciation to decide whether a "pressing social need" exists (*Stoll v. Switzerland* [GC], 2007, § 102).

315. Although the press is at the origin of the concept of "public watchdog", the Court also recognises that NGOs play the same role (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 103; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 86; *Cangi v. Turkey*, 2019, § 35; *National Youth Council of Moldova v. the Republic of Moldova*, 2024, § 73). In particular, the Court considers that the public watchdog role played by NGOs is "of similar importance to that of the press" (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 103; *Steel and Morris v. the United Kingdom*, 2005, § 89; *Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 166). In the Court's view, in a comparable way to the press, an NGO performing a public watchdog role is likely to have greater impact when reporting on irregularities of public officials, and will often dispose of greater means of verifying and corroborating the veracity of criticism than would be the case of an individual reporting on what he or she has observed personally (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 87).

316. Referring also to the Fundamental Principles on the Status of Non-governmental Organisations in Europe (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, §§ 45 and 87), the Court has concluded that the same considerations on the "duties and responsibilities" inherent in the freedom of expression of journalists[10] should apply to an NGO assuming a social watchdog function (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, §§ 159 and 166).

317. Given the importance of activities in the field of human rights, the Court is of the opinion that the principles relating to the protection of journalists and media professionals may apply *mutatis mutandis* to the continued detention on remand of human rights defenders or leaders or activists of such organisations, when pretrial detention has been imposed on them in connection with criminal proceedings instituted for offences directly linked to activities concerning the defence of human rights (*Taner Kılıç v. Turkey (no. 2)*, 2022, § 147).

318. Equally, academic researchers and authors of literature on matters of public concern also enjoy a high level of protection. The Court has further noted that, given the important role played by the Internet in enhancing the public's access to news and facilitating the dissemination of information, 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* [GC], 2016, § 168). Similar principles were applied 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).

B. Rights, duties and responsibilities connected to the function of journalist

319. The increased protection afforded to "public watchdogs" and particularly the press under Article 10 is subject to the condition that they comply with the duties and responsibilities connected with the function of journalist, and the consequent obligation of "responsible journalism".

320. The most important aspects of this protection, and of the duties and responsibilities which govern it under Article 10 § 2 of the Convention, are addressed below.

1. Information gathering

a. Research and investigation activities

321. The Court has found it to be well-established that the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom (*Satakunnan*

[10] See the section "Rights, duties and responsibilities connected to the function of journalist" below.

Markkinapörssi Oy and Satamedia Oy v. Finland [GC], 2017, § 128; *Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 130; *Guseva v. Bulgaria*, 2015, § 37; *Shapovalov v. Ukraine*, 2012, § 68).

322. The Court considers not only that restrictions on freedom of the press concerning a preparatory step prior to publication fell within the Court's supervision, but that a journalist's research and investigative activities called for the closest scrutiny by the Court on account of the great danger represented by restrictions on that form of activity (*Dammann v. Switzerland*, 2006, § 52; *The Sunday Times v. the United Kingdom (no. 2)*, 1991, § 51; *Amaghlobeli and Others v. Georgia*, 2021, § 36).

323. The Court considers that obstacles created in order to hinder access to information of public interest may discourage those working in the media or related fields from pursuing such matters (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 167; *Társaság a Szabadságjogokért v. Hungary*, 2009, § 38; *Shapovalov v. Ukraine*, 2012, § 68).

324. In a case, the applicant (a journalist), was conducting an investigation into the prior convictions of private persons. He was convicted of a criminal offence for inciting another person to disclose official secrets in order to obtain information. The Court held that his conviction amounted to a kind of censorship which was likely to discourage him from undertaking research, inherent in his job, with a view to preparing an informed press article on a topical subject. Punishing, as it did, a step that had been taken prior to publication, such a conviction was likely in the Court's opinion to deter journalists from contributing to public discussion of issues affecting the life of the community (*Dammann v. Switzerland*, 2006, § 57).

325. Equally, in a case concerning the broadcasting of a report on the commercial practices of insurance brokers that had been filmed with a hidden camera, the Court, ruling on the method of obtaining the information, considered that the applicants, who were journalists, could not be accused of having acted deliberately in breach of professional ethics (*Haldimann and Others v. Switzerland*, 2015, § 61). The Court also noted that the domestic courts had failed to reach a unanimous position on whether the applicants had disregarded the journalistic rules in gathering the information. It held that the applicants were to be granted the benefit of the doubt (*ibid.*, § 61).

b. Access to localities in order to gather information, and presence therein

326. In a case where a journalist had been prevented from gaining access to Davos during the World Economic Forum on account of a general prohibition imposed by the police, the Court noted, firstly, that this collective measure amounted to an "interference" with the exercise of the applicant's freedom of expression. In reaching that finding, the Court noted that the applicant wished to travel to Davos to write an article on a specific subject. It then pointed out that the authorities had made no distinction between potentially violent individuals and peaceful demonstrators. Given that the competent authorities had not been entitled to make use of the general police clause, the refusal to allow the applicant into Davos could not therefore be considered as "prescribed by law" for the purposes of Article 10 § 2 of the Convention (*Gsell v. Switzerland*, 2009, §§ 49 and 61).

327. With regard to freedom of expression in Parliament, the Court has reiterated that parliamentary speech enjoys an elevated level of protection. Parliament is a unique forum for debate in a democratic society, which is of fundamental importance (*Karácsony and Others v. Hungary* [GC], 2016, § 138). With regard to the removal of journalists from the press gallery during parliamentary proceedings, the Court found that the journalists concerned were exercising their right to communicate information to the public about the conduct of elected representatives and the manner in which the authorities were dealing with the disturbances that had erupted during the debates. Any attempt to remove journalists from the scene of those debates had therefore to be subject to strict scrutiny (*Selmani and Others v. the Former Yugoslav Republic of Macedonia*, 2017, § 75; referring to the *Pentikäinen v. Finland* [GC], 2015, judgment, §§ 89 and 107). The Court emphasised, firstly, that the journalists had not posed any threat to public safety or order in the chamber (§ 80), and secondly that their removal had entailed immediate adverse effects that instantaneously prevented them from obtaining first-hand and direct

knowledge based on their personal experience of the events unfolding in the chamber, although these were important elements in the exercise of the applicants' journalistic functions, which the public should not have been deprived of (§ 84).

328. In the *Mándli and Others v. Hungary*, 2020, judgment, concerning a decision to suspend journalists' accreditation to enter Parliament on account of interviews and video recordings they had made with MPs outside the designated areas, the Court considered that parliaments were entitled to some degree of deference in regulating conduct in parliament buildings by designating areas for recording, so as to avoid disruption to parliamentary work (§§ 68-70). However, the absence of adequate procedural safeguards, namely the fact that it had been impossible to take part in the decision-making process, the lack of clarity regarding the length of the restriction period and of any effective means of challenging the contested decision, led the Court to find that there had been a violation of Article 10 of the Convention (§§ 72-78; for similar findings in a case involving members of informal civic movement, see *Drozd v. Poland*, 2023, §§ 67-75).

329. In the Court's view, in situations where the authorities conduct operations to preserve public order, the media play a crucial role in providing information on the authorities' handling, for example, of public demonstrations and the containment of disorder. The "watchdog" role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account for their conduct *vis-à-vis* the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order (*Pentikäinen v. Finland* [GC], 2015, § 89).

330. In a case concerning an absolute refusal to allow filming of an interview with a prisoner inside prison, the Court noted, in particular, the lack of any pressing social need for the restriction in question, and the absence in the domestic authorities' decisions of any real balancing of the interests in issue (*Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, 2012, §§ 22 and 65).

331. In the case of *Szurovecz v. Hungary*, 2019, the applicant, an investigative journalist, had unsuccessfully applied for permission to visit a reception centre accommodating asylum-seekers in order to conduct interviews with residents for an article on living conditions inside the centre. The Court held that public interest in reporting from certain locations is especially relevant where the authorities' handling of vulnerable groups is at stake. The "watchdog" role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account. As the subject concerned a matter of public interest, there was little scope for State restrictions on freedom of expression (§§ 61-62). The Court held that the existence of other alternatives to direct newsgathering within the reception centre did not extinguish the applicant's interest in having face-to-face discussions on and gaining first-hand impressions of living conditions in it (§ 74).

332. Conversely, the Court found no violation of Article 10 in *Amaghlobeli and Others v. Georgia*, 2021. The applicants, journalists, had entered a customs-control zone, interviewed travellers and taken photographs, had refused to leave when requested to do so by customs officials and had eventually been held liable to administrative fine in that connection. The Court observed, in particular, that the applicants had not proved in the domestic proceedings that, if they had requested authorisation to access the relevant zone, such request would have been refused, and that they had not shown that only first-hand and direct knowledge, based on their personal experience and presence in the relevant zone, could have the value and reliability necessary for their journalistic activities (§ 39). It was also significant that the domestic authorities had not objected to the applicants making full use of the interviews recorded during their time in the customs-control zone and publishing the article on their journalistic investigation, and that the amount of their administrative fine could not be considered excessive (§ 40).

c. The lawfulness of a journalist's conduct

333. The concept of "responsible journalism", as a professional activity which enjoys the protection of Article 10 of the Convention, is not confined to the contents of information which is collected and/or disseminated by journalistic means. That concept also embraces, *inter alia*, the lawfulness of the conduct of a journalist, including his or her public interaction with the authorities when exercising journalistic functions. The fact that a journalist has breached the law in that connection is a most relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly (*Pentikäinen v. Finland* [GC], 2015, § 90; *Amaghlobeli and Others v. Georgia*, 2021, § 37).

334. In this connection, the Court has accepted that journalists may sometimes face a conflict between the general duty to abide by ordinary criminal law, of which journalists are not absolved, and their professional duty to obtain and disseminate information, thus enabling the media to play its essential role as a public watchdog. Against the background of this conflict of interests, it has to be emphasised that the concept of "responsible journalism" requires that whenever a journalist – as well as his or her employer – has to make a choice between the two duties and if he or she makes this choice to the detriment of the duty to abide by ordinary criminal law, such journalist has to be aware that he or she assumes the risk of being subject to legal sanctions, including those of a criminal character, by not obeying the lawful orders of, *inter alia*, the police (*Pentikäinen v. Finland* [GC], 2015, § 110). The Court has consistently reiterated that journalists cannot be exempted from their duty to obey the ordinary criminal law solely on the basis that Article 10 affords them protection (*Stoll v. Switzerland* [GC], 2007, § 102).

335. In other words, a journalist cannot claim an exclusive immunity from criminal liability for the sole reason that, unlike other individuals exercising the right to freedom of expression, the offence in question was committed during the performance of his or her journalistic functions (*Pentikäinen v. Finland* [GC], 2015, § 91, and further references).

336. However, in order to ascertain whether the impugned measure was none the less necessary, the Court has regard to several different aspects: the interests at stake (β), the review of the measure by the domestic courts (γ), the conduct of the applicant (δ) and whether the penalty imposed was proportionate (ε) (*Stoll v. Switzerland* [GC], 2007, § 112).

337. Thus, the Court has held that interference with journalists' freedom of expression following unlawful conduct by them was proportionate to the legitimate aims pursued in cases concerning the publication of a diplomatic document that was classified as confidential (*Stoll v. Switzerland* [GC], 2007); a refusal to obey police orders to disperse once a demonstration had become violent (*Pentikäinen v. Finland* [GC], 2015); the interception of police communications using radio equipment (*Brambilla and Others v. Italy*, 2016); taking a weapon on board an aeroplane in order to highlight failings in the security system (*Erdtmann v. Germany* (dec.), 2016); unlawful possession of a firearm in order to illustrate the ease of access to such weapons (*Salihu and Others v. Sweden* (dec.), 2016); the purchase and illegal transportation of prohibited fireworks (*Mikkelsen and Christensen v. Denmark* (dec.), 2011); blackmail and organised crime (*Man and Others v. Romania* (dec.), 2019); or unauthorised access to a restricted customs-control zone and a refusal to obey the order of customs officers to leave it (*Amaghlobeli and Others v. Georgia*, 2021).

338. In the case of *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, although the data were not obtained by illicit means, the Court considered that the applicant companies, media professionals, clearly had a policy of circumventing the normal channels open to journalists to access taxation data and, accordingly, the checks and balances established by the domestic authorities to regulate access and dissemination to that information (§ 185). The Court noted, in particular, that as media professionals, the applicant companies should have been aware of the possibility that the mass collection of the data in question and its dissemination on such a scale could not be considered as processing solely for journalistic purposes (§ 151; (§ 151; see also, with regard to the withdrawal of

accreditation to conduct research in the archives following a journalist's failure to respect the private life of third parties, *Gafiuc v. Romania*, 2020, §§ 86-88).

339. In the case of *Zarubin and Others v. Lithuania* (dec.), 2019, which concerned an expulsion order and ban on entering the national territory imposed on journalists, the Court noted that the domestic courts had concluded that these journalists' presence in Lithuania constituted a threat to national security on account of their aggressive and provocative behaviour at a high-level political event, and not because of the dissemination of their ideas (§§ 53, 57).

2. Duties and responsibilities which relate to editorial decision-making

340. The duties and responsibilities which relate to editorial decision-making are also covered by concepts such as journalistic "ethics" or "professional codes", or by that of "responsible journalism". Elements related to these duties and responsibilities interact with other criteria used in the Court's assessment and are also covered in other chapters of this Guide. However, it is appropriate to summarise the main points here.

341. With regard to journalistic freedom, the Court has always assessed the scope of these "duties and responsibilities" in the light of the leading role played by the press in a State governed by the principle of the rule of law (*Thorgeir Thorgeirson v. Iceland*, 1992, § 63).

342. In spite of the essential role of the press in a democratic society, paragraph 2 of Article 10 does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern (*Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 65; *Monnat v. Switzerland*, 2006, § 66).

343. The Court considers that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso 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 (*Axel Springer AG v. Germany* [GC], 2012, § 93; *Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 65; *Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 78; *Fressoz and Roire v. France* [GC], 1999, § 54; *Stoll v. Switzerland* [GC], 2007, § 103; *Kasabova v. Bulgaria*, 2011, §§ 61 and 63-68; *Sellami v. France*, 2020, §§ 52-54; *Karaca v. Türkiye*, 2023, § 157; for an indication by the Court that the same principle must apply to others who engage in public debate, see *Steel and Morris v. the United Kingdom*, 2005, § 90).

344. These conditions are also described as acting "in accordance with the tenets of responsible journalism" (*Bédat v. Switzerland* [GC], 2016, § 50; *Pentikäinen v. Finland* [GC], 2015, § 90).

345. These considerations play a particularly important role nowadays, given the influence wielded by the media in contemporary society: not only do they inform, they can also suggest by the way in which they present the information how it is to be assessed. In 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, monitoring compliance with journalistic ethics takes on added importance (*Stoll v. Switzerland* [GC], 2007, § 104).

a. Reliable and precise information: responsibilities with regard to verification and transmission

346. Generally speaking, the Court considers that reporters must be free to report on events based on information gathered from official sources without having to verify them (*Selistö v. Finland*, 2004, § 60; *Axel Springer AG v. Germany* [GC], 2012, § 105; *Yordanova and Toshev v. Bulgaria*, 2012, § 51; *Mesić v. Croatia (no. 2)*, 2023, § 66).

347. In a case in which the applicant relied on publicly available material from an investigation into the activities of certain members of an anti-narcotics unit and an official medical certificate showing

the number of deaths by overdose, the Court concluded that the applicant's publication had been a fair comment on a matter of public concern rather than a gratuitous attack on the reputation of named police officers (*Godlevskiy v. Russia*, 2008, § 47).

348. In a case concerning the overview by a journalist applicant of an exiled parliamentarian's financial situation in the light of his official property declaration, the Court concluded that the applicant had been entitled to rely on an official document without having to undertake independent research (*Gorelishvili v. Georgia*, 2007, § 41).

349. In another case the publication director of a daily newspaper was held liable in civil proceedings for publishing statements described as defamatory towards a head of State, in that the statements in question implicated that individual in international drug trafficking. The Court noted, firstly, that the domestic courts had not denied that the content of the information published was essentially true. With regard to the alleged lack of detail concerning pending proceedings, the Court noted that the published article referred to information available to the journalist at the time of preparing her text, and considered that the writer of the article could not have been expected to know the future outcome of pending criminal proceedings two months before the delivery of the conviction judgment, nor to conduct research into police and judicial documents that were, by definition, restricted (*Gutiérrez Suárez v. Spain*, 2010, § 37).

350. The Court has stressed that it is relevant for the domestic courts to distinguish between the types of sources on which the impugned allegations are based. With regard to suspicions that a given individual belonged to the mafia, the national courts held that the applicant company had exaggerated the level of suspicion conveyed by the internal official reports and had been unable to prove the presented high level of suspicion by means of additional facts. According to the domestic court's distinction, although journalists could rely on public official reports or official press releases without further research, the situation was not the same for internal official reports. In the Court's view, this distinction held particularly true in regard to reports concerning allegations of criminal conduct, where the right to be presumed innocent was at issue (*Verlagsgruppe Droemer Knaur GmbH & Co. KG v. Germany*, 2017, § 48).

351. The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so (*Jersild v. Denmark*, 1994, § 31; *Anatoliy Yeremenko v. Ukraine*, 2022, § 99). The Court has stressed that news reporting based on interviews or reproducing the statements of others, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of "public watchdog" (*Observer and Guardian v. the United Kingdom*, 1991, § 59). In such cases, a distinction needs to be made according to whether the statements emanate from the journalist or are quotations from others (*Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 77). Where the national courts had failed to distinguish between the statements made by a third person and the reporting of such statements by the applicant (in that they had not elaborated on whether the applicant could be held responsible for relaying that person's statements while making it clear who the author had been) and where the applicant had demonstrated that he had checked, to a reasonable extent, the accuracy and reliability of the relevant information, the Court found that holding the applicant liable in defamation proceedings had constituted an unjustified interference with his Article 10 rights (*Anatoliy Yeremenko v. Ukraine*, 2022, §§ 96-104 and 108-109).

352. In a case involving verbatim reproduction of material from a news website, with an indication of its source, the Court accepted that there are differences between the written press and the Internet and that, having regard to the role the Internet plays in the context of professional media activities and its importance for the exercise of the right to freedom of expression generally, the 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 hindered the exercise of the vital function of the press as a "public watchdog" (*Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, 2011, § 64).

353. In the case of *Kącki v. Poland*, 2017, the Court stated that "responsible journalism" implies that journalists check the information provided to the public to a reasonable extent. Thus, they cannot always be reasonably expected to check all the information provided in an interview. The Court stressed the difference between reproduction in the written press of an interview in which the journalist had transcribed the statements of the person being interviewed rather the journalist's own statements, and the fact that he had shown his good faith by allowing the individual in question to ascertain that her statements had been accurately cited in the article prior to publication (§ 52).

354. At the same time, in the case of *Milosavljević v. Serbia*, 2021, the Court emphasised the importance of the accurate choice of factual statements when reporting on matters of public interest. In that case, the applicant journalist was found liable to pay damages in defamation proceedings as regards articles reporting on an incident involving the alleged sexual abuse of an underage Romani girl by the head of a local council office. The Court observed, in particular, that the applicant, as indeed any average citizen, should have been able to make a common-sense distinction between such sensitive yet very different phrases as "attempted to rape" stated as fact, on the one hand, and, for example, "suspected of having attempted to rape", on the other (§ 64).

355. Likewise, where a television program had not been based on precise facts, had not contained any accurate and reliable information and had apparently aimed solely at gratuitously attacking an opposing religious group, the Court considered that such a program could not be regarded as dissemination of information made in good faith with a view to contributing to a debate of general interest (*Karaca v. Türkiye*, 2023, § 158).

356. The Court has always recognised journalists' freedom in choosing the techniques or methods used to report the utterances of a third party that are capable of amounting to defamation. The Court has accepted that the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question (*Jersild v. Denmark*, 1994, § 31).

357. The Court considers that a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas (*Thoma v. Luxembourg*, 2001, § 64; *Brunet-Lecomte and Others v. France*, 2009, § 47).

358. In a case in which a journalist was prosecuted and convicted for making a television documentary about young people reaffirming their racism, the Court concluded that the applicant had not intended to disseminate racist opinions, but to highlight a matter of public concern: news reporting based on interviews constituted one of the most important means whereby the press was able to play its vital role of "public watchdog" (*Jersild v. Denmark*, 1994, § 35).

359. Freedom of the press also covers possible recourse to a degree of exaggeration, or even provocation (*Pedersen and Baadsgaard v. Denmark*, 2004, § 71). It is not for the Court, or for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists in any given case (*Jersild v. Denmark*, 1994, § 31; *Eerikäinen and Others v. Finland*, 2009, § 65). Journalists enjoy the freedom to choose, from the news items that come to their attention, which they will deal with and how (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, §§ 31 and 139).

360. That being stated, the Court attached considerable importance to the fact that an applicant, director of a daily newspaper, published, alongside the impugned editorial in which he criticised the political views of an election candidate, numerous extracts from recent press articles. It held that, in so doing, he had acted in accordance with the rules governing the journalistic profession. It explained that, while reacting to those articles, the director had allowed readers to form their own opinion by

placing the editorial in question alongside the statements made by the person referred to in that editorial (*Lopes Gomes da Silva v. Portugal*, 2000, § 35).

361. In that connection, the Court considers that the fairness of the means used to obtain information and reproduce it for the public and the respect shown for the person who is the subject of the news report are also essential criteria to be taken into account. The reductive and truncated nature of an article, where it is liable to mislead the reader, is therefore likely to detract considerably from the importance of the said article's contribution to a debate of public interest (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 132; *Travaglio v. Italy* (dec.), 2017, § 34).

362. The Court has reiterated in several cases that a distinction also needs to be made according to whether the statements emanate from the journalist or are a quotation of others (*Godlevskiy v. Russia*, 2008, § 45; *Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 77; *Thorgeir Thorgeirson v. Iceland*, 1992, § 65; *Jersild v. Denmark*, 1994, § 35).

363. In a case in which the domestic courts had based their findings solely on the passage in the impugned article containing accusations of bribery, the Court noted that the contested passage had been taken out of context. Although the accusations were serious ones, the article read in its entirety clearly warned the reader that the rumour in question was unreliable. The Court reiterated in this judgment that the media's reporting on "stories" or "rumours" – emanating from other persons – or "public opinion" is also to be protected where they are not completely without foundation (*Timpul Info-Magazin and Anghel v. Moldova*, 2007, § 36).

b. Other responsibilities: editors and publishing directors of newspapers, readers, contributors

364. The Court has held that, because they help to provide authors with a medium for the expression of their ideas, publishers not only participate fully in the exercise of the freedom of expression of the authors published by them, but also share the latter's "duties and responsibilities". Subject to compliance with the requisites of paragraph 2, Article 10 does not therefore preclude publishers, even if they are not personally associated with the opinions expressed, from being penalised for publishing a text whose author has disregarded these "duties and responsibilities" (*Orban and Others v. France*, 2009, § 47, with further references).

365. Another case concerned a triple conviction for defamation in respect of a far-right party and its president: the author and publisher of a novel, and the publication director of a newspaper, following the printing of a petition citing the offending passages and protesting against the first two convictions. The Court held that, in addition to the first two convictions, that of the newspaper's publication director was compatible with Article 10, given that it did not appear unreasonable to consider that he had overstepped the limits of permissible "provocation" by reproducing the defamatory passages (*Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 66).

366. In another case involving the imposition of a suspended prison sentence on a newspaper director for publishing a defamatory article about two judges, the Court reiterated that, as a newspaper director, the applicant had the power and the duty to ensure that political debate did not degenerate into insult or personal attacks (*Belpietro v. Italy*, 2013, § 41).

367. Although, "because of the particular nature of the Internet, the 'duties and responsibilities' that are to be conferred on an Internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher, as regards third-party content" (*Delfi AS v. Estonia* [GC], 2015, § 113; see also *Orlovskaya Iskra v. Russia*, 2017, § 109), the fact of providing a forum for the exercise of freedom of expression by enabling the public to impart information and ideas on the Internet must

be assessed in the light of the principles applicable to the press (*Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, 2016, § 61)[11].

VI. Protection of journalistic sources

A. General principles

368. The protection of journalistic sources is one of the cornerstones of freedom of the press. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital "public watchdog" role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected (*Ressiot and Others v. France*, 2012, § 99; *Goodwin v. the United Kingdom*, 1996, § 39; *Roemen and Schmit v. Luxembourg*, 2003, § 57; *Ernst and Others v. Belgium*, 2003, § 91; *Tillack v. Belgium*, 2007, § 53).

369. The two legitimate aims most frequently relied on to justify interference with the protection of sources are "national security" and "to prevent the disclosure of information received in confidence". "The prevention of disorder", "the prevention of crime" and "protection of the rights of others" have also been relied on in several affairs of this nature.

370. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, an interference cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest (*Goodwin v. the United Kingdom*, 1996, § 39; *Weber and Saravia v. Germany* (dec.), 2006, § 149; *Financial Times Ltd and Others v. the United Kingdom*, 2009, § 59; *Tillack v. Belgium*, 2007, § 53; *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, § 444). Accordingly, limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court (*Goodwin v. the United Kingdom*, 1996, §§ 39-40).

371. There are two aspects to the confidentiality of journalistic sources: it concerns not only journalists themselves, but also and especially sources who assist the press in informing the public about matters of public interest (*Stichting Ostade Blade* (dec.), § 64; *Nordisk Film & TV A/S v. Denmark* (dec.), 2005).

372. The Court has emphasised that the right of journalists not to disclose their sources cannot be considered a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but is part and parcel of the right to information, to be treated with the utmost caution (*Nagla v. Latvia*, 2013, § 97; *Tillack v. Belgium*, 2007, § 65).

B. Definitions and sphere of application

373. In cases concerning the protection of journalistic sources, the Court frequently refers to Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information, adopted by the Committee of Ministers of the Council of Europe on 8 March 2000 (see, among other authorities, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], 2010, § 44; *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, 2012, § 86).

374. Thus, the Court's understanding of the concept of journalistic "source" is "any person who provides information to a journalist". Furthermore, the Court understands the expression

[11] For the responsibility of intermediaries on the Internet, see the Chapter "Freedom of expression and the Internet" below.

"information identifying a source" to include, as far as they are likely to lead to the identification of a source, both "the factual circumstances of acquiring information from a source by a journalist" and "the unpublished content of the information provided by a source to a journalist" (*Görmüş and Others v. Turkey*, 2016, § 45; *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, 2012, § 86).

375. In a case concerning an order that a television company hand over to the police un-shown footage implicating individuals suspected of pedophilia, the Court noted firstly that the journalist had been working undercover and that the persons talking to him had been unaware that he was a journalist. As the persons participating in the programme had not of their free will been assisting the press in informing the public about matters of public interest, they could not be regarded as sources of journalistic information in the traditional sense. Despite this finding, the Court held that the contested decision by the domestic courts constituted an interference within the meaning of Article 10 § 1 of the Convention. In its decision, the Court acknowledged the possibility that Article 10 of the Convention might be applicable in such a situation and noted that a compulsory hand-over of research material might have a chilling effect on the exercise of journalistic freedom of expression (*Nordisk Film & TV A/S v. Denmark* (dec.), 2005).

376. In a case concerning a search of magazine premises following the publication of a letter claiming responsibility for a bomb attack, the Court noted that the search was intended to investigate a serious crime and to prevent attacks. It concluded that the magazine's informant, who was seeking publicity for the attacks, was not entitled to the same protection as that granted to "sources" (*Stichting Ostade Blade v. the Netherlands* (dec.), 2014).

377. In *Norman v. the United Kingdom*, 2021, the Court, for the first time, examined a situation where the applicant was a source whom the journalist no longer wished to protect and whose name had been disclosed in the context of an agreement between the private owner of the relevant newspaper and the police. In the aftermath of the disclosure, the applicant was convicted of misconduct in public office and sentenced to twenty months' imprisonment. The Court observed that, in the absence of a court order compelling disclosure, the situation at hand was not thus akin to the compelled disclosure by the State of a journalistic source, and the impugned disclosure could not be attributable to the State (§§ 76-77).

C. Forms and proportionality of the interference

1. Orders to disclose sources

378. The Court has noted that orders to disclose sources potentially have a detrimental impact, not only on the source, whose identity may be revealed, but also on the newspaper or other publication against which the order is directed, whose reputation may be negatively affected in the eyes of future potential sources by the disclosure, and on members of the public, who have an interest in receiving information imparted through anonymous sources (*Sanoma Uitgevers B.V. v. the Netherlands* [GC], 2010, § 89; *Financial Times Ltd and Others v. the United Kingdom*, 2009, § 70).

379. In a case in which a journalist was detained with a view to compelling him to disclose his source of information about a criminal investigation into arms trafficking, the Court indicated its surprise at the lengths to which the national authorities had been prepared to go to learn the identity of the source. Such far-reaching measures could not but discourage those who had true and accurate information relating to wrongdoing from coming forward in the future and sharing their knowledge with the press (*Voskuil v. the Netherlands*, 2007, § 71).

2. Searches

380. The Court has held in several cases that, even if unproductive, a search conducted with a view to uncovering a journalist's source is a more drastic measure than an order to divulge the source's identity. This is because investigators who raid a journalist's workplace unannounced and armed with search warrants have very wide investigative powers, as, by definition, they have access to all the documentation held by the journalist (*Roemen and Schmit v. Luxembourg*, 2003, § 57; *Ernst and Others v. Belgium*, 2003, § 103; *Görmüş and Others v. Turkey*, 2016, §§ 57-59).

381. In the case of *Görmüş and Others v. Turkey*, 2016, there were several aspects to the impugned measure: the search carried out in the applicants' professional premises, the copying to external disks of the entire contents of the journalists' computers and the retention of these disks by the prosecutor's office. The Court considered that this threatened the protection of sources to a greater extent than an order requiring them to reveal the identity of the informers. The indiscriminate retrieval of all the data in the software packages had enabled the authorities to gather information that was unconnected to the acts in issue.

In the Court's view, this intervention was likely not only to have very negative repercussions on the applicants' relationships with all of their sources, but could also have a serious chilling effect in respect of other journalists or other whistle-blowers employed by the State, and could discourage them from reporting any misconduct or controversial acts by public authorities (*Görmüş and Others v. Turkey*, 2016, §§ 73-74; *Roemen and Schmit v. Luxembourg*, 2003, § 57; *Nagla v. Latvia*, 2013, where urgent searches were conducted at the home of a journalist, involving the seizure of data storage devices containing her sources of information).

3. Targeted surveillance of journalists for identification of their sources

382. In a case concerning the placing of journalists under surveillance and the order to hand over documents which could lead to the identification of their sources, the Court noted, firstly, that the case was characterised precisely by the targeted surveillance of journalists in order to determine from whence they had obtained their information (*Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, 2012, § 97). The question which arose was therefore whether the applicants' status as journalists required special safeguards to ensure adequate protection of their sources. The Court emphasised, in particular, that targeted surveillance of the journalists had been authorised without prior review by an independent body with the power to prevent or terminate it. In the Court's view, review *post factum* did not suffice, since, once destroyed, the confidentiality of journalistic sources could not be restored. It held that there had been a violation of Article 8 of the Convention taken together with Article 10 (§ 98).

383. In another case, the surveillance measures were intended to identify and prevent a threat while keeping the disclosure of journalistic sources to the inevitable minimum. The Court noted that the measure had not therefore been aimed at monitoring journalists; generally the authorities would know only when examining the intercepted telecommunications, if at all, that a journalist's conversation had been monitored. In the Court's view, since the surveillance measures were not directed at uncovering journalistic sources the interference with freedom of expression by means of strategic monitoring could not be characterised as particularly serious (*Weber and Saravia v. Germany* (dec.), 2006, § 151).

384. In the case of *Sedletska v. Ukraine*, 2021, in the context of criminal proceedings against a public official, a district court allowed the investigator to access the phone data of the applicant, a journalist and editor-in-chief of a television program focusing on corruption among high ranking politicians/prosecutors. The applicant complained that such data could enable the authorities to identify her sources, thus putting her journalistic activities at risk. The Court was not convinced that

the data access authorisation given by the domestic courts was justified by an "overriding requirement in the public interest" or, therefore, necessary in a democratic society (§ 72).

4. Injunction to give evidence in the context of criminal proceedings

385. In the case of *Becker v. Norway,* 2017, where a journalist had been ordered to give evidence against a source who had come forward himself, the Court held that the order had not been justified by an overriding requirement in the public interest (§ 83). The Court considered that the indictment of the source for having used the applicant as a tool to manipulate the market was relevant to the proportionality assessment. It noted, however, that the source's harmful purpose carried limited weight at the time when the order to testify was imposed (§ 77).

386. In the case of *Jecker v. Switzerland*, 2020, the applicant journalist had been ordered to give evidence as part of a criminal investigation involving a drug dealer about whom she had published a report. Although the offence in question fell within the statutory exceptions to the right to protection of a journalist's sources, the Court considered that, in this particular case, that ground was not sufficient to justify the obligation imposed on the applicant to disclose the identity of her source (§ 41).

D. Procedural guarantees

387. Given the vital importance to press freedom of the protection of journalistic sources and of information that could lead to their identification, any interference with the right to protection of such sources must be attended with legal procedural safeguards commensurate with the importance of the principle at stake (*Sanoma Uitgevers B.V. v. the Netherlands* [GC], 2010, § 88; *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, § 444).

388. First and foremost among these safeguards is the guarantee of review by a judge or other independent and impartial decision-making body. The requisite review should be carried out by a body separate from the executive and other interested parties, invested with the power to determine whether a requirement in the public interest overriding the principle of protection of journalistic sources exists prior to the handing over of such material and to prevent unnecessary access to information capable of disclosing the sources' identity if it does not (*Sanoma Uitgevers B.V. v. the Netherlands* [GC], 2010, § 90). In the Court's view, an independent review carried out at the very least prior to the access and use of obtained materials should be sufficient to determine whether any issue of confidentiality arises, and if so, whether in the particular circumstances of the case the public interest invoked by the investigating or prosecuting authorities outweighs the general public interest of source protection. It is clear, in the Court's view, that the exercise of any independent review that only takes place subsequently to the handing over of material capable of revealing such sources would undermine the very essence of the right to confidentiality (*ibid.*, § 91; see also *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, 2012, § 98).

389. The Court added that, given the preventive nature of such review the judge or other independent and impartial body must thus be in a position to carry out this weighing up of the potential risks and respective interests prior to any disclosure and with reference to the material that it is sought to have disclosed, so that the arguments of the authorities seeking the disclosure can be properly assessed. The decision to be taken should be governed by clear criteria, including whether a less intrusive measure can suffice to serve the overriding public interests established. It should be open to the judge or other authority to refuse to make a disclosure order or to make a limited or qualified order so as to protect sources from being revealed, whether or not they are specifically named in the withheld material, on the grounds that the communication of such material creates a serious risk of compromising the identity of a journalist's sources. In situations of urgency, a procedure should exist to identify and isolate, prior to the exploitation of the material by the authorities, information that

could lead to the identification of sources from information that carries no such risk (*Sanoma Uitgevers B.V. v. the Netherlands* [GC], 2010, § 92).

390. In the case of *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, § 221, the applicants, some being a newsgathering organisation and a journalist, complained about the scope and magnitude of the electronic surveillance programmes operated by the United Kingdom. The Court observed that, in the current increasingly digital age, technological capabilities had greatly increased the volume of communications traversing the global Internet and, as a consequence, surveillance which was not targeted directly at individuals had the capacity to have a very wide reach, both within and outside of the territory of the surveilling State. As the examination of a journalist's communications or related communications data by an analyst would be capable of leading to the identification of a source, the Court considered it imperative that domestic law contained robust safeguards regarding the storage, examination, use, onward transmission and destruction of such confidential material. Moreover, even if a journalistic communication or related communications data had not been selected for examination through the deliberate use of a selector or search term known to be connected to a journalist, if and when it became apparent that the communication or related communications data contained confidential journalistic material, their continued storage and examination by an analyst should only be possible if authorised by a judge or other independent and impartial decision-making body invested with the power to determine whether continued storage and such examination was "justified by an overriding requirement in the public interest" (§ 450).

391. The Court further found that, whilst the relevant statutory safeguards concerning the storage, onward transmission and destruction of confidential journalistic material could be considered adequate, those provisions did not contain safeguards which would meet the above-mentioned requirements. In particular, there was no requirement that the use of selectors or search terms known to be connected to a journalist be authorised by a judge or other independent and impartial decision-making body invested with the power to determine whether it was "justified by an overriding requirement in the public interest" and whether a less intrusive measure might have sufficed to serve the overriding public interest. On the contrary, where the intention was to access confidential journalistic material, or that was highly probable in view of the use of selectors connected to a journalist, all that was required was that the reasons for doing so, and the necessity and proportionality of doing so, be documented clearly. Moreover, there were insufficient safeguards in place to ensure that, once it became apparent that a communication which had not been selected for examination through the deliberate use of a selector or search term known to be connected to a journalist nevertheless contained confidential journalistic material, it could only continue to be stored and examined by an analyst if authorised by a judge or other independent and impartial decision-making body invested with the power to determine whether its continued storage and examination was "justified by an overriding requirement in the public interest". Instead, all that was required by the relevant statutory provisions was that "particular consideration" be given to any interception which might have involved the interception of confidential journalistic material, including consideration of any possible mitigation steps. The Court thus found a violation of Article 10 of the Convention.

VII. Preventing the disclosure of information received in confidence

A. General principles

392. Preventing the disclosure of information received in confidence has been relied upon before the Court with regard to several types of content, both "public" and "private": military information (*Hadjianastassiou v. Greece*, 1992, § 45; *Görmüş and Others v. Turkey*, 2016, § 62); confidential information concerning taxes (*Fressoz and Roire v. France* [GC], 1999, § 52); information obtained from a judicial investigation[12] (*Bédat v. Switzerland* [GC], 2016, § 55); protection of diplomatic correspondence (*Stoll v. Switzerland* [GC]), 2007; confidential reports by national security services (*Vereniging Weekblad Bluf! v. the Netherlands*, 1995); medical confidentiality (*Éditions Plon v. France*, 2004); or commercial information, inviting discussion on the business practices in a particular field of activity (*Herbai v. Hungary*, 2019, §§ 41-43).

393. The Court considers it appropriate to adopt an interpretation of the phrase "preventing the disclosure of information received in confidence" used in Article 10 § 2 of the Convention which encompasses confidential information disclosed either by a person subject to a duty of confidence or by a third party and, in particular, by a journalist (*Stoll v. Switzerland* [GC], 2007, § 61).

394. Press freedom assumes even greater importance in circumstances in which State activities and decisions escape democratic or judicial scrutiny on account of their confidential or secret nature. In such a context, the disclosure of State-held information plays a very important role in a democratic society because it enables civil society to control the actions of the government to which it has entrusted the protection of its interests (*Görmüş and Others v. Turkey*, 2016, § 48; *Stoll v. Switzerland* [GC], 2007, § 110).

395. In this connection, the Court has referred to the principle adopted within the Council of Europe whereby publication of documents is the rule and classification the exception, and to Resolution 1551 (2007) of the Parliamentary Assembly of the Council of Europe on Fair trial issues in criminal cases concerning espionage or divulging State secrets (*Stoll v. Switzerland* [GC], 2007, §§ 40-41).

396. The Court has noted the considerable variation in the member States in the rules aimed at preserving the confidential or secret nature of certain sensitive items of information and at prosecuting acts which run counter to that aim. It has pointed out that States can therefore claim a certain margin of appreciation in this sphere (*Stoll v. Switzerland* [GC], 2007, § 107).

397. The conviction of a journalist for disclosing information considered to be confidential or secret may discourage those working in the media from informing the public on matters of public interest. As a result, the press may no longer be able to play its vital role as "public watchdog" and the ability of the press to provide accurate and reliable information may be adversely affected (*Stoll v. Switzerland* [GC], 2007, § 110).

398. According to the Court's extensive case-law, it is unnecessary to prevent the disclosure of information once it has already been made public (*Weber v. Switzerland*, 1990, § 49) or ceased to be confidential (*Observer and Guardian v. the United Kingdom*, 1991, §§ 66-70; *The Sunday Times v. the United Kingdom (no. 2)*, 1991, §§ 52-56).

[12] See the Chapter "Protection of the authority and impartiality of the justice system and freedom of expression: the right to freedom of expression in the context of judicial proceedings and the participation of judges in public debate" below.

B. Assessment criteria

399. In several cases concerning the disclosure by journalists of confidential infomation or information relating to matters of national security, the Court has found that the State's measures amounted to interference with the journalists' freedom of expression (*Gîrleanu v. Romania*, 2018, §§ 71-72; *Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, 2012, § 22; *Dammann v. Switzerland*, 2006, § 28).

400. In assessing the necessity of a specific interference with the exercise of freedom of expression, the Court has regard to several criteria, namely the assessment of the competing interests, the applicants' conduct, the review carried out by the domestic courts and the proportionality of the penalty imposed (*Stoll v. Switzerland* [GC], 2007, § 112).

401. In assessing the relevant interests, the Court examines firstly whether the content of the document in question is capable of contributing to a debate of public interest (*Stoll v. Switzerland* [GC], 2007, §§ 118-124). If so, it also has regard to the nature of the interests – public or otherwise – which are to be weighed up against the public interest in being apprised of the contested documents (*ibid.*, §§ 115-116). In this connection, the Court has referred to interests such as maintaining citizens' trust in the national authorities concerned (*Görmüş and Others v. Turkey*, 2016, § 63).

402. In addition, the Court attaches a certain weight to whether the content of the document in question was completely unknown to the public (*Stoll v. Switzerland* [GC], 2007, § 113).

1. Contribution to a public debate on a matter of general interest

403. In the context of cases where preventing the disclosure of information received in confidence was involved, the Court has considered, *inter alia*, the following issues as relating to a matter of general interest: the disclosure of letters with a bearing on issues such as the separation of powers, improper conduct by a high-ranking politician and the Government's attitude towards police brutality (*Guja v. Moldova* [GC], 2008, § 88); links between the armed forces and a country's general politics (*Görmüş and Others v. Turkey*, 2016, § 56); a publication concerning criminal proceedings and the functioning of the justice system in general (*Bédat v. Switzerland* [GC], 2016, § 63; *A.B. v. Switzerland*, 2014, § 47; *Dupuis and Others v. France*, 2007, § 42); statements concerning proceedings for manslaughter brought at the intiative of victims of illnesses contracted after being vaccinated against hepatitis B (*Mor v. France*, 2011, § 53); the question of the compensation due to Holocaust victims for unclaimed assets deposited in Swiss bank accounts (*Stoll v. Switzerland* [GC], 2007, § 118).

404. In addition, the Court has held that workplace-related free speech does not only protect comments that demonstrably contribute to a debate on a public matter, and concluded that information about a professional practice, disseminated online within a specific circle of professionals and inviting discussion on the business practices of the audience, could not be excluded from the scope of Article 10 (*Herbai v. Hungary*, 2019, § 43).

2. Conduct of the person responsible for the disclosure

405. The Court has held that as far as the ethics of journalism are concerned, two aspects are to be taken into account in assessing journalists' conduct: the manner in which they obtain the confidential information and the form of the impugned articles (*Stoll v. Switzerland* [GC], 2007, § 140).

406. More generally, the Court considers that the manner in which a person obtains information considered to be confidential or secret may be of some relevance for the balancing of interests to be carried out in the context of Article 10 § 2 (*Stoll v. Switzerland* [GC], 2007, § 141).

407. In a case in which the applicant had been sanctioned for the disclosure of secret military information in the context of a journalistic investigation, the Court noted that the applicant was not a

member of the armed forces on which specific "duties" and "responsibilities" are incumbent (*Gîrleanu v. Romania*, 2018, § 90). It also noted that that the applicant, a journalist, had not obtained the information in question by unlawful means, nor had he actively sought to obtain it (*ibid.*, § 91).

408. In a case where the applicant had intercepted conversations that were not intended for him, including police communications, the Court reiterated that the concept of responsible journalism required that whenever a journalist's conduct flouted the duty to abide by ordinary criminal law, the journalist had to be aware that he or she was liable to face legal sanctions, including of a criminal character (*Brambilla and Others v. Italy*, 2016, § 64).

409. This is also the case where a journalist uses tricks, threats or other means to pressurise another person into disclosing the desired information (*Dammann v. Switzerland*, 2006, § 55).

410. Nevertheless, the fact that an applicant did not act illegally in that respect is not necessarily a determining factor in assessing whether or not he or she complied with his or her duties and responsibilities (*Stoll v. Switzerland* [GC], 2007, § 144; *Fressoz and Roire v. France* [GC], 1999, § 52).

411. In a case where the applicant, a prison officer, had been found guilty of misconduct in public office as he had passed information about that prison to a tabloid journalist on numerous occasions in exchange for money, the Court accepted the national courts' findings that the applicant had knowingly engaged in a course of conduct contrary to the requirements of his public office and that the scope and scale of his unlawful conduct had been significant. The Court also attached significant weight in that context to the serious harm caused to other prisoners, to staff and to public confidence in the prison service by the applicant's behaviour. It considered that there had therefore been a strong public interest in prosecuting him, in order to maintain the integrity and efficacy of the prison service and the public's confidence in it. Furthermore, there had been no public interest in the majority of the information disclosed by the applicant, who had been motivated by money and by his intense dislike of the prison governor. The Court thus concluded that the applicant's criminal conviction had been justified (*Norman v. the United Kingdom*, 2021, §§ 88-90).

3. The review carried out by the domestic courts

412. The Court has reiterated that it is not its role to take the place of the States Parties to the Convention in defining their national interests, a sphere which traditionally forms part of the inner core of State sovereignty. However, considerations concerning the fairness of proceedings may need to be taken into account in examining a case of interference with the exercise of Article 10 rights (*Görmüş and Others v. Turkey*, 2016, § 64; *Stoll v. Switzerland* [GC], 2007, § 137).

For example, the purely formal application of the concept of "confidentiality", to the extent that domestic courts were prevented from taking into consideration the substantive content of confidential documents in weighing up the interests at stake, would act as a bar to their reviewing whether the interference with the rights protected by Article 10 of the Convention had been justified (*Görmüş and Others v. Turkey*, 2016, §§ 64-66).

Equally, with regard to judicial supervision of the imposed measure, the Court has taken into account the fact that specific elements concerning the applicant's conduct were not taken into consideration by the domestic courts in their analysis; they had also failed to verify whether the said information could indeed have posed a threat to military structures. The courts had thus not weighed the interests in maintaining the confidentiality of the documents in question over the interests of a journalistic investigation and the public's interest in being informed of the leak of information and maybe even of the actual content of the documents (*Gîrleanu v. Romania*, 2018, § 95).

4. Proportionality of the imposed sanctions

413. The Court has reiterated that a certain margin of appreciation should be left to the national authorities with regard to national security and in cases concerning criminal sanctions for the disclosure of classified military information (*Hadjianastassiou v. Greece*, 1992, § 47).

414. In the case of a sanction imposed for a journalistic investigation, however, the relatively low amount of the fine did not prevent the Court from holding that there had been a violation of Article 10 of the Convention. The Court noted, in particular, that the fact of a person's conviction may in some cases be more important than the minor nature of the penalty imposed. Furthermore, the sanctions against the applicant were intended to prevent him from publishing and sharing classified information. In the Court's view, however, after de-classification of the documents, the decision whether to impose any sanctions should have been more thoroughly weighed (*Gîrleanu v. Romania*, 2018, § 98).

VIII. Specific protection for whistle-blowers and for reporting on alleged irregularities by public officials

415. Article 10 of the Convention applies to statements which seek to draw attention to unlawful or morally reprehensible conduct, and specific protection is provided for such statements in the Court's case-law. Two distinct categories exist in this connection: whistle-blowers, and the reporting of irregularities in the conduct of State officials or civil servants (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, §§ 80-84). This distinction has made it possible to identify specific protection criteria under Article 10 of the Convention.

With regard to the first category of cases, the legitimate aims pursued are, in particular, to prevent the disclosure of information received in confidence and/or to protect the rights of others, while for the second category, the protection of the reputation and rights of others is more frequently raised as justification.

The two essential distinguishing features between these two categories may be summarised as follows.

416. Firstly, the status of whistle-blower necessarily implies a work-based relationship and raises the issue of the duty of loyalty, reserve and discretion owed by employees to their employer (*Guja v. Moldova* [GC], 2008, § 70), while this kind of relationship is not a necessary condition for reporting on irregularities.

417. Secondly, reporting always concerns a State official (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 80; *Zakharov v. Russia*, 2006; *Siryk v. Ukraine*, 2011; *Sofranschi v. Moldova*, 2010), while whistle-blowing does not necessarily concern the conduct of civil servants. Indeed, the Court has recognised that protection for whistle-blowers may be granted to both private- and public-sector employees (*Guja v. Moldova* [GC], 2008, § 8; *Bucur and Toma v. Romania*, 2013, § 7; *Langner v. Germany*, 2015, § 6). For example, with regard to the dismissal of a nurse for lodging a criminal complaint alleging shortcomings in the care provided by her employer, a limited-liability company which was majority-owned by the Berlin *Land*, the Court specified that the protection in question also applied when the relations between employer and employee were governed, as in this case, by private law (*Heinisch v. Germany*, 2011, § 44).

418. In this connection, the Court has referred to Resolution 1729 (2010) of the Parliamentary Assembly of the Council of Europe on Protection of "whistle-blowers", which stressed the importance of "whistle-blowing" – concerned individuals sounding the alarm in order to stop wrongdoings that place fellow human beings at risk – as an opportunity to strengthen accountability, and bolster the

fight against corruption and mismanagement, both in the public and private sectors. It invited all member States to review their legislation concerning the protection of "whistle-blowers" (*Heinisch v. Germany*, 2011, § 37).

419. The Court has also referred to Recommendation CM/Rec(2014)7 of the Committee of Ministers of the Council of Europe on the protection of whistle-blowers, which recommends that member States have a normative, institutional and judicial framework in place to protect individuals who, in the context of their work-based relationship, report or disclose information on threats or harm in the public interest. In particular, the Court referred to such principles recommending that clear channels be put in place for reporting and disclosures and to principles regarding the protection of whistle-blowers against retaliation (*Gawlik v. Liechtenstein*, 2021, §§ 39-40 and further Council of Europe texts and other international instruments, §§ 41-42; *Halet v. Luxembourg* [GC], 2023, §§ 57, 123 and 125).

420. On the other hand, the Court refused to characterise as whistle-blowing a situation where the applicant, an art historian employed by a public museum, had denounced, by means of anonymous letters sent to competent State authorities, matters relating to the alleged financial and employment shortcomings on the part of his employer, the director of a State museum. The Court observed, in particular, that the general character of the impugned statements and the fact that they had been strongly charged with the applicant's value judgment undermined any seriousness of the irregularities that were being denounced; that the applicant had not had any privileged or exclusive access to, or direct knowledge of, the information contained in the letters; that it did not appear that he had any duty of secrecy/discretion so his could not be equated with one of public disclosure of in-house information in the public interest. Unlike the cases of whistle-blowing, the applicant had not been in the position of being the only person, or part of a small category of persons, aware of what was happening at work and thus best placed to act in the public interest by alerting the employer or the public at large (*Wojczuk v. Poland*, 2021, §§ 83-88).

A. Protection of whistle-blowers

421. The Court considers that employees owe to their employer a duty of loyalty, reserve and discretion, which is particularly so in the case of civil servants since the very nature of civil service requires that a civil servant is bound by a duty of loyalty and discretion (*Ahmed and Others v. the United Kingdom*, 1998, § 56; *De Diego Nafría v. Spain*, 2002, § 37).

422. Having regard to the role played by journalists in a democratic society, their obligation of discretion towards their employer cannot be said to apply with equal force, given that it is in the nature of their functions to impart information and ideas (*Wojtas-Kaleta v. Poland*, 2009, § 46; *Matúz v. Hungary*, 2014, § 39). In addition, where a journalist is employed by a public radio or television broadcaster, his or her obligations of loyalty and restraint have to be weighed against the public character of the broadcasting company (*ibid.*, § 39; *Wojtas-Kaleta v. Poland*, 2009, § 47).

423. However, the Court has recognised that some civil servants, in the course of their work, may become aware of in-house information, including secret information, whose divulgation or publication corresponds to a strong public interest. It thus considers that the signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large (*Guja v. Moldova* [GC], 2008, § 72; *Marchenko v. Ukraine*, 2009, § 46; *Heinisch v. Germany*, 2011, § 63; *Goryaynova v. Ukraine*, 2020, § 50). In other words, the Court considers that whistle-blowing by an applicant regarding the alleged unlawful conduct of his or her employer requires special protection under Article 10 of the Convention (*Langner v. Germany*, 2015, § 47; *Heinisch v. Germany*, 2011, § 43).

424. In the case of *Guja v. Moldova* [GC], 2008, the Court identified six criteria for assessing the proportionality of an interference with whistle-blowers' freedom of speech (§§ 74-78). These criteria were further consolidated and refined in the case of *Halet v. Luxembourg* [GC], 2023, §§ 120-154, where the Court reconfirmed its approach of verifying compliance with each of them taken separately, without establishing a hierarchy between them or an order of examination.

425. Thus, as regards the channels used to make the disclosure, the Court has held that it should be made in the first place to the person's superior or other competent authority or body. In this regard, it considers that it is only where this is clearly impracticable that the information can, as a last resort, be disclosed to the public (*Guja v. Moldova* [GC], 2008, § 73; *Haseldine v. the United Kingdom*, Commission decision, 1992). Accordingly, the Court must take into account whether there was available to the applicant any other effective means of remedying the wrongdoing which he or she intended to uncover. By way of example, in the case of *Bucur and Toma v. Romania*, 2013, the Court held that the disclosure of the information to the public could be justified, given that no official procedure was foreseen in this area, that the applicant had informed his superiors of his concerns and that he had even contacted an MP who was a member of the parliamentary commission responsible for supervising the service to which he was attached (§§ 95-100). Equally, in the case of *Matúz v. Hungary*, 2014, the Court noted that the book disclosing the information in issue had been published only after the applicant had attempted unsuccessfully to complain to his employer about the alleged censorship (§ 47); in contrast, in a case where the applicant, a military officer, had sent an email to the army's General Inspectorate of Internal Administration criticising a commander for misuse of funds, the Court had regard, *inter alia*, to the fact that the applicant had not complied with the chain of command and thus denied his hierarchical superior the opportunity to investigate the veracity of the allegations (*Soares v. Portugal*, 2016, § 48).

426. However, this order of priority between internal and external reporting channels is not absolute in the Court's case-law. The Court has accepted that certain circumstances may justify the direct use of "external reporting". This is the case, in particular, where the internal reporting channel is unreliable or ineffective, where the whistle-blower is likely to be exposed to retaliation or where the information that he or she wishes to disclose pertains to the very essence of the activity of the employer concerned. In this connection, the Court has pointed out that the criterion relating to the reporting channel must be assessed in the light of the circumstances of each case (*Halet v. Luxembourg* [GC], 2023, §§ 121-122).

427. As regards the public interest in the disclosed information, the Court specified that this concept was to be assessed in light of both the content of the disclosed information and the principle of its disclosure. The assessment of the public interest in disclosure must necessarily have regard to the interests that the duty of secrecy is intended to protect (especially where the disclosure also concerns third parties). Having regard to the range of information of public interest that could fall within the scope of whistle-blowing, the Court indicated that the weight of the public interest in the disclosed information would decrease depending on whether the information related to unlawful acts or practices; to reprehensible acts, practices or conduct; or to a matter that sparks a debate giving rise to controversy as to whether or not there is harm to the public interest. Information capable of being considered of public interest may also, in certain cases, concern the conduct of private parties, such as companies. The public interest must also be at assessed at the supranational (European or international) level or with regard to other States and their citizens. In sum, the assessment of this criterion must take account of the circumstances of each case and the context in which it occurred (*ibid*., §§131-144).

428. The public interest was found to be involved in the disclosed information as regards: shortcomings in the case provided by a private health-care institution (*Heinisch v. Germany*, 2011, § 3); suspicion that a chief physician working at a public hospital had repeatedly practised active euthanasia (*Gawlik v. Liechtenstein*, 2021, § 73); embezzlement of public funds (*Marchenko v. Ukraine*, 2009, § 10); improper conduct by high-ranking officials that was prejudicial to the

democratic foundations of the State or the Government's attitude towards police brutality. In this connection, the Court considers that these are very important matters in a democratic society which the public has a legitimate interest in being informed about (*Bucur and Toma v. Romania*, 2013, § 103; *Guja v. Moldova* [GC], 2008, § 88).

429. Equally, in several cases concerning the independence and impartiality of the judiciary, disclosure serves the public interest. In the Court's view, these questions concern the separation of powers: "Issues relating to the separation of powers can involve very important matters in a democratic society which the public has a legitimate interest in being informed about and which fall within the scope of political debate" (*Baka v. Hungary* [GC], 2016, § 165; *Guja v. Moldova* [GC], 2008, § 88; see also *Manole v. the Republic of Moldova*, 2023, § 51). By way of example, in the case of *Kudeshkina v. Russia*, 2009, noting that the applicant had publicly criticised the conduct of various officials and alleged that instances of pressure on judges were commonplace in the courts, the Court held that she had raised a very important matter of public interest, which should be open to free debate in a democratic society (§ 94).

430. The authenticity of the information disclosed is a further relevant criterion (*Guja v. Moldova* [GC], 2008, § 75). Freedom of expression carries with it duties and responsibilities and any person who chooses to disclose information must carefully verify, to the extent permitted by the circumstances, that it is accurate and reliable (*Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 65; *Morissens v. Belgium*, Commission decision, 1988). For example, in the case of *Gawlik v. Liechtenstein*, 2021 (§§ 74-78), the Court observed that the applicant had based his allegations of active euthanasia practised by his direct supervisor only on the information available in the electronic medical files which, as he would have known as a doctor of the hospital, had not contained complete information on patient health. The applicant had raised suspicions of a serious offence with an external body without therefore consulting the paper medical files which contained comprehensive information in that regard. The domestic courts found that, had he done so, he would have recognised immediately that his suspicions had been clearly unfounded and he had therefore acted irresponsibly. The Court concluded that the applicant had not carefully verified, to the extent permitted by the circumstances, that the disclosed information had been accurate and reliable. In *Halet v. Luxembourg* [GC], 2023, §§ 124-127, the Court has further underlined that whistle-blowers who wish to be granted the protection of Article 10 are thus required to behave responsibly by seeking to verify, in so far as possible, that the information they seek to disclose is authentic before making it public.

431. Furthermore, it is also necessary to weigh the damage, if any, suffered by the public authority as a result of the disclosure in question and assess whether such damage outweighed the interest of the public in having the information revealed (*Guja v. Moldova* [GC], 2008, § 76; *Hadjianastassiou v. Greece*, 1992, § 45). By way of example, the public interest in the disclosure of information regarding wrongdoing within a national security service or controversial practices in the armed forces is so important in a democratic society that it outweighs the interest in maintaining public confidence in these institutions (*Bucur and Toma v. Romania*, 2013, § 115; *Görmüş and Others v. Turkey*, 2016, § 63). Equally, although an allegation that the General Prosecutor's Office had been subject to undue influence could have had strong negative effects on public confidence in the independence of that institution, the public interest in disclosure of such information prevailed (*Guja v. Moldova* [GC], 2008, §§ 90-91). Conversely, the Court found, in the case of *Gawlik v. Liechtenstein*, 2021, that although there was a public interest in the revelation of information on suspicions of repeated active euthanasia in a public hospital, the public interest in receiving such information could not outweigh the employer's and chief physician's interest in the protection of their reputation since the well-foundedness of that suspicion had not been sufficiently verified prior to its disclosure (§ 80). In *Halet v. Luxembourg* [GC], 2023, §§ 145-148, the Court fine-tuned the terms of the balancing exercise to be conducted, clarifying that, over and above the sole detriment to the employer, account should be taken of the detrimental effects taken as a whole, in so far as these may affect private interests

(including those of third parties) and public ones (for example, the wider economic good or citizens' confidence in the fairness and justice of the fiscal policies of States).

432. A further relevant factor is the motive behind the actions of the reporting employee namely, whether he or she acted in good faith (*Guja v. Moldova* [GC], 2008, § 77; *Halet v. Luxembourg* [GC], 2023, §§ 128-130). In principle, according to the *Heinisch v. Germany*, 2011, judgment, in which the Court used the same terms as in Resolution 1729 (2010) of the Parliamentary Assembly of the Council of Europe, "a whistle-blower should be considered as having acted in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turned out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives" (§ 80). However, an act motivated by a personal grievance or personal antagonism or the expectation of personal advantage, including pecuniary gain, would not justify a particularly strong level of protection (*Guja v. Moldova* [GC], 2008, § 77; *Haseldine v. the United Kingdom*, Commission decision, 1992). In examining a case, the Court is particularly concerned with whether the employee held any personal grievance against his or her employer or against any other person who could be affected by the disclosure (*Guja v. Moldova* [GC], 2008, § 93). In this connection, the Court has refused to grant the specific protection usually afforded to whistle-blowers in several cases involving labour disputes or where the impugned criticism occurred in the context of a conflict of interests between the employer and employee (*Rubins v. Latvia*, 2015, § 87; *Langner v. Germany*, 2015, § 47; *Aurelian Oprea v. Romania*, 2016, §§ 69-70). Where the applicant's good faith has never been challenged in the domestic proceedings, the Court also takes this circumstance into account (*Wojtas-Kaleta v. Poland*, 2009, § 51; *Matúz v. Hungary*, 2014, § 44).

433. Lastly, the sixth criterion in reviewing the proportionality of the interference requires a careful analysis of the penalty imposed on the applicant and its consequences (*Guja v. Moldova* [GC], 2008, § 78). In this connection, in a case in which the heaviest sanction possible provided for by law (termination of his employment contract without entitlement to compensation) was imposed on the applicant, the Court found that this sanction was extremely harsh, particularly in view of the applicant's age and the length of time he had been employed by the company, whereas other more lenient and more appropriate disciplinary sanctions could have been envisaged (*Fuentes Bobo v. Spain*, 2000, § 49). Conversely, having regard to the prejudicial effect of the disclosure on the employer's and the other staff member's reputation, the Court concluded that the appplicant's dismissal without notice (the heaviest sanction possible under labour law), was justified (*Gawlik v. Liechtenstein*, 2021, § 85). It is also appropriate to have regard to the chilling effect of the sanction on the other employees of a company, but also on other employees of the same sector, in cases involving wide media coverage, where the severity of the sanction could discourage them from reporting other shortcomings (*Heinisch v. Germany*, 2011, § 91). In another case, the Court held that a one-year prison sentence could not be justified and the fact that the sentence was suspended did not alter that conclusion, particularly as the conviction itself was not expunged (*Marchenko v. Ukraine*, 2009, §§ 52-53). At the same time, the Court specified that neither the letter of Article 10 nor the Court's case-law ruled out the possibility that one and the same act could give rise to a combination of sanctions or lead to multiple repercussions, whether professional, disciplinary, civil or criminal; and that in many instances, depending on the content of the disclosure and the nature of the duty of confidentiality or secrecy breached by it, the conduct of the person concerned could legitimately amount to a criminal offence. That said, the nature and severity, as well as the cumulative effect, of the various sanctions imposed on an applicant is to be taken into account when assessing the proportionality of the impugned interference (*Halet v. Luxembourg* [GC], 2023, § 149-154).

434. The Court considers that the above-mentioned principles and criteria, set out in the *Guja v. Moldova* [GC], 2008, judgment, which concerned a public-sector employee, are transposable to employment relationships under private law and that they apply to the weighing of employees' right to signal illegal conduct or wrongdoing on the part of their employer against the latter's right to protection of its reputation and commercial interests (*Heinisch v. Germany*, 2011, § 64; *Halet*

v. Luxembourg [GC], 2023, § 155). Furthermore, where the reporting of alleged professional misconduct takes place after the end of employment, the protection regime for the freedom of expression of whistle-blowers should not automatically cease to apply simply because the work-based relationship ended. Rather, such protection can, in principle, apply provided that the public-interest information was obtained while the "whistle-blower" had privileged access to it by virtue of his or her work-based relationship. In cases where work-based relationship ended, there could be no question of repercussions at work, but retaliation measures against the former employee could take other forms. What is important is whether the detriment suffered by the former employee was the direct consequence of the protected disclosure (*Hrachya Harutyunyan v. Armenia*, 2024, § 46).

B. Protection in the context of reporting on irregularities in the conduct of State officials

435. In the case of *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, the Court found noteworthy the approach followed by the domestic court, which relied in substance on the case-law developed by the Court in a comparable group of cases, where it had found on the facts that "the requirements of protection under Article 10 of the Convention ha[d] to be weighed not in relation to the interests of the freedom of the press or of open discussion of matters of public concern but rather against the applicants' right to report alleged irregularities in the conduct of State officials" (§ 82); see also *Zakharov v. Russia*, 2006, § 23; *Siryk v. Ukraine*, 2011, § 42; *Sofranschi v. Moldova*, 2010, § 29; *Bezymyannyy v. Russia*, 2010, § 41; *Kazakov v. Russia*, 2008, § 28; *Lešník v. Slovakia*, 2002).

436. The Court has held that it is "one of the precepts of the rule of law" that citizens should be able to notify competent State officials about the conduct of civil servants which to them appears irregular or unlawful (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 82; *Zakharov v. Russia*, 2006, § 26; *Kazakov v. Russia*, 2008, § 28; *Siryk v. Ukraine*, 2011, § 42; *Rogalski v. Poland*, 2023, § 48) and maintains confidence in the public administration (*Shahanov and Palfreeman v. Bulgaria*, 2016, § 63). This right to report irregularities takes on an added importance in the case of persons under the control of the authorities, such as prisoners, even if the allegations in question are likely to alter the prison wardens' authority in their respect (*ibid.*, § 64).

437. The Court considers that civil servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary individuals (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 98; *Morice v. France* [GC], 2015, § 131; *Rogalski v. Poland*, 2023, § 46). Nonetheless, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty (*Janowski v. Poland* [GC], 1999, § 33). As to the specific case of prosecutors, the Court considers that it is in the general interest that they, like judicial officers, should enjoy public confidence. It may therefore be necessary for the State to protect them from accusations that are unfounded (*Lešník v. Slovakia*, 2003, § 54; *Chernysheva v. Russia* (dec.), 2004).

438. The Court attributes "crucial importance" to the fact that applicants addressed their complaints by way of private correspondence (*Zakharov v. Russia*, 2006, § 26; *Sofranschi v. Moldova*, 2010, § 33; *Kazakov v. Russia*, 2008, § 29; *Raichinov v. Bulgaria*, 2006, § 48), and accepts a relatively lenient burden on the applicants to ascertain the veracity of the allegations in question (see, for example, *Bezymyannyy v. Russia*, 2010, §§ 40-41, where the applicant had reported the alleged unlawful conduct of a judge who had adjudicated his case; *Lešník v. Slovakia*, 2003, § 60, where the applicant had complained of abuse of office and corruption regarding a public prosecutor who had rejected his criminal complaint against a third person; *Boykanov v. Bulgaria*, 2016, § 42, where the applicant had reported maladministration in a letter which was read by two people, and *Rogalski v. Poland*, 2023,

§§ 47, 49 and 50, where the applicant, a lawyer, acting in his client's interests, lodged with a competent authority a formal notification of a crime alleging that a public prosecutor had committed an offence of bribe taking).

439. Where a report is made through a letter, the assessment of the applicant's good faith and of his or her efforts to ascertain the truth is to be made according to a more subjective and lenient approach than in other types of cases (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 98, and the references cited therein).

440. With regard to the profile of the individual making the notification, the Court considers that, in a comparable way to the press, an NGO performing a public watchdog role is likely to have greater impact when reporting on irregularities of public officials, and will often dispose of greater means of verifying and corroborating the veracity of criticism than would be the case of an individual reporting on what he or she has observed personally (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 87). Consequently, where an NGO is at the origin of reporting on irregularities, it is appropriate to take account also of the criteria that generally apply to the dissemination of defamatory statements by the media in the exercise of its public watchdog function, namely the degree of notoriety of the person affected; the subject of the news report; the content, form and consequences of the publication; as well as the way in which the information was obtained and its veracity, and the gravity of the penalty imposed (*ibid.*, § 88; *Von Hannover v. Germany (no. 2)* [GC], 2012, §§ 108-113; *Axel Springer AG v. Germany* [GC], 2012, § 83).

IX. Freedom of expression and the right of access to State-held information

441. The question whether a right of access to State-held information as such can be viewed as falling within the scope of freedom of expression has been the subject of gradual clarification in the Convention case-law, both by the former Commission and by the Court.

442. In the case of *Magyar Helsinki Bizottság v. Hungary* [GC], 2016, the Court clarified its principles in this area. The applicant non-governmental organisation had requested access to files held by police departments, containing information on the appointment of lawyers and the names of court-appointed lawyers, with a view to completing a survey in support of proposals for reform of the public defenders scheme. Although the majority of police departments disclosed the requested information, two police departments failed to comply. The applicant NGO was unsuccessful in its domestic judicial action to obtain access to this information. Before the Court, it alleged that this refusal to order disclosure of the information had amounted to a breach of its rights under Article 10 of the Convention.

A. General principles

443. The Court considers that "the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him". Moreover, "the right to receive information cannot be construed as imposing on a State positive obligations to collect and disseminate information of its own motion". The Court further considers that Article 10 does not confer on the individual a right of access to information held by a public authority nor oblige the Government to impart such information to the individual. However, such a right or obligation may arise, firstly, where disclosure of the information has been imposed by a judicial order which has gained legal force and, secondly, in circumstances where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular "the freedom to receive and impart information" and where its denial constitutes an interference with that right (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 156; *Cangi v. Turkey*, 2019, § 30).

444. The Court has further specified that the above-mentioned right established in the *Magyar Helsinki Bizottság v. Hungary* [GC], 2016, case will be interfered with, not only in a situation where there has been a denial of access to information, but also in a situation where, whilst being under a statutory obligation to provide information, the relevant public authority provides information that is disingenuous, inaccurate or insufficient (*Association BURESTOP 55 and Others v. France*, 2021,§§ 85 and 108).

B. Assessment criteria concerning the applicability of Article 10 and the existence of an interference

445. With regard to the area of access to State-held information, the questions concerning the applicability of Article 10 and the existence of an interference – the latter being part of the substance of the complaints – are often inextricably linked (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, §§ 71 and 117; *Center for Democracy and the Rule of Law v. Ukraine* (dec.), 2020, § 55; *Šeks v. Croatia*, 2022, § 35).

446. The Court considers that whether and to what extent the denial of access to information constitutes an interference with an applicant's freedom-of-expression rights must be assessed in each individual case and in the light of its particular circumstances, having regard to the relevant criteria below, illustrated by the case-law in order to define further the scope of such rights (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 157):

1. The purpose of the information request
2. The nature of the information sought
3. The role of the applicant
4. The availability of the information

447. Whilst in two cases, it was expressly stated that those criteria were cumulative (*Saure v. Germany* (dec.), 2021, § 34), or were "in principle" cumulative (*Mitov and Others v. Bulgaria* (dec.), 2023, § 30), the majority of cases do not expressly indicate whether they are cumulative or not (*Rovshan Hajiyev v. Azerbaijan*, 2021, §§ 44-45; *Šeks v. Croatia*, 2022, § 37; *Namazli v. Azerbaijan* (dec.), 2022, § 31). The methodology applied in *Namazli v. Azerbaijan* (dec.), 2022, §§ 33-38, may be considered to provide some basis for treating them as not cumulative.

1. The purpose of the information request

448. In concluding that Article 10 of the Convention is applicable, the Court has held, in particular, that the purpose of the person in requesting access to the information held by a public authority must be to enable his or her exercise of the freedom to receive and impart information and ideas to others (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 158).

449. It must be ascertained whether access to the information sought was an essential element of the exercise of freedom of expression. Thus, the Court has placed emphasis on whether the gathering of the information was a relevant preparatory step in journalistic activities or in other activities creating a forum for, or constituting an essential element of, public debate (for an NGO, see *Társaság a Szabadságjogokért v. Hungary*, 2009, §§ 27-28; *Sieć Obywatelska Watchdog Polska v. Poland*, 2024, § 60; for journalists, *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, 2013, § 36; *Roşiianu v. Romania*, 2014, § 63; for academic researchers, *Suprun and Others v. Russia*, 2024, § 73).

450. In a case concerning an individual who was not a party to the proceedings and had requested a copy of a judgment, the Court pointed out that the applicant had not invoked any specific reason why a copy of the decision was necessary to enable him to exercise his freedom to receive and impart information and ideas to others (*Sioutis v. Greece* (dec.), 2017, §§ 26-27; see also, to the same effect, *Tokarev v. Ukraine* (dec.), 2020, § 21; and *Studio Monitori and Others v. Georgia*, 2020, §§ 40-42, in which members of an NGO carrying out journalistic investigations and a former lawyer unsuccessfully requested access to a criminal judgments concerning third persons. The Court considered that the applicant's failure to explain to the relevant court registry the purpose of his request made it impossible for the Court to accept that the information sought was instrumental for the exercise of his freedom-of-expression rights).

451. Likewise, in *Mitov and Others v. Bulgaria* (dec.), 2023, § 32, the applicants – investigative journalists – complained that, following the entry into force of anonymisation rules laid down by the President of the Supreme Administrative Court, they were unable to access freely on the Internet all scanned case material available in the database of that court. The Court reiterated that general statement on why certain types of information held by the authorities ought to be made available were insufficient to engage Article 10, and that the applicants could not complain of a restriction on access to information in the abstract.

452. In *Center for Democracy and the Rule of Law v. Ukraine*, the applicant NGO unsuccessfully tried to obtain from the Constitutional Court copies of legal opinions included in the file in a case concerning

the interpretation of a constitutional issue, and to which that court had referred in its decision. As the NGO had not submitted any information which would indicate that it had any particular experience in the relevant field or that it pursued activities related to the question of interpretation in issue, its access to the requested material was not considered instrumental for the exercice of its right to freedom of expression (§ 57).

453. However, in the case of *Yuriy Chumak v. Ukraine*, 2021, the applicant, a journalist involved in human rights protection activities and a member of a well-known NGO working to protect human rights, vainly requested access to presidential decrees, which, according to him, had been unlawfully classified and the Court concluded that, in view of the applicant's role, the information requested was necessary for the performance of his professional duties as a journalist (§ 29). In *Šeks v. Croatia*, 2022, where the applicant, a retired politician, had requested access to the classified presidential records as part of research for a historical book he was writing on the founding of the Republic of Croatia, the Court considered that it was not strictly relevant whether the documents were indeed crucial for his book: what was sufficient was that the applicant had sought access to them in order to provide his readers with a full and detailed chronology of the events that took place during the relevant period (§ 38).

2. The nature of the information sought

454. The Court considers that the information, data or documents to which access is sought must generally meet a public-interest test in order to prompt a need for disclosure under the Convention. The definition of what might constitute a subject of public interest will depend on the circumstances of each case. Public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about. The public interest cannot be reduced to the public's thirst for information about the private life of others, or to an audience's wish for sensationalism or even voyeurism (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, §§ 161-162).

455. The Court has emphasised that the privileged position accorded by the Court in its case-law to political speech and debate on questions of public interest is relevant. The rationale for allowing little scope under Article 10 § 2 of the Convention for restrictions on such expressions likewise militates in favour of affording a right of access under Article 10 § 1 to such information where it is held by public authorities (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 163).

456. By way of illustration, the following may come within the categories of information considered to be in the public interest:

- "Factual information concerning the use of electronic surveillance measures" (*Youth Initiative for Human Rights v. Serbia*, 2013, § 24);
- "Information about a constitutional complaint" and "on a matter of public importance" (*Társaság a Szabadságjogokért v. Hungary*, 2009, §§ 37-38).
- "Original documentary sources for legitimate historical research" (*Kenedi v. Hungary*, 2009, § 43).
- Decisions concerning real property transaction commissions (*Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, 2013, § 42);
- "Titles of legal acts issued by the head of State, which, apparently, were part of the law in Ukraine" (*Yuriy Chumak v. Ukraine*, 2021, § 30);

- Information regarding the number of formal employees and informal collaborators of the German Foreign Intelligence Service, and how many of those were formerly members of Nazi organisations (*Saure v. Germany* (dec.), 2021, §§ 4 and 36);
- Classified documents from the archives of the Office of the President of the Republic of Croatia which the applicant needed for writing a book about the creation of the Croatian State (*Šeks v. Croatia*, 2022, §§ 5 and 38);
- Information from the meeting diaries of the president and vice-president of the Constitutional Court of Poland, concerning their meetings held during a specified period of time, particularly given the political context at that time (*Sieć Obywatelska Watchdog Polska v. Poland*, 2024, §§ 61-64).

457. In contrast, the Court found that although both parties were publicly known, the nature of the information sought with regard to court proceedings between a member of parliament and a businessman did not meet the necessary public interest test in order to prompt a need for disclosure (*Sioutis v. Greece* (dec.), 2017, § 30).

458. This was also the case with regard to a request for information by a lawyer who was seeking to refute charges brought against his client rather than to disclose misconduct by the investigation authorities in the client's case or common practice or repeated misconduct, worthy of broader public discussion (*Tokarev v. Ukraine* (dec.), 2020, §§ 22-23).

459. Equally, the Court held that a request for a full copy of judicial orders concerning ongoing criminal proceedings, including documents which did not constitute public information according to the applicable domestic law, on the sole ground that charges had been brought against former high-ranking State officials for corruption offences, did not meet the criterion of public interest, which was not the same as the public's curiosity (*Studio Monitori and Others v. Georgia*, 2020, § 42).

460. Similarly, in *Mitov and Others v. Bulgaria* (dec.), 2023, § 32, where the applicants – investigative journalists – claimed unrestricted access to all case material available in the Supreme Administrative Court's data base, the Court was not convinced that all judicial review and other cases heard by that court concerned matters of public interest and that all information concerning those cases related, without distinction, to such matters.

3. The role of the person requesting the information

461. The Court has held that a logical consequence of the two criteria set out above – one regarding the purpose of the information request and the other concerning the nature of the information requested – is that the particular role of the seeker of the information in "receiving and imparting" it to the public assumes special importance (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 164).

462. The Court has recognised that this role is played by journalists (*Roşiianu v. Romania*, 2014, § 61; *Saure v. Germany* (dec.), 2021, § 35) and NGOs whose activities are related to matters of public interest (*Társaság a Szabadságjogokért v. Hungary*, 2009; *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, 2013; *Youth Initiative for Human Rights v. Serbia*, 2013; *Association BURESTOP 55 and Others v. France*, 2021, § 88; *Sieć Obywatelska Watchdog Polska v. Poland*, 2024, § 65).

463. Furthermore, the Court has clearly stated that a right of access to information ought not to apply exclusively to NGOs and the press. It has reiterated that a high level of protection also extends to academic researchers (*Başkaya and Okçuoğlu v. Turkey* [GC], 1999, §§ 61-67; *Kenedi v. Hungary*, 2009, § 42; *Gillberg v. Sweden* [GC], 2012, § 93; *Šeks v. Croatia*, 2022, § 41; *Suprun and Others v. Russia*,

2024, § 75) and authors of literature on matters of public concern (*Chauvy and Others v. France*, 2004, § 68; *Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 48).[13]

464. In contrast, in a case where the applicant was a private individual who had requested a copy of a judgment in a case where he was not a party to the proceedings, but without arguing that he would make any contribution to enhancing the public's access to the requested information and facilitating its dissemination, the Court considered that he had not invoked any specific role in order to meet this test (*Sioutis v. Greece* (dec.), 2017, § 31).

4. Ready and available information

465. The Court considers that the fact that the information requested is ready and available ought to constitute an important criterion in the overall assessment of whether a refusal to provide the information can be regarded as an "interference" with the freedom to "receive and impart information" as protected by that provision (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 170).

466. Thus, in one case the Court took into account the fact that the information sought was "ready and available" and did not necessitate the collection of any data by the Government (*Társaság a Szabadságjogokért v. Hungary*, 2009, § 36; see, in contrast, *Guerra and Others v. Italy* [GC], 1998, § 53 *in fine*).

467. In the case of *Yuriy Chumak v. Ukraine*, 2021, the Court considered that even if the data requested covered a quite extensive period (approximately eleven years), it was in principle ready and available, no information having been communicated to the Court to the effect that it would pose practical difficulties or an unreasonable burden for the authorities to gather them (§ 32).

468. In another case, the applicant association's aims were to research the impact of transfers of ownership of agricultural and forest land on society and to give opinions on relevant draft legislation. It requested information that was not confined to a particular document, but concerned a series of decisions issued over a period of time. The Court examined whether the reasons given by the domestic authorities for refusing the association's request were "relevant and sufficient" and dismissed the argument put forward by one domestic authority which referred to the difficulties involved in gathering the relevant material, holding that much of the anticipated difficulty referred to by the body in question had been of its own making and resulted from its own choice not to publish any of its decisions (*Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, 2013, § 46).

469. In *Šeks v. Croatia*, 2022, where the applicant, a retired politician, had requested access to the classified presidential records as part of research for a historical book he was writing on the founding of the Republic of Croatia, the Court observed that, despite the fact that any declassification of the documents might have been a laborious process involving several different authorities, there was nothing to show that the requested records had not been ready or available (§ 42).

470. In the case of *Bubon v. Russia*, the applicant, a lawyer who also wrote articles for various law journals and online legal information databases and networks, applied to the authorities for information on the number of persons declared administratively liable for prostitution, the number of criminal cases instituted and the number of individuals convicted in that regard. The Court held that there had been no interference with the applicant's rights under Article 10 of the Convention in so far as the information he sought was not "ready and available" and did not exist in the form the applicant was looking for (§ 44). As to the general information on sentences imposed on individuals found criminally liable under certain provisions of the Criminal Code, the Court held that there was an avenue available to the applicant to access that information, which he had failed to use (§ 47; see, to similar effect, *Center for Democracy and the Rule of Law* (dec.), § 58).

[13] See the chapter "The role of "public watchdog": increased protection, duties and responsibilities" above.

471. In *Saure v. Germany* (dec.), 2021, the applicant, a journalist with a daily newspaper, requested information concerning the number of employees and collaborators of the Foreign Intelligence Service and its predecessor organisation who had been affiliated to Nazi organisations. The Foreign Intelligence Service was not able to accept his request because, at the material time, it did not have the relevant information, which was being gathered by an independent commission of historians. The Court observed that the information requested by the applicant was not available within the Foreign Intelligence Service – not even the entire raw data – and that the purpose of the applicant's information request was essentially to have the authorities carry out extensive research and analysis in order to generate information. Such a situation was distinct from one where the requested information existed within the authority and would merely need to be compiled. Article 10 does not impose an obligation to collect information on the applicant's request, particularly when a considerable amount of work was involved, and *a fortiori* where the requested information did not even exist within the relevant domestic authority (§§ 37-38). It thus declared the complaint inadmissible as being incompatible *ratione materiae* with the provisions of Article 10 (§39).

C. Criteria for assessing the necessity of the interference (whether the interference was proportionate to the legitimate aim pursued or a fair balance was struck between different rights and interests)

472. In the majority of cases concerning access to State-held information, the legitimate aim invoked to justify the restriction on the applicants' rights is the protection of the rights of others (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 186; *Társaság a Szabadságjogokért v. Hungary*, 2009, § 34). In *Šeks v. Croatia*, 2022, the applicant's request to have certain documents declassified so that he could access those was rejected on the basis of the need to prevent irreparable damage to the independence, integrity and national security of the Republic of Croatia, as well as to its foreign relations. The Court accepted that the said refusal had pursued the legitimate aims of protecting the independence, integrity and security of the country and its foreign relations (§ 61). In *Saure v. Germany*, 2021, § 51, the Court accepted that the impugned interference pursued the aims of the protection of national security and preventing the disclosure of information received in confidence.

473. The Court assesses, firstly, whether the rights or interests invoked with regard to the interference in question were of such a nature and degree as could warrant engaging the application of Article 8 of the Convention and bringing then into play in a balancing exercise against the applicants' right as protected by the first paragraph of Article 10. In this connection, the Court takes into consideration the context and whether the disclosure of the information in dispute could have been considered foreseeable. It has noted that there are occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner. In the Court's view, a person's reasonable expectations as to privacy may be a significant, though not necessarily conclusive, factor (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 57).

474. If Article 8 is not applicable, the Court moves to an analysis of whether the interference was proportionate to the legitimate aim pursued (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 196). The Court examines, in particular, whether the domestic courts carried out a meaningful assessment of whether freedom-of-expression rights under Article 10 of the Convention had been respected. In this regard, it has emphasised that any restrictions on a proposed publication which is intended to contribute to a debate on a matter of general interest ought to be subjected to the utmost scrutiny (*ibid.*, § 199; see also *Roşiianu v. Romania*, 2014, § 67, where the Court found that the Government had adduced no argument showing that the interference in the applicant's right had been prescribed by law, or that it pursued one or several legitimate aims).

475. The procedural safeguards provided in a decision-making procedure are also a factor to be taken into account when assessing the proportionality of an interference. At the same time, the extent of those safeguards may differ depending on the context of a particular case. In particular, the Court held that in the context of national security – a sphere which traditionally forms part of the inner core of State sovereignty – the competent authorities may not be expected to give the same amount of details in their reasoning as, for instance, in ordinary civil or administrative cases. Providing detailed reasons for refusing declassification of top-secret documents may easily run counter to the very purpose for which that information had been classified in the first place (*Šeks v. Croatia*, 2022, § 71). On the other hand, since access to accurate and reliable information concerning the management of radioactive waste – a project representing a major environmental risk – was of particular importance, it was important that the decisions delivered by the authorities in an adversarial procedure were detailed and well-reasoned (*Association BURESTOP 55 and Others v. France*, 2021, § 115). Where the Government failed to present to present any argument, either in the domestic proceedings or in their observations, to show that the denial of information sought by the applicant NGO had pursued any legitimate aim or had been "necessary in a democratic society", the Court noted that it was precluded from further assessing the legitimate aim of the refusal and from analysing whether the interference with the applicant NGO's right was proportionate in the circumstances of the case, and it found a violation of Article 10 in that respect (*Sieć Obywatelska Watchdog Polska v. Poland*, 2024, §§ 76-78).

476. The Court has also underlined that, inasmuch as the domestic authorities are required to assess the proportionality of a refusal of access on the basis of the elements made available to them, there is a corresponding requirement on applicants to substantiate the purpose of their request before the domestic authorities, if needs be in the course of the proceedings before the domestic courts. It is not sufficient that an applicant makes an abstract point to the effect that certain information should be made accessible as a matter of general principle of openness (*Centre for Democracy and the Rule of Law v. Ukraine* (dec.), § 54). In particular, the Court has found that the applicant association's statement, that the information sought (the identity of sanctioned police officers) was of public interest, to have been too general and found that the applicant association had failed to clarify why – despite information having been made available about the authorities' response to the incident at issue (namely, disciplinary proceedings against police officers) – information about the identity of the sanctioned police officers could be of interest to society as a whole (see *Georgian Young Lawyers' Association v. Georgia* (dec.), 2021, §§ 30-33; see also, for similar considerations, *Studio Monitori and Others v. Georgia*, 2020, §§ 40-42; *Mikiashvili and Others v. Georgia* (dec.), 2021, § 53; *Namazli v. Azerbaijan* (dec.), 2022, §§ 36-37 and 39).

477. In a case where the applicant had failed to substantiate his request for access to information, having limited himself to a general reference to his watchdog role as a journalist, to the public interest in the information he had sought to obtain and to the voluminous scope of the files concerned, the Court considered that he had thus failed to put the domestic authorities in a position to engage in the necessary balancing of the competing interests so that the domestic courts could not be reproached for failing to engage in the relevant balancing exercise namely, as to whether the applicant's interests in obtaining access to the requested information had outweighed the national security interests in respect of certain documents (*Saure v. Germany*, 2021, § 57).

X. Protection of the authority and impartiality of the justice system and freedom of expression: the right to freedom of expression in the context of judicial proceedings and the participation of judges in public debate

478. In the category of cases examined in this Chapter, the right to freedom of expression may come into conflict not only with legitimate interests but also with other rights guaranteed by the Convention. This refers, in particular, to the right to a fair trial and its corollary, the presumption of innocence, which are safeguarded by Article 6 of the Convention, and the right to private life, safeguarded by Article 8 of the Convention.

479. Thus, this chapter considers cases involving the freedom of expression of members of the members of the national legal service, lawyers and defendants in the context of judicial proceedings, both with regard to conduct in the courtroom and out-of-court statements, particularly to the press.

It also sets out the principles with regard to media coverage of judicial proceedings and their application.

Finally, it describes the Court's case-law on the judiciary's freedom of expression in the more general context of public debate, independently of any judicial proceedings.

A. The particular status of actors in the justice system and their freedom of expression in the context of judicial proceedings

1. Members of the judiciary[14]

480. The general principles applicable to the freedom of expression of judges are summarised in paragraphs 162-167 of the *Baka v. Hungary* [GC], 2016, judgement.

481. The particular task of the judiciary in society requires judges to observe a duty of discretion (*Morice v. France* [GC], 2015, § 128). However, that duty pursues a specific aim: the speech of judges, unlike that of lawyers, is received as the expression of an objective assessment which commits not only the person expressing himself, but also, through him, the entire justice system (*ibid.*, § 168).

482. In carrying out its review, the Court will bear in mind that whenever civil servants' right to freedom of expression is in issue the "duties and responsibilities" referred to in Article 10 § 2 assume a special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the aim of maintaining the authority and impartiality of the judiciary (*Baka v. Hungary* [GC], 2016, § 162; *Vogt v. Germany*, 1995, § 53; *Guja v. Moldova* [GC], 2008, § 70; *Albayrak v. Turkey*, 2008, § 41).

483. Given the prominent place among State organs that the judiciary occupies in a democratic society, this approach also applies in the event of restrictions on the freedom of expression of a judge in connection with the performance of his or her functions, albeit the judiciary is not part of the ordinary civil service (*Albayrak v. Turkey*, 2008, § 42; *Pitkevich v. Russia* (dec.), 2001; *Manole v. the Republic of Moldova*, 2023, § 49).

[14] As used here, the term "member of the judiciary" includes both judges and prosecutors.

484. With regard to public officials serving in the judiciary, the Court has reiterated that it can be expected of them that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called in question (*Wille v. Liechtenstein* [GC], 1999, § 64; *Kayasu v. Turkey*, 2008, § 92; *Manole v. the Republic of Moldova*, 2023, § 49).

485. In the Court's view, the status of public prosecutors, holding a directly delegated power under the law for the purposes of the prevention and prosecution of offences and the protection of citizens, impose on them a duty as guarantors of individual freedoms and the rule of law, through their contribution to the proper administration of justice and thus to public confidence therein (*Kayasu v. Turkey*, 2008, § 91).

486. Judicial authorities, in the exercise of their adjudicatory function, are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges (*Olujić v. Croatia*, 2009, § 59; *Manole v. the Republic of Moldova*, 2023, § 50), but also in expressing criticism towards fellow public officers and, in particular, other judges (*Di Giovanni v. Italy*, 2013).

487. The Court has emphasised the increased vigilance to be shown by public officials in exercising their right to freedom of expression in the context of on-going investigations, especially where those officials are themselves responsible for conducting investigations involving information covered by an official secrecy clause designed to ensure the proper administration of justice (*Poyraz v. Turkey*, 2010, §§ 76-78).

488. The Court has likewise emphasised that, in principle, the judicial authorities were required to exercise maximum discretion with regard to the cases with which they dealt in order to preserve their image as impartial judges. That discretion should dissuade them from making use of the press, even when provoked. It is the higher demands of justice and the elevated nature of judicial office which impose that duty (*Eminağaoğlu v. Turkey*, 2021, § 136; *Manole v. the Republic of Moldova*, 2023, § 65). That duty of reserve is even stronger as regards information on pending cases which have not yet been rendered public particularly where those cases have been adjudicated by the person making statements, whose duty of reserve has thus been supplemented by the obligation of confidentiality (*ibid*., § 66).

489. With regard to statements by the authorities concerning criminal investigations in progress, the Court has reiterated that Article 6 § 2 cannot prevent the authorities from informing the public about such investigations; however, it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (*Fatullayev v. Azerbaijan*, 2010, §§ 159-162; *Garycki v. Poland*, 2007, § 69; *Lavents v. Latvia*, 2002, §§ 126-127; *Slavov and Others v. Bulgaria*, 2015, §§ 128-130).

490. The Court has stressed the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (*Daktaras v. Lithuania*, 2000, § 41; see also, in the context of interviews to the national press, *Butkevičius v. Lithuania*, 2002, § 50; *Gutsanovi v. Bulgaria*, 2013, §§ 197 and 202-203).

491. Where the Court points out the importance, in a State governed by the rule of law and in a democratic society, of maintaining the authority of the judiciary, it also emphasises that the proper functioning of the courts would not be possible without relations based on consideration and mutual respect between the various protagonists in the justice system, at the forefront of which are judges and lawyers (*Morice v. France* [GC], 2015, § 170).

2. Lawyers

492. The specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. They therefore play a key role in ensuring that the

courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence (*Morice v. France* [GC], 2015, §§ 132-139; *Schöpfer v. Switzerland*, 1998, §§ 29-30; *Nikula v. Finland*, 2002, § 45; *Amihalachioaie v. Moldova*, 2004, § 27; *Kyprianou v. Cyprus* [GC], 2005, § 173; *André and Another v. France*, 2008, § 42; *Mor v. France*, 2011, § 42; and *Bagirov v. Azerbaijan*, 2020, §§ 78 and 99; *Rogalski v. Poland*, 2023, § 39).

493. For members of the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation (*Morice v. France* [GC], 2015, § 132; *Kyprianou v. Cyprus* [GC], 2005, § 175).

494. That special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with regard to their conduct (*Morice v. France* [GC], 2015, § 133; *Van der Mussele v. Belgium*, 1983; *Casado Coca v. Spain*, 1994, § 46; *Steur v. the Netherlands*, 2003, § 38; *Veraart v. the Netherlands*, 2006, § 51; *Coutant v. France* (dec.), 2008).

495. Whilst they are subject to restrictions on their professional conduct, which must be discreet, honest and dignified, they also enjoy exclusive rights and privileges that may vary from one jurisdiction to another – among them, usually, a certain latitude regarding arguments used in court (*Morice v. France* [GC], 2015, § 133; *Steur v. the Netherlands*, 2003, § 38).

496. Moreover, in view of the specific status of lawyers and their position in the administration of justice, the Court takes the view that lawyers cannot be equated with journalists. Their respective positions and roles in judicial proceedings are intrinsically different. Journalists have the task of imparting, in conformity with their duties and responsibilities, information and ideas on all matters of public interest, including those relating to the administration of justice. Lawyers, for their part, are protagonists in the justice system, directly involved in its functioning and in the defence of a party (*Morice v. France* [GC], 2015, §§ 148 and 168).

B. Media coverage of judicial proceedings

1. Methodology

497. The right to inform the public and the public's right to receive information come up against equally important public and private interests which are protected by the prohibition on disclosing information covered by the secrecy of criminal investigations. Those interests are the authority and impartiality of the judiciary, the effectiveness of the criminal investigation and the right of the accused to the presumption of innocence and protection of his or her private life (*Bédat v. Switzerland* [GC], 2016, § 55).

It is thus typically the rights guaranteed by Article 6 § 2 of the Convention (*Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 65; *Axel Springer SE and RTL Television GmbH v. Germany*, 2017, §§ 40-42; *Eerikäinen and Others v. Finland*, 2009, § 60) and Article 8 of the Convention (*Bédat v. Switzerland* [GC], 2016, §§ 72 et seq.; *Axel Springer SE and RTL Television GmbH v. Germany*, 2017, § 40) which are at stake.

498. When it is called upon to adjudicate on a conflict between two rights which enjoy equal protection under the Convention, the Court must weigh up the interests at stake. The outcome of the application should not in principle vary depending on whether it was lodged by the person who was the subject of the impugned press article or by the author of the same article (*Bédat v. Switzerland* [GC], 2016, §§ 52-53; *Egeland and Hanseid v. Norway*, 2009, §§ 53 and 63).

499. Thus, where the balancing exercise between those two rights 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 (*Haldimann and Others v. Switzerland*, 2015, § 55).

500. Where its supervisory role does not require the weighing of two rights which enjoy equal protection, the Court the Court conducts a proportionality review. It considers the interference complained of in the light of the case as a whole, including the tenor of the applicant's remarks and the context in which they were made, and determines whether it "correspond[ed] to a pressing social need", was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (*Amihalachioaie v. Moldova*, 2004, § 30).

2. General principles

501. The Court considers that the phrase "authority of the judiciary" includes the concept that the courts are, and are accepted by the public at large as being, the correct forum for the resolution of legal disputes and for the determination of a person's guilt or innocence on a criminal charge and that the public at large have respect for and confidence in the courts' capacity to carry out that function (*Morice v. France* [GC], 2015, § 129; *Di Giovanni v. Italy*, 2013, § 71).

502. What is at stake is the confidence which the courts in a democratic society must inspire not only in the accused, as far as criminal proceedings are concerned (*Kyprianou v. Cyprus* [GC], 2005, § 172), but also in the public at large (*Morice v. France* [GC], 2015, § 130; *Kudeshkina v. Russia*, 2009, § 86).

503. In several judgments the Court has stressed the special role of the justice system, an institution that is essential for any democratic society (*Di Giovanni v. Italy*, 2013, § 71; *Prager and Oberschlick v. Austria*, 1995, § 34).

504. In consequence, as the guarantor of justice, a fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against gravely damaging attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying (*Morice v. France* [GC], 2015, § 128; *Di Giovanni v. Italy*, 2013, § 71; *Kudeshkina v. Russia*, 2009, § 86; *Anatoliy Yeremenko v. Ukraine*, 2022, § 59; *Stancu and Others v. Romania*, 2022, § 135).

505. Speaking about the legitimate aim of "maintaining the authority of the judiciary", the Court has also observed that the status and functions of the prosecution authorities differ from country to country and the question of whether they belong to the judiciary as such may accordingly have a different answer depending on the country concerned (*Goryaynova v. Ukraine*, 2020, § 56; *Stancu and Others v. Romania*, 2022, § 107). In *Stancu and Others v. Romania*, 2022, § 108, where the applicant journalists had been held liable in civil proceedings for defamation of a senior prosecutor, the Court accepted that the impugned measure had pursued the aime of "maintaining the authority of the judiciary", having regard to the role of prosecutors in Romania; to the absence of a fundamental distinction in the national judicial system between the status of judges and prosecutors; to the importance attached by the national authorities to the necessity of safeguarding the impartiality, the independence and the authority of prosecutors' decisions as a key element for preserving public confidence in the proper functioning of the justice system; as well as to the position held by the targeted prosecutor at the relevant time and the functions attached thereto.

506. The restrictions on freedom of expression permitted by the second paragraph of Article 10 "for maintaining the authority and impartiality of the judiciary" do not entitle States to restrict all forms of public discussion on matters pending before the courts (*Worm v. Austria*, 1997, § 50).

507. Indeed, the Court considers it inconceivable that there should be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them (*Bédat v. Switzerland* [GC], 2016, § 51; *SIC - Sociedade Independente de Comunicação v. Portugal*, 2021, § 58; *Mesić v. Croatia (no. 2)*, 2023, § 64).

508. Provided that it does not overstep the bounds imposed in the interests of the proper administration of justice, reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them (*Worm v. Austria*, 1997, § 50).

509. In this connection, the Court regularly refers to Recommendation Rec (2003)13 of the Committee of Ministers to member States on the provision of information through the media, adopted on 10 July 2003 (see, for example, *Dupuis and Others v. France*, 2007, § 42).

510. The Court has indicated that journalists reporting on criminal proceedings currently taking place must ensure that they do not overstep the bounds imposed in the interests of the proper administration of justice and that they respect the accused's right to be presumed innocent (*Du Roy and Malaurie v. France*, 2000, § 34), irrespective of whether the trial is that of a public figure (*Worm v. Austria*, 1997, § 50).

511. The Court has further held that consideration must be given to everyone's right to a fair hearing as secured under Article 6 § 1 of the Convention, which, in criminal matters, includes the right to an impartial tribunal and, in this context, the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice (*Tourancheau and July v. France*, 2005, § 66).

3. Application criteria

512. The application criteria below are not exhaustive and additional considerations, applicable depending on the interests which contested publications may affect, are illustrated in section 4 below.

a. Contribution to a public debate on a matter of general interest

513. Questions concerning the functioning of the justice system, an institution that is essential for any democratic society, fall within the public interest (*Morice v. France* [GC], 2015, § 128; *July and SARL Libération v. France*, 2008, § 67), thus calling for a high level of protection of freedom of expression, with a particularly narrow margin of appreciation accordingly being afforded to the authorities (*Morice v. France* [GC], 2015, §§ 125 and 153; *July and SARL Libération v. France*, 2008, § 67).

514. The "public interest" nature of remarks on the functioning of the judiciary is also valid when proceedings are still pending in respect of other defendants (*Morice v. France* [GC], 2015, § 125; *Roland Dumas v. France*, 2010).

515. A degree of hostility (*E.K. v. Turkey*, 2020, §§ 79-80) and the potential seriousness of certain remarks (*Thoma v. Luxembourg*, 2001, § 57) do not obviate the right to a high level of protection, given the existence of a matter of public interest (*Paturel v. France*, 2005, § 42).

516. Widespread media coverage of a case about which the impugned statements were made may be an indication of its contribution to a debate of public interest (*Bédat v. Switzerland* [GC], 2016, § 64; *Morice v. France* [GC], 2015, § 151).

b. The nature or content of the impugned comments

517. The Court examines the nature of the impugned remarks having regard to all the circumstances of the case, particularly the legitimate interests which come up against the right to inform the public and the public's right to receive information, protected by Article 10 of the Convention (see, for example, *Bédat v. Switzerland* [GC], 2016, §§ 58 et seq., for the secrecy of the judicial investigation and the presumption of innocence; *Morice v. France* [GC], 2015, §§ 154 et seq., for the protection of the reputation of judges).

c. Method of obtaining the impugned information

518. The manner in which a person obtains the impugned information is a relevant criteria, especially as regards publications entailing a breach of the secrecy of judicial investigations (*Bédat v. Switzerland* [GC], 2016, § 56).

519. In the case of *Bédat v. Switzerland* [GC], 2016, the Court held that the fact that the applicant did not act illegally in obtaining the relevant information was not necessarily a determining factor in assessing whether or not he complied with his duties and responsibilities when publishing the information, in that the applicant, as a professional journalist, could not have been unaware of the confidential nature of the information which he was planning to publish (§ 57; see also *Pinto Coelho v. Portugal (no. 2)*, 2016, for the unauthorised use of a recording of a court hearing; *Dupuis and Others v. France*, 2007, for using and reproducing in a book extracts from an ongoing investigation file).

d. Whether a ban on publication or a sanction was proportionate

520. In examining a general and absolute prohibition, which applied only to criminal proceedings instituted on a complaint accompanied by a civil-party application and not to those instituted on an application by the public prosecutor's office or on a complaint not so accompanied, the Court found that such a difference in the treatment of the right to inform did not seem to be based on any objective grounds, yet wholly impeded the right of the press to inform the public about matters which, although relating to criminal proceedings in which a civil-party application has been made, may be in the public interest (*Du Roy and Malaurie v. France*, 2000, § 35).

521. In contrast, the Court has held that a limited and temporary restriction, which merely prohibits any verbatim reproduction of procedural documents until such time as they have been read out in open court, did not prevent analysis of, or comments on, procedural material, or the publication of information gleaned from the proceedings themselves, and did not totally restrict the right of the press to inform the public (*Tourancheau and July v. France*, 2005, § 73).

522. In a case concerning an interlocutory injunction prohibiting a journalist from reporting on an accident involving a judge and the related court proceedings, the Court considered that, by its excessive scope, the impugned measure was a disservice to the authority of the judiciary because it reduced the transparency of the proceedings and could give rise to doubts about the court's impartiality (*Obukhova v. Russia*, 2009, § 27).

523. In the Court's view, the question of freedom of expression is related to the independence of the legal profession, which is crucial for the effective functioning of the fair administration of justice (*Morice v. France* [GC], 2015, § 135; *Siałkowska v. Poland*, 2007, § 111). It is only in exceptional cases that restriction – even by way of a lenient criminal sanction – of defence counsel's freedom of expression can be accepted as necessary in a democratic society (*Nikula v. Finland*, 2002, § 55; *Kyprianou v. Cyprus* [GC], 2005, § 174; *Mor v. France*, 2011, § 44).

524. The Court has noted that imposing a sanction on a lawyer may have repercussions that are direct (disciplinary proceedings) or indirect, in terms, for example, of their image or the confidence placed in them by the public and their clients (*Morice v. France* [GC], 2015, § 176, see also *Dupuis and Others v. France*, 2007, § 48; *Mor v. France*, 2011, § 61), or more generally a chilling effect for the legal profession as a whole (*Pais Pires de Lima v. Portugal,* 2019, § 67).

525. The Court has consistently held that the dominant position of the State institutions requires the authorities to show restraint in resorting to criminal proceedings in matters of freedom of expression, especially when they have available other possible sanctions rather than a prison sentence.

526. In a case concerning a lawyer's conviction for "contempt of court" for getting carried away inappropriately at a hearing, the Court reiterated that, while it is the task of the judicial and disciplinary authorities, in the interest of the smooth operation of the justice system, to penalise certain conduct

of lawyers, these authorities must ensure that this review does not constitute a threat with a chilling effect that would harm the defence of their clients' interests (*Bono v. France*, 2015, § 55; *Kyprianou v. Cyprus* [GC], 2005, § 181; *Rodriguez Ravelo v. Spain*, 2016, § 49).

527. The Court found, *inter alia*, that the summary nature and lack of fairness in the "contempt" proceedings which resulted in a lawyer's conviction compounded the lack of proportionality (*Kyprianou v. Cyprus* [GC], 2005, §§ 171 and 181).

528. In a case about the publication, in an article featured on a magazine's front cover, of accusations that a student had been raped at a party for a local baseball team, the Court held that the team members' right to be presumed innocent had been breached and that, in this case, the criminal sanctions, exceptionally compatible with Article 10, had not been disproportionate. These very serious accusations had been presented as facts and the applicants had failed to verify whether they had a factual basis; in addition, the accusations had been published before the criminal investigation was opened (*Ruokanen and Others v. Finland*, 2010, § 48).

529. In a case where a lawyer who was also a politician had been convicted for defamation of a public prosecutor following publication of a book in which he described his own trial, the Court noted that the comments held to be defamatory were the same as those made by the applicant two years previously during an incident at the trial. It noted that no proceedings had been instituted against the applicant by the disciplinary authorities, either for insult as defined by the Criminal Code, or on the basis of his status as a lawyer. It also noted that when the applicant repeated the impugned comments in his book, two years after the incident at the hearing, and after he had been acquitted, he was careful to put them in context and explain them. In assessing whether the impugned measure had been proportionate, the Court attached a certain weight to the fact that the domestic courts had not taken account of these relevant factors (*Roland Dumas v. France*, 2010, §§ 47-49).

530. Where fines are concerned, the fact that the proceedings are civil rather than criminal in nature and the relatively moderate nature of this type of sanction would not suffice to negate the risk of a chilling effect on the exercise of the right to freedom of expression (*Anatoliy Yeremenko v. Ukraine*, 2022, § 107) even where it was not shown whether the applicant struggled or not to pay the fine (*Monica Macovei v. Romania*, 2020, § 96; *Stancu and Others v. Romania*, 2022, § 148).

4. Other contextual considerations, concerning the interests likely to be impinged upon by the contested publications

a. Publications/statements likely to influence the conduct of the judicial proceedings

531. The Court takes account of various aspects of the case in order to assess a contested publication's potential impact on the conduct of the proceedings. The time of the publication, the nature of its content (whether it is provoking or not) and the status (professional or not) of the judges ruling in a case are among the aspects most frequently examined by the Court.

532. With regard to the significance of the time of publication, the Court noted in one case that the impugned article was published at a critical moment in the criminal proceedings – when the prosecution's final submissions were being made – and when respect for the presumption of the defendant's innocence was especially important (*Campos Dâmaso v. Portugal*, 2008, § 35; see, with regard to publication prior to an assize court hearing, *Tourancheau and July v. France*, 2005, § 75; see also *Dupuis and Others v. France*, 2007, § 44).

533. The non-professional status of lay members of a jury who are required to rule on defendants' guilt is another aspect taken into account by the Court (*Tourancheau and July v. France*, 2005, § 75) in assessing the possible influence that an article might have on the conduct of judicial proceedings.

534. Having regard to the State's margin of appreciation, it is in principle for the domestic courts to evaluate the likelihood that lay judges would read the impugned article and the influence that it might have (*The Sunday Times v. the United Kingdom (no. 1)*, 1979, § 63; *Worm v. Austria*, 1997, § 54).

535. In the Court's view, the fact that no non-professional judges might be called on to determine a case reduces the risks of publications affecting the outcome of judicial proceedings (*Campos Dâmaso v. Portugal*, 2008, § 35; *A.B. v. Switzerland*, 2014, § 55).

536. The impact of an impugned publication on the opinion-forming and decision-making processes within the judiciary was shown where the article in question was set out in such a way as to paint a highly negative picture of the defendant, highlighting certain disturbing aspects of his personality and concluding that he was doing everything in his power to make himself impossible to defend (*Bédat v. Switzerland* [GC], 2016, § 69).

537. Conversely, the Court has found that the fact that the applicant, a journalist, had not taken a position as to the given individual's potential guilt reduced *in fine* the likelihood that the contested articles would affect the outcome of the judicial proceedings (*Campos Dâmaso v. Portugal*, 2008, § 35).

b. Publications likely to entail a breach of the confidentiality of judicial investigations and of the presumption of innocence

538. The Court emphasises that the secrecy of investigations is geared to protecting, on the one hand, the interests of the criminal proceedings by anticipating risks of collusion and the danger of evidence being tampered with or destroyed and, on the other, the interests of the accused, notably from the angle of presumption of innocence, and more generally, his or her personal relations and interests. Such secrecy is also justified by the need to protect the opinion-forming and decision-making processes within the judiciary (*Bédat v. Switzerland* [GC], 2016, § 68; *Brisc v. Romania*, 2018, § 109; *Tourancheau and July v. France*, 2005, § 63; *Dupuis and Others v. France*, 2007, § 44).

539. Where a case is widely covered in the media on account of the seriousness of the facts and the individuals likely to be implicated, a lawyer cannot be penalised for breaching the secrecy of the judicial investigation where he or she has merely made personal comments on information which is already known to the journalists and which they intend to report, with or without those comments. Nevertheless, when making public statements, a lawyer is not exempted from his duty of prudence in relation to the secrecy of a pending judicial investigation (*Morice v. France* [GC], 2015, § 138; *Mor v. France*, 2011, §§ 55-56).

540. In a case concerning the removal of a chief prosecutor for having given information to the media about a pending investigation on influence peddling, the Court noted that he had provided a summary description of the prosecution case at its initial stage; the applicant had refrained from identifying by name any of the individuals involved pending completion of the judicial investigation, and had not revealed any confidential information or document from the file. It found that the domestic courts had not adduced "relevant and sufficient" reasons in support of their decision that there had been a breach of the secrecy of the criminal investigation (*Brisc v. Romania*, 2018, §§ 110-115).

541. In a case involving a journalist who broadcast, without permission, a sound recording from a court hearing, the Court concluded that the interest in informing the public outweighed the "duties and responsibilities" incumbent on the applicant journalist. Her actions had been intended to expose a miscarriage of justice which she believed to have occurred in respect of one of the convicted individuals. The Court had particular regard to two elements: firstly, when the impugned report was broadcast the domestic case had already been decided and it was no longer obvious that broadcasting the audio extracts could have had an adverse effect on the proper administration of justice. Additionally, the voices of those taking part in the hearing had been distorted in order to prevent them from being identified (*Pinto Coelho v. Portugal (no. 2)*, 2016, §§ 49-50).

542. In a case concerning limitations on media coverage of a major criminal trial in Norway, the Court argued that, depending on the circumstances, live broadcasting of sound and pictures from a court hearing room may alter its characteristics, generate additional pressure on those involved in the trial and even unduly influence the manner in which they behave and hence prejudice the fair administration of justice. The Court observed that there was no common ground between the domestic systems in the Contracting States to the effect that live transmission, be it by radio or television, is a vital means for the press of imparting information and ideas on judicial proceedings (*P4 Radio Hele Norge ASA v. Norway* (dec.), 2003).

c. Publication of information concerning the private life of parties to the proceedings

543. In a case concerning a journalist's conviction for the disclosure of information covered by the secrecy of criminal investigations, particularly letters written by a defendant to the investigating judge and information of a medical nature, the Court held that the national authorities were not merely subject to a negative obligation not to knowingly disclose information protected by Article 8, but that they should also take steps to ensure effective protection of an accused person's rights, including the right to respect for his correspondence (*Bédat v. Switzerland* [GC], 2016, § 76; see also *Craxi v. Italy (no. 2)*, 2003, § 73).

544. In the Court's view, this type of information called for the highest level of protection under Article 8; that finding was especially important as the accused was not known to the public. The mere fact that he was the subject of a criminal investigation, for a very serious offence, did not justify treating him in the same manner as a public figure, who voluntarily exposes himself to publicity (see also, in a similar context, *Fressoz and Roire v. France* [GC], 1999, § 50; *Egeland and Hanseid v. Norway*, 2009, § 62; as regards the obligation to protect the victim's identity, see *Kurier Zeitungsverlag und Druckerei GmbH v. Austria*, 2012).

d. Contempt of court

545. The Court recognises that – save in the case of gravely damaging attacks that are essentially unfounded – bearing in mind that judges form part of a fundamental institution of the State, they may as such be subject to personal criticism within the permissible limits, and not only in a theoretical and general manner. When acting in their official capacity they may thus be subject to wider limits of acceptable criticism than ordinary citizens (*Morice v. France* [GC], 2015, § 131; *July and SARL Libération v. France*, 2008, § 74; *Aurelian Oprea v. Romania*, 2016, § 74; *Do Carmo de Portugal e Castro Câmara v. Portugal*, 2016, § 40).

546. It may however prove necessary to protect the judiciary against gravely damaging attacks that are essentially unfounded (*Prager and Oberschlick v. Austria*, 1995, § 34; *Lešník v. Slovakia*, 2003, § 54; for criticism of the prosecutor by the defendant, see *Čeferin v. Slovenia*, 2018, §§ 56 and 58).

547. Lawyers are entitled to comment in public on the administration of justice, provided that their criticism does not overstep certain bounds (*Amihalachioaie v. Moldova*, 2004, §§ 27-28; *Foglia v. Switzerland*, 2007, § 86; *Mor v. France*, 2011, § 43). Those bounds lie in the usual restrictions on the conduct of members of the Bar (*Kyprianou v. Cyprus* [GC], 2005, § 173).

548. In this connection, the Court has referred to the ten basic principles enumerated by the Council of Bars and Law Societies of Europe, with their particular reference to "dignity, honour and integrity" and to "respect for ... the fair administration of justice" (*Morice v. France* [GC], 2015, §§ 58 and 134). In the Court's opinion, such rules contribute to the protection of the judiciary from gratuitous and unfounded attacks, which may be driven solely by a wish or strategy to ensure that the judicial debate is pursued in the media or to settle a score with the judges handling the particular case.

549. Furthermore, a distinction should be drawn depending on whether the lawyer expresses himself in the courtroom or elsewhere. As regards, firstly, the issue of "conduct in the courtroom", since the lawyer's freedom of expression may raise a question as to his client's right to a fair trial, the principle of fairness thus also militates in favour of a free and even forceful exchange of argument between the parties. Lawyers have the duty to "defend their clients' interests zealously", which means that they sometimes have to decide whether or not they should object to or complain about the conduct of the court. In addition, the Court takes into consideration the fact that the impugned remarks are not repeated outside the courtroom (*Morice v. France* [GC], 2015, §§ 136-137).

550. Turning to remarks made outside the courtroom, the Court reiterates that the defence of a client may be pursued by means of an appearance on the television news or a statement in the press, and through such channels the lawyer may inform the public about shortcomings that are likely to undermine pre-trial proceedings (*Morice v. France* [GC], 2015, § 138). For example, the Court noted that comments made by a lawyer to journalists on leaving the courtroom had been part of an analytical approach intended to help persuade the Principal Public Prosecutor to appeal against an acquittal decision, and was thus a statement made in the task of defending his client (*Ottan v. France*, 2018, § 58).

551. Equally, the Court makes a distinction depending on the person concerned; thus, a prosecutor, who is a "party" to the proceedings, has to "tolerate very considerable criticism by ... defence counsel" (*Morice v. France* [GC], 2015, § 137; *Nikula v. Finland*, 2002, §§ 51-52; *Foglia v. Switzerland*, 2007, § 95; *Roland Dumas v. France*, 2010, § 48).

552. Thus, in a case where a private prosecution for defamation was brought by a prosecutor against a lawyer who, during a court hearing, had raised an objection and read aloud a note in which she criticised him, the Court held that such criticisms, voiced by a lawyer within the courtroom and not through the media, were of a procedural character and, accordingly, did not amount to personal insult (*Nikula v. Finland*, 2002, § 52; see also *Lešník v. Slovakia*, 2003).

553. Lawyers cannot, moreover, make remarks that are so serious that they overstep the permissible expression of comments without a sound factual basis, nor can they proffer insults. The Court assesses remarks in their general context, in particular to ascertain whether they can be regarded as misleading or as a gratuitous personal attack and to ensure that the expressions used had a sufficiently close connection with the facts of the case (*Morice v. France* [GC], 2015, § 139, with further references). Where the applicant lawyer, acting in his client's interests in a situation of emergency, had made critical comments concerning a judge, the Court found that those remarks had not amounted to insults or gratuitous personal attacks given, in particular, that that reporting had been found legitimate at the domestic level (*Lutgen v. Luxembourg*, 2024, §§ 58, 69-71).

554. In a case concerning a letter sent by a detained applicant to a regional court, the Court drew a clear distinction between criticism and insult. In the Court's view, where an individual's sole intent is to insult a court or the judges on its bench, it would not in principle constitute a violation of Article 10 were an appropriate punishment to be imposed. However, the heavy prison sentence imposed was found to exceed the seriousness of the offence, particularly given that the applicant had not previously been convicted of a similar offence and the letter had not been brought to the attention of the public (*Skałka v. Poland*, 2003, §§ 39-42).

555. In a case in which the applicant had been prosecuted, placed in detention and then confined in a psychiatric institution for thirty-five days on account of the content, held to be contemptuous, of letters sent to judges, the Court noted that the applicant's remarks, which had been particularly caustic, virulent and offensive towards several members of the judiciary, had been recorded only in writing and had not been made public. Accordingly, their impact on public confidence in the administration of justice had been very limited. The Court further noted that the public prosecutor's office which had sought his detention had participated in the proceedings concerning his placement under guardianship and had therefore been aware, when requesting his detention, that his mental

state was at the very least open to question and might have been the reason for his actions (*Ümit Bilgiç v. Turkey*, 2013, §§ 133-136).

556. In a case in which the applicant, a lawyer who had complained to the High Council of the Judiciary alleging corruption on the part of a judge who had ruled in a civil case concerning one of his clients, was ordered to pay 50,000 euros in compensation to the judge in question, the Court held that the contested sanction was excessive and had not struck the requisite fair balance. It noted, in particular, that the domestic courts had held that although the accusations had not been made public, they had been discussed in judicial circles. In this regard, the Court held that the applicant could not be held responsible for leaks from proceedings that were supposed to remain confidential (*Pais Pires de Lima v. Portugal*, 2019, § 66).

C. Participation of judges in public debate

557. Even if an issue under debate has political implications, this is not in itself sufficient to prevent a judge from making a statement on the matter (*Wille v. Liechtenstein* [GC], 1999, § 67).

558. The Court applied this principle in a case concerning the early termination of the applicant's mandate as President of the Supreme Court for expressing his views and criticisms, notably to Parliament, on constitutional and legislative reforms affecting the organisation of the justice system, although he held a post as judge within the judiciary. In this case, the Court attached particular importance to the office held by the applicant, who was also President of the National Council of the Judiciary, and whose functions and duties included expressing his views on the legislative reforms which were likely to have an impact on the judiciary and its independence (*Baka v. Hungary* [GC], 2016, § 168).

559. The Court referred in this connection to the Council of Europe instruments, which recognize that each judge is responsible for promoting and protecting judicial independence and that judges and the judiciary should be consulted and involved in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system (see paragraph 34 of *Opinion no. 3 (2002) of the CCJE* and paragraphs 3 and 9 of the Magna Carta of Judges (*Baka v. Hungary* [GC], 2016, §§ 80-81).

560. As far as the general right to freedom of expression of judges to address matters concerning the functioning of the justice system is concerned, the Court held that such right may be transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence when those fundamental values come under threat (*Żurek v. Poland*, 2022, § 222).

561. In one case, the applicant alleged that her removal from judicial office resulted from certain statements made by her to the media during her electoral campaign. The Court observed in this case that the applicant had not been granted important procedural guarantees in the context of the disciplinary proceedings and that the sanction imposed on her had been disproportionately severe and capable of having a "chilling effect" on judges wishing to participate in the public debate on the effectiveness of the judicial institutions (*Kudeshkina v. Russia*, 2009, §§ 97-99; see also, concerning a prosecutor whose mandate was terminated prematurely after she publicly criticised judicial reforms, *Kövesi v. Romania*, 2020, §§ 205-208 ; *Eminağaoğlu v. Turkey*, 2021, regarding a sanction of disciplinary transfer against a judicial officer, later replaced with a reprimand, on account of public statements and criticisms; *Kozan v. Turkey*, 2022, §§ 64-70, concerning a serving judge disciplined for having shared, in a private Facebook group, a press article which criticised certain decisions of the High Council of Judges and Prosecutors, without posting any comment himself).

562. In the case of *Previti v. Italy* (dec.), 2009, the Court held that judges, in their capacity as legal experts, may express their views, including criticism, with regard to the legislative amendments initiated by the Government. Such a position, expressed in an appropriate manner, does not bring the

authority of the judiciary into disrepute or compromise their impartiality in a given case. As the Court stated, the fact that, in application of the principles of democracy and pluralism, certain judges or groups of judges may, in their capacity as legal experts, express reservations or criticism regarding the Government's legislative proposals does not undermine the fairness of the judicial proceedings to which these proposals might apply (§ 253).

563. On the other hand, in a case where a Constitutional Court judge complained about having been dismissed from his duties for having expressed his views publicly (in a letter sent to high public officials and a media interview, as well as an unauthorised press conference, in which he discussed the work of the Constitutional Court, accusing it of corruption), the Court noted that the dismissal decision had essentially related to reasonable suspicions as to his impartiality and independence, and the behaviour incompatible with the role of a judge, and concluded that the complaint submitted by the applicant under Article 10 was manifestly ill-founded (*Simić v. Bosnia and Herzegovina* (dec.), 2016, §§ 35-36).

564. Similarly, in *M.D. and Others v. Spain*, 2022, the applicants were twenty serving judges and magistrates who worked in Catalonia and who complained that they had suffered disciplinary proceedings for expressing their views by signing a manifesto on the Catalan people's "right to decide". The Court found that no "chilling effect" could be discerned from the mere fact that disciplinary proceedings took place. Indeed, there was no reprisal by the public authorities against the applicants and the action of the judges' governing body was further to a complaint by a third party. Moreover, the applicants continued their professional careers and were promoted under the usual procedure, without any prejudice resulting from their participation in the manifesto. The Court therefore declared their complaint manifestly ill-founded (§§ 88-91).

XI. Freedom of expression and the legitimate aims of national security, territorial integrity or public safety, the prevention of disorder or crime

565. The legitimate aims referred to in this chapter are frequently invoked in combination, and sometimes at the same time as other legitimate aims, such as preventing the disclosure of information received in confidence (*Stoll v. Switzerland* [GC], 2007, § 53) or protection of the rights of others (*Brambilla and Others v. Italy*, 2016, § 50). Occasionally, the focus is placed on one of the legitimate aims invoked, as with "ensuring territorial integrity" when faced with so-called "separatist" discourse (*Sürek and Özdemir v. Turkey* [GC], 1999, § 50).

566. The fight against terrorism[15] is very often cited as the predominant context in the cases which come within this category.

567. The domestic-law provisions which refer to these legitimate aims are very varied and usually appear in the Criminal Code or anti-terrorist legislation, and sometimes even in the national Constitutions.

A. General principles

568. As a matter of general principle, the "necessity" of any restriction on the exercise of freedom of expression must be convincingly established (*Sürek and Özdemir v. Turkey* [GC], 1999, § 57; *Dilipak v. Turkey*, 2015, § 63; *Gaspari v. Armenia (no. 2)*, 2023, § 25). The Court must determine whether the reasons adduced by the national authorities to justify the restriction are "relevant and sufficient" (*Barthold v. Germany*, 1985, § 55; *Lingens v. Austria*, 1986, § 40; *Gaspari v. Armenia (no. 2)*, 2023, § 26).

569. With particular regard to the disclosure of information received in confidence, the Court has emphasised that the concepts of "national security" and "public safety" need to be applied with restraint and to be interpreted restrictively and should be brought into play only where it has been shown to be necessary to suppress release of the information for the purposes of protecting national security and public safety (*Stoll v. Switzerland* [GC], 2007, § 54; *Görmüş and Others v. Turkey*, 2016, § 37). Likewise, in the context of cases concerning expression alleged to stir up, promote or justify violence, hatred or intolerance, the Court has considered that the legitimate aim of "prevention of disorder" may not be invoked unless it has been demonstrated that the impugned statements statements were capable of leading or actually led to disorder – for instance in the form of public disturbances – and that in acting to suppress them, the relevant authorities had that in mind (*Perinçek v. Switzerland* [GC], 2015, §§ 152-153; compare also *Gaspari v. Armenia (no. 2)*, 2023, § 30; and contrast *Sanchez v. France* [GC], 2023, § 144).

570. On the one hand, the Court has consistently held that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or debate (*Brasilier v. France*, 2006, § 41; *Sanchez v. France* [GC], 2023, § 146) or on debate on matters of public interest (*Sürek v. Turkey (no. 1)* [GC], 1999, § 61; *Lindon, Otchakovsky-Laurens and July v. France* [GC], 2007, § 46; *Wingrove v. the United Kingdom*, 1996, § 58).

571. Freedom of expression is particularly important for political parties and their active members, and interference with the freedom of expression of politicians, especially where they are members of an opposition party, calls for the closest scrutiny on the Court's part. The limits of permissible criticism

[15] See also the Case-law Guide on Terrorism.

are wider with regard to the Government than in relation to a private citizen, or even a politician (*Faruk Temel v. Turkey*, 2011, § 55; *Incal v. Turkey*, 1998, § 54; *Han v. Turkey*, 2005, § 29; *Yalçıner v. Turkey*, 2008, § 43).

572. According to the Court, in a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression (*Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, 2012, § 70).

573. On the other hand, the Court takes into account the problems linked to the prevention of terrorism (*Gözel and Özer v. Turkey*, 2010, § 55; *Karataş v. Turkey*, 1999, § 51). In this context, it pays particular attention to the need for the authorities to remain vigilant about acts capable of fuelling additional violence, in the light of the legitimate aims of protecting public safety and preventing disorder or crime within the meaning of Article 10 § 2 (*Leroy v. France*, 2008, § 36; *Stomakhin v. Russia*, 2018, §§ 85-86).

574. The Court considers that the difficulties raised by the fight against terrorism do not in themselves suffice to absolve the national authorities from their obligations under Article 10 of the Convention (*Döner and Others v. Turkey*, 2017, § 102). In other words, the principles which emerge from the Court's case-law relating to Article 10 also apply to measures taken by national authorities to maintain national security and public safety as part of the fight against terrorism (*Faruk Temel v. Turkey*, 2011, § 58).

575. With due regard to the circumstances of each case and a State's margin of appreciation, the Court must ascertain whether a fair balance has been struck between the individual's fundamental right to freedom of expression and a democratic society's legitimate right to protect itself against the activities of terrorist organisations (*Zana v. Turkey*, 1997, § 55; *Karataş v. Turkey*, 1999, § 51; *Yalçın Küçük v. Turkey*, 2002, § 39; *İbrahim Aksoy v. Turkey*, 2000, § 60).

576. More specifically, in the case of public statements by a teacher in a particularly sensitive context, the Court considered that since teachers symbolised authority for their students in the educational field, their special duties and responsibilities also applied, to some extent, to their out-of-school activities (*Mahi v. Belgium* (dec.), 2020, §§ 31-32, and the references therein). Thus, the Court held that in view of the particularly tense atmosphere prevailing in the school in the wake of the January 2015 attacks in Paris, although a teacher's comments should not necessarily have been considered punishable under criminal law (in the absence of incitement to hatred, xenophobia or discrimination), they could nonetheless legitimately be regarded as incompatible with his duty of discretion (§ 34).

577. The "national security" and "public order" aims have also been used to justify entry bans on foreigners. A popular Russian performer and producer was prohibited from entering Lithuania not because of isolated statements or speeches but because of the local authorities assessment that he was the Russian Federation's "tool of soft power" (*Kirkorov v. Lithuania* (dec.), 2024, § 59).

B. Assessment criteria with regard to the justification for interference

1. Contribution to a debate of general interest

578. The Court has explicitly defined what it means by the concept of a matter of general interest: public interest ordinarily relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest

in being informed about (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 171; *Sürek and Özdemir v. Turkey* [GC], 1999, § 61).

579. In several cases concerning publications likely to undermine the confidentiality of certain information relating to national security, the Court stressed contribution made by these publications to debates of general interest. In the Court's view, such publications were justified by the requirement to disclose illegal acts committed by the State security services and the public's right to be informed of them (*Observer and Guardian v. the United Kingdom*, 1991, § 69; *The Sunday Times v. the United Kingdom (no. 2)*, 1991, §§ 54-55).

580. In a case concerning the conviction of a magazine's owner for having published a report containing accusations of violence against State agents engaged in combating terrorism, the Court noted that, in view of the seriousness of the alleged misconduct, the public had a legitimate interest in knowing not only the nature of the officers' conduct but also their identity. In this connection, the Court noted that the information on which the news report was based had already been reported in other newspapers and that these newspapers had not been prosecuted (*Sürek v. Turkey (no. 2)* [GC], 1999, §§ 39-40).

581. On the other hand, in a case concerning a television program where a certain religious group had been accused of terrorism with the result that a number of its members had spent significant periods in detention before being ultimately acquitted, the Court observed, with reference to the domestic courts' findings, that the program in question had not been based on precise facts, had not contained any accurate and reliable information and had apparently aimed solely at gratuitously attacking an opposing religious group. The Court considered that such a program could not be regarded as a contribution to a debate of general interest (*Karaca v. Türkiye*, 2023, § 158).

2. The nature and content of the speech and its potential impact: analysis of the text in its context

582. The essential question which arises in this type of case is whether the speech in question is likely to exacerbate or justify violence, hatred or intolerance. In a number of these cases, the Court has been required to rule on the applicability of Article 10 of the Convention[16].

583. In the Court's view, in determining whether given remarks, taken as a whole, may be classified as inciting to violence, regard must be had to the words used and the context in which they were published, as well as to their potential impact (see, for example, *Özgür Gündem v. Turkey*, 2000, § 63; *Gözel and Özer v. Turkey*, 2010, § 52).

584. One of the key factors in the Court's assessment is the political or social background against which the statements in question are made (*Perinçek v. Switzerland* [GC], 2015, § 205); for example: a tense political or social background (*Mariya Alekhina and Others v. Russia*, 2018, § 218; *Zana v. Turkey*, 1997, §§ 57-60; *Sürek v. Turkey (no. 3)* [GC], 1999, § 40; *Erkizia Almandoz v. Spain*, 2021, § 45; *Gapoņenko v. Latvia* (dec.), 2023, § 43), the atmosphere during deadly prison riots (*Saygılı and Falakaoğlu (no. 2) v. Turkey*, 2009, § 28), problems relating to the integration of non-European and especially Muslim immigrants in France (*Soulas and Others v. France*, 2008, §§ 38-39; *Le Pen v. France* (dec.), 2010), or the relations with national minorities in Lithuania shortly after the re-establishment of its independence in 1990 (*Balsytė-Lideikienė v. Lithuania*, 2008, § 78).

585. Another factor has been whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance (*Perinçek v. Switzerland* [GC], 2015, § 206; see, *inter alia*, *Incal v. Turkey*, 1998, § 50; *Sürek v. Turkey (no. 1)* [GC], 1999, § 62; *Özgür Gündem v. Turkey*, 2000, § 64; *Gündüz v. Turkey*, 2003, §§ 48 and 51; *Soulas and Others v. France*, 2008, §§ 39-41 and 43; *Balsytė-Lideikienė*

[16] See the Guide on Article 17 of the Convention (prohibition of abuse of rights).

v. Lithuania, 2008, §§ 79-80; *Féret v. Belgium*, 2009, §§ 69-73 and 78; *Hizb ut-Tahrir and Others v. Germany* (dec.), 2012, § 73; *Kasymakhunov and Saybatalov v. Russia*, 2013, §§ 107-112; *Fáber v. Hungary*, 2012, §§ 52 and 56-58; *Vona v. Hungary*, 2013, §§ 64-67; *Lilliendal v. Iceland* (dec.), 2020, §§ 36-39). In particular, in the case of a purportedly offensive billboard advertisement published by an NGO, the Court has stated that it is important to look at the broader social context in which the advertisement was published. In this case, the Court found that there was no incitement to hatred or intolerance conveyed by the advertisement, and that it contained an intelligible albeit exaggerated anti-discrimination message (*National Youth Council of Moldova v. the Republic of Moldova*, 2024, §§ 78-79).

586. The Court has emphasised the importance of the interplay between the above-cited factors, rather than any one of them taken in isolation, in determining the outcome of the case (*Perinçek v. Switzerland* [GC], 2015, § 208).

587. In the case of *Savva Terentyev v. Russia*, 2018, the Court noted that the domestic authorities focused on the form and tenor of the impugned statements, without analysing them in the context of the relevant discussion, without ever attempting to assess the potential of these statements to provoke any harmful consequences, with due regard to the political and social background against which they were made, and to the scope of their reach. It concluded that, having failed to take account of all facts and relevant factors, the reasons adduced could not be regarded as "relevant and sufficient" to justify the interference with the applicant's freedom of expression (§§ 82-84).

588. Likewise, in the case of *Glukhin v. Russia*, 2023, the Court observed that the applicant's solo demonstration had been carried out in an indisputably peaceful and non-disruptive manner. The offence of which he had been convicted consisted merely of a failure to notify the authorities of his solo demonstration and included no further incriminating element concerning any reprehensible act, such as the obstruction of traffic, damage to property or acts of violence. Nor did the applicant's actions cause any major disruption to ordinary life and other activities to a degree exceeding that which was normal or inevitable in the circumstances or present any danger to public order or transport safety. However, the authorities did not take the above relevant elements into account and did not assess whether the applicant's acts had constituted an expression of his views. The only relevant consideration was the need to punish unlawful conduct, which in the Court's view was not a sufficient consideration in this context, in terms of Article 10 of the Convention. It thus considered that the domestic courts had failed to adduce "relevant or sufficient reasons" to justify the interference with the applicant's right to freedom of expression (§ 56).

589. More generally, where the views expressed do not comprise incitements to violence – in other words unless they advocate recourse to violent actions or bloody revenge, justify the commission of terrorist offences in pursuit of their supporter's goals or can be interpreted as likely to encourage violence by expressing deep-seated and irrational hatred towards identified persons – Contracting States must not restrict the right of the general public to be informed of them, even on the basis of the aims set out in Article 10 § 2, that is to say the protection of territorial integrity and national security and the prevention of disorder or crime by bringing the weight of the criminal law to bear on the media (*Sürek v. Turkey (no. 4)* [GC], 1999, § 60; *Fatullayev v. Azerbaijan*, 2010, § 116; *Gözel and Özer v. Turkey*, 2010, § 56; *Nedim Şener v. Turkey*, 2014, § 116; *Dilipak v. Turkey*, 2015, § 62; *Dmitriyevskiy v. Russia*, 2017, § 100).

590. However, where the impugned remarks incite to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of expression (*Sürek v. Turkey (no. 3)* [GC], 1999, § 37). This is the case for remarks calling for the use of armed force (*ibid.*, § 40; *Taşdemir v. Turkey* (dec.), 2010) or remarks which could jeopardise social stability, even if the individuals making the remarks do not themselves openly call for the use of armed force as a means of action, but, equally,

do not distance themselves from the use of violence (*Yalçıner v. Turkey*, 2008, § 46; *Zana v. Turkey*, 1997, § 58).

591. In the case of *Zana v. Turkey*, 1997, the Court emphasised two criteria regarding the concept of the potential impact of the impugned statements: firstly, the role and function of the person making the statements and, secondly, the situation in terms of the social context surrounding the subject matter of his statements (§§ 49-50; see also *Yalçıner v. Turkey*, 2008, §§ 46-49).

592. In the case of *Savva Terentyev v. Russia*, 2018, concerning the imposition of a prison sentence on a blogger convicted of offensive comments on the Internet against police officers, the Court noted the offensive, insulting and virulent wording of the applicant's comments. However, it considered that these statements could not be regarded as an attempt to incite hatred or provoke violence against the police officers and thus as posing a clear and imminent danger which would have required the applicant's conviction. The Court stressed, in particular, that the applicant was neither a well-known blogger or a popular user of social media and that, accordingly, he did not have the status of an influential figure (§ 81). In a similar context where the use of derogatory language was at stake, the Court stressed that, although certain remarks may be perceived as offensive or insulting by particular individuals or groups, such sentiments, albeit understandable, could not alone set the limits of freedom of expression. It is only by a careful examination of the context in which the offending, insulting or aggressive words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 of the Convention and language which amounts to wanton denigration – for example, where the sole intent of the offensive statement is to insult – thereby falling outside the protection of freedom of expression. (*Gaspari v. Armenia (no. 2)*, 2023, §§ 27-29).

593. In a case, where the applicant, a representative of a trade union, had been convicted in criminal proceedings for having uttered expletives directed at the national flag at a peaceful protest against unpaid wages, the Court observed that the national authorities had not examined whether there had been sufficient grounds to find that his statements had amounted to hate speech, such as the existence of a tense political or social background or the capacity of the statements to lead to harmful consequences. It also took into account the fact that the impugned remarks had been made orally during a protest, so that the applicant had had no possibility of reformulating, refining or retracting them. It furthermore emphasised the fact that the applicant's statements had not been directed at any person or group of persons. While the Court was prepared to accept that provocative statements directed against a national symbol might hurt people's feelings, the damage thus caused, if any, was of a different nature compared with that caused by attacking the reputation of a named individual. (*Fragoso Dacosta v. Spain*, 2023, §§ 29-30).

594. Among other things, the Court has recognised the need to guarantee heightened protection to vulnerable minorities, characterised by a history of oppression or inequality, against insulting or discriminatory discourse (*Savva Terentyev v. Russia*, 2018, § 76; *Soulas and Others v. France*, 2008, §§ 38-39; *Le Pen v. France* (dec.), 2010). In the case of *Savva Terentyev v. Russia*, 2018, it noted that the domestic courts had failed to explain why the police officers, none of whom had been identified by name, could be considered vulnerable (§§ 75-76).

595. The means of communicating the statement is also an important criterion in assessing the potential impact of the discourse. Thus, the Court has held that an individual's conviction for publishing an anthology of poetry was disproportionate, having regard to the form of expression used, which implied metaphorical language and reached a limited audience (*Karataş v. Turkey*, 1999, § 52; see also *Polat v. Turkey* [GC], 1999, § 47).

596. The medium used may have a certain importance. In particular, speech transmitted through the audiovisual media has a much more immediate and powerful effect than the print media (*Jersild v. Denmark*, 1994, § 31; *Roj TV A/S v. Denmark* (dec.), 2018, § 47; *Zemmour v. France*, 2022, § 62). Other situations include where the discourse is disseminated *via* the distribution of a political party's

pamphlets in the context of an election campaign (*Féret v. Belgium*, 2009, § 76), or *via* the Internet, which exacerbates the potential impact of the statements. Since defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain persistently available online (*Delfi AS v. Estonia* [GC], 2015, § 110), the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms is certainly higher than that posed by the press: it is thus essential for the assessment of the potential influence of an online publication to determine the scope of its reach to the public (*Savva Terentyev v. Russia*, 2018, § 79; *Delfi AS v. Estonia* [GC], 2015, § 133).

597. It is possible to identify several categories of discourse in the Court' case-law, depending on their content and their impact on the legitimate aims relied on. Although these categories are not always clearly distinguished, it is appropriate to describe them, and the specific criteria applicable to each one. The categories in question are dealt with separately below.

a. Separatist discourse and publications from illegal organisations

598. Generally speaking, the Court considers that it is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself (*Socialist Party and Others v. Turkey*, 1998, § 47).

599. In assessing whether an interference was proportionate, the Court distinguishes between so-called peaceful or democratic separatist discourse and separatist discourse that is linked to the commission of offences or acts which perpetuate violence. The Court has held that an interference with the freedom of expression of a political leader of the French Basque separatist movement was proportionate; the measure concerned a prohibition, valid throughout the period of his release on licence, on disseminating works or making any public comment regarding the offences of which he had been convicted, given that the applicant had still been entitled to express his views on the Basque question, as long as he did not mention these particular offences (*Bidart v. France*, 2015, § 42).

600. The Court takes account of the context in which the discourse occurs, especially when separatist claims in a given region are accompanied by armed conflicts. Thus, although the concepts of national security and public safety must be interpreted restrictively, the Court has held that matters relating to the conflict in the Chechen Republic were of a very sensitive nature and therefore required particular vigilance on the part of the authorities (*Stomakhin v. Russia*, 2018, §§ 85-86; *Dmitriyevskiy v. Russia*, 2017, § 87).

601. The Court has held that if an interference with freedom of expression is to be justified, separatist discourse (specifically in the form of slogans) must have an impact on national security and public order and present a clear and imminent danger with regard to these legitimate aims (*Gül and Others v. Turkey*, 2010, § 42; *Kılıç and Eren v. Turkey*, 2011, §§ 29-30; *Bülent Kaya v. Turkey*, 2013, § 42).

602. The criminal conviction of a regional newspaper editor for publishing articles supposedly written by the leaders of a separatist movement who were wanted on serious criminal charges could not be justified, in the Court's view, solely on the basis of the profile of the presumed authors (*Dmitriyevskiy v. Russia*, 2017, §§ 104 and 114; see, to similar effect, *Ceylan v. Turkey* [GC], 1999, § 36; *Sürek and Özdemir v. Turkey* [GC], 1999, § 61; *Erdoğdu and İnce v. Turkey* [GC], 1999, §§ 52 and 55; *Faruk Temel v. Turkey*, 2011, §§ 62 and 64; *Polat v. Turkey* [GC], 1999, § 47).

603. In considering whether the publication of statements from banned terrorist organisations causes a danger of public provocation to commit a terrorist offence or vindication of terrorism, it is necessary to take into consideration not only the nature of the author and of the addressee of the message, but also the contents of the article in question and the background against which it was published. When striking a balance between competing interests, the national authorities must have sufficient regard

to the public's right to be informed of a different perspective on a conflict situation, from the point of view of one of the parties to the conflict, irrespective of how unpalatable that perspective may be for them (*Gözel and Özer v. Turkey*, 2010, § 56).

604. Thus, the Court has found a violation of Article 10 of the Convention in numerous cases against Turkey with regard to the conviction of proprietors, publishers or editors of periodicals for the publication of statements or tracts emanating from organisations classified as "terrorist" under domestic law (*Gözel and Özer v. Turkey*, 2010; *Karakoyun and Turan v. Turkey*, 2007; *Çapan v. Turkey*, 2006; *İmza v. Turkey*, 2009; *Kanat and Bozan v. Turkey*, 2008; *Demirel and Ateş v. Turkey*, 2007; *Özer v. Turkey (no. 3)*, 2020). In the Court's view, these instances of interference had the effect of partly censoring the media professionals concerned and limiting their ability to publicly convey an opinion – provided that they did not advocate directly or indirectly the commission of terrorist offences – which was part of a public debate (see, in particular, *Ali Gürbüz v. Turkey*, 2019, § 77, *Özgür Gündem v. Turkey*, 2000, §§ 62-64, and the four *Yıldız and Taş v. Turkey* judgments (*no. 1*, *no. 2*, *no. 3* and *no. 4*), 2006; with regard to an individual's conviction for disseminating propaganda in favour of a terrorist organisation on the sole ground that he attended the funeral of deceased members of that organisation, see *Nejdet Atalay v. Turkey*, 2019, §§ 20-23).

605. By way of contrast, in a case involving the seizure and destruction by the Swiss customs authorities of a large quantity of propaganda material from the Kurdish Workers' Party (PKK), the Court held that the seized materiel advocated and glorified violence and was aimed at winning over as many persons as possible for the armed struggle against the Turkish authorities, and concluded that the restriction was justified under Article 10 § 2 (*Kaptan v. Switzerland* (dec.), 2001).

606. It should also be noted that, in a case concerning the conviction of a television company for broadcasting programmes promoting a terrorist organisation, the Court – in concluding that the applicant company's complaint fell, by virtue of Article 17, outside the ambit of Article 10 – examined the programmes' content, presentation and connection, and took account of the following elements: the one-sided coverage of events with repetitive incitement to participate in fights and actions, incitement to join the organisation or the armed struggle, and the portrayal of deceased members of the organisation as heroes. It also noted that the national courts had established that at the relevant time the applicant company had been financed to a significant extent by this organisation (*Roj TV A/S v. Denmark* (dec.), 2018).

b. Glorifying and condoning criminal and/or terrorist acts

607. Where the Court examines the justification for interference with discourse defending terrorism, it looks at the interference in the light of the case as a whole, including the content of the impugned statements and the context in which they were made (*Erdoğdu and İnce v. Turkey* [GC], 1999, § 47; *Stomakhin v. Russia*, 2018, § 93) and the personality and function of the person making the statements in question (*Demirel and Ateş v. Turkey*, 2007, § 37; *Dicle v. Turkey (no. 3)*, 2022, § 91 ; *Rouillan v. France*, 2022, § 66).

608. In a case concerning the conviction of the owner of a weekly review, the Court held that the content of the article was capable of inciting to further violence in the region. In the Court's view, the reader came away with the impression that recourse to violence is a necessary and justified measure of self-defence in the face of the aggressor, and it concluded that what was in issue in the case was incitement to violence. Although the applicant did not personally associate himself with the views contained in the news commentary, he had nevertheless provided its writer with an outlet for stirring up violence (*Sürek v. Turkey (no. 3)* [GC], 1999, §§ 40-41).

609. In another case, the applicant, a cartoonist, had been convicted for complicity in condoning terrorism following publication of a caricature two days after the attack of 11 September 2001 against the twin towers of the World Trade Centre. The Court emphasised the temporal aspect and the absence of precautions as to language, at a time when the entire world was still in a state of shock at

the news of the attack. The Court further noted that the publication of the drawing had entailed reactions that could have stirred up violence and indicated that it may well have affected public order in the politically sensitive region in which it was published. Thus, it held that the moderate sanction imposed on the applicant had been based on relevant and sufficient reasons (*Leroy v. France*, 2008, §§ 45-46; conversely, for a Court's finding of a disproportionate sanction, see *Stomakhin v. Russia*, 2018, §§ 109 and 125-132; and *Rouillan v. France*, 2022, §§ 74-76).

610. In the case of *Z.B. v. France*, 2021, the applicant was convicted for giving his young nephew, as a present for his third birthday, a T-shirt with the slogans "I am a bomb" and "Jihad, born on 11 September". The garment was worn at nursery school: although it was not directly visible to third parties, it was discovered on the premises of the school when the child was being dressed by adults and then reported to the authorities. The applicant had no links with a terrorist group nor a terrorist ideology: he claimed that the slogans were supposed to be humorous in tone. He was given a suspended two-month prison sentence and fined. The Court observed that the impugned slogans could not be considered as relevant to the debate of general interest regarding the attacks of 11 September 2001 (§ 58): it also took into account the general context in which the impugned events had taken place, including recent bombings in which three children had been killed outside their school (§§ 60 and 63), as well as the specific context (the instrumentalisation of a three-year-old child, § 61). It also found that the applicant's conviction was based on relevant and sufficient reasons and that the sanction was proportionate to the legitimate aim pursued (the prevention of disorder or crime) so that there had been no violation of Article 10 of the Convention.

611. As to the public defence of war crimes, the Court attaches significance to whether the speech contributed to a debate of general interest. In a case about a book whose author, a member of the French armed forces, described the use of torture during the Algerian War, the Court held that the impugned text was of singular importance for the collective memory, by informing the public not only that such practices existed, but, moreover, with the consent of the French authorities (*Orban and Others v. France*, 2009, § 49).

612. The Court has reiterated that it is an integral part of freedom of expression to seek the historical truth, and that a debate on the causes of acts which might amount to war crimes or crimes against humanity should be able to take place freely (*Dmitriyevskiy v. Russia*, 2017, § 106). At the same time, in a case concerning the publication of a book, combining the author's personal recollections – representing in a negative light a married couple who at the time of the events described in the book had been his neighbours – with historical material obtained through research in the archives, the Court stressed the importance of a proper balance between freedom of expression and the protection of an individual reputation (*Marinoni v. Italy*, 2021, §§ 74-75 and 80).

613. In the case of *Erkizia Almandoz v. Spain*, 2021, the applicant, a public figure in politics, had been convicted and sentenced to one year in prison and seven years' political ineligibility for having taken part in a ceremony to pay tribute to a former member of the ETA terrorist organisation and for having made a speech at that ceremony. The Court acknowledged that the speech had formed a part of a debate of general interest (§ 44). It further observed that it had been made against a tense social and political background (§ 45). However, given that, despite certain ambiguities, it could not be regarded as stirring up violence, hatred or intolerance (§§ 46-47), that its potential to provoke harmful consequences had been limited (§ 48); and in view of the severity of the penalty imposed (§ 50), the Court found a violation of Article 10 of the Convention.

c. Other types of speech that are restricted on the grounds of preventing disorder and crime

614. The legitimate aim of preventing disorder, as enshrined in the second paragraph of Article 10, has been relied on by the member States, *inter alia*, in the context of statements opposing military service or advocating demilitarisation (*Arrowsmith v. the United Kingdom*, Commission report, 1978;

Chorherr v. Austria, 1993, § 32). In the case of *Ergin v. Turkey (no. 6)*, 2006, the Court specified that, although the words used in the offending article gave it a connotation hostile to military service, so long as they did not exhort the use of violence or incite armed resistance or rebellion, and they did not constitute hate-speech, the interference could not be justified by the legitimate aim of preventing disorder. The Court noted that the offending article had been published in a newspaper on sale to the general public. It did not seek, either in its form or in its content, to precipitate immediate desertion (§ 34).

615. In a case concerning a refusal by the Portuguese criminal legislation to allow the entry of a vessel into territorial waters, the applicant associations were seeking to transmit information and hold meetings to campaign for the decriminalisation of voluntary termination of pregnancy. The Court accepted that this prohibition pursued, *inter alia*, the legitimate aim of the prevention of disorder (*Women On Waves and Others v. Portugal*, 2009, § 35). However, it concluded that such a radical measure could not fail to have a deterrent effect, not only on the applicant associations but on other parties wishing to share ideas and information which challenged the established order.

616. Equally, the Court accepted that the banning of a poster campaign owing to the immoral conduct of publishers and the reference to a proselytising Internet site pursued, among other legitimate aims, the prevention of crime (*Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 54). It noted that no question arose as to the effectiveness of the judicial scrutiny exercised by the domestic courts, which had given detailed reasons for their decisions, referring to the promotion of human cloning, the advocating of "geniocracy" and the possibility that the Raelian Movement's literature and ideas might lead to sexual abuse of children by some of its members.

617. In a case concerning the publication of a blog post showing unconstitutional (Nazi) symbols, the Court held, in the light of the historical context, that States which had experienced the Nazi horrors could be regarded as having a special moral responsibility to distance themselves from the mass atrocities perpetrated, which could justify the ban, for the purpose of preventing disorder, on the use of those symbols in all means of communication in order to pre-empt anyone becoming used seeing them (*Nix v. Germany* (dec.), 2018). Conversely, in a case, where a journalist had published a newspaper article about a controversial nationalist group, with quotations from a manifesto of that group and with symbols resembling Nazi symbols, the Court expressed doubts that a caution issued by a federal mass-media regulator for dissemination of "extremist material" in respect of that article had pursed the aim of preventing disorder, given that the author of the article had not endorsed or otherwise associated himself with the content of that manifesto, and that his principle purpose appeared to have been directed at uncovering a racist or otherwise reprehensible agenda pursued by that group: the Court, however, preferred to address that question in the context of its assessment of whether the interference was "necessary in a democratic society" (*RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, 2021, § 80).

618. In a case concerning the dismissal of senior diplomats for alleging in public that a recent presidential election had been fraudulent, the Court accepted that the interference pursued the legitimate aims of protecting national security and public safety, and the prevention of disorder. It emphasised the duty of loyalty which bound the diplomats and the need for the Respondent State to be able to count on a politically neutral diplomatic corps (*Karapetyan and Others v. Armenia*, 2016, §§ 49-50).

619. The prevention of disorder or crime has also been invoked as regards the sanctioning of acts committed by journalists in breach of national criminal-law provisions on the grounds that they were conducting journalistic activities[17].

[17] See the section "The lawfulness of a journalist's conduct" in Chapter V above.

3. The severity of the sanction

620. The Contracting States do not enjoy unlimited discretion to take any measure they consider appropriate for protecting the legitimate interests established in Article 10 § 2 of the Convention and for punishing illegal conduct intertwined with expression. In the assessment of the proportionality of an interference, the nature and severity of the penalties imposed are factors to be taken into account and the Court exercises the utmost caution where the measures taken by the national authorities are such as to dissuade the applicants and other persons from imparting information or ideas contesting the established order of things (*Stomakhin v. Russia*, 2018, § 126). In a democratic system, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it certainly remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks (*Incal v. Turkey*, 1998, § 54; for examples of criminal-law sanctions in this area, see *Arslan v. Turkey* [GC], 1999, §§ 49-50; *Stomakhin v. Russia*, 2018, §§ 128 and 132).

621. In one particular case, the Court found that the prison sentence was proportionate to the legitimate aim pursued, particularly since the applicant had served only a small part of the sentence (*Zana v. Turkey*, 1997, § 61). In other cases, even though the Court accepted that the impugned statements had constituted an apology of terrorism and there had thus been a "pressing social need" to impose a restriction on the applicants' freedom of expression, it found that the prison sentence had been a disproportionate measure (*Stomakhin v. Russia*, 2018, §§ 127-132; *Rouillan v. France*, 2022, §§ 74-76).

622. In *Dickinson v. Turkey*, 2021, the Court held that the placement of the applicant in custody and pre-trial detention and the criminal sanction against him (even if only a judicial fine) was not justified in the particular circumstances of the case. The Court considered that, by its very nature, such a sanction would inevitably have a chilling effect (notwithstanding its moderate amount) taking into account in particular the effects of the sentence. The fact that the sentence had been in fact suspended for five years did not alter that conclusion, even if the judgment was finally overturned, along with all the consequences arising therefrom. Indeed, the maintenance for a considerable period of time of the criminal proceedings against the applicant, on the basis of a serious criminal offence for which imprisonment could be required, had a chilling effect on the applicant's willingness to speak out on matters of public interest (§ 58).

623. Conversely, with regard to the criminal conviction of a businessman for hate speech against ethnicities, accompanied by a fine and two-year ban on journalistic or publishing activities, the Court found that there had been no violation of Article 10 (*Atamanchuk v. Russia*, 2020, § 72).

624. The Court held that a measure to prevent the publication of information had been disproportionate, given that the information in question had already been made public (*Vereniging Weekblad Bluf! v. the Netherlands*, 1995, §§ 44-46).

625. In cases concerning the freedom of the press in particular, what matters is not the fact of being sentenced to a minor penalty, but the fact of being convicted at all, which is likely to deter journalists from contributing to public discussion of issues affecting the life of the community (*Dammann v. Switzerland*, 2006, § 57). In this connection, the Court took into consideration, in particular, that an applicant had never been convicted of a similar offence, in which case the decision to impose a harsh sentence would have been more acceptable (*Stomakhin v. Russia*, 2018, § 130).

626. In a case concerning the detention of a journalist, the Court noted that, even in cases where serious charges have been brought, pre-trial detention should only be used as an exceptional measure of last resort when all other measures have proved incapable of fully guaranteeing the proper conduct of proceedings. It emphasised, in particular, that the pre-trial detention of anyone expressing critical

views produces a range of adverse effects, both for the detainees themselves and for society as a whole, and inevitably has a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices (*Şahin Alpay v. Turkey*, 2018, §§ 181-182).

627. The Court found that the imposition of a fine in criminal proceedings, which could have been replaced by deprivation of liberty in the event of non-payment, on a representative of a trade union for having uttered expletives directed at the national flag at a peaceful protest against unpaid wages, had been disproportionate. It observed in that respect that the statements in issue had been made orally on only one occasion, before a limited audience, in the context of a protest that had lasted several months relating to unpaid wages and that those statements had not resulted in any disturbances or disorder (*Fragoso Dacosta v. Spain*, 2023, § 33).

628. Furthermore, when reviewing the proportionality of the interference, the Court may also have regard to the length of the criminal proceedings resulting in the conviction of the author of the relevant discourse (*Gül and Others v. Turkey*, 2010, § 43).

XII. Freedom of expression and the protection of health or morals

629. The legitimate aim of the protection of health or morals is frequently relied on by the Contracting States under its both aspects at the same time (*Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 54; *Bayev and Others v. Russia*, 2017, § 45). Moreover, the protection of morals or health is sometimes relied on together with other legitimate aims, particularly the rights of others (*Müller and Others v. Switzerland*, 1988, § 30; *Aydın Tatlav v. Turkey*, 2006, § 20; *Sekmadienis Ltd. v. Lithuania*, 2018, § 69; *Gachechiladze v. Georgia*, 2021, § 48), the prevention of crime (*Open Door and Dublin Well Woman v. Ireland*, 1992, § 61; *Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 54) or the prevention of disorder (*Akdaş v. Turkey*, 2010, § 23).

630. This part of the Guide will then also examine certain cases where "the protection of the rights of others" is regarded as the overriding legitimate aim (*Vejdeland and Others v. Sweden*, 2012, § 49; *Mamère v. France*, 2006, § 18; *Hertel v. Switzerland*, 1998, § 42), in so far as, in the domestic proceedings and/or before the Court, this legitimate aim was supplemented by considerations related to the protection of health or morals.

631. The Court reserves the right to assess the legitimacy of the aims relied on by the respondent State to justify an interference. Thus, the Court held in a case concerning a law prohibiting the promotion of homosexuality among minors that the legislation in question, which exacerbated stigma and prejudice and encouraged homophobia, could not be justified by any of the legitimate aims guaranteed by Article 10 § 2 of the Convention (*Bayev and Others v. Russia*, 2017, § 83). Suppression of information about same-sex relationships – which, according to the respondent State, was necessary to maintain demographic targets – could not be justified by the legitimate aim of protecting public health (*ibid.*, § 73).

632. In the case of *Macatė v. Lithuania* [GC], 2023, §§ 210-217, the Court assessed for the first time restrictions imposed on literature about same-sex relationships which had been aimed directly at children and written in a style and language easily accessible to them. It noted the absence of scientific evidence that information about different sexual orientations, when presented in an objective and age-appropriate way, may cause any harm to children and pointed out that, on the contrary, it was the lack of such information and continuing homophobia that was harmful to them. Moreover, measures that restrict children's access to such information, solely on the basis of sexual orientation, have wider social implications. Such measures, whether they are directly enshrined in the law or

adopted in case-by-case decisions, demonstrate that the authorities have a preference for some types of relationships and families over others – that they see different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions, however limited in their scope and effects, are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society. The Court concluded that the restrictions in question had not pursued any aims that could be accepted as legitimate for the purposes of Article 10 § 2 of the Convention and were therefore incompatible with Article 10 of the Convention.

633. The provisions of domestic law which allow for interference related to the pursuit of these legitimate aims are very varied. The legitimate aims in question are protected by civil and criminal legislation such as, *inter alia*, those governing the profanation of tombstones (*Sinkova v. Ukraine*, 2018, § 44), obscene publications (*Perrin v. the United Kingdom* (dec.), 2005; *Akdaş v. Turkey*, 2010, § 19) or the management of posters in public areas (*Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 25).

A. General principles

1. The protection of health

634. The legitimate aim of the protection of health has been relied on in several types of case, concerning, among other issues, public health (in particular, in *Société de conception de presse et d'édition and Ponson v. France*, 2009, § 53, concerning a restriction on tobacco advertisements; *Bielau v. Austria*, 2024, § 39, concerning statements on general ineffectiveness of vaccines), bioethics (*Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 54, concerning discourse in favour of human cloning and the transfer of conscience), and patients' rights not to be exposed to unverified medical information (*Vérités Santé Pratique SARL v. France* (dec.), 2005; and discourse encouraging the use of drugs (*Palusinski v. Poland* (dec.), 2006).

635. The Court attaches a high level of protection to freedom of expression where the impugned speech is intended to discuss issues concerning the protection of health. In these cases, the Court characterises the speech as participating in a debate affecting the general interest (*Hertel v. Switzerland*, 1998, § 47) and consequently carefully examines whether the measures in issue were proportionate to the aim pursued.

636. The Court considers that speech criticising the fact that the public was not sufficiently informed by the authorities about an environmental disaster and its consequences for public health was part of an extremely important public debate (*Mamère v. France*, 2006, § 20; see also, with regard to a scientific paper on the health effects of consumption of food prepared in microwave ovens, *Hertel v. Switzerland*, 1998, § 47). It concluded that the margin of appreciation available to the authorities in establishing the "need" for the impugned measure was particularly narrow.

637. In examining issues related to a debate of general interest, the Court considers that, although the opinion expressed is a minority one and may appear to be devoid of merit, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas (*Hertel v. Switzerland*, 1998, § 50). Nevertheless, the Court has specified that while nothing prohibits the dissemination of information that offends, shocks or disturbs in a sphere in which it is unlikely that any certainty exists, this may only be done in a nuanced manner (*Vérités Santé Pratique SARL v. France* (dec.), 2005).

638. Furthermore, a nuanced approach is required where statements concerning public health issues are made by health professionals. In particular, practicing doctors enjoy freedom of expression under Article 10 and have the right to participate in debates on public health issues, including expressing critical and minority opinions. The exercise of that right is, however, not without limits, particularly when connected to the exercise of their profession. Because of their expert knowledge in the medical

field and the professional services they offer in the interest of public health, they have a key role to play in the context of public health debates. They can be submitted to professional obligations in line with their duties and responsibilities under Article 10 § 2. Restricting the freedom of expression of doctors may be called for in cases of categorical and untrue public information on medical questions, in particular if that information is published on a website, to protect the health and well-being of others (*Bielau v. Austria*, 2024, §§ 41,42 and 44). Thus, the Court found no violation of Article 10 in a case where the applicant, a practicing doctor, had been sanctioned in disciplinary proceedings for publishing on his website one-sided, negative and scientifically untenable statements about the ineffectiveness of vaccination (*Bielau v. Austria*, 2024, §§ 37-47).

639. In assessing whether an interference with regard to the protection of public health was proportionate, the Court attaches considerable significance to the existence of a European consensus. Indeed, after recognising the existence of a European consensus as to the need for strict regulation of tobacco advertising, the Court held that fundamental considerations of public health, on which legislation had been enacted in France and the European Union, could prevail over economic imperatives and even over certain fundamental rights such as freedom of expression (*Société de conception de presse et d'édition and Ponson v. France*, 2009, § 56; see also, in the same vein, *Bielau v. Austria*, 2024, § 44, regarding the Contracting Parties' consensus on effectiveness of vaccination).

2. The protection of morals

640. In the Court's case-law the protection of morals has been relied on as a legitimate aim in order to justify interference with the following types of speech:

- political, including artistic performances (*Sinkova v. Ukraine*, 2018, § 107; *Mariya Alekhina and Others v. Russia*, 2018, § 203; *Bouton v. France*, 2022, §§ 31 and 41),
- literary (*Akdaş v. Turkey*, 2010, § 30),
- philosophical or religious (*İ.A. v. Turkey*, 2005, § 20; *Aydın Tatlav v. Turkey*, 2006, § 25; *Rabczewska v. Poland*, 2022, § 6),
- educational (*Handyside v. the United Kingdom*, 1976),
- resembling a commercial register (*Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 62),
- or guidance on assisted suicide (*Lings v. Denmark,* 2022, §§ 41, 45 and 60).

641. Generally speaking, in cases concerning a restriction on freedom of expression for the sake of morality, the Court considers that the national authorities enjoy a wide margin of appreciation (*Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 76). Nonetheless, the breadth of such a margin of appreciation varies depending on a number of factors, among which the type of speech at issue is of particular importance (*ibid.*, § 61). Although the Court considers that there is little scope under the Convention for restrictions on political speech (*Ceylan v. Turkey* [GC], 1999, § 34), the Contracting States have a wide margin of appreciation with regard to speech in commercial matters and advertising (*Sekmadienis Ltd. v. Lithuania*, 2018, § 73; *markt intern Verlag GmbH and Klaus Beermann v. Germany*, 1989, § 33), in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion (*Sekmadienis Ltd. v. Lithuania*, 2018, § 73; *Murphy v. Ireland*, 2003, § 67; *Rabczewska v. Poland*, 2022, § 52). This is also the case with regard to "sexual morality", with regard to which the domestic courts have a wide margin of appreciation (*Müller and Others v. Switzerland*, 1988, § 36).

642. The Court has noted that it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, and often requires that, within a single State, the existence of various cultural, religious, civil or philosophical communities be taken into consideration (*Kaos GL v. Turkey*, 2016, § 49). In consequence, the Court considers that, by

reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the 'necessity' of a 'restriction' or 'penalty' intended to meet them (*Handyside v. the United Kingdom*, 1976, § 48, *Otto-Preminger-Institut v. Austria*, 1994, § 56).

643. Nonetheless, the Court has specified that it cannot agree that the State's discretion in the field of the protection of morals is unfettered and unreviewable (*Open Door and Dublin Well Woman v. Ireland*, 1992, § 68). In other words, with regard to the protection of morals, the Court considers that the Contracting States enjoy a certain but not unlimited margin of appreciation (see, for example, *Norris v. Ireland*, 1988, § 45). Thus, in assessing the necessity of State interference in a democratic society, the Court uses the traditional principles developed in its case-law, which require it to determine whether there existed a pressing social need for the interference, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient (*Open Door and Dublin Well Woman v. Ireland*, 1992, § 70).

644. In addition, the quality of the parliamentary and judicial review of the necessity of a general measure is of particular importance, including for the operation of the relevant margin of appreciation (*Lings v. Denmark*, 2022, §§ 42 and 58, regarding the criminalisation of assisted suicide).

645. The protection of religious faith, depending on the specific features of each Contracting State, may arise from the legitimate aim of the protection of morals (*Sekmadienis Ltd. v. Lithuania*, 2018, § 69). In this regard, the Court considers that the fact that there is no uniform European conception of the requirements of the protection of the rights of others in relation to attacks on their religious convictions means that the Contracting States have a wider margin of appreciation when regulating freedom of expression in connection with matters liable to offend intimate personal convictions within the sphere of morals or religion (*Aydın Tatlav v. Turkey*, 2006, § 24; *Rabczewska v. Poland*, 2022, § 52).

646. Conversely, the scope of the margin of appreciation thus afforded – in other words acknowledgment of the cultural, historical and religious particularities of the Council of Europe's member States – cannot, in the Court's view, extend so far as to prevent public access in a given language to a work belonging to the European literary heritage (*Akdaş v. Turkey*, 2010, § 30). In this case, which concerned the conviction of a publisher and the seizure and destruction of all copies of a novel containing graphic descriptions of scenes of sexual intercourse, with various practices such as sadomasochism, vampirism and paedophia, the Court reiterated that although it afforded States a certain margin of appreciation in this area, in this specific case it could not underestimate the fact that more than a century had passed since the book's initial publication in France, its publication in various languages in a large number of countries, or its recognition through publication in the prestigious "La Pléiade" series about ten years prior to its seizure in Turkey (*Akdaş v. Turkey*, 2010, §§ 28-29).

647. Lastly, the Court considers that Article 10 does not prohibit as such any prior interference with the expression of speech or publication of written statements, as is clear from the wording of the Convention: "conditions", "restrictions", "prevent" and "prevention" (*Kaos GL v. Turkey*, 2016, § 50). Nevertheless, news is a perishable commodity and to delay its publication, even for a short period, might well deprive it of all its value and interest (*Ahmet Yıldırım v. Turkey*, 2012, § 47), which has led Court to conclude that the dangers inherent in prior restraints are such that they call for the most careful scrutiny (*Kaos GL v. Turkey*, 2016, § 50).

B. Assessment criteria with regard to the justification for an interference

1. The nature, content and potential impact of the speech

a. The nature and content of the speech

648. Determining the extent to which the contested statements may contribute to a debate of general interest is the first criterion in analysing whether an interference with freedom of expression was proportionate, irrespective of the legitimate aim pursued. Generally speaking, where statements contribute to a debate of general interest, this will have the effect of reducing the national margin of appreciation. In the Court's view, assessment of the immoral content of statements could not be inferred from the mere fact that the statements are not accepted by the majority of the public (*Alekseyev v. Russia*, 2010, § 81).

649. As for statements about religion, the Court considers that it is necessary to determine whether the comments were insulting in tone and directly targeted against the person of believers, or amounted to an attack on sacred symbols. Thus, those who choose to exercise the freedom to manifest their religion cannot reasonably expect to be exempt from all criticism, and must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith (*Otto-Preminger-Institut v. Austria*, 1994, § 47; *Rabczewska v. Poland*, 2022, §§ 51 and 57).

650. Among the duties and responsibilities mentioned in Article 10 § 2 of the Convention, the Court refers, in the context of religious beliefs, to the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs, including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and blasphemous (*Sekmadienis Ltd. v. Lithuania*, 2018, § 74; *Giniewski v. France*, 2006, § 43; *Murphy v. Ireland*, 2003, § 65). The Court has held that, as a matter of principle, the domestic authorites may legitimately consider it necessary to punish improper attacks on objects of religious veneration (*İ.A. v. Turkey*, 2005, § 24). The Court considers that presenting objects of religious worship in a provocative way capable of hurting the feelings of the followers of that religion could be conceived as a malicious violation of the spirit of tolerance, which was one of the bases of a democratic society (*E.S. v. Austria*, 2018, § 53; *Rabczewska v. Poland*, 2022, § 51). By way of illustration, the Court has held that the conviction of an speaker who had accused the Prophet of Islam of pedophilia, on the grounds that those abusive attacks were capable of stirring up prejudice and putting at risk religious peace, did not entail a violation of Article 10 of the Convention (*ibid.*, §§ 57-58).

651. In contrast, when examining statements made by an applicant in a book in which he presented "the critical perspective of a non-believer with regard to religion in the socio-political sphere", the Court did not perceive an insulting tone to the comments aimed directly at believers, or an abusive attack against sacred symbols, in particular against Muslims, even if, on reading the book, they could nonetheless feel offended by the caustic commentary on their religion. It concluded that the interference had been disproportionate (*Aydın Tatlav v. Turkey*, 2006, §§ 26-31; for an example of proselytising discourse, see *Kutlular v. Turkey*, 2008, § 48).

652. In a case concerning a fine imposed on a company for running clothing advertisements depicting religious figures, the Court found that the advertisements did not appear to be gratuitously offensive or profane or to incite hatred on the grounds of religious belief or attack a religion in an unwarranted or abusive manner (*Sekmadienis Ltd. v. Lithuania*, 2018, § 77). Likewise, in a case where the applicant, a pop singer, was convicted in criminal proceedings and sentenced to a fine for having described, in an interview for a news website, the Bible as "the writings of someone wasted from drinking wine and smoking some weed", the Court considered that those expressions had not amounted to an improper

or abusive attack on an object of a religious veneration, likely to incite religious intolerance or violating the spirit of tolerance (*Rabczewska v. Poland*, 2022, § 64).

653. In another case, the applicant entrepreneur had produced condoms with various designs on the packaging: she was fined and ordered to cease using certain symbols (being unethical advertising) on the packaging and to recall those products already distributed. The Court considered that the relevant "expression" – the use of the impugned designs – had not been made solely for commercial reasons but that usage had also sought to initiate and/or contribute to a public debate concerning various issues of general interest. In particular, the declared objective of the brand, expressed at the time of its launch, had been to shatter stereotypes and "to aid a proper understanding of sex and sexuality"; some images used by the applicant concerned same-sex relationships; and several designs used by the brand appeared to have been a social as well as political commentary on various events or issues (*Gachechiladze v. Georgia*, 2021, § 55).

654. The Court has also examined the different forms of expression available to the author of statements and his or her choice, having regard to their impact on morals or public health. This principle is applicable where the applicant had other alternatives available which impinged less on the protection of these legitimate aims, especially where, for example, a particular mode of expression breached the criminal law and insulted the memory of soldiers who had died in combat (*Sinkova v. Ukraine*, 2018, § 110).

655. Lastly, the Court considers that, even in the course of a lively discussion, it is not compatible with Article 10 of the Convention to package incriminating statements in the wrapping of an otherwise acceptable expression of opinion and deduce that this renders statements exceeding the permissible limits of freedom of expression passable (*E.S. v. Austria*, 2018, § 55).

b. The impact of the speech: means of dissemination and the target audience

656. In assessing the justification of an interference which pursues the legitimate aims of protecting morals or public health, the vulnerability of the members of the public who have access to the contested text is an important criterion for measuring the material's potential impact on society. In the case of *Handyside v. the United Kingdom*, 1976, the impugned book was specifically intended for school pupils aged from twelve to eighteen years. The Court held that, despite the variety and the constant evolution in the United Kingdom of views on ethics and education, the competent English judges were entitled, in the exercise of their discretion, to think at the relevant time that the Schoolbook would have pernicious effects on the morals of many of the children and adolescents who would read it (§ 52).

657. In much the same way, in a case in which the applicants were convicted for having left homophobic leaflets in students' lockers at an upper secondary school, the Court held that, despite the acceptability of the applicants' aim – to start a debate about the lack of objectivity in the education in Swedish schools –, regard had to be paid to the wording of the leaflets. The leaflets described homosexuality as "a deviant sexual proclivity" which had "a morally destructive effect" on society and was responsible for the development of HIV and AIDS. The Court noted, in particular, that the pupils had been at an impressionable and sensitive age (*Vejdeland and Others v. Sweden*, 2012, § 56).

658. This is also the case where the statements are freely available, in other words where they are not specifically aimed at a vulnerable group but they are not appropriate for all sections of the public who might consult them (*Kaos GL v. Turkey*, 2016, §§ 61 and 63). Thus, in the Court's view, a magazine depicting, in particular, a painting showing sexual relations between two men was not appropriate for all sections of the public, and might be deemed liable to offend the sensibilities of sections of the non-specialised public (*ibid.*, §§ 59-60). In this connection, the Court acknowledged that the seizure of all subscriber copies of an issue of a magazine amounted to a disproportionate interference, while specifying that such a measure could, for example, have taken the form of prohibiting its sale to persons under the age of eighteen or requiring special packaging with a warning for minors, or even

withdrawing the publication from newspaper kiosks (*ibid.*, §§ 61 and 63; see also, for a similar approach with regard to a public exhibition of artworks representing sexual relations, particularly between men and animals, *Müller and Others v. Switzerland*, 1988, § 36).

659. This reasoning is also applicable with regard to the protection of health. The Court considered that, given that the readership of a magazine was essentially made up of young people, who were more vulnerable, the impact of messages on that group had to be taken into consideration. In consequence, the Court held in one case that the fact that the offending publications were regarded as capable of inciting people, particularly young people, to consume tobacco products was a relevant and sufficient reason to justify the interference (*Société de conception de presse et d'édition and Ponson v. France*, 2009, §§ 58-60). Likewise, where one-sided and scientifically untenable statements regarding the general ineffectiveness of vaccination were made by a doctor on his website in connection with his medical practice, the Court underlined the potentially very wide impact of those statements which could be easily accessible to everyone including, in particular, medical laypersons (*Bielau v. Austria*, 2024, § 43).

660. In contrast, the fact that messages were accessible to a particularly vulnerable audience such as children was not enough to justify State interference, provided that the messages were not aggressive, sexually explicit or advocating a particular sexual behaviour, and that those minors were exposed to the ideas of diversity, equality and tolerance. In a case concerning a campaign against a law banning the promotion of homosexuality among minors, the Court held that o the extent that the minors who witnessed the campaign were exposed to the ideas of diversity, equality and tolerance, the adoption of these views could only be conducive to social cohesion (*Bayev and Others v. Russia*, 2017, § 82). In this context, the Court has also underlined that it is the lack of such information and the continuing stigmatisation of LGBTI persons in society which is harmful to children since this contributes to the discrimination, bullying and violence experienced by children who identify as LGBTI or who come from same-sex families (*Macatė v. Lithuania* [GC], 2023, § 211).

2. The severity of the sentence or measure

661. The proportionality of the interference must be assessed in the light of the scope of the restriction of or prohibition on the statements in question. The Court has reiterated in this connection that the authorities are required, when they decide to restrict fundamental rights, to choose the means that cause the least possible prejudice to the rights in question (*Women On Waves and Others v. Portugal*, 2009, § 41).

662. The Court held that a continual restraint on the provision of information to pregnant women concerning abortion facilities abroad, regardless of age or state of health or their reasons for seeking counselling on the termination of pregnancy, was too broad, and thus disproportionate to the aims pursued (*Open Door and Dublin Well Woman v. Ireland*, 1992, §§ 73-80).

663. Equally, the Court found that the seizure by the domestic authorities of all of the copies of a magazine, although adequate alternatives were available to them, had been disproportionate (*Kaos GL v. Turkey*, 2016, §§ 61 and 63; see also, for a fine that was held to be proportionate, *E.S. v. Austria*, 2018, § 56).

664. The Court considers that, in principle, peaceful and non-violent forms of expression should not be made subject to the threat of imposition of a custodial sentence (*Murat Vural v. Turkey*, 2014, § 66). With regard to political speech, although sentencing is in principle a matter for the national courts, the imposition of a prison sentence for an offence in the area of political speech will be compatible with freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech (*Otegi Mondragon v. Spain*, 2011, § 59; *Bouton v. France*, 2022, § 53). The principle does not apply to cases where the contested material is purely commercial in

nature and is not intended to contribute to a debate on a matter of public interest (*Perrin v. the United Kingdom* (dec.), 2005).

665. In a case where the applicant, a feminist militant, was convicted in criminal proceedings and received a suspended sentence of one-month of imprisonment for "sexual exposure" in connection with her performance at a church in Paris, during which she, topless, had simulated an abortion in protest against the stance of the Catholic Church on that matter, the Court was struck by the severity of the sanction imposed on the applicant. It observed that the respondent State's margin of appreciation was narrow given that the applicant's expression concerned a matter of public interest, so that the prison sentence, even suspended, could only be justified in exceptional circumstances (*Bouton v. France*, 2022, §§ 48-54). It further found that the national courts had not adduced "relevant and sufficient" reasons to justify such a sentence. In particular, they had not sought to analyse whether the applicant's performance had been gratuitously offensive to religious beleifs, whether it had been injurious or had incited a disprespect or hatred towards the Catholic Church: nor had they analysed the applicant's performance with due regard to the message she had sought to convey (*ibid*., §§ 55-66).

666. In a case concerning a conviction following a demonstration held on a war memorial, the Court examined how much of the prison sentence had actually been served, noting that the sentence had been suspended (*Sinkova v. Ukraine*, 2018, § 111). This was also the situation in a case where the two-year prison sentence had been commuted to an "insignificant" fine (*İ.A. v. Turkey*, 2005, § 32).

667. In a case concerning a conviction for publishing seriously obscene material on a free preview page of a website, the Court noted that, although he had been sentenced to thirty months' imprisonment, the applicant could claim release on licence after fifteen months. It held that it was reasonable for the domestic authorities to consider that a purely financial penalty would not have constituted sufficient punishment or deterrent (*Perrin v. the United Kingdom* (dec.), 2005).

668. In other cases, irrespective of whether or not the sanction imposed is a minor one, what matters is the very fact of judgment being given against the person concerned, including where such a ruling is solely civil in nature (*Société de conception de presse et d'édition v. France*, 2016, § 49). In addition, in the context of a liberal profession and having regard to the range of possible penalties, the Court held that imposing a fine was not a negligible disciplinary punishment (*Stambuk v. Germany*, 2002, § 51).

669. Moreover, in assessing the proportionality of a fine or the awarding of damages, it is necessary to take into account the individual situation of the person responsible for the impugned speech, and particularly his or her capacity to pay the sums in question. In a case where the publishers of offending material had been ordered to pay "significant" sums as a fine and in damages, the Court held that in examining the severity of the sanction, this had to be weighed up against the income from a magazine with high circulation figures (*Société de conception de presse et d'édition and Ponson v. France*, 2009, § 62).

670. In the Court's view, the justification for a restriction or sanction must also be examined in the light of the overall impact on the freedom of expression of the author of the material in question. Thus, the Court considered that while it might perhaps have been disproportionate to ban the association itself or its website, limiting the scope of the impugned restriction only to the display of posters in public places had been a way of ensuring the minimum impairment of the applicant association's rights (*Mouvement raëlien suisse v. Switzerland* [GC], 2012, § 75).

XIII. Freedom of expression and the Internet

A. Specific features of the Internet in the context of freedom of expression

1. The innovative character of the Internet

671. The Court has noted on several occasions that user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression (*Delfi AS v. Estonia* [GC], 2015, § 110; *Cengiz and Others v. Turkey*, 2015, § 52; *Sanchez v. France* [GC], 2023, § 159), holding that, in view 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 generally (*Delfi AS v. Estonia* [GC], 2015, § 133; *Times Newspapers Ltd v. the United Kingdom (no. 1 and no. 2)*, 2009, § 27).

672. Accordingly, the Court considers that the blocking of access to the Internet may be in direct conflict with the actual wording of paragraph 1 of Article 10 of the Convention, according to which the rights set forth in that Article are secured "regardless of frontiers" (*Ahmet Yıldırım v. Turkey*, 2012, § 67).

673. Furthermore, the Court has observed that an increasing amount of services and information is available only via the Internet (*Jankovskis v. Lithuania*, 2017, § 49; *Kalda v. Estonia*, 2016, § 52) and that political content ignored by the traditional media is often shared via the Internet (in this particular case, via YouTube), thus fostering the emergence of citizen journalism (*Cengiz and Others v. Turkey*, 2015, § 52).

674. With regard to the material scope of Article 10 of the Convention, the Court has emphasised that this provision is to apply to communication on the Internet, whatever the type of message being conveyed and even when the purpose is profit-making in nature (*Ashby Donald and Others v. France*, 2013, § 34).

675. In particular, it considers that the following spheres are covered by the exercise of the right to freedom of expression:

- the maintenance of Internet archives in so far as they represent a critical aspect of the role played by Internet sites (*Times Newspapers Ltd v. the United Kingdom (no. 1 and no. 2)*, 2009, § 27; *M.L. and W.W. v. Germany*, 2018, § 90; *Węgrzynowski and Smolczewski v. Poland*, 2013, § 59; *Hurbain v. Belgium* [GC], 2023, § 180);
- the publication of photographs on an Internet site specialising in fashion and offering photos and videos of fashion shows on a free or pay-to-view basis (*Ashby Donald and Others v. France*, 2013, § 34);
- the fact of a political party making available a mobile application allowing voters to share anonymous photographs of their invalid ballot papers and comments on their reasons for voting in this way (*Magyar Kétfarkú Kutya Párt v. Hungary* [GC], 2020, § 91);
- the use of certain sites allowing information to be shared, in particular YouTube, a video-hosting website on which users can upload, view and share videos (*Cengiz and Others v. Turkey*, 2015, § 52), and Google Sites, a Google service designed to facilitate the creation and sharing of websites within a group (*Ahmet Yıldırım v. Turkey*, 2012, § 49);
- the use of the "Like" button on social networks (*Melike v. Turkey*, 2021, § 44).

676. The Court has reiterated that, having regard to the role the Internet plays in the context of professional media activities and its importance for the exercise of the right to freedom of expression

generally, the 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". In the Court's view, the complete exclusion of such information from the field of application of the legislative guarantees of journalists' freedom may itself give rise to an unjustified interference with press freedom under Article 10 of the Convention (*Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, 2011, § 64; *Magyar Jeti Zrt v. Hungary*, 2018, § 60).

2. Internet and other media

677. While acknowledging the benefits of the Internet, the Court has also recognised that these are accompanied by a number of dangers, in that clearly unlawful speech, including defamatory remarks, hate speech and speech inciting violence, can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain persistently available online (*Delfi AS v. Estonia* [GC], 2015, § 110; *Annen v. Germany*, 2015, § 67).

678. More specifically, the Court accepts 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. It has acknowledged that the electronic network, serving billions of users worldwide, is not and potentially will never be subject to the same regulations and control, and that the policies governing reproduction of material from the printed media and the Internet may differ. The rules governing the latter undeniably have to be adjusted according to the technology's specific features in order to secure the protection and promotion of fundamental rights and freedoms (*Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, 2011, § 63).

679. Equally, the Court has noted that although Internet and social media remain powerful communication tools, the choices inherent in the use of the Internet and social media mean that the information emerging therefrom does not have the same synchronicity or impact as broadcasted information (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 119), and that a telephone interview broadcast in a programme available on an Internet site had a less direct impact on viewers than a television programme (*Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, 2012, § 64).

B. Protection of the rights of others in the Internet context

1. General comments

680. The specific aspects of the exercise of freedom of expression in the Internet context have led the Court to examine the fair balance between freedom of expression and other rights and requirements. In this regard, it considers that 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 (*Delfi AS v. Estonia* [GC], 2015, § 133; *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, 2011, § 63; *Węgrzynowski and Smolczewski v. Poland*, 2013, § 98).

Thus, while acknowledging the important benefits that can be derived from the Internet in the exercise of freedom of expression, liability for defamatory or other types of unlawful speech must, in principle, be retained and constitute an effective remedy for violations of personality rights (*Delfi AS v. Estonia* [GC], 2015, § 110).

681. However, the Court may also take into account other factors mitigating the effects of messages from Internet users on the interests protected by Article 10 § 2 of the Convention. For example, sending a message in an environment reserved for professionals in a particular field may be a

mitigating factor if the distribution of the message is too limited to cause significant damage, unlike a message which would be accessible to all internet users (*Kozan v. Turkey*, 2022, § 51).

682. The specific features of the Internet may be taken into account in ruling on the level of seriousness in order for an attack on personal reputation to fall within the scope of Article 8 (*Arnarson v. Iceland*, 2017, § 37).

683. The impact of the Internet's amplifying effect appears very clearly in a case concerning an individual against whom accusations of antisemitism were made; they were published on an association's website, and the association had been ordered to remove the article in question. The Court noted, in particular, that the potential impact of the antisemitism allegation was considerable and was not limited to the usual readership of the Newsletter in which it had been published, given that the description of the text in question as antisemitic had been visible to a large number of people. Merely entering the individual's name into a search engine enabled one to access and read the impugned article. The publication on the applicant association's site had thus had a considerable impact on the reputation and rights of the individual concerned (*Cicad v. Switzerland*, 2016, § 60).

684. With regard to the margin of appreciation enjoyed by the member States, the Court recognised the existence of a wider margin in a case concerning a conviction for defamation, noting the existence of a dispute involving only private individuals and the fact that the alleged defamatory statements had been made in a semi-public manner, namely on a secure Internet forum (*Wrona v. Poland* (dec.) [committee], 2017, § 21; see also *Kucharczyk v. Poland* (dec.) [committee], 2015, concerning the balancing of a lawyer's right to respect for private life and the right to freedom of expression of an individual who had posted a critical comment on a private Internet portal).

685. The general principles applicable to offline publications also apply online. For example:

- the Court considers that where private or personal information is published on the Internet, such as a person's name or a description of them, the need to preserve confidentiality in this regard can no longer constitute an overriding requirement, in that this information has ceased to be confidential and is in the public domain. In such cases, it is the protection of family life and reputation which comes to the fore and must be ensured (*Aleksey Ovchinnikov v. Russia*, 2010, §§ 49-50);

- the Court found that a webmaster's criminal conviction for public insult against a mayor in respect of comments published on the Internet site of an association chaired by him had been excessive, noting in particular that the comments in question related to expression by the representative body of an association, which was conveying the claims made by its members on a subject of general interest in the context of challenging a municipal policy (*Renaud v. France*, 2010, § 40);

- equally, the Court found a breach of the Convention where an NGO was held liable for having described a politician's speech as "verbal racism" (*GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*, 2018);

- in contrast, although animal and environmental protection is undeniably in the public interest, the Court held that it had been proportionate to issue an injunction which prevented an animal rights organisation from publishing on the Internet a poster campaign featuring photos of concentration camp inmates alongside pictures of animals reared in intensive farming conditions (*PETA Deutschland v. Germany*, 2021);

- in addition, whatever the medium used, statements which incite to racial discrimination and hatred do not enjoy the protection offered by Article 10 § 2; the Court has held that the conviction of a website's owner – who was also a politician – for disseminating xenophobic comments corresponded to the pressing social need to protect the rights of the immigrant community (*Féret v. Belgium*, 2009, § 78; see also *Willem v. France*, 2009, concerning the conviction of an elected representative for comments inciting to discrimination, which were repeated on the municipality's website; and *Sanchez*

v. France [GC], 2023, concerning a criminal conviction of a politician for xenophobic remarks posted by third persons on the "wall" of his persona Facebook account during an election campaign);

- equally, the online publication of personal attacks which go beyond a legitimate battle of ideas are not protected by Article 10 § 2 (*Tierbefreier e.V. v. Germany*, 2014, § 56).

686. In the case of *Tamiz v. the United Kingdom* (dec.), 2017, the applicant, a politician, complained of an attack on his reputation on account of the domestic courts' refusal to acknowledge Google's liability for comments which he regarded as defamatory, published on Google's Blogger platform. The domestic courts had held that the condition of "real and substantial" tort, required to serve defamation proceedings outside the State jurisdiction, had not been met. The Court emphasised the importance of this threshold test and specified that, in reality, 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. The Court accepted the domestic courts' findings to the effect that the majority of comments about which the applicant complained were undoubtedly offensive but that for the large part they were little more than "vulgar abuse" of a kind which is common in communication on many Internet portals and which the applicant, as a politician, would be expected to tolerate. Furthermore, many of the comments which made more specific allegations would, in the context in which they were written, likely be understood by readers as conjecture which should not be taken seriously (§ 81).

2. Protection of vulnerable persons

687. The protection of vulnerable persons, particularly on account of their young age, may have numerous implications for the exercise of freedom of expression on the Internet.

688. Thus, the Court found inadmissible an application lodged in response to a conviction for having published obscene documents on a free preview page for a website, noting in particular that the material in question was the very type of material which might be sought out by the young people whom the national authorities were attempting to protect (*Perrin v. the United Kingdom* (dec.), 2005).

689. In addition, in a case of a sexual nature, the Court found that the repeated reference by the press to the identity of a minor involved in a violent incident had been harmful to his moral and psychological development and to his private life. For that reason, it held that the civil liability imposed on the journalist who had written the article was justified, even if this personal information had already entered the public domain in that it was available on the Internet (*Aleksey Ovchinnikov v. Russia*, 2010, §§ 51-52).

690. In the Court's view, faced with the danger of paedophilia on the Internet, strengthened protection of confidentiality, preventing an effective investigation with a view to obtaining from an Internet service provider the identity of the person posting an advertisement of a sexual nature targeting a minor, cannot be justified. Thus, the Court held that it was incompatible with Article 8 of the Convention not to oblige the Internet service provider to disclose the identity of a person wanted for placing an indecent advertisement about a minor on an Internet dating site, noting in this context the potential threat to his physical and mental welfare that the situation could entail for the applicant and the vulnerability created by his young age (*K.U. v. Finland*, 2008, § 41), while emphasising that the Internet, precisely because of its anonymous character, could be used for criminal purposes (*ibid.*, § 48).

691. In *Ramadan v. France* (dec.), 2024, the applicant, accused of sexual assault in ongoing criminal proceedings, disseminated in his book and two other media information concerning the identity of the alleged victim of that assault without the latter's consent. The Court observed that the applicant was known in certain circles and that, despite the fact that the victim's identity had already been in the public domain, not least because she herself had revealed it on her social media accounts, her subsequent identification by the applicant had significantly amplified public awareness and coverage,

which fact had been attested by numerous reactions to the applicant's revelations on social media (§§ 37-38). Given the State's obligation to ensure protection of the victim of the alleged sexual assault, it did not overstep its margin of appreciation in sanctioning the applicant for his publication (§§ 39-40 and 45).

3. "Duties and responsibilities" of Internet news portals

692. While, because of the particular nature of the Internet, the "duties and responsibilities" that are to be conferred on an Internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher as regards third-party content (*Delfi AS v. Estonia* [GC], 2015, § 113; see also *Orlovskaya Iskra v. Russia*, 2017, § 109), the provision of a forum for the exercise of freedom of expression rights, enabling the public to impart information and ideas, must be assessed in the light of the principles applicable to the press (*Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, 2016, § 61).

693. In assessing whether an Internet portal operator is required to remove comments posted by a third party, the Court has identified four criteria with a view to striking a fair balance between the right to freedom of expression and the right to reputation of the person or entity referred to in the comments (*Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, 2016, §§ 60 et seq.; *Delfi AS v. Estonia* [GC], 2015, §§ 142 et seq.), namely:

1. the context and contents of the comments,
2. the liability of the authors of the comments,
3. the measures taken by the applicants and the conduct of the aggrieved party,
4. the consequences for the aggrieved party and for the applicants.

694. On the basis of these criteria, the Court held that it had been justified under Article 10 of the Convention to order an Internet news portal to pay damages for insulting anonymous comments posted on its site, in view of the extreme nature of the comments, which amounted to hate speech or incitements to violence (*Delfi AS v. Estonia* [GC], 2015).

695. In contrast, having regard to the absence of hate speech or any direct threats to physical integrity in the user comments in question, the Court found that objective liability of Internet portals for third-party comments was not compatible with Article 10 of the Convention, holding in particular that there was no reason to state that, accompanied by effective procedures allowing for rapid response, the notice-and-take-down-system had not functioned as an appropriate tool for protecting the commercial reputation of the real-estate management websites involved in this case (*Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, 2016, § 91; see also, with regard to the importance of a rapid reaction after notification of the illegality of content, *Pihl v. Sweden*, 2017, § 32; *Tamiz v. the United Kingdom* (dec.), 2017, § 84; *Høiness v. Norway*, 2019, §§ 73-74).

4. Liability arising from the publication of a hyperlink

696. In the case of *Magyar Jeti Zrt v. Hungary*, 2018, the applicant company had been found liable for having inserted a hyperlink to an interview on YouTube that was subsequently held to have defamatory content.

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*, 2018, § 73).

697. 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 (*Magyar Jeti Zrt v. Hungary*, 2018, § 74).

698. The 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. Additionally, the allegedly illegal content behind a hyperlink had already been made available by the initial publisher on the website to which it led, providing unrestricted access to the public (*Magyar Jeti Zrt v. Hungary*, 2018, § 75).

699. The Court considers that the issue of whether the posting of a hyperlink might amount to disseminating defamatory statements required the domestic courts to carry out an individual assessment in each case and to find the creator of the hyperlink liable only where there relevant and sufficient grounds.

In this connection, it listed, in the case under consideration, several relevant questions that the domestic courts had not examined when they found against the applicant company: (i) had the applicant company endorsed the impugned content; (ii) had it repeated the impugned content (without endorsing it); (iii) had it merely put a hyperlink to the impugned content (without endorsing or repeating it); (iv) had it known or could it reasonably have known that the impugned content was defamatory or otherwise unlawful; (v) had it acted in good faith, respected the ethics of journalism and performed the due diligence expected in responsible journalism? (*Magyar Jeti Zrt v. Hungary*, 2018, § 77).

700. In the circumstances of the *Magyar Jeti Zrt v. Hungary*, 2018, case, the Court noted that, in domestic law, hyperlinking amounted to dissemination of information and entailed objective liability for the person inserting it, which could have 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 had no control. This could therefore have, directly or indirectly, a chilling effect on freedom of expression on the Internet (§§ 83-84).

701. In *Kilin v. Russia*, 2021, the applicant was convicted of making public calls to violence and public discord by making third-party content available for access to others using an account on a social-network website. The Court considered, in particular, that the sharing of third-party content online through social-media platforms was a frequent way of communication and social interaction and that it did not always pursue any specific communicative aim or aims, especially where a person did not accompany it with any comment or otherwise signified his or her attitude toward the content. At the same time, it could not be excluded that such act of sharing certain content still could contribute to an informed citizenry (§ 79). It further noted that the present applicant, by uploading the impugned materials, had not intended to contribute to a debate on a matter of public interest (§ 82). He had taken those materials out of their context, without providing any commentary (§ 86), with the result that the relevant materials could be reasonably perceived as stirring up ethnic discord and violence. Importantly, the Court further found that the domestic courts had convincingly established the applicant's criminal intent vis-à-vis that content (§§ 87 and 90) and that this factor could be regarded as both relevant and sufficient to justify his prosecution (§ 92-93). It was therefore not decisive that, at the relevant time, there was an apparent lack of any sensitive social or political background or indeed a lack of any indication that the general security situation in Russia was tense, that there were any clashes, disturbances, or interethnic riots or that there existed an atmosphere of hostility and hatred towards the ethnic groups targeted by the impugned material.

5. "Duties, responsibilities" and press publications on the Internet

702. With regard to the provision of reliable and precise information in accordance with the ethics of journalism, the Court has stated the principle that when it publishes on the Internet the press has an increased responsibility, underlining that in 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, monitoring compliance with journalistic ethics takes on added importance (*Stoll v. Switzerland* [GC], 2007, § 104). In considering the "duties and responsibilities" of a journalist, the potential impact of the medium concerned is an important factor and the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question (*Delfi AS v. Estonia* [GC], 2015, § 134).

703. Equally, the duty of the press to act in accordance with the principles of responsible journalism by ensuring the accuracy of historical, rather than perishable, information published is likely to be more stringent in the absence of any urgency in publishing the material (*Times Newspapers Ltd v. the United Kingdom (no. 1 and no. 2)*, 2009, § 45).

704. Thus, in the Court's view, 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, the requirement to publish an appropriate qualification to an article contained in an Internet archive does not constitute a disproportionate interference with the right to freedom of expression (*Times Newspapers Ltd v. the United Kingdom (no. 1 and no. 2)*, 2009, § 47).

705. In contrast, responsible journalism does not require that the press remove from their Internet archives all traces of publications which had in the past been found, by final judicial decisions, to amount to defamation (*Węgrzynowski and Smolczewski v. Poland*, 2013, §§ 60-68, on the compatibility of preserving in a newspaper's Internet archives a press article that had been found to be defamatory, under Article 8; see also, on the need to anonymise archived online material about a trial and criminal conviction, *M.L. and W.W. v. Germany*, 2018).

706. Likewise, the editor of an Internet site could not be considered liable for having published allegations of child sex abuse against an election candidate, given that he had made sure that the article in question had been written in compliance with journalistic obligations to verify allegations (*Ólafsson v. Iceland*, 2017). Lastly, journalists' "duties and responsibilities" do not contain any obligation to notify in advance the subject of a report of their intention to publish, so as to enable the persons concerned to seek an interim injunction with a view to preventing publication (*Mosley v. the United Kingdom*, 2011, §§ 125-129).

707. It is important to note that journalists' duties and responsibilities in the exercise of their freedom of expression also apply when they publish information on the Internet under their own name, including on sites other than that of their newspaper – specifically, on a freely accessible Internet forum (see, to this effect, *Fatullayev v. Azerbaijan*, 2010, §§ 94-95).

6. "Right to be forgotten"

708. Although the concept of a "right to be forgotten" has only emerged recently and is still under construction, its application in practice has already acquired a number of distinctive features (*Hurbain v. Belgium* [GC], 2023, §§ 191 and 194). This concept first emerged in national judicial practice in the context of the republication by the press of previously disclosed information of a judicial nature, with the person claiming a "right to be forgotten" effectively seeking to obtain a judgment against the person who republished the information (*ibid.*, § 194). Subsequently, a new aspect of this "right to be forgotten" emerged in national judicial practice in the context of the digitisation of news articles, resulting in their widespread dissemination on the websites of the newspapers concerned. The effect of this dissemination was simultaneously magnified by the listing of websites by search engines. This aspect, known as the "right to be forgotten online", has concerned requests for the removal or

alteration of data available on the Internet or for limitations on access to those data, directed against news publishers or search engine operators. In such cases, the issue is not the resurfacing of the information but rather its continued availability online (*ibid.*, § 195). Generally speaking, the "right to be forgotten" may give rise, in practice, to various measures that can be taken by search engine operators or by news publishers. These relate either to the content of an archived article (for instance, the removal, alteration or anonymisation of the article) or to limitations on the accessibility of the information. In the latter case, limitations on access may be put in place by both search engines and news publishers (*ibid.*, § 175)

709. In its practice, the Court has dealt with several cases concerning requests for removal, alteration, anonymisation or de-indexing of news articles. These cases were examined either under Article 8, if brought by individuals who had invoked their right to respect for their private life (*Węgrzynowski and Smolczewski v. Poland*, 2013; *M.L. and W.W. v. Germany*, 2018) or under Article 10, if brought by journalists, editors or media owners, who had referred to their right of freedom of expression (*Biancardi v. Italy*, 2021; *Mediengruppe Österreich GmbH v. Austria*, 2022; *Hurbain v. Belgium* [GC], 2023).

710. More specifically, the case of *Biancardi v. Italy*, 2021, afforded the Court its first opportunity to rule on the compatibility with Article 10 of a civil judgment against a journalist for not de-indexing sensitive information published on the Internet concerning criminal proceedings against private individuals and the journalist's decision to keep the information easily accessible in spite of opposition from those concerned. The question of anonymising identities in the on-line article did not arise in this case. The Court noted that the article had remained easily accessible online for eight months after a formal request to remove it by the persons concerned. The severity of the sanction – liability under civil and not criminal law – and the amount of the compensation awarded did not appear excessive.

711. In the context of the initial publication of information relating to an individual's past, the Court examined the case of *Mediengruppe Österreich GmbH v. Austria*, 2022, which concerned a court order requiring a daily newspaper not to publish particular information about an individual indirectly connected to the campaign of a political candidate in the run-up to a presidential election. The newspaper had published a photo of the brother of the candidate's office manager in a "right-wing scene" and had revealed that he was a "convicted neo-Nazi". Over twenty years had passed between that conviction and the publication of the article at issue, and some seventeen years since his release from prison: moreover, the conviction had already been deleted from his criminal record at the time of the publication in question. The national superior court pointed to a lack of a temporal connection and prohibited the applicant company from publishing pictures of the office manager's brother without his consent if reporting in the same article that he was a convicted neo-Nazi in the accompanying report. The Court has found no violation of Article 10, emphasising, in particular, the lapse of time between the conviction, the release and the publication of the article in question; the loss of notoriety of the person concerned; the fact that he had no further criminal conviction; the importance of reintegration into society of persons who have served their sentence; and their legitimate and very significant interest in no longer being confronted with their conviction after a certain period of time.

712. As regards media web archives comprising the personal data of an individual who had been the subject of a publication in the past, the Court pointed out that this context differed from situations concerning an initial publication (*Hurbain v. Belgium* [GC], 2023, § 205), and defined the main issue to be addressed as the continued availability of such information online rather than its original publication (*ibid.*, § 174).

713. In this context, the refusal of the courts to order the withdrawal of an article damaging the reputation of a lawyer and available in a newspaper's Internet archives was found not to be in breach of Article 8 in the case of *Węgrzynowski and Smolczewski v. Poland*, 2013 (§§ 60-70). The Court accepted that it was not the role of the judicial authorities to engage in rewriting history by ordering

the removal from the public domain of all traces of publications which had in the past been found, by final judicial decisions, to amount to unjustified attacks on individual reputations (*ibid.*, § 65). Furthermore, the legitimate interest of the public in access to the public Internet archives of the press was protected under Article 10 (*ibid.*, § 65). It was noteworthy that the Polish courts had observed that it would be desirable to add a comment to the article on the newspaper's website informing the public of the outcome of the first set of proceedings. In the Court's view, this showed that the domestic courts had been aware of the significance which publications available to the general public on the Internet could have for the effective protection of individual rights and that they appreciated the value of the availability on the newspaper's website of full information about the judicial decisions concerning the article. The lawyer had not requested that a reference to the earlier judgments in his favour be added to the article (*ibid*., §§ 66-67).

714. In the case of *M.L. and W.W. v. Germany*, 2018, two individuals who had been convicted of murder and been released fourteen years later, having served their prison sentence, unsuccessfully requested that the newspaper web archives remove their photographs and statements of their full identities (surnames and forenames) to enable them to make a new start in life out of public view. The Court found no violation of Article 8 on the grounds that the public interest in having access to accurate and objective archives should take precedence (*ibid.*, § 116). In particular, the Court had regard to the following considerations: the fact that, at the time the applicants' requests for anonymisation were lodged, the impugned reports had continued to contribute to a debate of public interest; the fact that the applicants were not simply private individuals unknown to the public; the applicants' conduct with regard to the media, which they had approached after their conviction with a view to having the proceedings reopened; the fact that the reports had related the facts in an objective manner and without the intention to present the applicants in a disparaging way or to harm their reputation; and the limited accessibility of the information (*ibid.*, §§ 98-115).

715. In the case of *Hurbain v. Belgium* [GC], 2023, the Court revisited its existing case-law and adjusted the criteria to be applied for balancing of the respective rights under Article 8 and Article 10 concerning the continued availability of an electronic archived version of an article disclosing an individual's personal data. The case was brought by a newspaper publisher who had been ordered by the domestic courts to anonymise an online archived version of an article which had been published some twenty years earlier and had provided an accurate account of a fatal accident, on the ground of the "right to be forgotten" of a driver who had caused that accident. In its judgment, the Court acknowledged the adverse effects of the continued availability of certain information on the Internet, and in particular the considerable impact on the way in which the person concerned was perceived by public opinion, as well as the risks linked to the creation of a profile of the person concerned and to a fragmented and distorted presentation of the reality. Nevertheless, it explained that a claim of entitlement to be forgotten did not amount to a self-standing right protected by the Convention and, to the extent that it is covered by Article 8, could concern only certain situations and items of information (*ibid.*, § 199).

716. The Court went on to clarify that the balancing of the relevant rights (those being of equal value) to be carried out in the context of a request to alter online archived journalistic content should take into account the following criteria: (i) the nature of the archived information; (ii) the time that had elapsed since the events and since the initial and online publication; (iii) the contemporary interest of the information; (iv) whether the person claiming entitlement to be forgotten was well known and his or her conduct since the events; (v) the negative repercussions of the continued availability of the information online; (vi) the degree of accessibility of the information in the digital archives; and (vii) the impact of the measure on freedom of expression and more specifically on freedom of the press (*ibid.*, § 205). The Court, furthermore, underlined that, in most instances, several criteria would need to be taken into account simultaneously in order to determine the protection to be afforded to private life when set against the other interests at stake and against the means employed to give effect to that protection in a particular case. Thus, the protection of private life in the context of an assertion

of entitlement to be forgotten could not be considered in isolation from the means by which it had been implemented in practice. Seen from this perspective, it was a matter of carrying out a balancing exercise with a view to establishing whether or not, regard being had to the respective weight of the competing interests and the extent of the means employed in the specific case, the weight attributed either to the "right to be forgotten", through the right to respect for private life, or to freedom of expression had been excessive. Moreover, the criteria to be applied did not all carry the same weight. Particular attention was to be paid to properly balancing, on the one hand, the interests of the individuals requesting the measures and, on the other hand, the impact of such requests on the publishers. The principle of preservation of the integrity of press archives required the alteration and, a fortiori, the removal of content to be limited to what was strictly necessary, so as to prevent any chilling effect on the performance by the press of its task of imparting information and maintaining archives (*ibid.*, § 206 and 211). When applying the above-mentioned criteria in the circumstances of the case under examination, the Court observed that the national courts had taken account in a coherent manner of the nature and seriousness of the judicial facts reported on in the article in question, the fact that the article had had no topical, historical or scientific interest, and the fact that the individual concerned had not been well known. In addition, they had attached importance to the serious harm suffered by that individual as a result of the continued online availability of the article with unrestricted access, which had been apt to create a "virtual criminal record", especially in view of the length of time that had elapsed since the original publication of the article. Furthermore, after reviewing the measures that might be considered in order to balance the rights at stake, they had held that the anonymisation of the article had not imposed an excessive and impracticable burden on the applicant, while constituting the most effective means of protecting the said individual's privacy (*ibid.*, § 255). The Court was therefore satisfied that a proper balancing exercise had been carried out by the domestic courts, and found no violation of Article 10 (*ibid.*, § 256).

7. Social media

717. In the case of *Melike v. Turkey*, 2021, the Court examined, for the first time, limitations on political expression of employees on social media and, in particular, the use of the "Like" button to express interest or approval of content published by third persons. The relevant content comprised, *inter alia*, virulent political criticism of allegedly repressive practices by the authorities, calls and encouragement to demonstrate in protest against those practices as well as expressions of indignation. The applicant was dismissed by her employer under private law as she had "Liked" content following a decision of a disciplinary commission (on whom Ministry representatives sat). The Labour Court considered that the content she had "Liked" could not be covered by freedom of expression and was likely to disturb the peace and tranquillity of the workplace. The Court approached the case from the standpoint of the State's positive obligations under Article 10 (§§ 38-40). It pointed out that using the "Like" button could not be considered as carrying the same weight as sharing content. It further observed that the applicant was not a public figure and it was not shown whether her "Likes" had been noticed by a large number of the social network users or could have provoked any detrimental consequences at the applicant's working place (§§ 51-53). It further stressed the severity of the imposed penalty and found a violation of Article 10 (§§ 54-56).

718. In the case of *Sanchez v. France* [GC], 2023, the Court addressed, for the first time, the question of the liability of users of social networks on account of comments by third parties. In this case, the applicant a politician, was held criminal liable for xenophobic remarks posted by other users on the "wall" of his personal Facebook account during an election campaign. The Court underlined, in particular, that the applicant's Facebook "wall" was not comparable to a "large professionally managed Internet news portal run on a commercial basis", and rather approached the case in the light of "duties and responsibilities" attributable to politicians when they decided use social networks for political purposes, in particular for an election campaign, by opening fora that were accessible to the public on the Internet in order to receive their reactions and comments (§ 180). In this context, the

Court emphasised the fact that an account holder could not claim any right to impunity in his or her use of electronic resources made available on the Internet and that such a person had a duty to act within the confines of conduct that could reasonably be expected of him or her (§ 190). In the latter connection, a degree of notoriety was a relevant factor: a private individual of limited notoriety and representativeness would have fewer duties than a local politician and a candidate standing for election to local office, who in turn would have a lesser burden than a national figure for whom the requirements would necessarily be even heavier, on account of the weight and scope accorded to his or her words and the resources to which he or she would enjoy greater access in order to intervene efficiently on social media platforms (§ 201).

719. With this in mind, the Court pointed out that the applicant had used his Facebook account in his capacity as a politician and for political purposes, during an election campaign to which the impugned comments were directly related (§ 189). He had furthermore been free to decide whether or not to make access to the "wall" of his Facebook account public. Whilst he could not be reproached for that decision itself, in view of the local and election-related tension at that time, that option had clearly been not without potentially serious consequences, as the applicant must have been aware in the circumstances (§ 193). Noting that the applicant had not taken timely steps to review the posted comments and delete those that had been clearly unlawful, and that the domestic courts had given reasoned decisions based on the reasonable assessment of the facts (§ 199), the Court concluded that Article 10 had not been violated in that case (§§ 209-10).

C. Blocking of access to the Internet

720. The Court has ruled on several occasions on the Article-10 compatibility of measures by the national authorities blocking access to certain Internet sites. In essence, the applicants complained of the collateral effects of the blocking measure.

721. With regard to the blocking of the YouTube video-hosting site, the Court noted that the applicants, although they were mere users who were not directly targeted by the decision to block access to YouTube, could legitimately claim that the contested measure had affected their right to receive and impart information or ideas, in that they were active users of YouTube and that this platform was unique, 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*, 2015, §§ 52, 53, 55; see also *Ahmet Yıldırım v. Turkey*, 2012, §§ 49 and 55, about the fact that it was impossible for an individual to access his website, hosted on a Google Sites hosting service).

722. In contrast, the Court held that the mere fact that the applicant – like the other Turkish users of the websites in question – had been indirectly affected by a blocking measure against two music-sharing websites could not suffice for him to be regarded as a "victim" (*Akdeniz v. Turkey* (dec.), 2014, § 24).

723. With regard to whether the blocking measure was justified, the Court held that although such prior restraints were not incompatible with the Convention as a matter of principle, they had nonetheless to form part of a particularly strict legal framework ensuring both tight control over the scope of the ban and effective judicial review to prevent any abuses. The judicial review of such a measure, based on a weighing-up of the competing interests at stake and designed to strike a balance between them, is inconceivable without a framework establishing precise and specific rules regarding the application of preventive restrictions on freedom of expression (*Ahmet Yıldırım v. Turkey*, 2012, § 64; *Cengiz and Others v. Turkey*, 2015, § 62, which concerns the freedom to receive and impart information and ideas; see also *OOO Flavus and Others v. Russia*, 2020, §§ 40-43).

724. The Court has emphasised, in particular, the need to weigh up the various interests at stake, in particular by assessing the need to block all access to particular sites (*Ahmet Yıldırım v. Turkey*, 2012, § 66) and noted that the authorities should have taken into consideration, among other aspects, the

fact that such a measure, by rendering large quantities of information inaccessible, was bound to substantially restrict the rights of Internet users and to have a significant collateral effect (*ibid.*; *Cengiz and Others v. Turkey*, 2015, § 64). The fact that the organisations continued to have social media presence or were publishing on other platforms is not "an equivalent substitute for their main and fully fledged news websites" that have been blocked by local authorities. Even the fact that the website block could be bypassed through VPNs and other third-party services cannot "alleviate" the impact of such orders (*RFE/RL Inc. and Others v. Azerbaijan*, 2024, § 72-73).

725. In the case of *Vladimir Kharitonov v. Russia*, 2020, concerning the blocking of an Internet site as the automatic consequence of a blocking order against another site with the same IP address, the Court noted that this measure had had a significant collateral effect, by rendering large quantities of information inaccessible, and had thus substantially restricted the rights of Internet users. The Court considered that the legal framework on which the competent authorities based their decision had not been sufficiently foreseeable for the purposes of Article 10 of the Convention (§§ 45-47).

726. In the case of *Kablis v. Russia*, 2019, the Court ruled on whether prior restraints on Internet posts encouraging participation in an unauthorised public event were compatible with Article 10 of the Convention. It held that it ought to have been possible to obtain judicial review of the blocking measures before the event in question took place. The information contained in the posts was deprived of any value and interest after that date, and the annulment of the blocking measure on judicial review at that stage would therefore be meaningless (§ 96). Equally, in this case and in the case of *Elvira Dmitriyeva v. Russia*, 2019, the Court considered that the mere fact that the applicants had breached a statutory prohibition by publishing an online call for participation in a public event held in breach of the established procedure was not sufficient in itself to justify an interference with their freedom of expression (§§ 103 and 84 respectively).

727. The Court has found in several cases that a wholesale blocking order against a website is an extreme measure, which has been compared by the UN Human Rights Committee and other international bodies to banning a newspaper or broadcaster (*OOO Flavus and Others v. Russia*, 2020, § 37; *Bulgakov v. Russia*, 2020, § 34).

728. In the case of *OOO Flavus and Others v. Russia*, 2020, concerning the unjustified wholesale blocking of opposition online media outlets, the Court considered that this measure, which deliberately ignored the distinction between illegal and illegal information, was arbitrary and manifestly unreasonable (§ 34).

729. In the case of *Bulgakov v. Russia*, 2020, concerning the blocking, by court order, of an entire website on account of the presence of forbidden material, and its continued blocking even after that material had been removed, the Court held that there had been no legal basis for the blocking order, in that the legislation on which the order was based did not permit the authorities to block access to an entire Internet site (§ 34). The Court also considered that the finding of unlawfulness applied *a fortiori* to the continued blocking of the website after the prohibited material had been removed (§ 38). Lastly, the Court explained that while the procedural requirement of Article 10 is ancillary to the wider purpose of ensuring respect for the substantive right to freedom of expression, the right to an effective remedy afforded a procedural safeguard (§ 46). In this sense, the Court considered that although the applicant had been able formally to appeal against the judicial decision in question and to take part in the hearing, he had not had access to an "effective" remedy within the meaning of Article 13 of the Convention, in that the appellate court had not considered the merits of his grievance (§ 48; see also *Engels v. Russia*, 2020, §§ 41-44).

730. Lastly, in a case in which the owner of a website had been obliged, in order to avoid blocking of his entire website, to remove information prohibited by the domestic courts on filter-bypassing tools, the Court held that the legislative basis for the order did not give the courts or owners of Internet sites any indication as to the nature or categories of content that was likely to be banned, and thus failed to satisfy the foreseeability requirement (*Engels v. Russia*, 2020, §§ 27-28).

D. Access to the Internet and persons in detention

731. The Court has had occasion to rule on the refusal, on the grounds of protection of the rights of others and the prevention of disorder and crime, to allow prisoners to have access, via Internet, to information published on specific sites which was freely accessible in the public domain.

732. While emphasising that Article 10 does not impose a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners (*Jankovskis v. Lithuania*, 2017, § 55; *Kalda v. Estonia*, 2016, § 45), the Court held that there had been an interference with the applicants' exercise of the right to receive information and found a violation of Article 10. In so doing, it based its conclusion, in particular, on the nature and origin of the relevant information and the national authorities' failure to carry out a sufficiently in-depth examination of the prisoners' individual situations, noting, respectively, that the applicant needed access to it to protect his rights in the context of the domestic court proceedings (*Kalda v. Estonia*, 2016, § 50) and that it was not unreasonable to hold that the information in question was directly relevant to the applicant's interest in obtaining education, which was in turn of relevance for his rehabilitation and subsequent reintegration into society (*Jankovskis v. Lithuania*, 2017, § 59).

XIV. Pluralism and freedom of expression

733. The Court considers that there can be no democracy without pluralism (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 129). One of the principal characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence (*Manole and Others v. Moldova*, 2009, § 95). As the Court sees it, even in a state of emergency, which is a legal regime whose aim is to restore the normal regime by guaranteeing fundamental rights, the Contracting States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness (*Şahin Alpay v. Turkey*, 2018, § 180).

734. Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 129; *Manole and Others v. Moldova*, 2009, § 95; *Socialist Party and Others v. Turkey*, 1998, §§ 41, 45 and 47).

735. Given the importance of what is at stake under Article 10, the State is the ultimate guarantor of pluralism (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 101; *Manole and Others v. Moldova*, 2009, § 99; *Informationsverein Lentia and Others v. Austria*, 1993, § 38).

736. The Court considers that, in the field of audiovisual broadcasting, the above principles place a duty on the State to ensure, first, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting, *inter alia*, the diversity of political outlook within the country and, secondly, that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment (*Manole and Others v. Moldova*, 2009, § 100).

737. Pluralism as a value intrinsic to democracy is emphasised in the Court's case-law on Article 10 of the Convention in several fields, and especially those set out below.

A. The general principles concerning pluralism in the audiovisual media

738. The freedom of expression enshrined in paragraph 1 of Article 10 constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress (*Lingens v. Austria*, 1986, § 41). Freedom of the press and other news media afford the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on political issues and on other subjects of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them (see, for example, *Handyside v. the United Kingdom*, 1976, § 49, and *Lingens v. Austria*, 1986, §§ 41-42).

739. The audiovisual media, such as radio and television, have a particularly important role in this respect. Because of their power to convey messages through sound and images, such media have a more immediate and powerful effect than print (*Animal Defenders International v. the United Kingdom* [GC]; 2013, § 119; *Pedersen and Baadsgaard v. Denmark* [GC], 2004, § 79; *Jersild v. Denmark*, 1994, § 31). The function of television and radio as familiar sources of entertainment in the intimacy of the listener's or viewer's home further reinforces their impact (*Manole and Others v. Moldova*, 2009, § 97; *Murphy v. Ireland*, 2003, § 74). Moreover, particularly in remote regions, television and radio may be more easily accessible than other media (*Manole and Others v. Moldova*, 2009, § 97).

740. The Court considers that respect for the principle of pluralism also implies, in the field of audiovisual broadcasting, a duty on the State to ensure, first, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting *inter alia* the diversity of political outlook within the country (*Manole and Others v. Moldova*, 2009, § 20). The choice of the means by which to achieve these aims must vary according to local conditions and, therefore, falls within the State's margin of appreciation.

741. Where a State does decide to create a public broadcasting system, it follows from the principles outlined above that domestic law and practice must guarantee that the system provides a pluralistic service. Particularly where private stations are still too weak to offer a genuine alternative and the public or State organisation is therefore the sole or the dominant broadcaster within a country or region, it is indispensable for the proper functioning of democracy that it transmits impartial, independent and balanced news, information and comment and in addition provides a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed (*Manole and Others v. Moldova*, 2009, § 101). The choice of the means by which to achieve these aims must vary according to local conditions and, therefore, falls within the State's margin of appreciation (*NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 192).

742. The requirement of pluralism is not restricted to what can be described as issues of external pluralism (for example monopoly, duopoly or other positions of dominance) but also concerns the relevant national legal framework on internal pluralism, such as the obligation on broadcasters to present different political views in a balanced manner without favouring a particular party or political movement (*NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 189).

743. Neither aspect of pluralism, internal or external, should be considered in isolation from each other but rather in combination. Thus, in a national licensing system involving a certain number of broadcasters with national coverage, what may be regarded as a lack of internal pluralism in the programmes offered by one broadcaster may be compensated for by the existence of effective external pluralism (*NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 190).

744. However, it is not sufficient to provide for the existence of several channels (*Centro Europa 7 S.R.L. and Di Stefano v. Italy* [GC], 2012, § 130). As stated in the Committee of Ministers Recommendation CM/Rec (2007)2 on media pluralism and diversity of media content, "pluralism of

information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public". What is required is to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society targeted by the programmes. Indeed, there may be different approaches to achieving overall programme diversity in the European space (*NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 190).

745. In the case of *Manole and Others v. Moldova*, 2009, the applicants were all, during the relevant period, journalists, editors or producers; they complained of restrictions on their freedom of expression and the insufficient statutory guarantees with regard to the independence of the public broadcasting service, which enjoyed a virtual monopoly in the country. The Court reiterated in this case that, subject to the conditions set out in Article 10 § 2, journalists have a right to impart information. The protection of Article 10 extends to employed journalists and other media employees. An employed journalist can claim to be directly affected by a general rule or policy applied by his or her employer which restricts journalistic freedom. A sanction or other measure taken by an employer against an employed journalist can amount to an interference with freedom of expression (§§ 103 and 111; see also *Fuentes Bobo v. Spain*, 2000, § 38).

746. In a case concerning the disciplinary dismissal of a journalist from a public radio service, the Court took account of the general principles concerning pluralism in the audiovisual media and of the right of public broadcasters to set their editorial policy, in line with the public interest, and their responsibility for statements made on air. The Court found that the applicant's capacity as a journalist did not automatically entitle her to pursue, unchecked, a policy that ran counter to that outlined by her employer, which amounted to flouting legitimate editorial decisions taken by the management (*Nenkova-Lalova v. Bulgaria*, 2012, §§ 59-60).

B. Media pluralism and elections

747. Free elections and freedom of expression, and particularly the freedom of political debate, form the foundation of any democracy. The two rights are inter-related and operate to reinforce each other. It is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely (*Orlovskaya Iskra v. Russia*, 2017, § 110; *Cheltsova v. Russia*, 2017, § 96; *Długołęcki v. Poland*, 2009, § 40; *Bowman v. the United Kingdom* [GC], 1998, § 42; *Teslenko and Others v. Russia*, 2022, § 119). This principle applies both to national and local elections (*Cheltsova v. Russia*, 2017, § 96; *Kwiecień v. Poland*, 2007, § 48).

748. In consequence, the watchdog role of the press is no less pertinent at election time. In the Court's view, this role encompasses an independent exercise of freedom of the press on the basis of free editorial choice aimed at imparting information and ideas on subjects of public interest. In particular, discussion of the candidates and their programmes contributes to the public's right to receive information and strengthens voters' ability to make informed choices between candidates for office (*Orlovskaya Iskra v. Russia*, 2017, § 130).

749. The Court has reiterated that a political debate on matters of general interest is an area in which restrictions on the freedom of expression should be interpreted narrowly (*Lopes Gomes da Silva v. Portugal*, 2000, § 33).

750. In the context of election debates, the Court has attributed particular significance to the unhindered exercise of freedom of speech by candidates (*Kudeshkina v. Russia*, 2009, § 87).

751. Referring to the *travaux préparatoires* on Article 3 of Protocol No. 1, the Court has stressed that the phrase "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" implies essentially – apart from freedom of expression (already protected under Article 10 of the Convention) – the principle of equality of treatment of all citizens in the exercise of

their right to vote and their right to stand for election (*Mathieu-Mohin and Clerfayt v. Belgium*, 1987, § 54).

752. In certain circumstances the two rights may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the "free expression of the opinion of the people in the choice of the legislature". The Court recognises that, in striking the balance between these two rights, the Contracting States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 123; *Oran v. Turkey*, 2014, § 52; *Bowman v. the United Kingdom* [GC], 1998, § 43).

C. Regulations on paid advertising

753. The Court recognises that powerful financial groups can obtain competitive advantages in the area of commercial advertising and may thereby exercise pressure on, and eventually curtail the freedom of, the radio and television stations broadcasting the commercials. It considers that such situations undermine the fundamental role of freedom of expression in a democratic society as enshrined in Article 10 of the Convention (*VgT Verein gegen Tierfabriken v. Switzerland*, 2001, § 73).

754. The Court has held that purchasing broadcasting time to advertise tends to have a distinctly partial objective, which would lean in favour of unbalanced usage by groups with larger resources than others (*Murphy v. Ireland*, 2003, § 74). Media pluralism is especially at risk in the area of advertising in that the impugned advertisements are political (*Animal Defenders International v. the United Kingdom* [GC], 2013) or religious (*Murphy v. Ireland*, 2003) in nature.

755. The Court has noted that there is no European consensus on how to regulate paid political advertising in broadcasting (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 123). This broadens the margin of appreciation, usually narrow, to be accorded to the State as regards restrictions on public interest expression (*ibid.*, § 123; *TV Vest AS & Rogaland Pensjonistparti v. Norway*, 2008, § 67; *Société de conception de presse et d'édition and Ponson v. France*, 2009, §§ 57 and 63). In the case of *Animal Defenders International v. the United Kingdom* [GC], 2013, the Court noted that the interests to be weighed up with regard to political advertising are, on the one hand, the applicant NGO's right to impart information and ideas of general interest which the public is entitled to receive with, on the other, the authorities' desire to protect the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media. It recognises that such groups could obtain competitive advantages in the area of paid advertising and thereby curtail a free and pluralist debate, of which the State remains the ultimate guarantor (§ 112).

756. Protection of media pluralism in the area of political advertising is particularly high in situations where major parties are given considerable airtime, while smaller parties are barely mentioned. In such situations, the Court has held that paid advertising on television was thus the only way for a small party to put its message across to the public through that medium, although this was prohibited by law (*TV Vest AS & Rogaland Pensjonistparti v. Norway*, 2008, § 73). Access to alternative media is a key factor in assessing the proportionality of a restriction on access to other potentially useful media such as radio or television discussion programmes, the print media and social media (*Animal Defenders International v. the United Kingdom* [GC], 2013, § 124).

757. The Court also protects media pluralism in the context of religious advertising, for the sake of safeguarding the objective of promoting neutrality in broadcasting and of ensuring a level playing field for all religions (*Murphy v. Ireland*, 2003, § 78). In this connection, it accepts that a provision allowing one religion, and not another, to advertise would be difficult to justify and that a provision which allowed the filtering by the State or any organ designated by it, on a case-by-case basis, of unacceptable or excessive religious advertising would be difficult to apply fairly, objectively and

coherently (*ibid.*, § 77). Nonetheless, it was reasonable for a State to consider it likely that even a limited freedom to advertise would benefit a dominant religion more than those religions with significantly less adherents and resources (*ibid.*, § 78).

D. The distribution of audiovisual sources

758. Under the third sentence of Article 10 § 1, States may regulate by means of a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 139). The granting of a licence may also be made conditional on other considerations, such as the nature and objectives of a proposed channel, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments (*Demuth v. Switzerland*, 2002, § 33; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 139).

759. While this may lead to interferences whose aims will be legitimate under the third sentence of Article 10 § 1, even though they do not correspond to any of the aims set out in paragraph 2, their compatibility with the Convention must nevertheless be assessed in the light of the other requirements of paragraph 2 (*NIT S.R.L. v. the Republic of Moldova*, 2022).

760. The Court has held, in numerous cases, that the refusal to grant a broadcasting licence (see, among many other examples, *Informationsverein Lentia and Others v. Austria*, 1993, § 27; *Radio ABC v. Austria*, 1997, § 27; *United Christian Broadcasters Ltd v. the United Kingdom* (dec.), 2000; *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, 2007, § 42), to authorise the broadcasting of a television programme (*Leveque v. France* (dec.), 1999; *Demuth v. Switzerland*, 2002, § 30) or to revoke the broadcasting licence of a TV channel (*NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 150), constituted interference with the exercise of the rights guaranteed by Article 10 § 1 of the Convention.

761. The Court considers that, as a result of the technical progress made over the last decades, justification for these restrictions can no longer today be found in considerations relating to the number of frequencies and channels available; above all, it cannot be argued that there are no equivalent less restrictive solutions (*Informationsverein Lentia and Others v. Austria*, 1993, § 39).

762. As to the margin of appreciation afforded to the States, the Court considers it to be essential in an area as fluctuating as that of commercial broadcasting and that, in consequence, the standards of scrutiny may be less severe (*Demuth v. Switzerland*, 2002, § 42; *Markt intern Verlag GmbH and Klaus Beermann v. Germany*, 1989, § 33). In particular, given the multifaceted character and complexity of issues concerning media pluralism, there are a variety of means that could be deployed by Contracting States to regulate effective pluralism in the audiovisual broadcasting sector. In such circumstances, the margin to be accorded in this regard should be wider than that normally afforded to restrictions on expression on matters of public interest or political opinion. The Contracting States should therefore in principle enjoy a wide discretion in their choice of the means to be deployed in order to ensure pluralism in the media. However, their discretion in this respect will be narrower depending on the nature and seriousness of any restriction on editorial freedom that the means thus chosen may entail (*NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 193).

763. In determining the extent of the margin of appreciation available to the national authorities, it is also necessary to have regard to the particular political structure of a member State, as well as its cultural and linguistic pluralism, especially where these factors, encouraging in particular pluralism in broadcasting, may legitimately be taken into account when authorising radio and television broadcasts (*Demuth v. Switzerland*, 2002, § 44).

764. Furthermore, the principle of fairness in the procedure, and procedural guarantees, apply too in the context of a refusal to issue a broadcasting licence and also to disclose the reasons for that

decision, on national security grounds (*Aydoğan and Dara Radyo Televizyon Yayıncılık Anonim Şirketi v. Turkey*, 2018, § 43).

E. Transparency with regard to media ownership

765. The Court has stated that, to ensure true pluralism in the audiovisual sector in a democratic society, it is not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audiovisual market. It is necessary for providers to have effective access to that market so as to guarantee diversity of the overall programme content, reflecting as far as possible the different opinions in society (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 130).

766. A situation whereby a powerful economic or political group in a society is permitted to obtain a position of dominance over the audiovisual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive (*Manole and Others v. Moldova*, 2009, § 98).

767. The Court has observed that in such a sensitive sector as the audiovisual media, in addition to its negative duty of non-interference, the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 134).

768. The Court has held that the positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism is especially desirable when the national audiovisual system is characterised by a duopoly (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 134) or, even more so, a monopoly. In the latter situation, the Court has held that, because of its restrictive nature, a licensing regime which allows the public broadcaster a monopoly over the available frequencies cannot be justified unless it can be demonstrated that there is a pressing need for it (*Manole and Others v. Moldova*, 2009, § 98; *Informationsverein Lentia and Others v. Austria*, 1993, § 39).

769. The Court refers in its case-law to Recommandation CM/Rec(2007)2 of the Committee of Ministers of the Council of Europe on media pluralism and diversity of media content (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 134). With regard to public service media, it also refers to the standards relating to public service broadcasting agreed by the Contracting States through the Committee of Ministers of the Council of Europe, which provide guidance as to the approach which should be taken to interpreting Article 10 in this field (*Manole and Others v. Moldova*, 2009, § 102 and §§ 51-54).

F. Pluralism and the freedom of expression of minorities

770. The Court considers that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority (*Alekseyev v. Russia*, 2010, § 81). Were this so, a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention (*ibid.*, § 81; *Barankevich v. Russia*, 2007, § 31).

771. The Court makes an important distinction between giving way to popular support in favour of extending the scope of the Convention guarantees and a situation where that support is relied on in order to narrow the scope of the substantive protection (*Bayev and Others v. Russia*, 2017, §§ 70-71).

772. In the case of *Sekmadienis Ltd. v. Lithuania*, 2018, where the applicant company had been ordered to pay a fine for running clothing advertisements depicting religious figures, the Court noted that the only religious group which had been consulted in the domestic proceedings had been the Roman Catholic Church, despite the presence of various other Christian and non-Christian religious communities in the country (§ 80). It held that, even assuming the Government were right in suggesting that the advertisements must have been considered offensive by the majority of the Lithuanian population who shared the Christian faith, it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority (§ 82).

XV. Article 10 and its relationship to other provisions of the Convention and the Protocols thereto: interdependency, overlapping

773. Occasionally one and the same event will fall within the scope of both Article 10 and another Convention provision. This situation has led the Court either to examine a case only under the Convention provision that it considers most relevant in view of the particular circumstances of the case and which is the equivalent of the *lex specialis*, or to examine the complaint under one provision and "in the light of" the second, or to examine the matters complained of under both Articles.

1. Article 6 § 1 of the Convention

774. In the case of *Kövesi v. Romania*, 2020, concerning the premature termination of a prosecutor's mandate following criticisms expressed with regard to legislative reforms, the Court considered that the restrictions laid down by the domestic courts for a review of her dismissal were contrary to Article 6 § 1 of the Convention (§§ 157-158); based on the same factual elements, it held, under Article 10 of the Convention, that the restrictions imposed on the applicant's freedom of expression had not been accompanied by effective and adequate safeguards against abuse (§ 210).

2. Article 8 of the Convention

775. In a case concerning the surveillance of journalists and an order for them to surrender documents capable of identifying their sources, the Court held that the law did not provide safeguards appropriate to the powers of surveillance used against the applicants with a view to discovering their journalistic sources, and found a violation of Articles 8 and 10 on the basis of the same facts (*Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, 2012, § 102; see also the Court's assessment in a comparable context: *Saint-Paul Luxembourg S.A. v. Luxembourg*, 2013, § 44; *Ernst and Others v. Belgium*, 2003, § 116; *Nagla v. Latvia*, 2013, § 101).

3. Article 9 of the Convention

776. In several cases in which the applicants relied on both Article 9 and Article 10 of the Convention, the Court decided to examine the complaints brought before it under Article 10 alone, thus rendering devoid of purpose the allegation of a violation of Article 9 (see, for example, on a ban by the competent State body on the broadcasting by a private radio station of a paid advertisement on a religious matter, *Murphy v. Ireland*, 2003, § 71; on the competent body's refusal to issue a broadcasting licence to a Christian radio station, *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, 2007, § 59; concerning a criminal conviction for public incitement to crime via an offensive speech targetting "non-believers", *Kutlular v. Turkey*, 2008, §§ 35 and 48. For cases in which the Court held that freedom of expression and

freedom of religion were closely linked and decided accordingly to examine the complaints under Article 10, interpreted, where appropriate, in the light of Article 9, see *Religious Community of Jehovah's Witnesses v. Azerbaijan*, 2020, § 24; see also *Taganrog LRO and Others v. Russia*, 2022, §§ 147, 218, 233, concerning various actions taken by the State against Jehovah's Witnesses religious organisations in Russia over a ten-year span).

777. The Court has also on occasion examined complaints solely under Article 9 and refused to examine the same complaints under Article 10 (*Kokkinakis v. Greece*, 1993, § 55; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, 2007, § 144; *Nasirov and Others v. Azerbaijan*, 2020, § 77).

4. Article 11 of the Convention[18]

778. In a case (*Palomo Sánchez and Others v. Spain* [GC], 2011) concerning the dismissal of trade-union members of having published articles which offended their colleagues, the Courted noted firstly that the question of freedom of expression was closely related to that of freedom of association in a trade-union context. However, although the applicants' complaint mainly concerned their dismissal for having, as members of the executive committee of a trade union, published and displayed the articles and cartoons in question, the Court considered it more appropriate to examine the facts under Article 10, which was nevertheless interpreted in the light of Article 11, given that it had not been found to be established that the applicants were dismissed as a result of their membership of that trade union (§ 52). Conversely, in another case (*Straume v. Latvia*, 2022, §§ 89-90) concerning sanctions suffered by an employee in response to a complaint she made while acting as a trade union representative, the Court considered that the question of freedom of expression was closely related to that of freedom of association within a trade union context and examined the complaint under Article 11, in the light of Article 10 of the Convention.

779. In the case of *Women On Waves and Others v. Portugal*, 2009, the Court noted at the outset that the question of freedom of expression was difficult to separate from that of freedom of assembly and reiterated that the protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention (§ 28). The Court found that it was easier to examine the situation in question under Article 10 alone. However, this approach does not prevent the Court from taking into account, where appropriate, Article 11 of the Convention when examining and interpreting Article 10 (*Schwabe and M.G. v. Germany*, 2011, § 101; *Ezelin v. France*, 1991, § 37; *Karademirci and Others v. Turkey*, 2005, § 26; *Novikova and Others v. Russia*, 2016, § 91; *Bumbeș v. Romania*, 2022, §§ 69-70; *Glukhin v. Russia*, 2023, § 47; see also, on the relationship between these two Convention provisions, *Öllinger v. Austria*, 2006, § 38; *Djavit An v. Turkey*, 2003, § 39; for the opposite approach, where Article 10 was regarded as a *lex generalis* in relation to Article 11, see *Hakim Aydın v. Turkey*, 2020, § 41).

5. Article 2 of Protocol No. 1

780. In the case of *İrfan Temel and Others v. Turkey*, 2009, concerning the temporary suspension of students for having petitioned university authorities to provide optional Kurdish language courses, Article 10 of the Convention and Article 2 of Protocol No. 1 were both relied on; the Court decided to interpret the second provision in the light of the first (see also *Çölgeçen and Others v. Turkey*, 2017).

781. In contrast, in a case concerning the refusal to allow prisoners to use a computer or to access the Internet, in premises specially designated for that purpose by the prison authorities, in order to continue their higher-education studies, the Court examined the case under the first sentence of Article 2 of Protocol No. 1 (*Mehmet Reşit Arslan and Orhan Bingöl v. Turkey*, 2019, § 42).

[18] See also Guide on Article 11, Chapter I B.

6. Article 3 of Protocol No. 1

782. The Court has repeatedly emphasised the interdependence in a democratic society between freedom of expression and the right to free elections. In particular, it held in the case of *Orlovskaya Iskra v. Russia*, 2017, that it was appropriate to consider the applicant's right to freedom of expression in the light of the right to free elections, protected by Article 3 of Protocol No. 1, which are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (§ 110; see also *Hirst v. the United Kingdom (no. 2)* [GC], 2005, § 58).

783. Freedom of expression is one of the "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" (*Mathieu-Mohin and Clerfayt v. Belgium*, 1987, §§ 42 and 54). For this reason, the Court considers that it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely. It has also stated that in certain circumstances these two rights may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the free expression of the opinion of the people in the choice of the legislature (*Bowman v. the United Kingdom* [GC], 1998, §§ 41-43). The Court recognises that, in striking the balance between these two provisions, the Contracting States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems (*Animal Defenders International v. the United Kingdom*, § 111; *Mathieu-Mohin and Clerfayt v. Belgium*, 1987, § 54; *TV Vest AS & Rogaland Pensjonistparti v. Norway*, 2008, § 62; *Orlovskaya Iskra v. Russia*, 2017, § 134).

784. In *Assotsiatsiya NGO Golos and Others v. Russia*, 2021, the applicant 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 ("silence") 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). It considered that the overbroad reach of the electoral legislation on the "silence period" extending to all material "relating to" an ongoing election disproportionately interfered with that NGO's exercise of its freedom to impart information and ideas on issues relating to the running of free and fair elections to the national legislature. In that connection, the Court emphasised that election observers should generally be able to draw the public's attention to potential violations of electoral laws and procedures as they occur, otherwise such reporting would lose much of its value and interest (*ibid*., § 88).

785. In a case concerning a removal of an election observer from a polling station whilst he was observing and filming the election process, the Court noted that his function had been to obtain first-hand and direct knowledge of the electoral process and impart the results of his observations, which served the important public interest in free and transparent elections. Given the fundamental importance of such elections in any democratic society and the essential role of political parties in the electoral process, the Court considered that the applicant had exercised his freedom of expression as a "public watchdog" and that the heightened level of protection under Article 10 therefore applied to his activity, which was of similar importance to that of the press. The fact that he had been forcibly removed from a polling station whilst observing the election process was considered to be a disproportionate interference with his freedom of expression given the lack of "relevant and sufficient" reasons to justify his removal (*Timur Sharipov v. Russia*, 2022, § 26 and §§ 35-39).

786. In *Mestan v. Bulgaria*, 2023, the applicant, a leader of a political party and a candidate at a legislative election, was fined for using Turkish, his mother tongue, at one of his election campaign meetings. In their relevant decision, the authorities referred to a provision of the national legislation on elections which prohibited the use of any language other than the official language (Bulgarian) in

the context of electoral campaigns. The Court pointed out that, in principle, the Contracting States had the right to regulate the use of languages – in certain forms or considering the circumstances surrounding the public communication – by candidates or other persons during electoral campaigns and, where appropriate, to impose certain restrictions or conditions corresponding to a "pressing social need". However, a regulatory framework imposing an absolute ban on the use of a non-official language under the threat of administrative sanctions could not be considered as being compatible with the essential values of a democratic society, the freedom of expression secured by Article 10 being amongst their number (§§ 58-60). In that context, the Court also emphasised the importance of pluralism, tolerance and the protection of minorities in a democratic society (§ 62).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, which becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (https://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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